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LEGISLATIVE UPDATE

2013 laws in review: bills that made the cut and those that didn't

by Robert J. Sniffen and Jeff Slanker
Sniffen & Spellman, P.A.

During its 2013 session, the Florida Legislature considered a number of bills of interest to employers and employees in the Sunshine State. The proposed legislation ranged from bills affecting the administration of the state's workers' compensation system and pension reform to proposals on workplace bullying and protected classes under the Florida Civil Rights Act (FLCRA). This article highlights some key employment laws that were passed during this year's legislative session. It also discusses some notable proposals that could have drastically altered the employment landscape in Florida but didn't make the cut this session. Nevertheless, there's always a chance that the failed bills might resurface in the future.

What passed

The following bills related to labor and employment issues, or otherwise affecting employers or employees, passed during the 2013 Florida legislative session.

House Bill (HB) 662 alters portions of Florida workers' compensation law. The state's workers' comp laws require employers to provide medical and indemnity benefits (such as prescription medication) to employees who are injured in an accident that occurs while they are performing a task within the course and scope of their employment. HB 662 changes provisions of the workers' comp law related to the reimbursement rate for prescription medication.

Specifically, the new law sets a reimbursement rate of 112.5% of the average wholesale price, plus $8 for a dispensing fee, for repackaged or relabeled drugs dispensed by a dispensing practitioner or physician. Firms that distribute repackaged or relabeled drugs purchase prescription medication directly from pharmaceutical manufacturers in bulk, repackage them in individual sizes for single patients, and then provide them to physicians and pharmacists to dispense. In Florida, physicians can, under certain circumstances, directly dispense prescription medication, including drugs received from medication repackaging or relabeling firms, to patients. The new reimbursement rate would apply to repackaged or relabeled drugs dispensed by a dispensing practitioner, while the reimbursement rates for other prescription medication would remain the same.

HB 662 allows an exception to the reimbursement schedule if an employer or carrier, or an agent of the employer or carrier, seeks a lower fee from a provider and directly contracts with the provider to receive a lower fee. Ultimately, the new law should increase the cost of providing prescription drugs for Florida's

Risk Management Program, but it will lower the cost of workers' comp insurance.

HB 553 changes the way Florida's workers' comp system is administered. First, the new law makes stop-work orders, or orders halting business operations by employers that don't comply with workers' comp coverage requirements, applicable to successors of limited liability companies.

The law also makes slight changes in the statutory language to allow out-of-state corporate officers to electronically apply for an exemption to workers' comp coverage. Corporate officers can apply for an exemption and not be treated as an employee for purposes of calculating premiums in exchange for forgoing coverage for any workplace injuries they may suffer. The new law removes the requirement to provide a Florida driver's license number or Florida identification card number to apply electronically for the exemption, which was preventing out-of-state corporate officers from applying electronically for the exemption.

Further, under HB 553, the requirement that healthcare providers be certified by the Florida Department of Financial Services (DFS) has been eliminated. The new law also increases the time frames for healthcare providers, insurance carriers, and the DFS to file or address medical reimbursement disputes.

Notably, the new law also changes the amount of the financial penalties the DFS may levy against employers that violate workers' comp reporting requirements. The DFS has the authority to assess fines for violations of the workers' comp law, and HB 553 provides that violations of the reporting requirements carry up to a $500 fine apiece.

HB 655 amends current law to prohibit political subdivisions of the state (which may include local governments such as municipalities and county governments) from requiring employers to provide certain employment benefits that aren't otherwise mandated by state or federal law, including (but not limited to) health insurance benefits, disability benefits, death benefits, paid or unpaid days off for holidays, sick leave, vacation benefits, retirement benefits, and profit-sharing benefits. Essentially, employment benefits, as used here, means any valuable benefit provided by an employer to an employee that isn't wages or salary or that's provided in addition to wages or salary.

Further, under the new law, political subdivisions are prohibited from establishing or requiring an employer to pay a minimum wage other than a state or federal minimum wage. The law doesn't limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for its own employees or employees of an employer it contracts with for goods or services. It also doesn't apply to any domestic violence or sexual abuse ordinances, rules, or policies adopted by the political subdivision or in situations when compliance would mean the political subdivision couldn't receive federal funds.

Under the new law, an 11-member task force on benefits will be created to study employment benefits and state preemption of employment benefits and report its findings to state leadership early next year.

HB 7145 saves a key provision of the Florida public records law that addresses records related to employment issues. The new law saves from repeal, pursuant to the Open Government Sunset Review Act, a section of the public records law that provides for an exemption from the inspection and copying of public records of employment discrimination complaints (such as complaints of discrimination on the basis of race, sex, age, or another protected class) and other records related to the complaints until a finding on probable cause is made, the investigation into the complaint becomes inactive, or the complaint is made part of the official record of any hearing or court proceeding. The law also exempts from disclosure documents related to an allegation of discrimination when the person alleging discrimination doesn't ultimately file a complaint but wants the records to remain confidential.

