

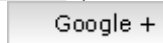
2013 Legislative Update

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The Louisiana 2013 Regular Legislative Session closed on June 6, 2013. In the subsequent weeks, Governor Bobby Jindal signed into law three bills that will affect employers:

1. the Louisiana employment discrimination law relative to veterans (La. R.S. 23:331);
2. the Louisiana Equal Pay for Women Act (La. R.S. 23:661 through 669); and
3. amendments to statutes regarding unemployment claims (La. R.S. 23:1599 and 23:1629(A)).

These new laws become effective on August 1, 2013. Their requirements and effect on employers are summarized below.

Louisiana Employment Discrimination Law Relative to Veterans (La. R.S. 23:331)

The Louisiana legislature has reenacted La. R.S. 23:331 (previously repealed by Acts 1999, No. 1366, § 2), to provide employment protections for veterans who were honorably discharged from the armed forces of the United States, including reserve components of the armed forces, the Army National Guard and the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the president in time of war or emergency. La. R.S. 23:331(D).

The statute now prohibits an employer from discharging, disciplining, or threatening to discharge or discipline, any covered veteran for taking time off of work to attend medical appointments necessary to meet the requirements to receive veterans' benefits. La. R.S. 23:331(A). An employer may require a veteran to verify his or her attendance at the medical appointment. An employee may satisfy this verification requirement by presenting a bill, receipt, or work excuse from the medical provider. La. R.S. 23:331(B). If a veteran is discharged or disciplined, or receives a threat of discharge or discipline, for attending medical appointments protected by this statute, the veteran may take legal action pursuant to La. R.S. 29:38(D), which sets forth the complaint and litigation procedure related to reemployment of persons called to duty in state military forces and national guards of other states.

What Does This Mean for Employers?

This statute leaves unanswered a number of questions that employers need to consider. The statute does not address the implications of an employer's lack of awareness that the employee is absent from work to attend a protected medical appointment. As a result, the statute could be interpreted to impose strict liability on employers for an unwitting violation. Additionally, there is no requirement that the employer notify an employee of his or her rights under this statute, which leads to a corresponding lack of guidance as to whether an employer may inquire into the reason for an employee's absence. The statute prohibits a broad category of conduct, particularly by prohibiting threats of discharge or discipline that may very well occur before the employer has knowledge of a protected medical appointment.

Ultimately, the statute may serve to create an exception to the employer's standard attendance policy especially where protected absences could subject an employee to "discipline" or "threat of discipline" under the employer's attendance policy. In light of these uncertainties surrounding the statute, employers should tread carefully when handling veterans' absences.

Louisiana Equal Pay for Women Act (La. R.S. 23:661 through 669)

Although initially drafted to apply to private and public employers alike, the final version of the Louisiana Equal Pay for Women Act (Senate Bill 153) applies only to the state of Louisiana, including any department, office, division, agency, commission, board, committee, or other organizational unit of the state. La. R.S. 23:663(3).

Prohibited Acts

The Act prohibits the state of Louisiana from discriminating against female employees who are employed by the state to work 40 or more hours per week, by paying them lower wages than the same agency pays men for the same or substantially similar work. La. R.S. 23:663(2); 23:664(A). The comparative jobs at issue must require equal skill, effort, education, and responsibility and must be performed under similar working conditions, including time worked in the position. La. R.S. 23:663(A). The Act carves out various exceptions and allows covered employers to pay different wage rates based on seniority, merit, production, or on any bona fide factor other than sex, such as education, training, or experience. La. R.S. 23:663(B). Covered employers are prohibited from remedying a violation of the Act by lowering the wages of any other employee. La. R.S. 23:664(C).

Covered employers are prohibited from taking any adverse employment action or discriminating in any other manner against employees who inquire about, disclose, compare, or otherwise discuss their wages or the wages of another employee. Encouraging or aiding others, filing complaints, and testifying are also protected by the Act. La. R.S. 23:664(D) and (E).

Complaint and Litigation Procedure

The Act specifies: (1) the process an employee must follow to report a violation of the Act, and (2) guidelines for a covered employer to respond to such complaints. An employee who in good faith believes that her employer has violated the Act must submit a complaint in writing to the employer. La. R.S. 23:665(A). The employer has 60 days from receipt of the complaint to investigate and remedy any violation.

