

# H.R. ALERT\*

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In this month's *H.R. Alert* and next month's *H.R. Alert*, we are providing our readers with some key legislative developments for employers who do business in Louisiana. All Louisiana employers should take note of the following:

## I. New Legislation Broadening Scope of Non-Competition Agreements Signed into Law to Be Effective August 15, 2003

Almost two years after the Louisiana Supreme Court decided the case, *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 808 So.2d 294 (La. 2001), the Louisiana Legislature responded by passing House Bill 1770, which was designed to overrule *SWAT 24* and provide employers greater ability to restrict former employees from going to work for a competitor.

Employers will recall that in *SWAT 24*, the Louisiana Supreme Court severely restricted the scope of non-competition agreements by holding that non-competition agreements that prevented former employees from going to work for a competitor were invalid. *SWAT 24*'s ruling basically allowed employers only to restrict their former employees from opening up a competing business, rather than from going to work for a competitor.

Last month, Governor Mike Foster signed Act No. 428 which enacts House Bill 1770. This new law amends and reenacts La. R.S. 23:921(B) and enacts R.S. 23:921(H). With respect to the amendments to 23:921(B), the Act expands the definition of a person who can be restrained from a competing business to a "other interested party in the transaction." In addition, 23:921(H) indicates that employers can now prohibit a person from going to work for a competing business, in addition to being the owner of a competing business. Specifically, section H now provides that a "person who becomes employed by a competing business, regardless of whether or not that a person is a owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business

similar to that of the party having a contractual right to prevent that person from competing." See, La. R.S. 23:921(H). In essence, *Swat 24* was overruled and employers can now restrict their employees from working for a competing business.

Although the new law overrules *SWAT 24*, the remaining provisions of La. R.S. 23:921 remain intact. Specifically, a non-competition agreement will be enforceable only if:

- (1) it contains a geographic restriction which specifies the parish or parishes, municipality or municipalities, or parts thereof to which it applies;
- (2) the parishes specified in the geographic restriction are limited to the parishes where the employer is carrying on "a like business therein...";
- (3) it restricts an employee from "carrying on or engaging in a business similar to that of the employer...or becomes employed by a competing business...";
- (4) it is limited to a period of two years from the date of termination of employment; and,
- (5) it specifically defines the employer's business.

Louisiana courts continue to construe agreements that restrict an individual's right to employment narrowly and, in the employee's favor. Therefore, we strongly urge all employers to review their non-competition agreements to ensure compliance with the new law, which becomes effective August 15th.

## II. Payment of Wages upon Resignation of Employment

The Louisiana Legislature also amended the so-called wage payment statute in subpart (b) slightly to make it clear that employees who resign (as opposed to being

discharged) also receive their wages timely in accordance with La. R.S. 23:631(A)(1). The wage payment statute now reads as follows:

\* H.R. ALERT is intended to provide late-breaking news in the employment arena.

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To amend and reenact R.S. 23:631(A)(1), relative to the payment of employees; to provide for the payment of employees' wages upon separation from employment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:631(A)(1) is hereby amended and reenacted to read as follows:

§631. Discharge or resignation of employees; payment after termination of employment.

A.(1)(a) Upon the discharge of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of discharge, whichever occurs first.

(b) Upon the resignation of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday for the pay cycle during which the employee was working at the time of separation or no later than fifteen days following the date of resignation, whichever occurs first.<sup>1</sup>

<sup>1</sup> Words that are underscored are additions to the existing law.

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**H.R. ALERT**

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"Recent Updates in Employment Law"

Thursday, July 31, 2003  
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