

H.R. ALERT*

AUGUST 2003

In last month's *H.R. Alert*, we discussed two new pieces of legislation in Louisiana: (1) amendments to La. R.S. 23:921 which broadened the scope of non-competition agreements and, (2) amendments to La. R.S. 23:631(A)(1) which clarified when employees who resign must be paid their final wages. In this month's *H.R. Alert*, we examine three other key legislative developments for employers who do business in Louisiana. All Louisiana employers should take note of the following:

I. Immunity from Civil Liability for Disclosing Background Check

The Louisiana legislature amended R.S. 23:291 to provide employer immunity from civil liability for conducting background checks under certain circumstances. Section 1. R.S. 23:291(D) becomes effective on August 15, 2003 and states as follows:

§291. Disclosure of employment related information; presumptions; causes of action; definitions

D. Any employer who has conducted a background check of an employee or prospective employee after having obtained written consent from the employee or prospective employee or at the request of the owner or operator of any facility where the employer performs or may perform all or part of its work shall be immune from civil liability for any and all claims arising out of the disclosure of the background information obtained. This limitation of liability shall extend to all claims of the employee based upon a failure to hire, wrongful termination, and invasion of privacy, as well as all claims of any owner, operator, or any third person for

claims of negligent hiring or negligent retention.

(1) The term "background check" shall mean research by any lawful means, including electronic means, into the background of a "prospective employee" or "employee" as defined in Section C of this Subsection, including research into state or federal criminal history repositions, social security status or verification, and research conducted pursuant to the U.S.A. Patriot Act, 31 U.S.C. 5318(1), regarding politically exposed persons, including known or suspected terrorists, money launderers, drug kingpins, and person debarred from conducting business with the United States government, as well as any permissible purposes under the Fair Credit Reporting Act, 15 U.S.C. 1681.

(2) The term "owner" shall mean any person, firm, or legal entity that is engaged in the production of goods or services and who may engage in contractual relations with contractors to perform any type of work on any leased or owned premises of the owner.

II. Obtaining Criminal History Records of Applicants

The Louisiana legislature enacted a new law which allows employers to obtain criminal history records of persons applying for employment if the applicant has signed a consent form authorizing the employer to obtain such conviction records. The new law becomes effective on August 15, 2003 and provides as follows:

Section 1. R.S. 15:587(E) is hereby enacted to read as follow:

§587. Duty to provide information; processing fees; Louisiana Bureau of Criminal Identification and Information.

R.S. 15:587(E) is all new law.

E. An employer or his representative shall be entitled to obtain conviction records of an applicant seeking

employment, directly from the Bureau of Criminal Identification and Information in order to further qualify the applicant for the position being sought, if the applicant has signed a consent from authorizing the employer to obtain such conviction records. Upon written request and upon presentation of a consent form prepared by the bureau and executed by the applicant, the bureau shall provide any conviction records of the applicant to the employer or his representative in a timely manner. For the purposes of this Subsection "conviction records" shall include only those records which are electronically maintained by the bureau, and are records of a finding of guilty, a plea of guilty or nolo contendere, including those which have been set aside or dismissed pursuant to Code of Criminal Procedure Articles 893 or 894, or for which an individual has received an automatic first offender

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

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pardon. It shall not include those records which have been ordered expunged pursuant to R.S. 44:9. The provisions of 15:587(B) shall apply to any request made

pursuant to this Subsection. The bureau shall not be liable civilly or criminally for the release of information released pursuant to the provisions of this Subsection.

III. Withholding Cost of Medical and Drug Testing

The Louisiana legislature also clarified when employers can recover for the cost of preemployment medical examinations and drug tests. This statute became effective on June 27, 2003 and provides as follows:

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:897(M) is hereby enacted to read as follows:

§897. Medical and other examinations, fingerprinting,

requiring employee to pay for, prohibited; enforcement of provisions; civil and criminal penalties.

M. An employer may withhold from the wages of an employee the costs of the preemployment medical examination, drug test, or both provided that all of the provisions of R.S. 23:634(B) and Subsection K of this Section are met and further providing that the employee has signed a contract which fully explains the terms and conditions under which the employer's right of reimbursement is established and authorizing the employer to withhold the cost of such preemployment medical examination, drug test, or both if the employee resigns within ninety working days.

Section 2. This Act shall become effective upon signature by the governor, or if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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Please send any suggested topic ideas to:
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