

# Northshore Society for Human Resource Management

## What's Happening in H.R. - 2021 Regular Session Bills of Interest

Pursuant to my role as NSHRM Legislative Director, I have reviewed the bills pending before the Louisiana Legislature during the 2021 Regular Session (which concludes no later than June 10, 2021). The following is an update of summaries of the official bill Digests for select bills that I believe are of interest to H.R. professionals, and their status as of June 1, 2021. Please review the bills and contact your legislature to discuss as you deem appropriate. I suggest that you particularly note House Bills 243, 245, 439, 705, 707 and Senate Bills 7, 49, 215, 244.

If you have any questions, please do not hesitate to contact me, Michael Weiner, NSHRM's Legislative Director, at [mweiner@mfweiner.com](mailto:mweiner@mfweiner.com) or 985-875-7710.

Copies of the bills and more information can be found at [www.legis.la.gov](http://www.legis.la.gov).

- ❖ House Bill 103 by McCormick
  - Abstract: Provides for civil liability when requiring COVID-19 vaccinations.
  - **PASSED HOUSE - PENDING IN SENATE JUDICIARY A**
  - Proposed law provides for civil liability for public and private entities that require COVID19 vaccinations for employment, school admissions, entry into premises, or services rendered.
  - Proposed law retains the rights and remedies afforded to employees under the Louisiana Workers' Compensation Law.
- ❖ House Bill 151 by Riser:
  - **House Bill 151 was reported by substitute and became House Bill 705**
- ❖ House Bill 180 by Goudeau:
  - Abstract: Provides relative to unemployment compensation benefits by adding an additional condition in order to satisfy the active search requirement.
  - **PENDING IN HOUSE LABOR AND INDUSTRIAL RELATIONS (CONSIDERED 5/13/21)**
  - Present law provides that an unemployed individual shall be eligible to receive benefits only if the administrator finds that he has made a claim for benefits and he has registered for work and continues to report with the administrator. Present law further provides that the individual must be able to work, available for work, and is conducting an active search for work.
  - Present law provides that the claimant will have satisfied the requirements of making an active search for work if he is pursuing a course of action to become reemployed by maintaining a reemployment assistance plan and an unemployment booklet.
  - Proposed law provides that when a claimant is scheduled for a job interview, the claimant shall produce sufficient proof of having attended the interview. Proposed law further provides that sufficient proof of attendance is evidenced by the submission of a completed

interview verification form, which shall be prescribed by the Louisiana Workforce Commission (LWC) and set forth the following:

- (1) The claimant's first and last name.
- (2) The employer's or company's name, physical address, and telephone number.
- (3) The interviewer's name and telephone number, if different from the employer's or company's.
- (4) The position for which the claimant is being interviewed.
- (5) The interviewer's signature.
- Proposed law provides that LWC shall promulgate all rules as are necessary to facilitate the process of the interview verification form, including but not limited to all of the following:
  - (1) The creation of the interview verification form.
  - (2) The manner and method in which LWC will provide the interview verification form to employers.
  - (3) The manner and method by which employers can submit the completed interview verification form to LWC

❖ House Bill 189 by Phelps:

- Abstract: Prohibits intentional discrimination in employment in regard to natural hairstyles.
- **PENDING IN HOUSE LABOR AND INDUSTRIAL RELATIONS**
- Present law provides that it shall be unlawful discrimination for an employer to engage in certain practices based on race, color, religion, sex, or national origin.
- Proposed law retains present law and adds that for the purpose of proposed law, "race" shall include traits historically associated with race, including but not limited to hair texture and protective hairstyles.
- Proposed law further provides that "protective hairstyles" include but are not limited to natural hairstyles, braids, dreadlocks, locs, and twists.

