

LEGAL UPDATES

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## Service

Labor &amp; Employment

## Colorado Governor Signs Four Employment Bills

Colorado Gov. John Hickenlooper recently signed into law four employment bills, all of which received some measure of bipartisan support in the 2016 General Session. The bills, which address topics ranging from pregnancy accommodation to employee access to personnel files, may require employers to make changes to their human resources practices.

### **Pregnancy Accommodation**

The Colorado Pregnancy Accommodation Act requires employers to provide reasonable accommodations to applicants or employees for conditions related to pregnancy or the physical recovery from childbirth, unless the requested accommodation creates an undue burden to the employer's business. This new law, which the governor signed June 1, 2016, requires employers to engage in a timely, good-faith and interactive process to determine the appropriate reasonable accommodation. It also contains standard anti-retaliation provisions prohibiting employers from taking adverse actions against women who request accommodations.

Employers already have experience with accommodation requests, the interactive process and the assessment of undue burden by mandate of federal and state disability laws. The Pregnancy Accommodation Act adopts an identical standard. Accordingly, this bill's primary impact is that there is now no question of the need to provide reasonable accommodations to pregnant women and women recovering from childbirth. The battleground litigation issues, as with disability claims, will center on whether a requested accommodation is reasonable or creates an undue burden. We further expect to see more requests for light duty as a reasonable accommodation, also resulting in potential litigation.

The law mandates that employers provide current employees with written notice of their rights by December 8, 2016, and to new hires. The law also mandates that employers post the written notice in a visible position at their place of business in an area accessible to employees. The law takes effect on August 10, 2016.

## **Access to Personnel Files**

On June 10, 2016, Governor Hickenlooper signed into law a bill that permits employees to access, at least once annually, their personnel files under supervision of the employer. Former employees also have a one-time right of inspection. Employees may be required to pay copy expenses. Colorado joins about 20 other states that have similar laws.

This bill might be most notable for what it does not require. The bill does not create a private right of action for employees or former employees. Employees are not permitted to submit rebuttal statements. Perhaps most significantly, the law does not require employers to maintain any particular types of information in the personnel files. The law becomes effective January 1, 2017.

## **Elimination of Duplicate Worker Verification Requirements**

In 2006, Colorado passed a law requiring employers to complete and maintain worker verification affidavits to ensure that workers were eligible to be employed in the United States. This requirement was in addition to the standard I-9 documentation that federal law requires employers to maintain. Many well-meaning employers were not aware of the Colorado requirement, and in practice, it was nothing more than a paperwork burden with little benefit.

House Bill 16-1114, signed by the governor on June 8, 2016, repeals the Colorado requirement for employment verification affirmation. The Colorado General Assembly declared that the requirement imposed an unreasonable burden on employers and did not prevent individuals who are ineligible for employment from entering the workforce. The repeal of the affirmation requirement also eliminates the fines that the Colorado government was to assess employers who failed to maintain the proper paperwork.

## **Classifications for Unemployment Insurance Eligibility**

A persistent source of confusion among employers is whether a worker is classified as an employee or an independent contractor. Contributing to the confusion, different laws use different legal tests and criteria. Senate Bill 16-179 requires the Colorado Department of Labor to at least partially address the inconsistency by issuing guidance for the purposes of unemployment law. The bill gives the Department of Labor the power to develop guidelines for employers and to clarify the process for proving that a worker is an independent contractor as part of an audit. The bill, of course, will not

impact the conflicting standards within federal law, but it is at least an attempt by the state to give employers some clarity.

## **What This Means to You**

Employers should ensure that their human resource personnel are aware of these new laws and, if appropriate, make changes to their standard practices.

## **Contact Us**

For additional information on how the new legislation may impact your business, contact Christopher Ottele of Husch Blackwell's Labor & Employment group at 303.749.7209.