

THE EMPLOYER'S ADVISORY

PERIODICAL NEWSLETTER

HIGHLIGHTING CURRENT EMPLOYMENT LAW ISSUES

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Updates from the Hill & Upcoming Seminar

If the first weeks of Colorado's Legislative Session are any indication, there are sure to be a plethora of bills being proposed in the Legislature during this session. For example, in the first month, the following bills concerning employment-law issues have already been proposed by our legislators. It's still, of course, a little too early to predict whether these bills will or will not pass.

House Bill 22-1112: Concerning the notices required for on-the-job injuries covered by workers' compensation insurance. Current Colorado law requires an injured employee to notify the employer within four days after the occurrence of an on-the-job injury, authorizes a reduction in compensation to the injured employee for failure to notify the employer within that time period of the injury, and tolls the four-day period if the employer has failed to post a notice specifying the injured employee's notification deadline. This bill would change the four-day notice period to a 10-day notice period and would repeal the tolling and compensation reduction provisions if the employer failed to post the required workers' compensation notice. Further, the bill identifies that if an employer has actual notice of the injury or good cause is

shown for the failure of the employee to report the injury in writing, the employee's claim would not be subject to a loss of compensation for failure to report the injury.

HB22-1152: Prohibit Employer Adverse Action [For] Marijuana Use. This bill would limit Colorado organizations from taking an adverse action against an employee who uses: (1) medical marijuana on the premises of the employer during working hours; or (2) medical or retail marijuana off the premises of the employer during working hours. In essence, while both Colorado's Constitutional Amendments concerning the lawfulness of an individual's use of marijuana, as well as a Colorado Supreme Court case, permit an employer to test an employee for marijuana usage and terminate an employee who tests positive for such use, this bill would only permit an employer to take an adverse action against an employee if the employer can establish that the employer's restriction on marijuana usage: (a) relates to a bona fide occupational requirement of the employer or employee; or (b) is necessary to avoid a conflict of interest with responsibilities the employee has to the employer. In short, while the bill still permits an employer the opportunity to subject an employee to an adverse action for testing positive for marijuana, the bill would require every such employer to establish one of the

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identified exemptions before taking that adverse action. Current Colorado law only requires employers to establish the presence of marijuana in the employee's system during working hours.

House Bill 22-1216: Concerning restrictive employment agreements (e.g., non-compete agreements; no-recruit agreements; confidentiality agreements; etc.). Currently, Colorado identifies that an employer can have a noncompete agreement with an employee when the agreement concerns the: (1) sale of a business; (2) protection of trade secrets; (3) limitations on competition if the employee is a manager or officer; or (4) repayment of training costs incurred by the employer within the first 2 years of an employee's employment. This bill imposes a number of limits on "restrictive agreements," which is a term much broader than simply noncompete agreements. For example, the bill identifies the following as examples of a "restrictive agreement:" confidentiality agreements; no-business agreements; noncompete agreements; nonsolicitation agreements; no-recruit agreements; and training-repayment agreements. A few "highlights" in the bill include:

- Colorado employers must provide a prospective worker, current worker receiving a promotion, and a departing worker, at least 14 days to consider the restrictive agreement before the worker is required to sign the restrictive agreement.

- All restrictive agreements, except confidentiality agreements and training-repayment agreements, are prohibited unless the worker is compensated at least 2-¼ times the rounded annual salary for exempt employees as identified in the current version of Colorado's Pay Calc Order. Currently, this amount would equal slightly more than \$100,000.00. It should be noted that the bill identifies those making under this amount as a "Low-wage worker."

- Similarly, the bill prohibits the enforcement of restrictive agreements, except confidentiality agreements and training-repayment agreements, if the worker terminates for "good cause attributable to the employer" or the employer terminates the worker for a reason other than gross misconduct.

- A no-business agreement, which is defined as an agreement that prohibits a worker from working for a client or customer of the employer, and an agreement not to "poach" one of the organization's current workers, can, if each agreement meets the other restrictions identified in the bill, last no more than six months.

In short, this bill has the potential for greatly restricting employers and employees from entering into restrictive agreements.

Other bills before Colorado's legislature include a bill that requires employers to permit an employee subject to a COVID-19 vaccine or testing requirement to instead provide documentation demonstrating that the person has naturally acquired immunity to the disease (HB 22-1144) and another bill that would remove the requirement for businesses with under 16 employees to provide leave under Colorado's Healthy Families and Workplaces Act (HB 22-1130).

In essence, it's never a dull moment these days at the Colorado Legislature and things will certainly change as the session continues. To that end, be sure to put on your calendar the upcoming WCHRA Spring Legislative Conference. This Conference will take place April 26, 2022, from 8:00 to 5:00. Sign up now at <http://wchra.org/>. Current rate for members is only a \$199.00 through April 1st. Hope to see you there.