❖ House Bill 243 by Newell and Marcelle

- Abstract: Decriminalizes the possession and distribution of marijuana contingent upon legislative enactment of a statutory regulatory system and establishment of a sales tax and provides relative to applicability.
- **SUBJECT TO CALL – HOUSE FINAL PASSAGE**
- Present law provides for the regulation of controlled dangerous substances, and prohibits the possession, distribution, dispensing, or possession with intent to distribute or dispense marijuana.
- Proposed law removes those criminal penalties contingent upon the legislature providing for a statutory regulatory system for the legal sale and distribution of marijuana and establishing a sales tax on those sales.
- Provides that proposed law shall not apply to the present law offense of operating a vehicle while intoxicated (R.S. 14:98(A)(1)(d)(i), (ii), and (e)(i)), shall not prohibit any employer from enforcing or adopting reasonable zero tolerance policies or drug free workplace policies, and shall not be construed to prohibit any school policy, pursuant to present law (R.S. 17:416(C)(2)) from being enforced or adopted relative to drug free zones.

- ❖ House Bill 245 by Carpenter:
  - Abstract: Provides relative to prohibiting unlawful employment practices related to wage history, wage disclosure, and retaliation.
  - **SUBJECT TO CALL – HOUSE FINAL PASSAGE**
  - Proposed law provides that it shall be an unlawful employment practice for any employer to inquire about or rely on the wage history of an applicant for an offer of employment by doing any of the following:
    - (1) Screening job applicants based on the applicant's current or prior wages, benefits or other compensation, or salary histories.
    - (2) Relying on the applicant's wage history in deciding whether to offer employment to an applicant or to determine the applicant's salary, benefits, or other compensation.
    - (3) Refusing to hire or otherwise disfavor, injure, or retaliate against an applicant for not disclosing his wage history.
  - Proposed law prohibits the discrimination, retaliation, or any other adverse employment action, including but not limited to termination or other forms of discrimination, by an employer against any employee for inquiring, disclosing, comparing, or discussing the employee's wages or any other employee's wages, or aiding or encouraging any other employee to exercise the same actions.
  - Proposed law provides that protections shall not be applicable to an employee who already has access to the wage information of other employees because it is an essential part of the employee's job function.
  - Proposed law also provides the same prohibitions to state employers.
- ❖ House Bill 259 by Horton:
  - Abstract: Provides relative to employment for persons with disabilities.
  - **PASSED HOUSE – PASSED SENATE WITH AMENDMENTS – PENDING HOUSE CONCURRENCE**
  - Present law provides that for the purpose of present law, the term "employment" does not apply to service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impairment cannot readily compete in the labor market.
  - Proposed law changes present law by updating terminology referring to persons with disabilities.
  - Proposed law further provides for an exception that states that an individual's employment shall be considered employment under present law if the individual's employment is defined as employment under present law and the individual is performing work under the AbilityOne Program or a similarly set-aside program under federal law.
- ❖ House Bill 261 by Stagni:
  - Abstract: Relative to the municipal fire and police civil service board, requires the respective governing body to conduct a background check on each person under consideration for appointment to a board.
  - **PASSED HOUSE - PENDING IN SENATE LOCAL AND MUNICIPAL AFFAIRS**
  - Present law creates a municipal fire and police civil service board in each parish, municipality, and fire protection district composed of five members appointed by the

respective governing body. Requires that at least two members of the board be appointed who shall be first nominated and elected by and from the regular employees of the fire and police departments. Provides further with respect to the qualifications of board members.

- Proposed law retains present law and additionally requires the respective governing body to conduct a background check on any person being considered for appointment to the board. Provides that no person is eligible for appointment or may serve as a member of the board if his background check reveals that he has been convicted of or terminated from previous employment for certain violations in the 10 years immediately preceding his appointment.

❖ House Bill 379 by Larvadain:

- Abstract: Provides for exemplary damages for sexual harassment in the workplace.
- **PASSED HOUSE – PENDING IN SENATE JUDICIARY A**
- Proposed law (C.C. Art. 2315.11) provides for liability for damages caused by an act or acts of sexual harassment in the workplace for the perpetrator of the sexual harassment to also include exemplary damages.
- Present law (C.C.P. Art. 863) provides for sanctions for pleadings not verified or certified by an attorney.
- Proposed law (C.C. Art. 2315.11) provides for an amount of court costs, reasonable attorney fees, and other related costs to the defendant, as well as other sanctions and relief under C.C.P. Art. 863, for frivolous or fraudulent claims.
- Proposed law (C.C. Art. 2315.11) provides for a liberative prescriptive period of three years.

