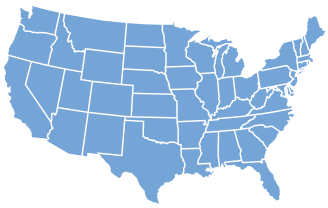
HRhero.com
EMPLOYERS STATE LAW ALERT
Summarizing Significant New Employment Laws & Regs in All 50 States



Vol. 13, No. 8 • August 2018

Hiring

Laws easing negligent hiring fears one more way states trying to help ex-offenders get jobs

by Tammy Binford

Job prospects for ex-offenders have a tendency to be slim. Potential employers often toss an application that shows a job candidate has been in trouble with the law. To combat that problem, many states and localities have passed "ban-the-box" laws, which prohibit employers from requiring applicants to check a box on an application to reveal whether they have a criminal record. The point of ban-the-box laws is to allow applicants with criminal records the chance to prove themselves during an interview instead of being automatically rejected at the beginning of the hiring process because of one line on an application.

Although ban-the-box laws help ex-offenders get to the interview stage—where they may still be rejected because of a conviction—they still face impediments to getting hired since many employers don't want to risk a negligent hiring claim in the event trouble follows the ex-offender to work. So now, at least a handful of states have taken a different step aimed at helping ex-offenders land a job.

Laws easing liability

On August 3, 2018, Arizona became the latest state to enact a law providing a broad exemption from negligent hiring claims when employers hire employees or independent contractors with criminal convictions.

The summary of Arizona's new law names six other states with similar measures: Colorado (Title 8 § 8-2-201), Minnesota (Chapter 181 § 181.981), North Carolina (§ 15A-173.5), Ohio (Title 29 § 2953.25-G), Tennessee (Title 40 § 40-29-107), and Texas (Title 6 § 142.002).

Although they differ somewhat, the state laws all limit an employer's liability for hiring someone who has been convicted of a crime, but they don't offer encouragement for employers to hire those with violent or sex crimes on their record. Often, employers are reluctant to hire even nonviolent ex-offenders out of fear that an employee or some other person claiming to have been harmed by the ex-offender will file a negligent hiring claim.

In Arizona, the new law prevents evidence of the conviction from being introduced in cases in which the negligent hiring claim is based on more than just the past conviction. The law stipulates that in negligent supervision claims, evidence of the conviction can be introduced but only if the employer knew or was grossly negligent in not knowing about the conviction and the conviction was directly related both to the nature of the work and the conduct that gave rise to the claim.

(continued on pg. 2)

In This Issue

Employers State Law Alert is published monthly for $497 per year by M. Lee Smith Publishers®, a Division of BLR®—Business & Legal Resources, 100 Winners Circle, Suite 300, P. O. Box 5094, Brentwood, TN 37024-5094, 800-274-6774 or custserv@blr.com.

Alan King, Editor • Brad Forrister, VP Content • With contributions from members of the Employers Counsel Network

The liability exemption and evidentiary exclusion don't apply in three circumstances:

- The claim is misuse of money or property of a third party, and it was foreseeable that the job would involve a fiduciary responsibility in the management of money or property;
- The claim is misappropriation of money, the employee had a conviction for fraud or the misuse of money or property, and the employee was hired to work as an attorney; and
- The claim involves violence or use of excessive force, and the employee was hired as a law enforcement officer or security guard.

Other states with similar laws also exclude violent and sex crimes from the liability exemption.

Ban the box

Many more states have adopted laws that prevent employers from asking about criminal history at the front end of the hiring process. Those inquiries are delayed until later when applicants have had a chance to show why they would make good employees. A recent count by the National Employment Law Project (NELP) shows 31 states with some form of ban-the-box law. Most of those laws cover only public-sector employers.

But 11 of the 31 states with some form of ban-the-box law also ban the box on private employers' applications, according to information from NELP. Those states are California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington. In addition, many cities have adopted ban-the-box laws for at least public-sector jobs.

In addition to the 11 states, NELP counts 17 local governments that have their own ban-the-box laws that apply to private employers. They are Austin, Texas; Baltimore, Maryland; Buffalo, New York; Chicago, Illinois; Columbia, Missouri; the District of Columbia; Kansas City, Missouri; Los Angeles, California; Montgomery County, Maryland; New York, New York; Philadelphia, Pennsylvania; Portland, Oregon; Prince George's County, Maryland; Rochester, New York; San Francisco, California; Seattle, Washington; and Spokane, Washington.

According to the NELP tally, nearly three-fourths of the U.S. population is in a jurisdiction with some form of ban-the-box law.

Background checks

In addition to delaying criminal history inquiries, two states—California and Hawaii—now restrict when employers can conduct background checks, according to information from NELP.

