**Last Week At the State House**

**House Passes Budget**

The House passed a $14 billion budget in a record 2 hours 45 minutes. Most amendments offered were technical in nature; however additional monies were added for early childhood learning efforts. A double counting of $5 million in ARPA funds in the current year fiscal budget freed up some monies for other programs. The budget now sits in the Senate Finance Committee and will be heard Tuesday at 3:00 pm. The House and Senate hope to finish their 2023 business this week.

**Data Breach Bill Passes Committee**

You received a “Call to Action” last week concerning H.5684 SubA. This bill proposed to change notice requirements and remediation service requirements following a data breach within a company. The bill was filed in response to the RIPTA data breach in which the agency failed to comply with the current law of notification to individuals within 45 days of the breach.

The Committee passed a SubA that keeps the notification requirement at 45 days for non-governmental entities but still requires businesses to pay for 5 years of remediation services for each adult customer whose information was compromised and remediation services to age 20 for minors.

Chairwoman Baginski stated during the hearing that discussions with the various interested parties continue. The Chamber continues to advocate for amendments to the remediation service requirements

**Monday, June 12th**

**Wage Theft** - H.5902 An Act Relating to Labor and Labor Relations – Payment of Wages is scheduled for a vote Monday at 3:00 in the House Judiciary Committee.

Last week, the Senate passed S.1079 without changing the definition of independent contractor. The Senate bill creates felony penalties if an employer knowingly and willfully: (1) fails to pay employees on a regular pay day and the amount owed is over $1500 (2) pay any employee wages owed at the time of termination of employment and the amount is over $1500 (3) fails to withhold union dues and pay those dues to the union, (4) fails to pay wages owed to a deceased employee to the appropriate person/entity within 30 days of death, and the amounts owed are greater than $1500 or (5) misclassifies an individual as an independent contractor. S.1079 as amended is scheduled for a vote in the House Judiciary Committee Tuesday, but it will likely be amended.

The House Judiciary Committee posted a SubA for H.5902 yesterday afternoon. The SubA can be viewed at: <http://webserver.rilegislature.gov/BillText/BillText23/Proposed23/H5902A.pdf>

The Sub A keeps all of the Senate language declaring it a felony to knowingly and willfully fail to pay employees on the regular pay day, at the time of termination, and to deceased employees provided the amount owed is greater than $1500. (It does not include the collection of union dues)

The proposed amendment directs the Department of Labor and Training (DLT) to review all complaints of misclassification and to review those complaints using factors consistent with the Fair Labor Standards Act (FLSA). What is the test under the FLSA?

*The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:*

1. *The extent to which the services rendered are an integral part of the principal's business.*
2. *The permanency of the relationship.*
3. *The amount of the alleged contractor's investment in facilities and equipment.*
4. *The nature and degree of control by the principal.*
5. *The alleged contractor's opportunities for profit and loss.*
6. *The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.*
7. *The degree of independent business organization and operation.*

*There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status. (see USDOL Wage and Hour Division* [*https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship*](https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship) *)*

H.5902 SubA requires DLT to undergo an investigation of complaints together with the assistance of the Underground Economy Task Force. The findings, along with a recommendation, is given to the Director of DLT who then passes it along to the Attorney General with the Director’s recommendations.

A business that misclassifies employees under the new test, is liable for civil penalties in the amount of $1500 - $3,000 for each misclassified employee for the first offense and up to $5000 for each misclassified employee for any subsequent offense. The money is divided equally between the DLT and the individual harmed. Any “construction industry” related entity that knowingly and willfully violates the new standard is guilty of a misdemeanor if the value is less than $1500, or a felony if the value is greater than $1500. If the construction related business or individual misclassifies employees in a manner that is not knowing and willful, the penalty appears to revert back to a civil penalty of $1,500-$3,000 per misclassified employee for the first offense and up to $5,000 for a subsequent offense. (It may be difficult to claim a subsequent offense was not knowing and willful).

***Lastly, any “party” that is not an employer but intentionally contracts with an employer that intends to misclassify employees is subject to the same penalties as the employer.***

H.5902 SubA includes an annual reporting requirement for both DLT and the Attorney General’s office. The reports must include a disaggregating of complaints including those found to have no violation present. The effective date of the new definition and penalties is January 1, 2024.

**Gift Card Sales** - A bill placing notice requirements on businesses that sell gift cards is scheduled for a vote Monday in the House Corporations Committee at the Rise. H.5732, An Act Relating to Commercial Law – Gift Card Fraud, originally required all entities that sell gift cards to display a notice at the location where cards are sold. The notice must caution the purchaser about prepaid card scams and instruct the purchaser on what to do if they suspect they might be a potential victim of such a scam. The Department of Business Regulation is charged with determining the content and form of the notice. The original bill also included a provision requiring employers to train employees on how to identify and respond to gift card fraud. This language was removed in the amendment under consideration Monday. The amendment also reduces the penalty from the original $500 per violation to “up to $250” per violation. If passed, the law would take effect upon passage.

**TDI and TCI Requirements** - The House Labor Committee is scheduled to vote on H.5591 which provides a private right of action as a penalty for an employer’s violation of the temporary caregiver’s law. Employers are required to reinstate the employee at the return from leave and restore seniority and other benefits to the employee. Additionally, the employer is required to maintain the employee’s health insurance while the employee is out on leave. H.5591 also prohibits employers from retaliating against an employee that exercises rights under the temporary caregiver’s law. Lastly, the bill oddly provides a private right of action to employees that fail to correctly receive Sunday or Holiday pay. RIGL 25-3-9 already gives employees the ability to file a civil suit and, if successful, the employee is entitled to reinstatement, double the amount of back pay, interest, attorney fees and court costs.

**New State Holiday for Employers** - June 19th, referred to as Juneteenth, may become the newest state holiday for which employers are required to pay holiday pay to employees. H.5380 and S.444, Act Relating to Holidays and Days of Special Observances is scheduled for a vote Monday in the House Special Legislation Committee at 3:45 pm.

**Independent Contractor Registration** – H.5710 SubA, An Act Relating to Labor and Labor Relations – Workers Compensation is scheduled for a vote Monday in House Labor. The amended language requires independent contractors to file electronically with the Department of Labor on an annual basis, “regardless of how many forms are filed.” This would seem to suggest an annual filing for each client. The bill currently has an effective date of January 1, 2024. The Senate companion bill, S.427, was amended last week to remove the $50 registration filing fee, but this version does not reference electronic means of filing and takes effect upon passage. The Senate bill is scheduled for a vote Tuesday in House Labor.

**Tuesday, June 13th**

**Non-compete Clauses** – S.888, An Act Relating to Labor and Labor Relations eliminates the use of non-compete agreements except when they are used during the purchase and sale of a business. Agreements not to share client lists, trade secrets or business plans are still enforceable under the legislation. S.888 is scheduled for a vote in the Senate Judiciary Committee as is H.5929, An Act Relating to Labor and Labor Relations which bans the use of non-disclosure and non-disparage agreements when dealing with alleged violations of civil rights.