❖ House Bill 382 by Newell:

- Abstract: Provides relative to race and national origin discrimination in education, employment, public accommodations, and housing opportunities.
- **FAILED HOUSE FINAL PASSAGE**
- Present law provides that it shall be unlawful employment discrimination for an employer to engage in certain practices based on race, color, religion, sex, or national origin.
- Proposed law adds that "race" and "national origin" shall include traits historically associated with race and national origin, including but not limited to skin color, facial characteristics, hair texture, natural hairstyles, and protective hairstyles.
- Proposed law defines "natural hairstyles" and "protective hairstyles" to include but not be limited to afros, dreadlocks, twists, locs, cornrows braids, Bantu knots, and curls.
- Present law provides that no person shall be refused admission into or be excluded from any public school in the state of Louisiana based on race, creed, color, disability as defined in present law, or national origin.
- Proposed law retains present law and additionally prohibits discrimination in any form based on race, creed, color, disability as defined in present law, or national origin.
- Proposed law adds that "race" and "national origin" shall include traits historically associated with race and national origin, including but not limited to skin color, facial characteristics, hair texture, natural hairstyles, and protective hairstyles.
- Proposed law defines "natural hairstyles" and "protective hairstyles" to include but not be limited to afros, dreadlocks, twists, locs, cornrows braids, Bantu knots, and curls.

- Present law provides for discriminatory practices concerning public accommodations based on race, creed, color, religion, sex, age, disability, or national origin.
  - Proposed law adds that "race" and "national origin" shall include traits historically associated with race and national origin, including but not limited to skin color, facial characteristics, hair texture, natural hairstyles, and protective hairstyles.
  - Proposed law defines "natural hairstyles" and "protective hairstyles" to include but not be limited to afros, dreadlocks, twists, locs, cornrows braids, Bantu knots, and curls.
  - Present law provides for discriminatory practices concerning house opportunities based on race, creed, color, religion, sex, familial status, or national origin.
  - Proposed law adds that "race" and "national origin" shall include traits historically associated with race and national origin, including but not limited to skin color, facial characteristics, hair texture, natural hairstyles, and protective hairstyles.
  - Proposed law defines "natural hairstyles" and "protective hairstyles" to include but not be limited to afros, dreadlocks, twists, locs, cornrows braids, Bantu knots, and curls.
- ❖ House Bill 430 by James:
- Abstract: Reduces the time for an officer to secure representation, extends the time period for the investigation of an officer, and provides for the time period sustained complaints remain in an officer's file.
  - **PASSED HOUSE – PASSED SENATE WITH AMENDMENTS - PENDING HOUSE CONCURRENCE**
  - Present law sets the time period for an officer to secure representation at 30 days.
  - Proposed law changes the time period for an officer to secure representation from 30 days to 14 days.
  - Present law sets the time period for an investigation of an officer at 60 days.
  - Proposed law extends the time period for an investigation of an officer from 60 days to 70 days, inclusive of weekends and holidays.
  - Proposed law requires that notice be given to an officer orally, in writing, or electronically, and that notice be considered received once sent.
  - Proposed law requires that sustained complaints regarding an officer remain in the officer's file for at least 10 years.
- ❖ House Bill 439 by Newell:
- Abstract: Provides relative to pre-dispute arbitration agreements concerning claims or accusations involving sexual harassment in the workplace.
  - **PENDING IN HOUSE LABOR AND INDUSTRIAL RELATIONS (CONSIDERED 5/6/21)**
  - Proposed law provides that it shall be considered unlawful employment practice for an employer to require, as a condition of employment or continued employment, a prospective employee or employee to enter into a pre-dispute arbitration agreement that includes a provision requiring arbitration for any claim or accusation concerning sexual harassment in the workplace.
  - Proposed law provides that the provisions of proposed law shall not prohibit an employer and employee from consenting to arbitrating a sexual harassment claim or accusation after that claim or accusation has arisen.

