NEW INDIANA LAWS AFFECTING EMPLOYMENT

The year is half over, and there have been many developments in the employment and labor field that have us all talking and wondering what lies ahead. The Supreme Court has made several rulings that will have a significant impact on employment litigation. Most recent is the Wal-Mart decision that put an end to a nation-wide sex discrimination class action. Earlier this year, the Supreme Court decided the “Cat’s Paw” case that we discuss in the latest issue of our Employment Law Briefing. The National Labor Relations Board has been busy proposing new regulations that would require the posting of a Notice to Employees detailing protected rights under the NLRA. The NLRB also proposed new rules in June that would have the effect of speeding up the union election process for private employers.

The Indiana General Assembly also passed laws that have an impact on Indiana employers. Those laws become effective today, July 1, and are summarized below:

UNEMPLOYMENT COMPENSATION - REFUSING OR FAILING DRUG TESTS OF POTENTIAL EMPLOYER

An unemployed person who refuses an offer of “suitable work” is not entitled to collect unemployment benefits. A new provision states that a person is considered to have refused suitable employment if an offer of work is withdrawn by an employer after (1) the person tests positive in a required drug test, or (2) the person refuses to take a required drug test.

Senate Enrolled Act No. 86, IC 22-4-15-2(j)

UNEMPLOYMENT COMPENSATION - REGULAR "ON-CALL" OR "AS-NEEDED" EMPLOYEES AND EMPLOYEES ON PAID VACATION

A person who is regularly and customarily employed on an On-Call or As-Needed basis is not considered to be unemployed for any week where the person has compensation payable or has work available. Likewise, a person is not considered to be unemployed in any week where the person is on vacation and is receiving, has received or there is a policy or a contract to receive compensation for the week. This does not apply if the employer fails to follow the policy or contract.

House Enrolled Act No. 1450, IC 22-4-3-3, 4 and 5

UNEMPLOYMENT COMPENSATION - HARDSHIP DISTRIBUTION FROM RETIREMENT PLANS IS NOT "DEDUCTIBLE INCOME"

Normally, if a person receives “deductible income” (e.g. severance pay) or pension distributions equaling or exceeding the amount of unemployment benefits, the person is not entitled to collect unemployment benefits. A new provision was added that does not disqualify a person who receives a hardship distribution because of a severe financial hardship resulting from an unforeseeable emergency that is beyond the person's control.

House Enrolled Act No. 1450, IC 22-4-15-4(a)(2)(B)

NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS - NOW REQUIRED FOR INITIAL PROFESSIONAL LICENSE OR CERTIFICATE

A new provision in the professional licensing statute requires all persons seeking an initial license or certificate to submit to a National Criminal History Background Check at the applicant's cost. The relevant professional licensing board is authorized to conduct a random audit and require a person seeking a renewal of the license to submit to the national check at the person's cost. This applies to 20 different professions, including nurses, physicians, OTs, PTs, PAs, pharmacists, dentists, dental hygienists, psychologists and health facility administrators.

Senate Enrolled Act No. 363, IC 25-1-1.1-4(a)

BRING YOUR GUN TO WORK LAW - MORE PROTECTIONS FOR EMPLOYEES AND APPLICANTS

Last year, Indiana adopted a law that generally permitted employees to store firearms and ammunition in their locked vehicles while on the employer’s property. This so called “Bring your Gun to Work” law led some employers to develop policies that were seen as limitations on an employee's right to possess firearms. In response to these developments, the law was amended to provide more protection to those employees and applicants who carry firearms and ammunition in their vehicles. Effective July 1, 2011, private and public employers in Indiana (with a few exceptions) may not, as a condition of employment:
require an applicant or an employee to disclose if they own, possess, use or transport a firearm or ammunition; or

forego their rights to own, possess, store, transport or use a firearm or ammunition.

The law allows a civil action to be brought for actual damages, court costs, attorneys' fees and, if the violation is willful, exemplary or punitive damages. An employer still has the right to regulate the use and possession of firearms in the course of the employee's duties while on the employer's premises and can require disclosures when the firearms or ammunition are to be used in the employee's duties.

Senate Enrolled Act No. 411, IC 34-28-8

EMPLOYEE REPRESENTATION ELECTIONS - SECRET BALLOT GUARANTEED ... EXCEPT WHEN THE NLRA SAYS NO

Following the national battle over the Employee Free Choice Act, which would have allowed “card check” certifications of unions without a secret ballot election, Indiana and other states tried to protect the secret ballot in employee elections. Indiana now has such a law that applies to any election for the designation of employee representation. It guarantees the right to vote by secret ballot and the employer's right to engage in a campaign. The results of any election that violates the statute are deemed to be void. However, the law says that it cannot conflict with the NLRA. So, essentially, the law only applies to elections held in the public sector.

House Enrolled Act No. 1203, IC 22-6-5

WORK AUTHORIZATION - GOVERNMENTAL EMPLOYERS AND EMPLOYERS WITH STATE SERVICE CONTRACTS AND GRANTS MUST USE E-VERIFY

All Indiana governmental employers are required to utilize E-Verify to verify the work eligibility of all employees hired after June 30, 2011. Additionally, all Indiana employers who have “public contracts for services” with a state agency or receive grants exceeding $1,000 from a state agency will also be required to participate in the E-Verify Program. The obligation for private employers will arise as a result of governmental employers (i.e. state agencies) being obligated to require recipients of public service contracts and grants in excess of $1,000 entered into after, or renewed after, June 30, 2011, to participate in E-Verify. Notably, the Indiana Family and Social Services Administration (“FSSA”) has advised that Medicaid provider agreements with FSSA are not “public contracts for service,” and therefore, receipt of Medicaid reimbursements alone will not result in an employer being obligated to participate in E-Verify.

Senate Enrolled Act No. 590, IC 22-5-1.7

Should you have questions, please contact your regular Hall Render attorney or a member of our Employment and Labor Section.