

Maine SHRM Government Affairs Update

June 5, 2011

This edition offers updates since our May 22 edition so you might still act on key measures before the close of the session. Included are information about issues under consideration, Maine State government and updates to bills. Please watch for a comprehensive year-end wrap-up after the close of the session.

Executive

Governor LePage administered the oath of office on Friday, June 3 to both Lt. General Robert J. Winglass (Ret.) and George Gervais. Lt. General Winglass was endorsed by the Maine Senate Friday by a vote of 32-1 as Maine's new Commissioner of Labor. More here:

<http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=256606&v=article2011>

Commissioner Gervais will now head the Department of Economic and Community Development. Gervais was confirmed by the Maine Senate Friday by a vote of 33-0. Gervais, of Hampden, has served as Assistant Commissioner, Development Program Manager and Business Development Specialist within DECD since 2008. Gervais has served as Acting Commissioner since April. More here:

<http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=256633&v=article2011>

Governor LePage issued his first "true" veto to date on LD 1222 (he has had pocket vetoes). He objected to the "most favored nation" clause ban in the original bill and offered a compromise measure to retain this language, but create a waiver process so that insurance carriers could continue to contractually prohibit providers from working for competing carrier at a lower rate. More here:

<http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=256576&v=article2011>

Legislature

Workers Compensation

- LD 1056 - **An Act To Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992**— Amendment replaced the bill. It specifies that health care providers who examine injured workers at the request of an employer in accordance with the Maine Revised Statutes, Title 39A, section 207 are limited to 12 such examinations per calendar year. It adds the requirement that independent medical examiners be certified in the field of practice of the injury by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association. It clarifies that an independent medical examiner may not be assigned to an injured worker if the independent medical examiner has previously examined the worker or has been closely affiliated with the insurance company at any time during the preceding 52 weeks unless there is no other physician reasonably available. The amendment requires that an independent medical examiner that examines an injured worker at the request of the employer in accordance with Title 39A, section 207 notify the Workers' Compensation Board of the name of the employee, the employer or the insurer that requested the examination and the date of the examination within 10 days of the date of the examination. The amendment also requires that the board submit a report that includes findings and recommendations by January 15, 2013 to the joint standing committee of the Legislature having jurisdiction over workers' compensation matters regarding the board's review of the selection process of independent medical examiners and the number of independent medical examiners who have examined injured workers at the request of employers or insurers. The joint standing committee is authorized to introduce a bill related to the board's report to the First Regular Session of the 126th Legislature. The amendment adds an emergency preamble and emergency clause. **The bill was passed to be enacted by both houses on May 26th.**
- LD 1268 – **This bill is back in the House after the Senate adopted Committee amendment A and is officially unfinished business as of this writing.** An Act to Allow the Repayment of Improperly Awarded Workers Compensation Benefits - Current law authorizes an employer or insurer to recover from an employee overpayments made pending an appeal to the Law Court. This bill extends that authorization to allow an insurer or employer to

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recover overpayments made to an employee pending a motion for findings of fact and conclusions of law filed with the hearing officer. Another bill, LD 1285 addresses the WC assessment process.

- LD 1099 – **this bill, as amended, was signed into law on May 31, 2011.** *An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries* - The amendment struck the bill and allowed a person engaged in freight transportation or courier and messenger services to be considered an independent contractor either by meeting all of the factors for determining independent contractor status described in the bill or by being able to provide proof of coverage under a workers' compensation policy. This amendment changed one of the factors to require that there be a statement signed by both the person providing the services and the hiring entity that the person meets all of the requirements for being an independent contractor and is considered an independent contractor. The law sunsets on October 1, 2013.