- ❖ House Bill 459 by Frieberg:
  - Abstract: Provides relative to the reporting and sharing of occupational information and employment records and reports.
  - **PASSED HOUSE – PENDING IN SENATE FINANCE**
  - Present law provides that the secretary of the Louisiana Workforce Commission (LWC) may require an employer who meets certain requirements to report his contribution and wage reports.
  - Proposed law retains present law and provides that an employer, who is subject to the requirements of present law, shall also report occupational information on a form promulgated by the secretary of LWC.
  - Proposed law also provides that when an employer files his contribution and wage reports, he must also file electronically the occupational information form with LWC.
  - Present law provides that each employing unit shall keep true and accurate records containing the necessary information as required by the administrator.
  - Present law also provides that in addition to the information required by the administrator, each employer shall keep records of and quarterly report to the administrator:
    - (1) The street of each establishment, branch, outlet, or office of such employer.
    - (2) The nature of the operation.
    - (3) The number of persons employed.
    - (4) The wages paid at each establishment, branch, outlet, or office.
  - Proposed law retains present law and adds that each employing unit shall keep records of and quarterly report to the administrator each employee's wages.
  - Proposed law provides that when filing quarterly wage reports, each employing unit shall include occupational information, including the Standard Occupational Classification (SOC) System codes and job title of each employee as recorded and reported by the employer. The administrator or his authorized representative shall share the occupational information with the Workforce Investment Council and the Louisiana Board of Regents to aid in the improvement of workforce development and educational alignment.
  - Proposed law provides that the administrator shall transmit employment data, which is collected pursuant to present law, to the Board of Regents for its economic research and for purposes of preparing an occupational forecast.
- ❖ House Bill 480 by Willard:
  - **House Bill 480 was reported by substitute and became House Bill 707**
- ❖ House Bill 580 by Cox:
  - Abstract: Provides for additional paid sick leave for certain public employees who have contracted or are quarantined due to exposure to COVID-19.
  - **PENDING IN HOUSE AND GOVERNMENTAL AFFAIRS**
  - Proposed law provides that if a public-school teacher or emergency service provider employed by the state or a political subdivision of the state contracts COVID-19 or is required to be quarantined because of exposure to COVID-19, he shall receive extra sick leave for up to 14 days without reduction in pay and without reduction in accrued sick leave or reduction in any other accrued leave while sick or quarantined.
  - Requires the employee, if requested by the employer, to present a physician's certification.

- Defines emergency service provider as a POST-certified law enforcement officer, a firefighter, or a medical services provider.
- ❖ House Bill 705 by Riser
  - Abstract: Provides for the misclassification of employees and a criteria for classifying employees.
  - **PASSED HOUSE = PENDING IN SENATE LABOR AND INDUSTRIAL RELATIONS**
  - Present law provides that if, after an investigation, the administrator determines that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, failed to properly classify an individual as an employee and failed to pay contributions and that failure was not knowingly or willfully, the employer will be issued a written warning. Present law further provides that the written warning shall constitute as evidence that the employer has been cited for a first offense for misclassification.
  - Proposed law repeals present law.
  - Present law provides that the administrator may assess an administrative penalty of not more than \$250 per each employer who has misclassified an employee and failed to pay contributions.
  - Proposed law changes the administrative penalty amount from \$250 to \$500.
  - Proposed law provides that after the first offense, the administrator shall assess an administrative penalty of \$1,000 per each individual who is misclassified.
  - Present law provides that an employer who fails to properly classify an individual as an employee and pay contributions, shall be subject to an administrative penalty of not more than \$500.
  - Proposed law changes the administrative penalty amount from \$500 to \$2,500.
  - Present law provides that after an employer has been issued a written warning and is subsequently found on two or more separate occasions to have still misclassified an employee, the employer may also be subject to an additional fine of not less than \$100 and nor more than \$1,000, or be imprisoned for not less than 30 days nor more than 90 days, or both.
  - Proposed law repeals present law.
  - Proposed law provides that all administrative penalties assessed pursuant to proposed law shall be deposited into the state's unemployment trust fund.
  - Proposed law provides that for the purposes of proposed law, an independent contractor means any person or organization, including a sole proprietor, partnership, limited liability company, corporation, or other entity that undertakes orally or in writing, to perform services for or in connection with another party in a manner consistent with the requirements of proposed law.
  - Proposed law provides that if an individual or entity meets at least seven of twelve criteria listed in proposed law, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work.
  - Proposed law provides that obtainment of an independent contractor certification from the state is optional and is not required to establish independent contractor status.

