

Louisiana

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

No new laws or regulations enacted in 2015 or 2016.

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

A. Equal Pay Act Poster Resolution

The Louisiana Legislature passed a non-binding resolution that urges and requests that the state labor department create, and make available online, a poster that will inform employees of their rights under equal pay laws and the procedures to remedy any violation of those laws.

The resolution will not be codified.

B. Wage Withholding Orders

Louisiana updated its child support garnishment laws to account for lump-sum payments to an employee. The amendment requires employers to notify the Department of Children and Family Services of any pending lump-sum payments to employees who owe support if that lump-sum payment is \$300 or more. Lump-sum payments are defined as a single payment made all at once from any source, in lieu of recurring payments that would be received by an obligor over a period of time.

The statute provides that an employer who willfully violates withholding income provisions may be fined up to \$50 per day. The amendment states that employers who issue a lump-sum payment in full to an employee, if the employer satisfies the reporting requirements, shall not be subject to that penalty.

La. R.S. § 45:236.3(E)(6) (Effective Date 08/01/2016).

V. Drug Testing

A. Medical Marijuana

This law amends a 1991 law which authorized the limited use of medical marijuana by striking provisions that require FDA and DEA approval for medical marijuana. Under this law, doctors can “recommend” medical marijuana to patients in all forms except for “inhalation” or “raw or crude” cannabis to patients for glaucoma, chemotherapy cancer treatment, or spastic quadriplegia. The Louisiana State Board of Medical Examiners may submit additional qualifications for consideration to the state legislature by January 1, 2016.

The law authorizes the Louisiana Board of Pharmacy to adopt rules and regulations for dispensing up to ten medical marijuana distribution sites with a single marijuana cultivation facility overseen by the Department of Agriculture and Forestry.

La. R.S. § 40:1046 (Effective Date 06/29/2015).

B. Forensic Hair Drug Testing

Louisiana's drug-testing law permits employers to conduct drug testing on employees and applicants using a hair specimen, blood, saliva, and urine. Employers are required to use laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) or the College of American Pathologists/Forensic Urine Drug Testing. However, neither the SAMHSA nor the College of American Pathologists/Forensic Urine Drug Testing certifications allow hair specimen testing. The new law permits employers to use laboratories certified by the College of American Pathologists to perform forensic hair drug testing. The law closes a loophole in Louisiana's drug-testing laws that effectively prevented employers from drug testing employees and applicants using hair specimens.

La. R.S. § 49:1002(J), La. R.S. § 49:1005(A), and La. R.S. § 49:1001(14) (Effective Date 08/01/2015).

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

A. Employment Tax Reporting

Louisiana law requires employers to file their annual tax returns with the secretary of the Department of Revenue. Previously, these returns were due the first business day after February 27 of each year. The amendments change the due date to on or before January 31 of each year.

Additionally, the amendments clarify that employers receiving the state's motion picture investor tax credit must withhold the applicable employment taxes from individuals who receive payment for services used directly in a production activity. These tax payments must be made to the Department of Revenue quarterly.

La. R.S. § 47:114 and La. R.S. § 47:164 (Effective Date 06/17/2016).

B. Military Spouse Unemployment

Louisiana law disqualifies an individual who voluntarily quits his or her job from receiving unemployment compensation benefits. The amendments provide an exception to the voluntary quit rule for the spouses of military service members.

Accordingly, an individual who is otherwise eligible for unemployment benefits may not be disqualified from receiving benefits if:

- He or she is the spouse of an active-duty military service member;
- His or her spouse receives an order of permanent change of station; and
- He or she resigns employment in order to relocate with his or her spouse due to the permanent change of station order.

Benefits paid pursuant to the amendments will not be charged against an employer's experience rating. However, the benefits paid will be recouped as a social charge per Louisiana unemployment law.

La. R.S. § 23:1553 and La. R.S. § 23:1601 (Effective Date 08/01/2016).

C. Franchisor Liability

Under new/amended laws, a franchisor is generally not considered an employer of either a franchisee or a franchisee's employees. A state department or agency cannot use a voluntary agreement between an employer and the United States Department of Labor as evidence to determine whether an employee of a franchisee is an employee of the franchisor.

An employee of a franchisee may be an employee of the franchisor if the franchisor participates in controlling essential terms and conditions of employment such as 1) hiring, 2) firing 3) discipline, 4) supervision, and 5) direction.

Under the amendments, "franchise," "franchisee," "franchisors" and "subfranchisors" are defined as:

- **Franchise:** any continuing commercial relationship created when the franchisor and franchisee agree that:
 - The franchisee will operate a business associated with a franchisor's trademark.
 - The franchisor may exercise significant degree of control over the franchisee's operations.
 - The franchisee will pay the franchisor.
- **Franchisee:** Includes a franchisee, partner, shareholder with at least 10% interest in the franchisee, and executive officer of the franchisee. There must be a signed agreement that expressly binds the franchisee.
- **Franchisor:** any person who grants and participates in the franchise. Unless expressly excluded, franchisor includes a subfranchisor.
- **Subfranchisor:** a franchisor that participates in the pre-sale and post-sale of the franchise.

La. R.S. § 23:921 (Effective Date 08/01/2015).