California law requires both public- and private-sector employers to delay conviction background checks, in addition to questions about criminal history on applications, until after a conditional offer of employment has been made. Also, when reviewing conviction history, employers in California must conduct an "individualized inquiry" and consider at least the amount of time elapsed since the conviction, the nature of the conviction, and whether the conviction is related directly to the job. California law also requires employers to provide written preliminary notice to an applicant of an intent to rescind a conditional job offer and provide time for the applicant to respond.

In Hawaii, employers may consider only the most recent 10 years when examining conviction records. In addition, the law prohibits inquiries into an applicant's conviction history until a conditional offer of employment has been made. The offer can be withdrawn only if the applicant's conviction bears a "rational relationship" to the job being sought.

NELP identifies two cities—Austin and Baltimore—that have laws that allow background checks for just some positions. So far, no states have taken that step.

More local governments have laws that allow background checks only after a conditional offer of employment. Those localities are: Austin, Texas; Baltimore, Maryland; Columbia, Missouri; the District of Columbia; Los Angeles, California; New York, New York; Philadelphia, Pennsylvania; Portland, Oregon; and San Francisco, California.

Statutes

Arizona

Analysis

Legislation

Misrepresenting pet as service animal now illegal in Arizona

by Jodi R. Bohr

Gallagher & Kennedy, P.A.

For years, we have addressed issues facing employers and places of public accommodation when confronted with requests for accommodating an employee's or patron's need for a service animal. Since that time, we've all heard stories about the failed attempts of customers who have tried to board an airplane with their "service" pigs or peacocks. This has resulted in revised service animal policies by places of public accommodation and much criticism by the general public regarding patrons' decisions to bring animals into public places.

Based on that backlash, Arizona legislators got involved to curb the perceived abuse of laws protecting the rights of those who actually need service animals. The legislature passed House Bill 2588, which revises A.R.S. § 11-1024 by adding a provision that a person who fraudulently misrepresents a pet as a service animal is subject to a civil penalty of up to $250. This statute follows on the heels of approximately 19 other states that have enacted laws cracking down on people who try to pass off their pets as service animals. It took effect August 3, 2018 (90 days after the close of the legislative session).

While many business owners view this as a win, disability advocates are concerned that this provision could subject people with a disability to uncomfortable situations and inappropriate inquiries. Because the law didn't change what constitutes a permissible inquiry, businesses must be mindful of the particulars of what constitutes a service animal and know how to make appropriate inquiries when the nature of the service isn't obvious.

Are "emotional support animals" considered service animals? No. Neither the Arizonans with Disabilities Act (AzDA) nor the Americans with Disablities Act (ADA) classifies emotional support animals as "service animals." To be a service animal, the dog (or miniature horse) must perform work or tasks directly related to the individual's disability. Tasks don't include providing companionship or comfort to individuals with psychiatric or emotional disabilities. To be considered a service animal that supports a psychiatric condition, the animal must help his handler manage mental and emotional disabilities by, for example, interrupting self-harming behaviors, reminding handlers to take medication, checking spaces for intruders, or providing calming pressure during anxiety or panic attacks. Simple therapeutic benefits offered by the presence of the animal don't qualify the animal as a service animal.

What are the permissible inquiries when it isn't obvious what service the animal provides to the handler? Businesses may ask only two questions: (1) Is the service animal required because of a disability and (2) what work or task has the service animal been trained to perform? You may not ask about the person's disability and may not request or require medical documentation from the handler. Because service animals aren't required to be certified, you may not request a special identification card or training documentation for the service animal. Finally, you may not ask that the service animal demonstrate its ability to perform the work or task for which it is trained.

What are the potential effects of this new provision? Because it's unlikely that a person will self-report misrepresenting a pet as a service animal, the impact remains to be seen. It has served as a reminder that proper inquiries are extremely limited, but it has provided businesses with a recourse if that inquiry reveals that the animal isn't a service animal. You should take care in making that determination or asking the handler to leave even when you aren't required to accommodate the handler and animal. Handling the situation with compassion—regardless of a perceived misrepresentation—is the best way of addressing an uncomfortable situation with potential legal implications.

Excerpted from *Arizona Employment Law Letter*
Dinita L. James, Editor
Gonzalez Law, LLC

California

Wages

Considering salary in compensation decisions

This law authorizes an employer to make a compensation decision based on an employee's current salary as long as any wage differential resulting from the decision is justified by one or more specified factors, including a seniority system or a merit system.

