

## Pennsylvania

### 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**

Pennsylvania has joined the majority of states in allowing employers to use payroll cards to pay employees. The new law amends Pennsylvania's Banking Code to permit the use of payroll debit cards as a wage payment method. Employers may make payment by credit to an account in a financial institution, including a payroll card account, that is authorized to accept deposits or payments. The amended law requires that the employee authorize the method of payment in writing or electronically. In addition, the employee may revoke the authorization. If the employee requests a change in the method of receiving wages from a payroll card account to direct deposit or negotiable check, the employer must make the change as soon as possible but no later than the first payday after 14 days from receipt of the employee's request.

The amended law provides that funds in a payroll card account cannot expire. However, a payroll card may have an expiration date if the employer provides the employee with a replacement card without cost prior to the expiration date. The amended law sets forth several prerequisites to using payroll debit cards with which the employer and the bank issuing the payroll debit card must comply, including:

- the employer may not mandate the use of payroll debit cards;
- the employer must comply with stringent notice requirements;
- the employee must receive one free withdrawal of all wages earned per pay period; and
- the employee must be able to check the balance on the card at no cost electronically or by telephone.

The amended law also prohibits an employer from using a payroll card account that charges fees to the employee for any of the following:

- the application, initiation or privilege of participating in the payroll card program;
- the issuance of the initial payroll card;

- the issuance of one replacement card per calendar year upon the employee's request; and
- the transfer of wages, salary, commissions or other compensation from the employer to the payroll card account.

7 P.S. § 6121, 7 P.S. § 6122, and 7 P.S. § 6122.1 (Effective Date 05/03/2017).

## V. **Drug Testing**

Pennsylvania has become the 24th state to legalize medical marijuana for patients with a qualified medical condition. The new law contains several provisions of interest to private employers.

### **Health Insurance**

The law does not require that insurers or health plans provide coverage for medical marijuana.

### **Workplace Use**

Employers are not required to make any accommodation for the use of medical marijuana. Further, the law does not limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana, when the employee's conduct falls below the standard of care normally accepted for that position. Also, employers are not required to commit any act that would put the employer in violation of federal law.

### **Discrimination**

Employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee because the employee is a certified user of medical marijuana.

### **Workplace Safety**

The new law prohibits medical marijuana users from operating or being in physical control of high voltage electricity or chemicals requiring a permit if the user has more than 10 nanograms per milliliter of active tetrahydrocannabinol in his or her bloodstream. An employer may prohibit employees who are under the influence of marijuana from performing any duties from certain heights or in confined spaces, or from performing any task the employer deems life-threatening. Employers may also prohibit employees under the influence from performing any duty that could result in a public health or safety risk. The prohibitions on heights, confined spaces, life-threatening tasks, and public health or safety risks are not deemed to be adverse employment decisions even if the prohibition results in financial harm to the employee.

35 P.S. § 10231.101 et. seq. (Effective Date 05/18/2016).

## 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**

The amended law protects the public from workplace violence by eliminating current exceptions for stalking, harassment, and making threats for both management and workers involved in labor disputes.

Pennsylvania law defines a labor dispute as any controversy concerning:

- Terms or conditions of employment;
- The association or representation of person in negotiating, fixing, maintaining, changing, or seeking to arrange terms of conditions of employment; or
- Employment relations or any other controversy arising out of the respective interest of the employer and employee.

The prohibition on the threatening behavior applies regardless of whether the disputants "stand in the proximate relation of employer and employee," and regardless of whether the employees are on strike with the employer.

Pennsylvania law had exempted the lawful conduct of parties participating in a labor dispute from being charged with harassment, stalking, and threats to use weapons of mass destruction as defined in sections 2709(a), 2709.1(a), and 2716(a) of Title 18 of the Pennsylvania Consolidated Statutes. The new law removes these exemptions. However, constitutionally protected activity is still exempt from being considered stalking and harassment.

18 Pa.C.S. § 2709 (e), 18 Pa.C.S. § 2709.1(e), and 18 Pa.C.S. § 2715(c.2) (Effective Date 01/04/2016).