

2009 VIRGINIA GENERAL ASSEMBLY

Summary of General Labor, Employment Law, & Health Insurance Issues

GENERAL LABOR & EMPLOYMENT LAW

PASSED

HB 2126/Byron - employing illegal aliens. Relocates provisions that require the cancellation of limited liability companies, limited partnerships, and business trusts upon conviction for violating federal law for actions of its members or managers constituting a “pattern or practice” of employing unauthorized aliens in the Commonwealth. The measure becomes effective April 1, 2009.

HB 2495/Alexander - child labor; driving automobiles and trucks. Permits children at least 17 years of age to drive automobiles or trucks on public roadways if enumerated criteria are satisfied, including requirements that the vehicle's gross weight not exceed 6,000 pounds, the driving occur in daylight hours, and the driving occur within 30 miles of the place of employment. *Currently, 17-year-olds may not be employed as a driver or helper on a truck or commercial vehicle with more than two axles.*

SB 860/Edwards - notice to employees; earned income tax credit (EITC). Requires employers only to post any notice that may be provided by the Department of Social Services informing employees that they may be eligible for the federal and state EITC. *The Chamber amended the introduced version to remove provisions that required additional written and oral notification, advising, and a penalty for failure to do so.*

SB 1264/Norment - payment of wages/salaries by paycard. Authorizes employers to pay wages/salaries to an employee hired after January 1, 2010 by credit to a prepaid debit card or card account, without the employee's affirmative written consent, if the employee fails to designate a financial institution to which payment could be made by electronic automated fund transfer and the employer arranges for the card or card account to be issued through a network system through which the employee will have the ability to make at least one free withdrawal or transfer per pay period, which withdrawal may be for any amount in the card or card account, using such card at a participating financial institution. *Currently, payment via prepaid debit card or card account requires the affirmative consent of the employee unless the employee is employed at an amusement park. The Chamber and SHRM favored a more useful version that would have made the paycard available to all employees after January 1, 2011.*

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FAILED

HB 1689/Tata - fraudulently assisting illegal aliens. Provides that any person who knows an individual is an alien in the United States unlawfully and who, with the intent to violate the immigration laws of the United States, fraudulently assists the illegal alien in acquiring or attempting to acquire a benefit, service, status, or privilege to which the illegal alien is not lawfully entitled, is guilty of a Class 1 misdemeanor. *Federal law likely preempts this effort.*

HB 1815/Morrissey - questioning employees about criminal convictions. Prohibits an employer from asking an existing or prospective employee about the individual's record of arrests or convictions unless the question refers to an arrest or conviction that occurred within the preceding 8 years or was for a violent felony. A violation is a Class 1 misdemeanor. *The Chamber opposed this measure.*

HB 2026/D. Marshall - Virginia Employee Voluntary Accounts Program. Creates a program whereby private employers with not more than 50 employees that have not offered a payroll savings deduction plan to employees in the preceding year may enroll to offer tax-deferred retirement plans to their employees. *This measure was referred to the Virginia Small Business Commission.*

HB 2121/Nichols - verification of legal presence. Requires all public contractors/subcontractors to register and participate in a federal Electronic Work Verification Program (E-Verify) or similar program. *This measure was referred to the Virginia Small Business Commission.*

HJR 640/Saxman; SJR 347/McDougle - constitutional amendment; right to work. Places Virginia's right to work law protection in the state constitution.

SB 1247/Northam - Virginia Human Rights Act; sexual orientation. Adds sexual orientation to the definition of unlawful discriminatory practice in the Virginia Human Rights Act. The bill also removes the provision limiting private causes of action to where the employers employed more than five but less than 15 persons.

SB 1499/Barker - participation in E-Verify program. Requires state agencies and contractors with state agencies to verify the social security number of newly hired employees using the E-Verify Program. Under the bill, the effective date of the provisions is contingent on the General Assembly and the Governor determining that the E-Verify Program is fully functional and properly funded. *Currently, it is not.*

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HEALTH INSURANCE

PASSED

HB 2024/D. Marshall; SB 1411/Watkins - availability of basic health insurance.

Allows health insurers to offer and sell group health insurance policies or contracts that do not include state mandated health insurance benefits to employers with 50 or fewer employees to provide coverage for employees who have been uninsured during the preceding six months. Such a group policy or contract may include any, or none, of the state-mandated health benefits as the health insurer and the employer agree. The measure also provides that a plan of correction prepared by a holder of a certificate of public need for a medical care facility may allow the holder to satisfy the conditions of the certificate regarding the provision of charity care by (i) making direct payments to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum of understanding with the Department of Health to receive contributions satisfying conditions of a certificate, or (ii) other documented efforts to provide primary or specialized care to underserved populations. Finally, the measure states that a health insurance policy or contract may include caps or limits on the total annual or lifetime benefits provided there under at specified dollar amounts, which statement is declarative of existing law. Health insurers offering plans under this act are required to report annually to the Bureau of Insurance on the number of small employers and individuals using plans that do not offer mandated benefits, the coverage provided, and the cost of premiums and out-of-pocket expenses, which information shall be compiled, evaluated, and submitted to the Governor and General Assembly. HB 2209 is incorporated and SB 1411 is identical. *The Chamber supported this measure.*