Cite: 2018 CA AB2282, CA Pub. Ch. 127 (5 pages)

Enacted: 7/18/2018

Effective: 1/1/2019

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2282

Colorado

Analysis

Legislation

Colorado's new data privacy requirements apply to employers

by Dustin Berger

Organizations that employ workers who reside in Colorado will soon face more stringent data privacy requirements thanks to legislation recently passed by the Colorado General Assembly. Signed into law by Governor John Hickenlooper at the end of May, House Bill (HB) 18-1128 imposes new obligations on all covered entities in the state that maintain documents containing Colorado residents' personal identifying information (PII). Here are the highlights of the new requirements and steps employers should take to comply.

Disposal of documents containing PII

Colorado has had a statute governing the disposal of documents containing PII since 2004, but its requirements were relatively limited. HB 18-1128 amends C.R.S. § 6-1-713 to strengthen the steps employers must take when disposing of documents containing PII.

First, the amendment applies the disposal requirements to documents that are kept electronically in addition to those kept in paper form. Next, the new law requires that covered entities implement a written policy specifying that when paper or electronic documents containing PII are no longer needed, they will destroy (or arrange for the destruction of) the documents in their custody or control by shredding, erasing, or otherwise modifying the PII in the documents to make the information unreadable or indecipherable through any means. The more specific disposal requirement strengthens the old language requiring only a policy (which didn't have to be in writing) for destroying or properly disposing of paper documents without specifying how the destruction or disposal must occur.

The amendment defines a "covered entity" as essentially any individual, corporation, unincorporated association, or any other legal or commercial entity "that maintains, owns, or licenses [PII] in the course of the person's business, vocation, or occupation." The statute defines "personal identifying information" as "a [Social Security number (SSN)]; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data; an employer,

student, or military identification number; or a financial transaction device."

Because virtually all employers maintain employee information that's considered PII, including SSNs, employee identification numbers, passport numbers, or driver's license numbers, Colorado employers are subject to the enhanced document destruction requirements in HB 18-1128. Consequently, you must implement a written policy that complies with the statutory provisions.

New data security requirements

HB 18-1128 also creates C.R.S. § 6-1-713.5, a new statutory section that requires employers to implement and maintain reasonable security procedures and practices to protect PII from unauthorized access, use, modification, disclosure, or destruction. While it doesn't specify the type of security procedures that are required, the new law states that such procedures must be appropriate to the nature of the PII and the nature and size of the business and its operations.

If a covered entity discloses PII to a third-party service provider, it must require the service provider to implement and maintain security procedures and practices that are reasonably designed to help protect the information from unauthorized access, use, modification, disclosure, or destruction, as appropriate to the nature of the information disclosed. A third-party service provider is defined as an entity that has been contracted to maintain, store, or process PII on behalf of a covered entity.

Security breach notification requirements enhanced

The new law significantly amends C.R.S. § 6-1-716, Colorado's statute governing notifications of a security breach. A "security breach" is defined, in relevant part, as the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a covered entity.

Under the new law, a covered entity has no more than 30 days to provide notice of a security breach. Notice must be made to affected Colorado residents in a specific manner, including by mail, telephone, electronically, or substitute notice (i.e., e-mail notice to the affected persons, conspicuous posting on the entity's website, and notification to major statewide media), and must contain certain information about the breach and options that are available to the affected person. If a breach is reasonably believed to have affected 500 or more Colorado residents, the entity must also notify the Colorado Attorney General's Office of the breach.

Governmental entities also covered

Article 73 was added to Title 24 of the Colorado Revised Statutes to require governmental entities that maintain PII to protect the information from unauthorized access, use, or disclosure as well as properly dispose of documents containing such information and implement procedures for notifying affected individuals of security breaches.

Steps for employers to take

The new data security requirements go into effect September 1, so employers that maintain PII on Colorado residents have little time to prepare to comply. Here are some the steps covered employers should take:

- Create a written policy on the destruction and disposal of paper and electronic documents containing PII.
- Implement reasonable practices designed to protect PII from unauthorized access, use, or disclosure (e.g., password-protection and encryption measures).
- Review agreements with third-party service providers to ensure they have reasonable procedures for protecting the security of any PII entrusted to them.
- Appoint a person who will be responsible for possible data security breaches, and ensure that she is trained on the investigation and notification requirements set forth in the new law.

Excerpted from *Colorado Employment Law Letter*
Judith A. Biggs, John M. Husband, Emily Hobbs-Wright, Editors
Holland & Hart LLP

Delaware

Layoffs

Creates the Delaware Worker Adjustment and Retraining Notification Act

This law directs certain employers to provide the Department of Labor's Division of Employment and Training at least 60 days' advance notice of mass layoffs, plant closings, or relocations. The law is intended to provide dislocated workers the rapid response services and benefits that are owed to them through the Department of Labor and other service providers.

Cite: 2018 DE HB409 (9 pages)

Enacted: 7/11/2018

Effective: 1/1/2019

https://legis.delaware.gov/BillDetail/26633

Wages

Creates a training minimum wage

This law creates a training minimum wage and a youth wage that are not more than 50 cents less than the minimum wage rate. The increase in the minimum wage to $8.75 is effective January 1, 2019.