- Proposed law further provides that any contracting party or independent contractor may rely on the provisions of proposed law to establish an employment or independent contractor relationship.
  - Proposed law provides that proposed law shall not apply to any motor carrier who pursuant to a contract with an owner operator as defined in present law undertakes the performance of services as a motor carrier.
- ❖ House Bill 707 by Willard
- Abstract: Prohibits employment discrimination based on criminal history records.
  - **PASSED HOUSE - PENDING IN SENATE LABOR AND INDUSTRIAL RELATIONS**
  - Proposed law provides that when making a hiring decision, an employer shall not request or consider an arrest record or charge that did not result in a conviction, if such information is received in the course of a background check.
  - Proposed law provides that when considering other types of criminal history records, an employer shall make an individual assessment of whether an applicant's criminal history record has a direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position.
  - Proposed law provides that when making the individual assessment, an employer shall consider all of the following:
    - (1) The nature and gravity of the offense or conduct.
    - (2) The time that has elapsed since the offense, conduct, or conviction.
    - (3) The nature of the job sought.
  - Proposed law provides that upon written request by the applicant, an employer shall make available to the applicant, any background check information used during the hiring process.
- ❖ Senate Bill 7 by Peterson:
- Abstract: Establishes a state minimum wage.
  - **PENDING IN SENATE LABOR AND INDUSTRIAL RELATIONS**
  - Proposed law establishes a state minimum wage and sets it at \$11.00 per hour beginning January 1, 2022.
  - Proposed law provides that the state minimum wage shall be \$13.00 per hour beginning on January 1, 2024.
  - Proposed law provides that the state minimum wage shall be \$15.00 per hour beginning on January 1, 2026.
  - Proposed law requires that if the federal minimum wage is raised, the state minimum wage shall also be raised to that level.
  - Proposed law provides that, in addition to any other remedy provided by law, an employee will have the right to file a civil lawsuit for damages against the employer for a violation of the provisions of proposed law.
  - Proposed law provides that an employer who violates proposed law by paying an employee less than the state minimum wage will be liable to the affected employee in the amount of the difference between the amount that the employee was paid and the amount the employer was statutorily obligated to pay, plus reasonable attorney fees and court costs associated with the civil action.



- Proposed law provides that a lawsuit filed by the employee to recover wages for a violation of proposed law must be commenced within three years from the date that an employee becomes aware that the employer is in violation of proposed law.
- Proposed law shall not apply to any of the following:
  - (1) Student employees of the state.
  - (2) Student employees of state colleges and universities.
  - (3) Student employees of a private employer.
- Proposed law shall not apply to tipped employees and agriculture employees who are also exempted from the federal minimum wage laws.
- Proposed law authorizes the La. Workforce Commission to promulgate rules and regulations pursuant to the provisions of the Administrative Procedure Act that may be necessary for the implementation of the provisions of proposed law.

❖ Senate Bill 49 by Carter:

- Abstract: Established a state minimum wage.
- **PENDING IN SENATE FINANCE**
- Proposed law establishes a state minimum wage and provides that beginning January 1, 2022, the state minimum wage shall be set at \$15 per hour. Every employer in the state shall pay to each employee wages at a rate of not less than \$15 per hour for hours worked in a pay period, regardless of how the time at work is measured.
- Proposed law provides that beginning January 1, 2023, and each January first thereafter, the minimum wage shall be increased by the percentage increase of the Consumer Price Index for all Urban Consumers (CPI-U), or its successor index, as calculated by the U.S. Department of Labor, or its successor agency, for the 12 months preceding the previous September first.
- Proposed law provides the minimum wage shall be rounded off to the nearest five cents.
- Proposed law provides that if there is a CPI-U decrease, the minimum wage shall not be decreased.
- Proposed law provides that the secretary of the La. Workforce Commission (commission) shall calculate the increase to the minimum wage annually and, by October first of each year, publish on the commission's website the new minimum wage effective January first of the next year.
- Proposed law provides that if, at any time, the federal minimum hourly wage rate is raised to a level higher than the state minimum wage rate, then the state minimum wage rate shall be increased to the federal level.
- Proposed law provides that an employee shall have the right to file an action to enforce a wage claim against the employer through a summary proceeding as provided by the La. Code of Civil Procedure
- Proposed law provides relative to venue and damages of the difference of wages paid and minimum wage, attorney's fees and costs.
- Proposed law provides for a prescriptive period of three years from the date that an employee becomes aware that the employer violated the minimum wage law.
- Proposed law does not apply to a student learner, defined by federal law, who is employed by any of the following: (1) The state. (2) State colleges and universities. (3) A private employer.