If, within this 60-day period, the employer remedies any violation and brings itself into compliance with the Act, the employee may not bring a legal action against the employer without first filing an administrative complaint with the Louisiana Commission on Human Rights. La. R.S. 23:665(A). The Commission's findings operate much like a Notice of Right to Sue from the Equal Employment Opportunity Commission (EEOC). After filing a complaint with the Commission, an employee may file suit in the 19th Judicial District Court (JDC) for East Baton Rouge Parish if the Commission issues a finding of discrimination or retaliation in violation of the Act and is unable to resolve the issue or if the Commission issues a finding of no discrimination. La. R.S. 23:665(C). Any action filed in the 19th JDC for relief under the Act must be filed within one year of the date that an employee becomes aware or should have been aware that the employer is in violation of the Act. La. R.S. 23:667(A). This one-year prescriptive period is tolled during the 60-day period that an employer has to remedy any violation and also during the pendency of any administrative review or investigation by the Commission or the U.S. Department of Labor. La. R.S. 23:667(B).

If a violation of the Act is found, the employer will be liable for the employee's unpaid wages, attorneys' fees, and costs. La. R.S. 23:666(A). The Act limits the recovery of monetary damages to those violations that occurred within the three years prior to the employee's written notice to the employer. La. R.S. 23:666(B).

If the court finds that the employee has brought a frivolous claim under the Act, the employee will be liable for reasonable damages, reasonable attorneys' fees, and court costs incurred as a result of the claim. La. R.S. 23:666(F).

Recordkeeping

The Act's recordkeeping provisions require covered employers to create and preserve records showing the name, address, and position of each employee and wages paid to each employee. La. R.S. 23:668. These records must be preserved for at least three years after an employee's last date of employment with the employer.

What Does This Mean for Public Employers?

At first glance, this Act might appear to be redundant of the Louisiana Employment Discrimination Law (LEDL), which prohibits state employers from discriminating against individuals with respect to compensation or terms and conditions of employment because of the individual's sex. La. R.S. 23:332 (A)(1). While there are some similarities between the two laws (i.e., the limitations period and liability for frivolous claims), the specific intent of the Act is to supplement the LEDL. Unlike the LEDL, the Act provides guidelines for determining when discrimination in compensation occurs and requires an affected employee to provide written notice to the employer and to allow the employer an opportunity to identify and correct any violations of the Act.

Unfortunately, even if the employer does correct the violation, the employee may still bring suit after filing an administrative complaint with the Commission. Also unlike the LEDL, monetary damages are limited to violations occurring in the three-year period prior to the employee's initial written complaint. The recordkeeping provision is new, and state employers should review their practices to ensure that they are in compliance with the Act. Based on a reading of the language of the Act, a recordkeeping violation may be sufficient to trigger a complaint under the Act.

Unemployment Claims (La. R.S. 23:1599 and 23:1629(A))

The Louisiana legislature has taken certain actions regarding procedural issues related to claims for unemployment benefits. First, an employer or claimant can now waive the right to receive written notices or determinations by certified mail. La. R.S. 23:1599. The waiver must be in writing and mailed or electronically transmitted to the office of unemployment insurance. Thereafter, notices and determinations will be transmitted by first-class mail or by electronic delivery and will be deemed delivered when mailed or electronically transmitted.

The provisions of La. R.S. 23:1629(A), regarding appeals of determinations, have been amended to provide for a 7-day hearing notice, instead of the former 10 days. La. R.S. 23:1629(A)(1). Additionally, a party may now waive the seven-day advance notice requirement by written waiver executed after the appeal has been filed. La. R.S. 23:1629(A)(2).

What Does This Mean for Employers?

The amendments shorten the notice period for an appeal hearing from 10 to 7 days. Additionally, the law allows employers to waive receipt of notices by certified mail, as well as notices of appeal hearings.

Additional Information

Should you have any questions about these new laws and their impact on your workplace, please contact the author, the Ogletree Deakins attorney with whom you normally work, or the Client Services Department at clientservices@ogletreedeakins.com.

Note: This article was published in the July 25, 2013 issue of the *Louisiana eAuthority*.

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