Cite: 2018 DE HB483 (1 page)

Enacted: 7/1/2018

Effective: 1/1/2019

https://legis.delaware.gov/BillDetail?LegislationId=27033

Workers' Compensation

Benefits for surviving spouses

This law ensures that the spouses of those killed in the line of duty are able to receive benefits for the remainder of their lives regardless of future marital status. When a surviving spouse remarries, the surviving spouse's benefit is reduced

to 90 percent of the original benefit for the first 10 years after remarrying and then will be reduced to 75 percent of the original benefit until the death of the surviving spouse.

Cite: 2018 DE SB202 (2 pages)

Enacted: 6/27/2018

Effective: 6/27/2018

https://legis.delaware.gov/BillDetail?LegislationId=26641

Hawaii

Wages

Prohibits inquiries about wage history in employment process

This law prohibits prospective employers from requesting or considering a job applicant's wage or salary history as part of an employment application process or compensation offer. It also prohibits enforced wage secrecy and retaliation or discrimination against employees who disclose, discuss, or inquire about their own or coworkers' wages.

Cite: 2018 HI SB 2351, HI Pub. Ch. 108 (8 pages)

Enacted: 7/5/2018

Effective: 1/1/2019

www.capitol.hawaii.gov/session2018/bills/SB2351_CD1_.pdf

Massachusetts

Wages/Paid Leave

Minimum wage increases, paid family and medical leave program enacted

The law, which increases the minimum wage for both regular employees and tipped employees, establishes two incremental increase schedules. The first increase goes into effect January 1, 2019. Thereafter, the minimum wage for regular and tipped employees would gradually increase on January 1 of each year, with the final increase going into effect January 1, 2023.

The law also would affect retail workers' wages. The law gradually decreases the premium Sunday pay rate over the next five years, until it is eliminated on January 1, 2023. The first incremental decrease, which would go into effect January 1, 2019, decreases the premium Sunday rate to one and four-tenths of the employee's regular rate.

The law also establishes a job-protected paid family and medical leave program, which takes effect January 1, 2021. Importantly, unlike the federal Family and Medical Leave Act (FMLA), the law does not require an employer to employ a threshold minimum number of employees to trigger coverage. The only carve-out for smaller employers is that employers with fewer than 25 employees would not be required to pay their portion of the payroll tax that would fund the program.

Leave taken under the program would run concurrently with leave taken under the FMLA. Under the law, employees would be eligible for up to 12 weeks of paid family leave in a benefit year. Employees would be eligible for up to 26 weeks of paid family leave in a benefit year if the leave is taken to care for a covered servicemember. Also, employees would be eligible for up to 20 weeks of paid medical leave. Employees would not be permitted to take more than 26 weeks of combined paid family and medical leave in the same benefit year (a 52-week period).

During leave, after the first seven calendar days, employees will be paid a percentage of their salary, the calculation of which varies depending on their average weekly wage compared to the state average weekly wage. An employee will be paid only up to a maximum of $850 per week. The maximum rate will be recalculated each year.

Cite: 2018 MA HB4640, MA Pub. Ch. 121 (12 pages)

Enacted: 6/28/2018

Effective: Various dates

https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121

New Hampshire

Analysis

Discrimination

Gender identity added to NH's antidiscrimination laws

by Jim Reidy

Governor Chris Sununu has signed a bill banning discrimination based on gender identity and creating legal protections for transgender people in New Hampshire. The legislation, House Bill (HB) 1319, adds gender identity to the state's existing antidiscrimination laws (RSA 354-A), which prohibit discrimination in employment, housing, and places of public accommodation. The new law becomes effective on July 8, 2018.

The bill defines gender identity as meaning "a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." It goes on to say that gender-related identity "may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity, provided, however, that gender-related identity shall not be asserted for any improper purpose."

The public accommodations portion of HB 1319, which provides protections for transgender people to use the bathroom that corresponds with their gender identity, drew pushback from some lawmakers. The measure passed the State House of Representatives in March. On May 2, the State Senate passed the bill by a 14-10 margin.

Covered employers should add gender identity to their equal employment opportunity (EEO)/antidiscrimination policies and posters as well as training for staff and managers.

New Hampshire is the 21st state in the country (along with Puerto Rico, Guam, and the District of Columbia) to ban discrimination against transgender people.

