



Texas Employers Take Notice: Proposed Bills For 2019

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The Texas Legislature does not officially convene until Jan. 8, 2019. But during the week of Nov. 12, Texas lawmakers got off to a furious start and submitted more than 600 bills to be considered during the 2019 legislative session. In the 2017 session, Texas legislators filed more than 10,000 bills and resolutions, of which approximately 10 percent became law. If 2017 is any indication, these early submissions are only a taste of the thousands of bills sure to be filed ahead of the March 8, 2019, bill-submission deadline. Many of the bills affect the workplace and carry the potential to significantly alter the landscape for both Texas employers and their employees. As such, it is critical that employers and their lawyers keep up to date with proposed legislation so they are not ambushed by new laws that may significantly affect the workplace.

While many of the proposed bills face an uphill battle and may be mostly symbolic in nature, some of the bills already filed have legs and stand a real chance of becoming law. Until the Texas House formally chooses a speaker on Jan. 8, 2019, we will not know which bills leadership will consider their top priorities. Lower bill numbers indicate important legislation deemed a priority by the lieutenant governor and speaker, who head the Texas Senate and House, respectively.

Here are particular bills to watch.

Equal Pay and Minimum Wage

Equal pay for equal work and a higher minimum wage are on the Texas legislature's agenda. Sen. Jose Menendez, D-Texas, filed Senate Bill 112, which would make it an unlawful employment practice to pay employees differently for the same job based on discriminatory factors. Under this proposed law, the victim of a discriminatory pay practice would be entitled to two years' worth of back wages. Menendez also filed Senate Bill 113, which would raise the minimum wage to \$10, and he plans to file a bill that would ban the use of nondisclosure agreements in sexual harassment lawsuit settlements.

Cannabis

Cannabis reform may be on the horizon in Texas, with at least 10 marijuana-related bills already filed. Notably, in their party platform, Texas Republican delegates have called for marijuana decriminalization and reclassification, expanded medical cannabis and the farming of industrial

hemp. Both Texas Democrats and Republicans favor an expansion of the 2015 Compassionate Use Act, which allowed some epilepsy patients to use small amounts of low-THC cannabis oil, or CBD oil.

Menendez filed Senate Bill 90, a bill to let more Texans use medical cannabis and CBD oil under the already-existing Texas compassionate use program. On the more-permissive end of the spectrum, Rep. Ron Reynolds, D-Texas, filed House Bill 209, which would legalize marijuana use for a wide swath of medical conditions, including cancer, glaucoma, autism, Alzheimer's or any other chronic condition that produces pain, nausea or muscle spasms.

House Bill 63, filed by Rep. Joe Moody, D-Texas, would make it a civil offense, not a criminal one, to be detained with less than one ounce of marijuana. Although it remains to be seen which, if any, of these bills become law, some Texas employers may decide to adjust drug testing or other workplace policies, though there will almost certainly be no obligation to do so. For example, employers who choose to screen applicants for marijuana would still be able to do so (at least until the federal government changes its policy on marijuana), but other employers may decide that they cannot secure enough qualified applicants if they continue testing for a substance that is permitted under state law.

Paid Sick Leave

Local paid sick leave ordinances have been the source of much confusion and angst for Texas employers during 2018. In February, Austin passed an ordinance requiring that private sector employers provide paid sick leave to employees. San Antonio passed a similar law a few months later. Although the Austin ordinance was scheduled to take effect on Oct. 1, 2018, an appellate court granted an injunction to block the ordinance from taking effect for the time being. Now, Texas lawmakers have an opportunity to enact legislation that will permanently prevent local governments like Austin and San Antonio from enacting paid leave ordinances covering private employers.

House Bill 222, filed by Rep. Matt Krause, R-Texas, would prohibit any Texas municipality from adopting or enforcing an ordinance, rule or regulation that requires employers to provide employees with paid sick leave. While this bill is sure to be contentious, its passage into law or possible failure is sure to have a significant impact on Texas employers' policies in Austin, San Antonio and other cities considering paid leave mandates. While San Antonio's ordinance does not become effective until Aug. 1, 2019, both the legislative and legal developments surrounding paid leave are worth monitoring for all Texas employers.

Postpartum Medicaid Coverage

Medicaid is responsible for funding nearly 50 percent of U.S. births. House Bill 241 seeks to extend postpartum Medicaid coverage after a woman gives birth or miscarries from 60 days to 12 months. While this legislation may not directly affect employers financially, it is sure to complicate matters

While this legislation may not directly affect employers immediately, it is sure to complicate matters for an employer, because an employee who has given birth or miscarried may be more likely to take time off of work and invoke the Family and Medical Leave Act. This would also bring up issues surrounding job protection under the FMLA, as well as Medicaid work requirements.

Franchise Tax

In some potentially positive tax news for Texas residents, Senate Bill 66, proposed by Sen. Jane Nelson, R-Texas, would reduce and eventually eliminate the state's franchise tax. Texas property taxes have exploded over the last several years, largely to fund Texas public schools. To combat this increasing taxation, there is bipartisan support among Texas lawmakers that the state needs to increase its share of funding for Texas public schools. Rep. Charlie Geren, R-Texas, filed House Joint Resolution 24, which would initiate the constitutional amendment process that ultimately could require the state of Texas to fund half of the public-school costs. Currently, the state pays about 38 percent of public school costs, down from 46 percent in 2009, leaving local taxpayers to make up for the shortfall.

Daylight Savings

For those of us who are not fans of springing our clocks forward in March and falling back in November, there may finally be relief in sight. House Bill 49 filed this November would mean that Texas may join Hawaii and Arizona in ditching the scourge of daylight savings time for good.

Lemonade Stands

And, on a lighter note, two young Texas entrepreneurs, sisters Zoe and Andrea, ages seven and eight, found out the hard way that it is technically illegal to sell lemonade without a permit in Texas. House Bill 234 would legalize lemonade or other nonalcoholic drink stands run for a limited time by minors on private property.

Conclusion

At least some of the bills discussed above are likely to become law by the time the 86th Texas legislative session closes on May 28, 2019. Employers and their counsel must remain vigilant and mindful of the impact these new laws may have on employers' existing policies and practices. To ensure that their clients are not caught flat-footed when these new laws are enacted, Texas attorneys should continue to monitor news media and the Texas.gov website for updates on these bills.

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