

January 18, 2019

Colorado Legislature Will Consider Wide Range of Employment Bills

Employment-related issues are a big priority for the Colorado Legislature this session. Specifically, lawmakers are poised to consider bills addressing paid family leave, state-supported retirement plans, gender pay equity and ban the box. With the Democrats in control of both legislative chambers and the governor's office, some changes are likely. However, some bills will fail, particularly those with Republican-only sponsorship.

Here is an outline of the first few employment-related bills introduced so far:

Ban the Box – Inquiring Into Job Applicants' Criminal Histories

HB19-1025 was introduced by Democratic Reps. Jovan Melton and Leslie Herod. The bill restricts when an employer may look into a job applicant's criminal history by barring employers from:

- advertising that a person with a criminal history may not apply;
- placing a statement in a job application that a person with a criminal history may not apply; and
- asking about an applicant's criminal history on a job application.

According to the bill's legislative declaration, its purpose is to provide people with criminal records a more meaningful chance to compete for jobs in Colorado. The bill still allows an employer to obtain a job applicant's criminal history at any time.

It also exempts employers from the bill's restrictions if:

- the law prohibits a person who has a certain criminal history from holding a particular job;
- the law requires an employer to conduct a criminal history record check for a particular job; or
- the employer is part of a program to spur employment of people with criminal histories.

The bill does not create a private right of action nor a protected class under employment anti-discrimination laws. Instead, the Colorado Department of Labor and Employment is solely charged with handling complaints and enforcing the requirements. It may also issue warnings and orders of compliance for first offenses, followed by civil penalties for second and subsequent violations.

Under current state law, most private employers are restricted only from asking applicants about sealed criminal records. Very likely to pass, this bill would add Colorado to a growing list of states with so-called "ban-the-box" laws limiting an employer's ability to inquire about a job applicant's entire criminal history. However, this law would be one of the milder "ban-the-box" laws. It explicitly allows employers to obtain a job seeker's criminal history at any time, unlike many similar laws that forbid consideration of criminal history prior to interviewing the candidate or making a conditional offer. Still, if passed, many Colorado employers would need to revise their job applications, as most we have seen in use include questions about criminal history. Employers should also consult with counsel regarding whether certain positions or businesses are exempted from this law, such as licensed marijuana facilities, schools, child care providers, home care agencies and financial services providers.

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Family Leave Savings Accounts – Republican Alternative to State-Administered Program

Mandatory paid family and medical leave benefits are another growing trend to augment the federal Family and Medical Leave Act, which allows eligible employees 12 weeks of job-protected, unpaid leave in a 12-month period. This session, Colorado Republicans and Democrats will debate the best way for Colorado to join this national trend.

HB19-1058 was introduced by Republicans Lois Landgraf and Susan Beckman as an alternative to the Democrats' yet-to-be-introduced family medical leave insurance program. The Republican alternative establishes "leave savings accounts" that operate similarly to health savings accounts. They would allow an individual to save and use money in the account for any expense while he or she is on eligible leave, including:

- the birth, adoption or foster care of a child
- caring for a spouse, child or parent who has a serious health condition
- a serious health condition that makes the individual unable to perform the functions of his or her job
- any qualifying exigency as a result of a spouse, child or parent being called or ordered for active military duty

Individuals may save up to \$5,000 of state pretax wages, which employers may match. The bill also creates an income tax credit for an employer that pays an employee for six to 12 weeks of leave for the same eligible leave circumstances. For employers with fewer than 50 employees, the credit is equal to 5 percent of the amount paid. For employers with 50 or more employees, the credit is equal to 25 percent of the amount paid. The credit is not refundable but may be carried forward for up to five years.

If passed, either the Republican-sponsored or Democrat-sponsored law would alter how family and medical leave functions in Colorado.

Make-My-Day – Extending the Right to Use Deadly Force to the Workplace

Lastly, HB19-1022 was brought by Republican Shane Sandridge. The bill would extend Colorado's Make My Day Law—the right to use deadly force against an intruder—to owners, managers and employees of a business in three circumstances:

- the intruder has made unlawful entry into the business;
- there is a reasonable belief that the intruder has committed, is committing or intends to commit a crime in the business; and
- there is a reasonable belief that the intruder might use any physical force, no matter how slight.

Brought by a single Republican sponsor, this bill might be a nonstarter and is unlikely to survive its first committee hearing. If it does pass, employers should consider how to integrate the law's protections into their emergency plans and classes.

These three bills are the first of many employment-related bills from this session. We will continue to provide updates until the Legislature adjourns.

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