Excerpted from *Rhode Island Employment Law Letter*
James P. Reidy, Karen A. Whitley, Editors
Sheehan Phinney Bass & Green PA

Rhode Island

Workers' Compensation

Waiver of common law claims

This law allows all corporate and limited liability officers to waive their previously claimed common law right of action. The law also imposes certain limitations on payments to injured employees. Payments will not be awarded to any injured employee or dependent if the award would directly or indirectly inure to the benefit of the uninsured employer. No payment will be awarded when the director or the court, in its discretion, determines that unjust enrichment to or on behalf of the illegally uninsured employer would result. No payments will be awarded under this chapter to an injured employee—or, in the case of death of the injured employee—to persons presumed wholly dependent for support on the deceased employee, in a total amount in excess of $50,000 plus any attorneys' fees awarded in connection with petitions for payment from the fund.

Cite: 2018 RI HB8215, RI Pub. Ch. 98 (12 pages)

Enacted: 6/28/2018

Effective: 6/28/2018

http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H8215A.pdf

Unemployment Compensation

Increases attorneys' fees

This law raises from $50 to $250 the minimum attorneys' fees awarded to a claimant in an unemployment compensation matter when an employer appeals a decision favorable to the claimant or when the claimant successfully appeals an adverse decision.

Cite: 2018 RI HB8339 (3 pages)

Enacted: 7/10/2018

Effective: 7/10/2018

http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H8339.pdf

Wages

Allows for electronic statements

This law provides that statements of earnings required to be furnished to an employee may be furnished in an electronic record. The employer must furnish an employee a printed or handwritten record, in lieu of an electronic record, at no cost when the employee provides written authorization to the employer.

Cite: 2018 RI SB2597, RI Pub. Ch. 84 (2 pages)

Enacted: 6/28/2018

Effective: 6/28/2018

http://webserver.rilin.state.ri.us/BillText/BillText18/SenateText18/S2597Aaa.pdf

Vermont

Analysis

Legislation

Two new Vermont antidiscrimination laws took effect July 1

by Kendall Hoechst

Governor Phil Scott has signed two new laws that will have an impact on all Vermont employers. The first, a response to the #MeToo movement, is designed to protect Vermonters from sexual harassment. The second law restricts employers from making certain inquiries about applicants' salary history, with an eye toward closing the wage gap between men and women. Both laws took effect July 1, 2018.

Preventing sexual harassment

Applicability. First, the new sexual harassment law expands the applicability of the state's antiharassment statute to "all persons who engage a person to perform work or services" even if the individuals or entities involved might not have previously met the definition of "employer" or "employee." That suggests the law is meant to apply broadly. The definition or meaning of "harassment" hasn't been altered.

Antiharassment policies. Vermont employers are required to provide copies of written policies against sexual harassment to new employees upon hire. Now, you must also provide notice to all employees when you make any changes or updates to your sexual harassment policy. The statute encourages, but doesn't require, sexual harassment education and training for newly hired employees as well as annual training for existing employees.

Employment contracts. Under the new law, you may not require any employee or prospective employee to sign an employment contract or a waiver that prevents her from opposing, disclosing, or reporting sexual harassment, or participating in a sexual harassment investigation. Likewise, you may not require employees to waive their rights or remedies with respect to a claim of sexual harassment. Any agreement that purports to do either of those things will be void and unenforceable.

Settlement agreements. The law also addresses the settlement of sexual harassment claims. Settlement agreements may not prevent an employee from working for the employer or any parent, subsidiary, division, or affiliate in the future. In other words, no-rehire clauses will render the entire settlement agreement void and unenforceable. A settlement agreement must also include certain

statements affirming that the settlement does not prevent the accuser from:

- Reporting sexual harassment to an appropriate governmental agency;
- Complying with a discovery request (i.e., a request for evidence related to a legal claim);
- Testifying at a hearing or trial involving a claim of sexual harassment or participating in any related investigation; or
- Exercising his right under state or federal labor law to engage in concerted activity for mutual aid or protection.

A settlement agreement that doesn't include those statements will be void and unenforceable. Furthermore, the settlement agreement must make it clear that the accuser isn't waiving any rights or claims that might arise after the agreement is executed.

Enforcement powers. The new law imbues the Attorney General's Office (AG)—or the Vermont Human Rights Commission (VHRC) if the employee works for the state—with the power to enter and inspect any place of business or employment, question any person who is authorized to receive or investigate complaints of sexual harassment, and examine an employer's records, policies, procedures, and training materials related to sexual harassment. An employer must be given 48 hours' notice prior to any on-site visit, but the employer can waive or shorten the notice period.

It's important to note that an employer only has to provide redacted data on the number of complaints of sexual harassment it has received and the resolution of each complaint. You should preserve this kind of data going forward to make compliance with an inspection request from the state easier.

After an inspection, the AG must notify the employer of the results, including any issues or deficiencies; provide resources to assist with the prevention of harassment; and identify any technical assistance it may offer. If the AG deems it necessary, an employer can be required to conduct an annual education and training program, an annual anonymous workplace survey, or both, for up to three years. The AG is required to maintain the confidentiality of records and information related to or obtained through an inspection.

