



Five New State Laws Will Soon Affect Colorado Employers

Insights

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Colorado Governor John Hickenlooper recently signed five bills into law that will soon impact employers in a number of different ways. Employers who do business in the state will face a new legal framework with respect to personnel files, classification of workers as employees or independent contractors for unemployment purposes, work status verification, and employment of workers with intellectual or developmental disabilities. Moreover, public employers will have additional challenges when it comes to employee whistleblowers.

Personnel Files Will Soon Be Open For Review

Colorado workers in the private sector will gain the right to access their personnel files effective January 1, 2017. You will be required to allow present and former employees to review their files at your office at a mutually convenient time. You may designate an employee to be present during the review and may limit a current employee's review to once a year.

Former employees may review their files one time after they separate from employment. The law states that you may require employees to pay the reasonable cost of duplication of documents, but it does not expressly state whether employees may obtain copies of documents in their files.

For purposes of the law, "personnel file" means the personnel records that are or have been used to determine the employee's qualifications for employment, promotion, additional compensation, or disciplinary action. The definition does not include documents that must be kept in a separate file under federal or state law (such as medical information and responses to invitations to self-identify), records pertaining to confidential reports from previous employers of the employee (e.g., drug testing reports on drivers), or documents relating to an active criminal investigation, active disciplinary investigation, or active investigation by a regulatory agency. Documents that identify any person who made a confidential accusation against the employee are also excluded from the definition.

The law does not apply to financial institutions chartered and supervised under state or federal law, including but not limited to banks, trust companies, savings institutions, or credit unions. It also does not apply to public employees, as they already have access to their files under the Colorado Open Records Act.

The bill was supported by the Colorado Plaintiff Employment Lawyers Association, and contains a legislative declaration that its purpose is to "foster open communication" and "to deter frivolous

lawsuits against employers.” If there is any good news for employers, it’s that the new law does not create a private right of action for violations.

Employers Will Soon Get Classification Guidance

Misclassification of employees as independent contractors for unemployment purposes has long been an important issue for the Colorado Department of Labor and Employment. The second new law directs the Department to develop guidance for employers on the factors pertaining to classification. The law further establishes an individual to serve as a resource on classification and compliance audits. It takes effect August 10, 2016.

Legal Work Status Will No Longer Need To Be Affirmed

The third new law eliminates the requirement that employers attest in writing to a worker’s legal work status within 20 days of hiring a worker. The legislature concluded that the requirement imposed unnecessary and redundant burdens on businesses due to existing federal I-9 requirements. It takes effect on August 10, 2016.

New Law Focuses On Workers With Disabilities

A fourth bill creates a multiagency approach in an effort to increase employment opportunities for persons with disabilities. Rather than supporting specialized work in environments geared towards individuals with disabilities, the new law focuses on the type of work that is paid directly by employers at regular wages that occurs in a typical work setting.

It creates an “Employment First” partnership among the state’s Department of Labor, Department of Health Care Policy and Financing, Department of Higher Education, and Department of Human Services. “Employment First” refers to a framework for providing publicly funded services where employment in the general workforce is the first and preferred outcome for all working-age persons with disabilities.

The statute does not require employers to give a hiring preference to persons with disabilities; rather, it is intended to strengthen the support available to employers who hire and employ persons with disabilities. It takes effect July 1, 2016.

State Whistleblowers Will Get Additional Protection

Existing law protects state employees against discipline for disclosing information about state operations or conduct, but the protection does not apply if an employee discloses information that is confidential or closed to inspection by law. Effective June 10, 2016, this protection will be broadened for employees who first disclose the information to a whistleblower review agency to make that determination.

The whistleblower review agency will determine whether the information is confidential or closed to inspection. If there is a substantial likelihood that the information will be released to the public, the agency is required to notify the owner of the information of its determination whether the information

is confidential and of the circumstances creating the likelihood it will be released to the public. The owner may then seek an injunction prohibiting the release of the information.

The whistleblower review agency must also notify the supervisor of the disclosing employee that the agency has received the information, and remind the supervisor that no retaliatory action may be taken against the employee (except in the limited circumstances provided by statute). Whistleblower review agencies include the Office of Legislative Legal Services, the Colorado Department of Law, and the Judicial Department's Office of the State Court Administrator.

If you have any questions about these new laws or how they may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Denver office at 303.218.3650.

This Legal Alert provides an overview of specific Colorado state laws. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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