HB 2557/Nixon; SB 1351/Wagner - state employee health insurance plan; mandated benefits. Provides that any law effective on or after July 1, 2009 that provides for an insurance mandate on the private sector shall also apply to state employees. *The Chamber supported this measure.*

SB 1116/Ticer - mandated “offer and make available” coverage for prosthetic devices and components. Requires health insurers to “offer and make available” coverage for medically necessary prosthetic devices, their repair, filling, replacement, and components, to replace a limb. *The Chamber opposed the measure as introduced. It would have mandated the coverage as opposed to the passed requirement that health plans offer it or make it available should someone want it.*

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FAILED

HB 1588/R. Marshall; SB 1260/Vogel - mandated coverage for autism spectrum disorder. Requires coverage for the diagnosis and treatment of autism spectrum disorder in some individuals. *The Chamber opposed this costly measure.*

HB 1977/L.Ware - mandated coverage for prosthetic devices and components. Requires coverage for the cost of prosthetic devices and components. The measure also requires that the state health insurance plan also include coverage for the cost of prosthetic devices and components. *The Chamber opposed this measure.*

HB 2191/Phillips; SB 1458/Wampler - mandated coverage for telehealth services. Requires coverage for the cost of telehealth services when the services are appropriately provided through such means. "Telehealth services" means the use of interactive audio, video, or other telecommunications technology by a health care provider to deliver health care services at a site other than the site where the patient is located, for consultation, transfer of medical data, and medical education. *The measure was sent to the Mandated Benefits Commission for study.*

HB 2337/Amundson - mandated coverage for amino acid based elemental formulas. Requires coverage for amino acid based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non Immunoglobulin E mediated allergies to multiple food proteins for enrollees under age 10, severe food protein induced enterocolitis syndrome, eosinophilic disorders as evidenced by the results of a biopsy, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract.

HB 2521/Tyler – mandated coverage for length of hospital stay for mother and newborn. Requires coverage for inpatient care of a mother and her newborn immediately after childbirth of no less than 72 hours of inpatient care following normal delivery or 96 hours of inpatient care following a Cesarean section.

HB 2522/Nichols - coverage for employees of small employers. Permits employers with 50 or fewer employees to apply for coverage under the state health insurance plan.

SB 1443/Martin - tax credit for health insurance premiums paid by small business owners. Provides a tax credit to small business owners who pay at least one-half of the annual health insurance premium per employee. The credits are available to employers with 50 or fewer full-time employees.

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UNEMPLOYMENT COMPENSATION

PASSED

HB 1889/Nixon - minimum earnings requirement (MER). Postpones the scheduled MER increase (from \$2,700 to \$3,000) for one year (from July 2009 to July 2010). *The scheduled increase was a business-backed bill passed in 2008. This measure was a Governor's bill and one in which he asked for the business community's concurrence. We agreed.*

SB 1495/Locke - trailing spouse. Provides benefits to an employee who voluntarily leaves a job to accompany a military spouse to a new assignment in another locality. The measure applies only if the state to which the spouse is transferred has a similar provision, unless the transfer involves members of the Virginia National Guard relocated within the Commonwealth. Benefits paid to qualifying claimants shall be charged against the pool rather than against the claimant's employer. This measure shall become effective if the federal government appropriates funds for this purpose. *The business community did not oppose the measure provided the federal government provides the benefits.*

FAILED

HB 1816/Morrissey - eligibility of seasonal or temporary workers. Disqualifies an unemployed individual for benefits if he was provided with written notice, and signed an acknowledgment of receipt of such notice, by his employer stating that his employment is temporary or seasonal and will terminate by a date certain or upon the completion of seasonal work specified in the written notice.

HB 2046/Gear - eligibility of seasonal or temporary workers. Authorizes the Virginia Employment Commission (VEC) to designate, upon an employer's application, that an employer's establishment is a seasonal establishment that customarily operates only during a regularly occurring period of between 13 and 40 weeks in any 12-month period. Employees at a seasonal establishment shall not be paid benefits with respect to employment that was performed at a seasonal establishment during the establishment's operating season if (i) his employment terminated when the establishment's stated operating season expired, (ii) the employer notified the employee prior to commencing employment that he will be performing service in a seasonal establishment, and (iii) the employer posted notices that employees are performing service in a seasonal establishment. Any benefit charges assessable with respect to the employee that are due to other employment will not be the responsibility of the seasonal employer.