Notice to and participation by the state in private lawsuits. The AG remains empowered to bring enforcement actions, but individuals also have the option of filing sexual harassment complaints on their own without the state's involvement. Any person who files such a complaint is now required to provide notice to the AG and the VHRC within 14 days of filing the complaint. Either agency has the option to intervene in the action or to file a statement with the court addressing questions of law without becoming a party.

Future efforts to reduce and address sexual harassment. Before December 15, 2018, the AG and the VHRC must develop enhanced reporting mechanisms to make it easier for employees and members of the public to submit complaints of discrimination and sexual harassment. Those mechanisms must include, at a minimum, an "easy-to-use" Web portal and a telephone hotline. The AG must submit a report on the implementation of the enhanced reporting mechanisms on or before January 15, 2020.

The law also appropriates $125,000 to the Vermont Commission on Women for the purpose of creating a public education and outreach program focused on making the public aware of methods for reporting discrimination and sexual harassment, where to find information on the laws against discrimination and harassment, and best practices for prevention.

Finally, the law directs the Office of Legislative Counsel to investigate several aspects of potential future legislation addressing nondisclosure provisions. The legislature is seeking research on requiring notice of settlement agreements that restrict the accuser from disclosing information related to a sexual harassment claim and rendering a nondisclosure agreement void and unenforceable if the alleged harasser is found to have harassed again.

Next steps. You should review your policies on sexual harassment and identify which individuals are designated to receive complaints. It would also be prudent to maintain records of any complaints you receive and all of the associated documentation. Continue to take steps to address any complaints of sexual harassment, including conducting investigations and maintaining appropriate documentation of the results as well as any remedial measures you take in response. You may want to revisit your policies and procedures to ensure they cover those issues.

You should also review your form settlement agreements to ensure they include the necessary statements and don't contain a no-rehire clause. Finally, check your standard employment agreements to make sure they don't limit an employee's ability to complain about sexual harassment or participate in an agency investigation or any similar proceedings. You may want to consider adding a statement to that effect to your confidentiality provisions.

Inquiring about job applicants' salary history

The other new antidiscrimination law prevents employers from relying on past compensation information to set the salaries of new hires. The term "compensation," as used in the law, encompasses wages, salary, bonuses, core benefits, fringe benefits, and equity-based compensation. Employers may not:

- Ask either a prospective employee or his former employer about his past compensation;
- Require that a prospective employee's previous compensation satisfy a minimum or maximum standard; or
- Determine whether to interview a prospective employee based on his current or past compensation.

Importantly, if a prospective employee voluntarily discloses information about her previous compensation, you may seek to confirm or request that she confirm the information, but only after you make a job offer that includes a compensation amount. Furthermore, you are permitted to inquire about an applicant's salary expectations or

requirements and provide information about the wages, benefits, compensation, or salary offered for a particular position without running afoul of the statute.

Next steps. Review your application materials to ensure they don't include any requests for salary history information. You should also take care not to raise the topic during interviews or other hiring communications.

Bottom line

Even small changes in the law can have a significant impact on employers. These changes are fairly substantial and suggest that the state will have a more critical eye on employers going forward. Not only are preventing and responding to sexual harassment and reducing the wage gap now a more robust part of Vermont law, but they are also the right thing to do.

Excerpted from *Vermont Employment Law Letter*
Amy M. McLaughlin, Jeffrey J. Nolan, Leigh Polk Cole, Karen McAndrew, Editors
Dinse, Knapp & McAndrew, P.C.

Regulations

Alabama

Healthcare Professionals

Dentist prescription of controlled substances

The Board of Dental Examiners adopted amendments to require all dentists who are permitted by the board to write prescriptions for controlled substances to be registered with and have access to the controlled substance prescription database program maintained by the Department of Public Health.

Cite: Ala. Admin. Code r. 270-X-2-.11 (36 Ala. Admin. Mthly. 9, 06/29/2018) (1 page)

Adopted: 6/25/2018

Effective: 6/25/2018

www.alabamaadministrativecode.state.al.us/UpdatedMonthly/AAM-APR-18/270-X-2-.11.pdf

California

Discrimination

National origin discrimination

The Fair Employment and Housing Council amended rules to expand and clarify the application of the Fair Employment and Housing Act to the protected class of national origin in the employment context.

Cite: Cal. Code Regs. Tit. 2, § 11027.1, 11028 (CRNR 2018, No. 22-Z, 06/01/2018, page 878) (4 pages)

Adopted: 5/17/2018

Effective: 7/1/2018

https://govt.westlaw.com/calregs/Search/Index

Delaware

Healthcare Professionals

Telemedicine and telehealth

The Board of Medical Licensure and Discipline revised regulations to add a rule clarifying language in the Medical Practice Act specifying that remote, audio-only examinations are not considered an "appropriate in-person examination" and restricting the prescription of opioids via telemedicine.