Unemployment Insurance

- LD 1117 - An Act to Promote the Hiring of Seasonal Workers - The committee amendment, which is the majority report of the committee and adopted by the Senate, strikes and replaces the bill, makes the bill a resolve and directs the Commissioner of Labor to establish a stakeholder group to determine the most appropriate amount of time an employer may employ an employee without the employer's being subject to unemployment compensation requirements. It also changes the title of the bill to: **Resolve, To Require the Commissioner of Labor To Convene a Stakeholder Group To Determine the Most Appropriate Amount of Time an Employer May Employ an Employee without Being Subject to Unemployment Compensation Requirements.** It has been engrossed by both houses and is considered unfinished business as of this writing.
- LD 1057 - **An Act To Limit Increases in the Unemployment Contribution Rate** - This bill was replaced by its amendment and now directs the Commissioner of Labor to annually publish data on the content and usage of the Unemployment Compensation Fund. The commissioner must separately disclose, for not less than 5 years after enactment, legislative changes affecting the content or usage of the Unemployment Compensation Fund and the impact of those changes. This amendment also requires the Department of Labor, Bureau of Labor Standards to project the impact of proposed benefit changes on employer's experience classifications. **The amended bill was passed to be enacted.**
- LD 1238 - **An Act To Establish the Maine Back to Work Program - This bill was passed finally by the House on June 1 and by the Senate on June 2.** It creates the Maine Back to Work Program to provide workplace training to certain eligible unemployment insurance beneficiaries. The bill establishes the program within the Department of Labor, Bureau of Unemployment Compensation to allow an eligible participant who is receiving unemployment insurance benefits pursuant to the Employment Security Law to receive workplace training from an eligible employer.

Wages & Employment Practices

- LD 207 - **An Act To Amend the Laws Regarding Tips Used in Payment of Service Employees – This bill became law on May 23.** The amended bill defined "tip" and clarified that a sum presented by a customer in recognition of service performed is considered a tip for the service employee even if it is automatically included in the customer's bill or charged to a credit card. It also states that a service charge included in a bill in a banquet or private club setting is not a tip and that the customer must be notified of this, that all employees in the banquet or private club setting must be compensated in accordance with the State's minimum wage and overtime laws and that the service charge can be used to meet these obligations. The amendment further clarifies that tip pooling is a valid practice as described by federal laws and regulations.
- LDs 447 and 457 - These bills were to raise the minimum wage – the first to establish a new floor, the second to include an escalator. **LD 447 and LD 457 are both dead.** The Maine State Chamber has an informative video about it at: <http://youtu.be/Y9uRHOLg6w>
- LD 516 - **An Act To Amend Maine Law To Conform with Federal Law Regarding Employment Practices for Certain Minors** – This bill was amended in Committee and **enacted on May 31.** The most recent version of the bill extended the hours a student may work when school is in session from 20 to 24 and it extended the hours of work permitted

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per day from 4 to 6. The amendment removed language pertaining to authorized school closures and hours of employment. The most recent amendment also changes the hour to which a student may work on a day preceding a scheduled school day from 10 p.m. to 10:15 p.m.

- While RTW for the private sector is dead for this session (LD 788) , the public sector fair share bill, LD 309, has been put back on the table: <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280039408> . **This bill has been sent back to LCRED with a public hearing hastily scheduled for June 2 and a work session on June 6th at noon. Public testimony on the bill lasted well into Thursday evening June 2 with 45 testifying against the bill and 10 in support of it. Stay tuned!**
- LD 1241 – **An Act To Remove the Requirement That Employers Offer Substance Abuse Services to Employees Who Fail Drug Tests** - This bill had sought to remove the requirement that an employer must provide an opportunity to participate in a substance abuse rehabilitation program to an employee after the employee has received a confirmed positive result on a substance abuse test. The original bill also required that an employer that requires, requests or suggests that employees submit to substance abuse testing on a random or arbitrary basis must also require, request or suggest that supervisory personnel submit to a substance abuse test on a random or arbitrary basis and similarly submit to substance abuse testing on a random or arbitrary basis. The bill also sought to allow an employer to require, request or suggest an employee submit to substance abuse testing if the employee causes a work related accident that results in property damage, personal injury or loss of life or a citation or summons being issued to the employee by a law enforcement officer. In addition, the bill sought to remove the provision stating that it is the intent of the Legislature to narrowly construe the requirement concerning random testing of an employee who works in a position where being under the influence of a substance of abuse would place the health and safety of the public or coworkers under unreasonable threat. In Committee, the bill was re-imagined and re-titled to **An Act To Exempt Employers Subject to Federally Mandated Drug and Alcohol Programs from Maine Substance Abuse Program Laws** - It allows an employer subject to a federally mandated substance abuse testing program to extend its United States Department of Transportation mandated program to its entire workforce and its independent contractors. It allows such employers to have the same substance abuse policy for all employees and independent contractors. The amendment directs the Department of Labor, Bureau of Labor Standards to submit a report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012 with recommendations on simplifying and streamlining the labor laws dealing with substance abuse testing. The joint standing committee is authorized to introduce a bill related to the report to the Second Regular Session of the 125th Legislature. **The bill was passed to be enacted by both houses on May 26th.** It will be interesting to see how this will bump up against medical marijuana use by employees not specifically covered by the DOT regs who work for employers who adopt the policy across the company.

