

THE EMPLOYER'S ADVISORY

PERIODICAL NEWSLETTER

HIGHLIGHTING CURRENT EMPLOYMENT LAW ISSUES

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“I’m Just a Bill. I’m Just a Bill. Sitting here, waiting for the Governor’s Quill.”

Nearly a month after Colorado’s legislative session ended, a number of the employment bills that passed both the Colorado Senate and the Colorado House of Representatives still await the Governor’s signature. For example, HB22-1367, which slightly modifies Colorado’s Discrimination law, and HB22-1317, which concerns revisions to Colorado’s restrictive employment agreements statute (e.g., non-compete agreements), remains on the Governor’s desk awaiting his “Jared Polis.” (It wouldn’t make sense, after all, for him to sign “John Hancock.”)

So, while those bills await the Governor’s signature, the Governor has put his signature to other key employment legislation that will have significant impacts for Colorado employers.

Wage Theft Employee Misclassification Enforcement Bill (SB22-161). On June 3, 2022, the Governor signed SB22-161. This bill changes the current law regarding the procedure for deducting from an employee’s last paycheck for property or money not returned by the employee prior to termination. That is, under current Colorado law, employers may enter into an agreement with their employees to provide the employer up to ten (10)

calendar days after the employment separation for the employer to audit and assess any money or property that the employee failed to return to the employer. Current law permits employers, within those 10 days, to deduct the appropriate amount from the employee’s final paycheck.

The Wage Theft Bill (SB22-161) modifies the procedural requirements for the deduction to be lawful. For example, upon taking the deduction, employers are required to provide a written notice to the employee that includes:

- (1) An accounting of the amount of money or the value of property that the employee failed to properly pay or return to the employer;
- (2) The replacement value of the property in question;
- (3) The date (if known) when the money or property was provided to the employee; and
- (4) When the employer believes the employee should have paid the money or returned the property to the employer.

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Then, after receiving this information, the employee has 14 days to return the property or money claimed by the employer to be the basis for the deduction from wages. If that occurs, the employer must pay the employee the amount of the deduction within 14 days of the employee's payment or return of materials, as applicable.

In sum, for those organizations that use wage-audit agreements and/or want to make deductions from a final paycheck, this new law changes those requirements.

Concerning Unemployment Compensation (SB22-234). Another bill that the Governor signed into law concerns unemployment. This bill made headlines for putting more than \$600 million towards financially stabilizing the State's Unemployment System from the State's general fund. However, something not as well reported was the change in procedures Colorado employers must now undertake when separating employment with an employee.

That is, for the last couple of years, Colorado employers have been required to provide a notice to employees that informs them of the availability of unemployment insurance. 7CCR 1101-2(7.3.2). For example, that regulation required employers to provide employees a statement that unemployment insurance benefits are available to unemployed workers who meet the eligibility requirements of Colorado law; contact information to file a claim; information the worker will need to file a claim; and contact information to inquire about the status of their claim after it is filed.

This bill, which was signed by the Governor on May 25, 2022, and became effective immediately, now requires employers to provide a separating employee with written notice containing:

- (1) The employer's name and address;

- (2) The employee's name and address;
- (3) The employee's identification number or the last four numbers of the employee's social security number;
- (4) The employee's start date, date of last day worked, year-to-date earnings, and wage for the last week the employee worked; and
- (5) The reason the employee separated from the employer.

That fifth requirement would appear to run contrary to established Colorado law that employment relationships are at-will (i.e., can be separated without cause or reason), but an employer should be able to meet the unemployment requirement by simply identifying that the employee quit, was terminated, laid off, etc. Employers must provide this information to employees who resign, laid off, terminated, etc. Unfortunately, the law did not define "when" that information must be provided. It would seem reasonable, though, until the Colorado Department of Labor provides some direction, if employers provide the information with the same timing as the last paycheck (i.e., at the time of separation for an employee that's terminated; with the last paycheck for employees who quit).

So, in short, it's never a dull moment around the Capitol. Plus, there are still a number of other bills awaiting signature. So stay tuned!!!