Cite: 24-1700 Del. Admin. Code § 19.0, 19.1, *et seq.* (21 DE Reg 988, 06/01/2018) (2 pages)

Adopted: 6/1/2018

Effective: 6/11/2018

http://regulations.delaware.gov/register/june2018/final/21%20DE%20Reg%20988%2006-01-18.htm

Iowa

Healthcare Professionals

Telepharmacy practice

The Board of Pharmacy amended rules for telepharmacy practice to allow a telepharmacy to use the services of a delivery driver when that individual is registered as a pharmacy support person, but only for delivery activities.

Cite: Iowa Admin. Code r. 13.8(7) (IAB, 06/20/2018, page 3222) (2 pages)

Adopted: 5/23/2018

Effective: 7/25/2018

www.legis.iowa.gov/docs/aco/bulletin/06-20-2018.pdf

Occupational Safety

Elevator and conveyance safety

The Elevator Safety Board amended several chapters to update safety regulations to reflect website changes, pit excavation exemptions, maintenance safety, sprinklers, and speed switches.

Cite: Iowa Admin. Core r. 875-66.5(17A, 89A), 67.1(17A, 89A), *et seq.* (IAB, 06/20/2018, page 3181) (5 pages)

Adopted: 5/30/2018

Effective: 8/1/2018

www.legis.iowa.gov/docs/aco/bulletin/06-20-2018.pdf

Louisiana

Healthcare Professionals

Nursing denial or delay of licensure

The Louisiana Board of Nursing adopted amendments to revise criteria enumerating and broadening the scope of crimes of violence that will be considered for denial and delay of nursing licensure, licensure by endorsement, reinstatement, and the right to practice as a student nurse.

Cite: La. Admin. Code tit. 46, § 3331 (LR 44:1010, 06/20/2018) (4 pages)

Adopted: 6/20/2018

Effective: 6/20/2018

www.doa.la.gov/osr/REG/1806/1806.pdf

Maryland

Healthcare Professionals

Pharmacist authority for prescribing contraceptives

The secretary of health adopted new regulations governing the authority, requirements, training, record keeping, and continuing education for pharmacists to prescribe contraceptives.

Cite: COMAR 10.34.40.00, 01, 02, *et seq.* (45:13 Md. Reg. 668, 06/22/2018) (8 pages)

Adopted: 5/31/2018

Effective: 7/2/2018

www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=10.34.40.*

Michigan

Licensure

Architect license rules

The Department of Licensing and Regulatory Affairs amended, added, and rescinded general rules for architecture licensing, with sections for definitions, licensing criteria, licensure and seal requirements, and continuing education.

Cite: AC, R 339.15101, R 339.15201, *et seq.* (2018 MR 9, 06/01/2018, page 21) (8 pages)

Adopted: 5/4/2018

Effective: 5/4/2018

www.michigan.gov/documents/opt/MR9_060118_624416_7.pdf

Mississippi

Healthcare Professionals

Continuing education for pharmacy

The Mississippi Board of Pharmacy adopted amendments to increase annual continuing education hours and to require that at least five of those hours include opioid or other drug abuse issues.

Cite: Code Miss. R. 30-3001 (Mississippi Secretary of State website, System Number 23491) (3 pages)

Adopted: 6/29/2018

Effective: 7/30/2018

www.sos.ms.gov/adminsearch/ACProposed/00023491b.pdf

Nevada

Unemployment Compensation

Electronic reporting

The Employment Security Division adopted new rules to require the electronic filing of required contribution and wage reports and to allow for waivers of no more than one year if the employer lacks the facilities to file electronically, filing electronically would impose a severe economic hardship, or other good cause is shown.

Cite: NAC 612 (Register of Nevada Vol. 246, LCB File No. R054-18) (2 pages)

Adopted: 6/11/2018

Effective: 6/26/2018

www.leg.state.nv.us/Register/2018Register/R054-18AP.pdf

New Mexico

Licensure

Controlled substances and fees for pharmacies

The Board of Pharmacy repealed and replaced regulations for the registration and control of the manufacture, distribution, and dispensing of controlled substances, with registration requirements, inventory control, record keeping, distribution, prescription, and drug scheduling.

Cite: 16.19.20 NMAC (29 NM Reg. 764, 06/26/2018) (24 pages)

Adopted: 6/26/2018

Effective: 6/28/2018

http://164.64.110.134/nmac/nmregister/xxix/16.19.20.html

Ohio

Workers' Compensation

Payment for HBAI services

The Bureau of Workers' Compensation adopted new rules governing the bureau's reimbursement for health and behavior assessment and intervention (HBAI) services offered to injured workers who may benefit from an assessment that focuses on identifying behavioral barriers impeding their recovery.