- Proposed law provides that the minimum wage for student learners shall not be less than 75% of the minimum wage rate in effect in the state.
- ❖ Senate Bill 61 by Carter:
  - Abstract: Prohibits race discrimination based on natural hairstyles.
  - **PASSED SENATE – SUBJECT TO CALL HOUSE FINAL PASSAGE**
  - Present law provides that it shall be unlawful for an employer to engage in discriminatory practices based on an employee's race, color, religion, sex, or national origin.
  - Proposed law retains present law and provides that race shall include traits historically associated with race, including but not limited to hair texture and protective hairstyles.
  - Also provides that "protective hairstyles" includes but is not limited to, natural hairstyles, braids, locks, and twists.
- ❖ Senate Bill 92 by Luneau:
  - **Senate Bill 92 was reported out of committee by substitute and became Senate Bill 244**
- ❖ Senate Bill 215 by Barrow:
  - Abstract: Provides for the reasonable accommodations of employees who become temporarily disabled due to certain pregnancy-related medical conditions.
  - **PASSED SENATE – PENDING IN HOUSE LABOR AND INDUSTRIAL RELATIONS**
  - Present law provides relative to accommodations for pregnancy, childbirth, and related medical conditions in certain places of employment. The provisions of present law are applicable only to employers who employ more than 25 employees within this state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.
  - Proposed law makes present law applicable to employers who employ more than 15 employees within this state.
  - Present law provides that pregnancy, childbirth, and related medical conditions are to be treated as any other temporary disability with the employer being relieved of any responsibility to provide a female employee disability leave for a period exceeding six-weeks following a normal pregnancy, childbirth, or related medical condition.
  - Proposed law retains present law and adds that lactation and postpartum are to be treated as any other temporary disability. Provides the caveat that pregnancy-related medical conditions do not have to meet any definition of disability to trigger an employer's obligation to provide reasonable accommodations under proposed law.
  - Present law makes it an unlawful employment practice for any employer to refuse to promote, compensate, or train any female employee due to pregnancy, childbirth, or a related medical condition.
  - Proposed law adds lactation and postpartum to the list of conditions that are subject to unlawful employment practices. Removes gender restriction regarding an employer's requirement to provide employee disability leave on account of normal pregnancy, childbirth, lactation, postpartum, or related medical condition for a period exceeding six weeks.

- Present law makes it an unlawful employment practice for any employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions to receive the same benefits or privileges of employment granted by the employer to other employees who are temporarily disabled.
- Proposed law removes the term female used to describe the employee, but otherwise retains present law.
- Present law provides that it is an unlawful employment practice for any employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position, per the female employee's request and with the advice of her physician, if the transfer can be reasonably accommodated.
- Proposed law removes present law. Proposed law defines the phrases "reasonable accommodation" and "undue hardship".
  - "Reasonable accommodation" means the following:
    - Making existing facilities used by employees readily accessible to and usable by individuals with medical needs arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions provided the employer shall not be required to construct a permanent, dedicated space for expressing milk. Nothing in R.S. 23:342 exempts an employer from providing other reasonable accommodations.
    - For individuals with medical needs arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions, providing scheduled and more frequent or longer compensated break periods; providing more frequent bathroom breaks; providing a private place, other than a bathroom stall, for the purpose of expressing milk; modifying food or drink policy; providing seating or allowing the employee to sit more frequently if the job requires the employee to stand; providing assistance with manual labor and limits on lifting; temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified; providing job restructuring or light duty, if available; acquiring or modifying equipment or devices necessary for performing essential job functions; or modifying work schedules.
  - "Undue hardship" means an action requiring significant difficulty or expense, when considering of all of the following factors:
    - The nature and cost of the accommodation required by this part.
    - The overall financial resources of the facility involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the impact on expenses and resources of the accommodation upon the operation of the facility.
    - The overall financial resources of the employer, the overall size of the business of an employer with respect to the number of its employees, the number, type and location of its facilities.
    - The type of operation of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness and the administrative or fiscal relationship of the facility in question to the employer.
- Proposed law makes it an unlawful employment practice for an employer to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or other related medical conditions for an applicant for employment or an existing

