

# New Bills Address Labor, Business and Employment Issues

*State lawmakers' first batch of bills deal with discrimination, workers' rights and pandemic liability*

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LAW WEEK COLORADO

Colorado lawmakers introduced a big batch of bills when they reconvened the week of Feb. 15, including a handful that attorneys say employers will want to keep an eye on.

Sarah Mercer, shareholder at Brownstein Hyatt Farber Schreck, noted that another round of bills will be released this week, which is likely to include a few more that employers should have on their radar. Mercer said the bills that have already been introduced fall into three broad categories: bills that would affect individual workers, bills dealing with workers' rights more generally and bills affecting the business environment.

One bill in the first category is HB21-1065, which creates a statutory basis for private employers to give preference to a veteran or the spouse of a veteran who has been disabled or killed in the line of duty, as long as the veteran or spouse is as qualified as other applicants.

Holland & Hart partner John Husband said that although the bill is well-intentioned, he expects it to have some opposition from other groups who don't get preferential treatment. "I do believe that people that served in the armed forces are entitled to our respect," Husband said. "But to single out a group for a preference, I think, sets a pretty dangerous precedent. I mean, where does it go next? Do you give a preference for retired politicians?"

Another bill, HB21-1108, adds the terms "gender expression" and "gender identity" to statutes prohibiting discrimination against members of a protected class. The bill would not only update state laws governing employment discrimination and membership in labor organizations but also update a slew of statutes prohibiting discrimination in everything from housing, school enrollment, availability of family planning services and even the sale of cemetery plots.

"I think this bill will be really top of mind for a lot of folks," Mercer said, adding that it's one she expects to have a "really good chance" of passing.

The bill would also update the definition of "sexual orientation" in nondiscrimination laws to a person's "identity in relation to the gender

or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction." It is currently defined as an individual's "orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another individual's perception thereof."

Mercer said she will be closely watching SB21-077, which would remove the requirement for the Department of Regulatory Agencies to verify that someone is lawfully present in the U.S. as a condition for receiving professional licenses, certificates or registration. In addition to DORA, which issues licenses for occupations ranging from barbers to plumbers to architects and engineers, the change would apply to licensing under the Colorado Department of Education.

One of the bills in Mercer's second category has already died in committee. HB21-1049 was a Republican-backed bill that would have prohibited an employer from requiring union membership or payment of union dues as a condition of employment. It also would have declared all-union agreements to be unfair labor practices, bringing Colorado more in line with right-to-work states.

Mercer said similar right-to-work bills have been introduced and defeated annually in the General Assembly. Like similar bills from recent years, HB21-1049 would have created civil and criminal penalties for "employer violations regarding union membership," Husband noted, making it unpopular with employers and unions alike. "I'm not even sure what audience it's going to," Husband said of the short-lived bill, which the House Committee on Business Affairs & Labor on Feb. 25 voted to postpone indefinitely.

Another bill that has drawn interest so far is SB21-087, an agricultural workers' rights bill sponsored by Democrats. The bill would eliminate agricultural worker exemptions in Colorado's Labor Peace Act and wage and hour laws that have denied farmworkers the right to organize, take rests and meal breaks, earn the minimum wage and enjoy other protections granted to workers in other



The Colorado General Assembly is considering several labor and employment bills, including for expansion of discrimination protections, that lawyers say employers should watch. / LAW WEEK FILE

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industries. The bill has support from labor and economic justice groups as well as immigrant and Latino rights organizations but faces opposition from big agricultural interests such as the Colorado Farm Bureau, Colorado Cattlemen's Association and Rocky Mountain Farmers Union.

A bipartisan group of lawmakers has introduced SB21-039, which would eliminate subminimum wage employment. Currently, certain employers hold certificates from the U.S. Department of Labor that allow them to pay less than the minimum wage to workers whose earning capacity is impaired by age, disability or injury. If passed, the bill would require these

employers to submit plans to phase out this type of employment.

"I think you'll get some opposition to that from groups that work with that segment of the population, who I believe would say they want to encourage employment," Husband said. The bill is currently being supported by several disability advocacy groups.

Of the bills dealing with the business environment, Mercer said, the most notable are a pair of bills that would provide liability protections for businesses and other entities during the COVID-19 pandemic.

SB21-080 would protect businesses from liability for any damages resulting from exposure, loss, damage, injury or death arising from COVID, unless a claimant can prove by clear and convincing evidence that the

harm was caused by the business's failure to comply with public health guidelines, gross negligence or a willful and wanton act or omission.

A similar bill, HB21-1074, was introduced in the House by Rep. Mary Bradfield, a Republican from El Paso County who is also a sponsor of the Senate bill.

The House bill establishes immunity from civil liability for any act or omission resulting in COVID-related exposure, loss, damage, injury or death if the entity makes a good faith attempt to comply with public health guidelines.

Both bills would be repealed two years after the governor terminates the state of disaster emergency declared in March 2020.

Mercer said that if a pandemic li-

ability bill were to be passed and enacted, "hopefully, we will be pretty well through this pandemic."

"But I do think it could be helpful to have something like Senate Bill 80 in our statutes for — dare I even say this — but for the next pandemic," she added. "Hopefully, if we had something like that on the books, I think we will approach this kind of a situation very differently ... because now that we've been through it once before, that could allow businesses possibly to stay open."

Other bills of interest to employers include HB-1110, which strengthens anti-discrimination protections for people with disabilities, and HB-1050, which makes updates to workers' compensation laws. \*

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