Cite: Ohio Admin. Code 4123-6-33 (Register of Ohio, 06/08/2018) (5 pages)

Adopted: 6/8/2018

Effective: 7/1/2018

www.registerofohio.state.oh.us/pdfs/4123/0/6/4123-6-33_PH_FF_N_RU_20180608_0827.pdf

Workers' Compensation

Temporary total examinations

The Bureau of Workers' Compensation adopted amendments to rules for scheduling examinations to determine an employee's continued entitlement to temporary total disability compensation, the employee's rehabilitation potential, and the appropriateness of the employee's medical treatment.

Cite: Ohio Admin. Code 4123-3-32 (Register of Ohio, 06/07/2018) (2 pages)

Adopted: 6/7/2018

Effective: 6/18/2018

www.registerofohio.state.oh.us/pdfs/4123/0/3/4123-3-32_PH_FF_A_RU_20180607_0909.pdf

Oregon

Licensure

Physical therapy compact privilege fee

The Physical Therapist Licensing Board implemented a compact privilege fee for physical therapists and physical therapy assistants and deleted an early release fee that is no longer applicable.

Cite: OAR 848-005-0020 (Oregon Bulletin, 06/01/2018) (2 pages)

Adopted: 5/24/2018

Effective: 6/1/2018

https://secure.sos.state.or.us/oard/viewReceiptPDF.action?filingRsn=38176

South Dakota

Workers' Compensation

Medical fee schedules

The Department of Labor and Regulation amended rules for incorporation of relative values for physicians and reimbursement criteria to update workers' compensation fee schedules for medical services.

Cite: ARSD 47:03:05:01, 47:03:05:02, 47:03:05:05 (44 SDR 185, 06/11/2018) (3 pages)

Adopted: 6/5/2018

Effective: 6/25/2018

http://sdlegislature.gov/rules/PrinterRule.aspx?Rule=47:03:05

Texas

Healthcare Professionals

Utilization of opioid antagonists

The Texas Medical Board adopted a new subchapter of regulations to establish guidelines for the prescription of opioid antagonists and the identification of individuals at risk of opioid abuse. The regulations also clarify liability issues for physicians who prescribe opioid antagonists with good faith and reasonable care.

Cite: 22 TAC §§ 170.4 - 170.8 (43 TexReg 4454, 06/29/2018) (3 page)

Adopted: 6/18/2018

Effective: 7/8/2018

www.sos.state.tx.us/texreg/pdf/backview/0629/0629adop.pdf

Utah

Licensure

Physician assistant practice rule

The Department of Occupational and Professional Licensing adopted amendments to change the physician/physician assistant working relationship and delegation of duties by (1) removing the requirement for physicians to cosign all medical chart records for patients and (2) including the requirement of quality review in place of chart review.

Cite: Utah Admin. Code r. 156-70a (18-14 Utah Bull. 59, 07/15/2018) (3 pages)

Adopted: 5/15/2018

Effective: 6/21/2018

https://rules.utah.gov/publicat/bull_pdf/2018/b20180515.pdf

Occupational Safety

Industrial accidents

The Labor Commission amended rules to designate a proceeding initiated against employers that unlawfully interfere with an employee's workers' compensation claim under Section 34A-2-114 as an informal adjudicatory proceeding.

Cite: Utah Admin. Code r. 612-100-4 (18-13 Utah Bull. 155, 07/01/2018, page 155) (2 pages)

Adopted: 5/1/2018

Effective: 6/7/2018

https://rules.utah.gov/publicat/bull_pdf/2018/b20180501.pdf

Virginia

Licensure

Individual license and certification regulations

The Board for Contractors amended regulations to distinguish tradesman licenses from other categories of individual credentials, extend the license period for individuals licensed as tradesmen from two years to three years, and align renewal fees with the adjusted longer license term.

Cite: 18 VAC 50-30 (34 VA Regs. Reg. 22, 06/25/2018) (3 pages)

Adopted: 6/1/2018

Effective: 1/1/2019

http://register.dls.virginia.gov/details.aspx?id=6938

Washington

Licensure

Forensic phlebotomist credential

The Department of Health adopted a new chapter of rules to establish minimum credentialing standards for the new department-issued forensic phlebotomist credential and establish training requirements, fees, and other general administrative and credentialing processes.

Cite: WAC 246-827A (WSR 18-14-016, 06/25/2018) (5 pages)

Adopted: 6/25/2018

Effective: 7/26/2018

http://lawfilesext.leg.wa.gov/law/wsr/2018/14/18-14-016.htm