employee unless the employer first demonstrates that the accommodation would impose an undue hardship on the operation of the business.

- Proposed law provides that an employer is not required to make the following provisions for an employee due to pregnancy, childbirth, or other related medical condition if the employer would not make the same provisions for other employees similarly situated.
  - Hire new employees that the employer would not have otherwise hired.
  - Discharge an employee, transfer another employee with more seniority, or promote another employee who is not qualified to perform the new job.
  - Create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee.
  - Deny employment opportunities to a job applicant or existing employee, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions of an applicant for employment or an existing employee.
  - Require an applicant for employment or an existing employee affected by pregnancy, childbirth, lactation, postpartum, or related medical conditions, to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, childbirth, lactation, postpartum, or related medical conditions, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job.
  - Require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations for medical needs arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions.
  - Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations for medical needs arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions.
- Proposed law requires employers to provide written notice to new and existing employees of their discretionary power to accommodate the medical needs of an employee arising from pregnancy, childbirth, lactation, postpartum, or related medical conditions.
- If the provisions of proposed law are violated, an employee may file a complaint with the La. Commission on Human Rights requesting an investigation of the complaint as provided by law.

❖ Senate Bill 244 by Luneau

- Abstract
- **PASSED SENATE – PENDING IN HOUSE LABOR AND INDUSTRIAL RELATIONS**
- Present law provides a schedule of penalties imposed by the Louisiana Workforce Commission (LWC) for the misclassification of employees as independent contractors.
  - (1) A written warning for the first violation.
  - (2) \$250 for the first violation after the written warning is issued.
  - (3) \$500 for the second violation after the written warning.
  - (4) Up to \$1,000 for each subsequent violation and up to 90 days imprisonment.

- Proposed law changes the penalty structure, eliminates the written warning, and removes the possibility of imprisonment.
  - (1) \$500 for the first violation, which is waived if the employer properly classifies the employee and pays any tax due within 60 days of the citation.
  - (2) Up to \$1,000 for the second violation.
  - (3) \$2,500 for each subsequent violation.
- Proposed law directs the penalties associated with worker misclassification to be deposited into the Unemployment Trust Fund.
- Proposed law provides for the determination of which workers are properly classified as independent contractors by establishing a rebuttable presumption that workers who meet seven of the 12 criteria in proposed law are independent contractors.
  - (1) The individual or entity operates an independent business through which he provides services for or in connection with the contracting party.
  - (2) The individual or entity represents his services as self-employment available to others, including through the use of an application platform to obtain work opportunities or as a lead generation service.
  - (3) The individual or entity accepts responsibility for all tax liability associated with payments received from or through the contracting party.
  - (4) The individual or entity is responsible for obtaining and maintaining any required registration, licenses, or other authorization necessary for the legal performance of the services rendered by him as the contractor.
  - (5) The individual or entity is not insured under the contracting party's health insurance or workers' compensation insurance coverages and is not covered for unemployment insurance benefits.
  - (6) The individual or entity has the right to accept or decline requests for services by or through the contracting party and is able to perform services for or through other parties or can accept work from and perform work for other businesses and individuals besides the contracting party even if the individual voluntarily chooses not to exercise this right or is temporarily restricted from doing so.
  - (7) The contracting party does not direct or oversee the performance, methods, or processes the individual or entity uses to perform services.
  - (8) The contracting party has the right to impose quality standards or a deadline for completion of services performed, or both, but the individual or entity determines the days worked and the time periods of work.
  - (9) The individual or entity furnishes the major tools or items of equipment needed to perform the work.
  - (10) The individual or entity is paid a fixed or contract rate for the work he performs and the contracting party does not pay the individual or entity a salary or wages based on an hourly rate.
  - (11) The individual or entity is responsible for the majority of expenses he incurs in performing the services, unless the expenses are reimbursed under an express provision of a written contract between the parties or the expenses reimbursed are commonly reimbursed under industry practice.
  - (12) The individual or entity can use assistants as he considers proper for the performance of the work and is directly responsible for their supervision and compensation.