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SB 917/Reynolds - wage offset for concurrent job. Provides that the weekly benefit to which an eligible individual is otherwise entitled shall not be reduced or “offset” by wages payable to the individual from another position that the individual has held continuously at least since the week preceding the job separation. *Currently, an individual's weekly benefit amount is reduced or “offset” on a dollar-for-dollar basis by any wages that he earns in that week in excess of \$50. The business community opposed this measure.*

SB 1376/Ruff - waiting week. Eliminates the current requirement that applicants for benefits wait one week prior to receiving benefits. *The business community persuaded the patron to strike his bill.*

WORKERS' COMPENSATION

PASSED

HB 1674/Purkey; SB 1158/Saslaw - therapeutically equivalent drugs. Requires a pharmacist filling a prescription for a workers' compensation claim to dispense a therapeutically equivalent drug for a prescribed name-brand drug unless (i) a therapeutically equivalent drug does not exist or the retail price for it is higher than that of the prescribed name-brand drug or (ii) the prescriber specifies on the prescription "brand medically necessary" based on a medical reason why the claimant should not have the prescription filled with a therapeutically equivalent drug. *These bills were supported by the Chamber's Business Coalition on Workers' Compensation (BCWC) in an effort to reduce costs.*

HB 1756/Hargrove; SB 1372/Ruff - local government self-insurance pools. Establishes a mechanism for the merger of the local government group self-insurance association and local government group self-insurance pool for the purpose of allowing political subdivisions to provide insurance coverage for their employees.

HB 2111/Spruill - infectious disease presumption; police officers of the Virginia Port Authority. Adds sworn Virginia Port Authority police officers to those public safety employees who are entitled to the presumption that certain infectious diseases are occupational diseases compensable under the Act.

HB 2292/Cline - insurance notices. Authorizes the Commission to designate an agent for receipt of insurance-related notices that are required to be given to the Commission by an employer, insurance carrier, or group self-insurance association.

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HB 2515/Tata - uninsured employer's fund. Increases the maximum tax rate that may be assessed on uninsured or self-insured employers from 0.25 percent to 0.5 percent. The revenues from the tax fund benefits that are awarded against such employers from the uninsured employer's fund. The measure sunsets on July 1, 2012. *The Chamber's BCWC supported this bill.*

SB 1047/Y. Miller - occupational disease presumption; police officers of the Virginia Port Authority. Establishes a presumption that hypertension or heart disease causing the death or disability of a sworn Virginia Port Authority police officer is an occupational disease compensable under the Act.

FAILED

HB 1749/Pogge - infectious disease presumption. Adds employees of a locality or other political subdivision who are employed in a sewerage system, sewage treatment works, water treatment plant, wastewater treatment plant, or waste treatment works or system, to the existing list of public employees who are entitled to the presumption that hepatitis, meningococcal meningitis, tuberculosis, or HIV are occupational diseases compensable under the Act.

HB 1958/Mathieson; HB 2478/Hugo - infectious disease presumption. Authorizes the Governor to declare that a communicable, contagious, or infectious disease is a disease that is covered by the existing infectious disease presumption for firefighters, paramedics, emergency medical technicians, and certain law-enforcement officers under the Act. *The presumption currently exists for hepatitis, meningococcal meningitis, tuberculosis, and HIV.*

HB 1959/Mathieson - discharge of public safety employees. Prohibits the Commonwealth, a locality, or a political subdivision from discharging or terminating an employee suffering from a line of duty injury or occupational illness for a period of (i) one year after the injury occurred or illness arose, if the employee has not returned to employment in full unrestricted duty, or (ii) two years after the injury occurred or illness arose, if a physician has determined, before the expiration of the one-year period, that the employee, within the ensuing one year, will reach maximum medical improvement and, to a reasonable degree of medical probability, will resume employment without significant limitations in the position he held when the injury occurred or illness arose.

HB 2252/Barlow - occupational disease presumption limitation. Establishes a limitations period in which a public safety employee may bring a claim for hepatitis, meningococcal meningitis, or tuberculosis at two years after a positive test for exposure to the occupational disease is first communicated to the employee. The limitation applies only to those public safety employees who are entitled to the existing presumption that

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hepatitis, meningococcal meningitis, tuberculosis, or HIV for which there is a documented occupational exposure have incurred an occupational disease. *Existing law provides that the limitations period for claims involving HIV is two years after a positive test for infection with human immunodeficiency virus, while the limitations period for hepatitis, meningococcal meningitis, or tuberculosis is the earlier to occur of (i) two years after a diagnosis of the disease is first communicated to the employee or (ii) five years from the date of the last injurious exposure in employment.*

HB 2272/Poindexter - statutory employers. Provides that a person who contracts for a subcontractor is not required to insure benefits to the subcontractor, and is not liable for any injury sustained by the subcontractor, if the subcontractor is an individual who conducts business as a sole proprietorship, is licensed to perform the work, and has no employees or subcontractors engaged in the same trade.

SB 821/Stuart - presumption that injury arises out of employment. Creates a presumption that a workplace injury results from an accident arising out of employment if the employee is found dead or to have incurred a brain injury resulting from external mechanical force that impairs the employee's brain function to such an extent that the employee is incapable of recalling the relevant circumstances of the accident. *A judicially created presumption currently exists when an employee is found dead as the result of an accident at his place of work and there is no evidence offered to show what caused the death or to show that he was not engaged in his employer's business at the time. The BCWC opposed the bill's expansion.*

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