Contractor Status

- LD 1314, LD 1420 and LD 1450 sought to clarify the definition of independent contractor.
 - LD 1314- **An Act To Standardize the Definition of "Independent Contractor"** - This bill standardizes the definition of "independent contractor" for employment security law and workers' compensation law. It considers who directs or controls the means and manner of providing the contracted services; who furnishes the tools and equipment necessary to provide the services; whether the business is considered inseparable from the individual for purposes of taxes, profits and liabilities; who exercises control over the management and operations of the business; and who exercises the right and opportunity to perform the services of the business for multiple entities. **This bill will be carried over to the next session.**
 - LD 1420 –**An Act to Modify the Laws Regarding Status as an Independent Contractor. This bill was voted out of committee OPT as amended, passed to be enacted then recalled from the Governor's desk to add another participant to the stakeholder group. It is expect to be enacted.** The amendment adds an emergency preamble and clause to the bill and creates a stakeholder group of interested parties to develop an employment test that can be used across all occupations and in the administration of unemployment compensation law, workers' compensation law and labor standards programs. This amendment also repeals, effective December

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31, 2012, the presumption that services performed by an individual for remuneration are considered employment unless certain conditions are met.

Weapons in the Workplace

MESHHRM submitted a position statement with supporting documentation courtesy of SHRM in opposition to the following weapons bill. In essence, we oppose the bills because we want employer control of the workplace, especially to carry out our responsibilities under the OSHA general duty clause and ensure worker safety. We are also cosigners on the floor handout the Maine State Chamber put together in opposition to LD 35. Again, contact Sarah if you need a copy of either piece and PLEASE contact your legislator and ask them to vote no on LDs 35 and 1347. Yellow highlighting indicates bill still in play.

- **LD 35 - An Act Relating to Concealed Firearms Locked in Vehicles** –This bill provides that an employer may not prohibit an employee with a valid concealed firearms permit from keeping a firearm in the employee's vehicle as long as the vehicle is locked and the firearm is not visible. MESHHRM is opposed, SHRM is opposed, the Maine Chamber is opposed. **This bill was deemed unfinished business by the House on June 3.**
- **LD 658 - An Act To Modify the Requirement of a Permit To Carry a Concealed Weapon** - alters the concealed weapons laws in the state of Maine so that permits are not needed at all in most cases except a few mentioned in the bill. The bill was voted on in committee on April 15th and a divided report is expected. **This bill is dead.**
- **LD 932 – An Act To Allow Concealed Weapons in the State House** –This bill provides that a person to whom a valid permit to carry a concealed firearm has been issued may carry a concealed firearm in the State House. (This one was not a part of our position statement, but was also voted on on April 15th with a divided report.) **This bill was deemed unfinished business by the House on June 3.**
- **LD 1347 - An Act Relating to Locations Where Concealed Weapons May Be Carried** - The bill was voted on in committee on April 15th and a divided report is expected.

FYI, The Sun Journal offered this opinion piece on weapons bills before legislature on June 1:

<http://www.sunjournal.com/our-view/story/1038242> .

Miscellaneous

- **LD 636 - An Act To Ensure Proper Health Information Management** - **This bill is dead.** This bill required a hospital, beginning January 1, 2012, to employ a certified director of health information management. There were concerns about the lack of specificity of the bill as well as the necessity of such a bill. The bill could have had Maine legislating to force sponsorship of one professional certifying organization over another, a decision usually reserved for industry standards and employer choice/market driven considerations. The bill was also vague on which certifications “count”.
- LD 804 is the bill to make ME legislature unicameral:
<http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280040104> . **Last action was taken in Senate to accept the minority ONTP committee report.** More on the concept here:
<http://www.sunjournal.com/state/story/1039042>
- **LD 736 - An Act to Prohibit Texting While Driving** was signed on June 3
<http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280039960>
- **LD 1376 - An Act To Preserve the Integrity of the Voter Registration and Election Process** - This bill eliminates registration of new voters on election day and during the 2 business days before election day, but does allow an already registered voter who has had a change of name or a change of address within the municipality to update voter registration records up to and including on election day. This bill changes the minimum hours required by the registrar to be open to accept new in-person registrations on the deadline for registration before Election Day. The bill also changes the requirements for the municipality to publish the registrar's hours for the deadline day in a newspaper having general circulation in the municipality at least 10 to 15 business days before election day, and provides that municipalities with a population of 2,500 or fewer may give notice by other means the registrar