HB 1309 also amends the Florida public records law and may lead to higher costs for private firms working with state government under a state contract. The new law requires contractors working with the state under contract and on behalf of the state to keep and maintain public records that would ordinarily be required if the public agency was performing the work itself. The law requires contractors to allow the public access to the public records like the Florida agency would and at the same cost specified in the Florida public records law.

The contractor must ensure that records that are exempt from disclosure under the Florida public records law, or confidential and exempt, aren't produced in response to a public records request, except as authorized by law. A contractor must also return records to the state agency and destroy duplicates of records that are exempt from public disclosure requirements (or confidential and exempt) when the contract terminates. If the documents are stored electronically, the contractor must provide them to the agency in a format compatible with the agency's information technology systems. The new requirements may result in increased costs to private entities doing business with the state.

HB 7007 is related to economic development issues in Florida. Although the new law is aimed at providing incentives for economic development, some of its provisions address matters affecting employees and employers. Indeed, some parts included in this new law relate to reemployment assistance. This portion of the new law was actually enacted to comport with federal

requirements. This part of the new law penalizes those who fraudulently collect reemployment assistance benefits with a 15 percent penalty on the funds fraudulently collected or overpaid to the claimant.

A key aspect of the new law that affects employers throughout Florida is its treatment of employers that fail to timely and adequately respond to a notice of claim or request for information relating to reemployment benefits. If employers do not respond to a notice of claim or request for information adequately and timely, then the state's Department of Economic Opportunity, which administers the reemployment benefits program, is prohibited from relieving the employer of benefits charges.

Senate Bill (SB) 534 focuses on pension plans administered by local governments and their interaction with state government. The new law removes state liability for financial shortfalls in a local government's retirement plan. Moreover, it requires that public pension plans in Florida, except the state's own pension plan for its employees, submit certain information to the Florida Department of Management Services (DMS).

For example, local government pension plans must submit annual financial statements that are in compliance with the Government Accounting and Standards Board's guidance for accounting and financial reporting for pensions. The financial statements must contain specific information, including how long the current market value of assets in the retirement fund is adequate to sustain the expected payments of benefits claims under the pension plan and information setting forth the recommended contributions to adequately fund the plan. Finally, the new law requires that pension plans with a website publish on that website information and documentation related to the financial state of the plan itself.

What didn't pass

While the legislature passed a number of notable bills during this legislative session, several other bills, if passed, would have drastically altered labor and employment law in Florida. Here are some of the bills that weren't passed but could have affected employers and employees in the state.

HB 7011 addressed pension reform, which was a major priority for House Speaker Will Weatherford (R-Wesley Chapel). The bill would have significantly altered the pension system for state workers, pushing new state workers into a retirement plan similar to a 401(k) rather than the traditional defined-benefit retirement plan state workers currently enjoy. The bill failed in the senate.

A bill related to HB 7011, **SB 1392,** would have changed the default retirement plan for state employees who don't elect to participate in a particular plan. Employees that don't select a particular retirement plan would have defaulted to the defined-contribution system retirement plan. The bill also would have shortened the vesting period for workers in the defined-contribution retirement plan. Obviously, the motive was to push more state workers to opt for or be placed in defined-contribution plans, more akin to 401(k) plans or other plans typically seen in private industry, rather than the traditional defined-benefit pension plan.

HB 653, also known as the "Competitive Workforce Act," would have expanded the classes protected under the FLCRA to include sexual orientation and gender identity or expression. The bill would have made it illegal for an employer to take an adverse employment action (e.g., a failure to promote, termination, or discipline) based on an employee's sexual orientation or gender identify or expression. The bill died in the House Civil Justice Subcommittee in May.

While some local governments in Florida have instituted rules or ordinances that prohibit discrimination on the basis of sexual orientation and gender identity or expression, the FLCRA does not include sexual orientation and gender identity or expression among its list of protected classes. Title VII of the Civil Rights Act of 1964 similarly does not provide any protection from discrimination on the basis of sexual orientation and gender identity or expression, although there have been movements to prohibit such discrimination.

HB 149 would have created the "Safe Work Environment Act" to provide a private claim to supplement, but not replace, the claims currently available to employees who are subjected to an abusive work environment by their employers. Subjecting an employee to an abusive work environment would have been an adverse employment action, leading to potential liability for the employer. Employers would have been prohibited from retaliating against employees who report or otherwise oppose an abusive work environment and could have been vicariously liable for supervisors' actions in certain circumstances.

There is no analogous federal law providing such protection. Ultimately, the bill would have created a new employment-related claim in Florida, further cutting away the at-will-employment doctrine.

Bottom line

Florida employers now have several new employment laws to navigate. And although we were spared some of the more onerous proposals, there's no telling whether the bills that weren't passed during the 2013 legislative session will surface again next year.

Robert J. Sniffen is the founder and managing partner of the Tallahassee firm of Sniffen & Spellman, P.A. He can be reached at 850-205-1996 or rsniffen@sniffenlaw.com. Jeff Slanker is an attorney with Sniffen & Spellman, P.A., in Tallahassee. He can be reached at 850-205-1996 or jslanker@sniffenlaw.com. ✤

For a copy of this article please send an e-mail request to Tom Harper at: gth@harpergerlach.com

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