- Proposed law authorizes contracting parties to rely on this 12-step test for purposes of establishing an employment or independent contractor relationship.
- Proposed law creates the optional Fresh Start Proper Worker Classification Initiative to provide taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods.
- Proposed law provides that to be eligible a taxpayer must have consistently treated the workers as nonemployees for the previous three years and must have filed all required forms with the IRS with respect to those workers consistent with nonemployee treatment.
- Proposed law allows eligible taxpayers who participate in the Initiative to prospectively treat classes of workers as employees for future tax periods and not be liable for any withholding tax, unemployment tax, interest or penalties with respect to any workers before the date on which the taxpayer is accepted for participation in the program.
- Proposed law requires taxpayers who want to participate in the Fresh Start Proper Worker Classification Initiative to apply with the Dept. of Revenue (DOR).
- Proposed law provides that the DOR will review the application for eligibility and contact the taxpayer once a determination has been made.
- Proposed law provides that taxpayers accepted for the program will enter into a joint agreement with LWC and DOR in which the taxpayer agrees to classify the workers as employees from the acceptance date.
- Proposed law does not allow taxpayers who are contesting the classification of workers in court or taxpayers under audit for worker classification by the IRS, U.S. Dept. of Labor, or a state agency to participate in the program.
- Proposed law provides that a taxpayer is considered to be under audit for purposes of the Fresh Start Proper Worker Classification Initiative if a member of their affiliated group is under audit.
- Proposed law does not allow taxpayers who have withheld state income taxes from their workers but who have not remitted the tax to DOR to participate in the program.
- Proposed law creates the Louisiana Voluntary Disclosure Program (VDA Program) for the voluntary and anonymous reporting of undisclosed liabilities for withholding taxes administered by the DOR and unemployment taxes administered by LWC.
- Proposed law requires employers to provide proof that the employees are covered by workers' compensation to participate in the VDA Program.
- Proposed law provides for definitions applicable to the VDA Program, including a definition of "look-back period" that must include the current calendar year up to the date of registration with the department and the one immediately preceding calendar year.
- Proposed law requires the waiver of any delinquent penalty after all tax and interest due for the look-back period have been paid by the VDA Program applicant whose application has been accepted, unless the tax disclosed was collected but not remitted.
- Proposed law does not allow applicants who have been contacted by the DOR or LWC concerning a liability regarding a tax for which a voluntary disclosure agreement is requested.
- Proposed law provides a safe harbor from unemployment and withholding taxes for putative employers who have consistently and timely filed all required federal tax and information returns for their workers as independent contractors, always treated the particular classification of worker as an independent contractor, and had a reasonable basis for not treating the class of workers as an employee.

- Proposed law provides that the safe harbor does not apply if the putative employer treated any similar worker as an employee.
- Proposed law requires a service recipient who files or is required to file a Form 1099-NEC for independent contractors they use to file a copy of the federal return with the DOR on or before Feb. 28th of each year and further provides that the DOR may use data analytics to determine if any of the service providers included in the reports were misclassified.
- Proposed law provides that proposed law does not apply to a motor vehicle carrier who undertakes the performance of services as a motor carrier pursuant to a contract with an owner-operator as defined in present law (R.S. 23:1021(10)).
- Proposed law provides that the Act shall not apply to any person or organization licensed by the La. Dept. of Insurance, any securities broker-dealer, or any investment adviser or their agents and representatives registered with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or licensed by the State of Louisiana.