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considers sufficient to provide notice to the voters. The bill establishes a provisional voting procedure, as required by the federal Help America Vote Act of 2002, 42 United States Code, Section 15482, to allow a person who has registered to vote but whose name was omitted from the voting list in error to vote using a provisional ballot. The bill requires that the municipal clerk or registrar resolve and either count or reject the provisional ballots within 3 business days after the election and report the status of the provisional ballots to the Secretary of State. The Secretary of State must publish the provisional ballot information on the Secretary of State's publicly accessible website at least 20 days after the election, so that provisional voters know whether or not their ballots were cast and counted. The bill also prohibits the issuance of absentee ballots after the 3rd business day before Election Day, except when the voter signs an application designating one of the allowable reasons for voting by absentee ballot on that day.

More on the concerns about this bill here: <http://www.sunjournal.com/state/story/1038269>

- **LD 1463 - An Act Regarding Offenses against an Unborn Child** - more here: <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280041247> It is not entirely clear what this bill is attempting to address that isn't already being addressed nor how an employer, especially a healthcare provider, might be liable. There are concerns about the redefining of fetus to unborn child and the possible implications of same.

Interesting piece from Press Herald June 5th on efforts to find common ground in Augusta:
http://www.pressherald.com/news/trying-to-bridge-gap-in-augusta_2011-06-05.html

[Our New England Neighbors Have Also Had Busy Legislative Sessions to Date](#)

In Connecticut, paid sick leave was approved just yesterday for service workers only.

From the NY Times, June 5, 2011: After 11 hours of debate in Hartford, state legislators approved a bill on Saturday to make Connecticut the first state in the nation to mandate paid sick leave for hundreds of thousands of service workers. At about 3 a.m., the House voted 76 to 65 on the bill, which had been approved by an 18-to-17 vote in the Senate on May 25. About a dozen fiscally conservative House Democrats voted with the Republicans against the measure, which, while watered down from earlier proposals, had been vigorously denounced by business interests....

More here: <http://www.nytimes.com/2011/06/05/nyregion/connecticut-service-workers-to-get-paid-sick-leave.html>

In New Hampshire, right to work legislation was vetoed by the Governor.

From SHRM: New Hampshire Gov. John Lynch, on May 11, 2011, vetoed right-to-work legislation that had been overwhelmingly approved by the state House and Senate. The bill would have prohibited any worker from being required, as a condition of employment, to become a union member or to pay dues to a union or charity or other third party in place of union dues. "States should not interfere with the rights of businesses and their employees to freely negotiate contracts," Lynch, a Democrat, said in a veto message. "That is unless there is a compelling public interest, and there is no compelling public interest in passing this legislation." If the measure had been enacted, New Hampshire would have become the 23rd state with such a statute. Lynch said New Hampshire "has a lower unemployment rate and a stronger economy than most states with so-called right-to-work laws." The debate over the bill "appears to be largely driven by national outside interest groups," not by any problems facing state employers, he added. "There is no justification in this case for state government to interfere with the right of private businesses to freely negotiate and enter into contracts with their employees," he said.

In Vermont, Single Payer Healthcare is now a reality.

From CBS News: Vermont Gov. Peter Shumlin on Thursday (May 26th) signed into law a bill establishing a single-payer health care plan for the state, making Vermont the first state to do so....The legislation, when fully enacted, will guarantee every Vermont resident the right to enroll in a state-sponsored insurance plan, Green Mountain Care. The law

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is set to become operational in 2014. In the meantime, the legislation establishes a five-member board that will develop the health care system and ready it for implementation. The board will also be charged with figuring out how to pay for the plan, and must submit an outline for doing so to the legislature for approval by Jan. 15, 2013....

More here: http://www.cbsnews.com/8301-503544_162-20066495-503544.html

We will do our best to continue to update you and support you in having your say.

So it's handy, here is all relevant contact information:

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