

Eye on the Session, Pt. 2: Labor and Employment Summary of Louisiana's 2021 Legislation

June 16, 2021

On May 11, 2021, [we reported on a number of bills](#) that were pending before the Louisiana legislature which, if signed into law, would have had a direct impact on employers. The bills included increased penalties for those who willfully misclassified an employee as an independent contractor, changes to Louisiana's non-competition law with regard to physicians, expanding the definition of race discrimination, among others. With the exception of one, the labor and employment bills had difficulty gaining traction this session.

On June 10, 2021, the Louisiana legislature enacted [R. S. 23:291.2](#) (HB 707, a substitute for HB 480), which prohibits discrimination by employers based on criminal history records and which provides criteria regarding making hiring decisions in conjunction with criminal history records. Specifically, unless otherwise provided by law, an employer may not request or consider an arrest record or charge that did not result in a conviction, if such information is received in the course of a background check. The statute further provides that when considering other types of criminal history records, an employer can make an individual assessment of whether an applicant's criminal history record has a direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position. To make that assessment, the employer must consider: 1) The nature and gravity of the offense or conduct; 2) the time that has elapsed since the offense, conduct, or conviction; and 3) the nature of the job sought. The statute also requires the employer to make available to the applicant any background check information used during the hiring process upon receipt of a written request by the applicant. On June 11th, the bill was sent to Governor Edwards for his signature.

The remaining bills we tracked did not pass this session:

- SB 61 and HB 189, and HM 382 would have expanded current anti-discrimination laws, including creating a prohibition on race discrimination on the basis of natural hairstyles.
- HB 151 provided for administrative penalties up to \$500 per employee for a first offense if an employer willfully misclassifies an employee as an independent contractor as it relates to amounts owed for unemployment compensation contributions.
- HB 483 sought to limit the application of non-competition agreements with physicians.
- HB 245 would have limited La. R.S. 23:664 by excluding employment actions against an employee who has access to wage information of others as part of the employee's essential job function and disclosed the wage information to individuals who do not otherwise have access to such information.

We anticipate that bills to expand the definition of race discrimination will be filed in future legislative sessions. It remains to be seen whether such bills will garner sufficient support in both houses.

As always, please reach out to the authors or any member of McGlinchey's Labor and Employment team if you have any questions.

Related people

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