**2023 Legislative Session Comes a Close**

At 1:40 am June 16th, the legislative session wrapped up. The last day of session is always difficult as one branch must wait while the other acts on bills and sends them back to ensure that the language is identical to companion bills. It’s a messy process, but one that is unavoidable and difficult to explain to those that do not spend their days at the State House. Bills passed by both the House and Senate are transmitted to the Governor for his consideration. Once that process is complete, we will send a full list of new laws in a final wrap-up edition of Advocacy in Action.

**Bills Passed By Both the House and Senate**

Budget – The $14 billion budget passed and has already been signed into law by Governor McKee. This budget includes the Chamber’s priority issue of reducing the tangible tax for all businesses and eliminating the tangible tax for 75% of Rhode Island businesses. Fifty thousand dollars of value will be eliminated from the tangible tax assessment in all municipalities with the State providing reimbursement to communities.

Wage Theft/Independent Contractor - S.1079 SubAaa and H.5902 SubAaa – The final versions create 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) fails to pay any employee wages owed at the time of termination of employment and the amount is over $1500, or (3) 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.

The bills adopt the Fair Labor Standards Act (FLSA) definition of independent contractor by directing the Department of Labor and Training (DLT) to review all complaints of misclassification using those factors. The bills require DLT to undergo an investigation of complaints 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 and it is a second offense. If the construction related business or individual misclassifies employees in a manner that is not knowing and willful, the penalty reverts back to a civil penalty of $1,500-$3,000 per misclassified employee.

***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.***

Independent Contractor Registration – H.5710 SubA and S.427 SubB, require 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. There is no fee tied to the filing requirement. The bill becomes effective January 1, 2024.

Data Breach – H.5684 SubAaa passed both the House and the Senate, while the Senate sponsor chose not to amend his bill (S.425) to mirror the House bill thus letting it die in committee. The House amended H.5684 to apply to State agencies and municipalities only. Businesses remain under the same rules of notification to customers within 45 days of discovery of a data breach and including information as to what customers can do to protect themselves. H.5684 SubAaa requires State agencies and municipalities to notify affected employees/customers within 30 days of discovery of a breach and pay for five years of remediation services for adults and remediation services for minors until the age of twenty. The Senate sponsor, Senator DiPalma felt strongly that the remediation service requirements should apply to all businesses.

Electric Vehicle Parking Lot Infrastructure – S.988 aa passed both the House and Senate while the House duplicate bill, H.5159, failed to make it to the finish line. S.988aa requires large employers – defined as those with 100 employees located in a single complex – to install circuitry and other necessary equipment to support Level 2 or DC fast chargers in new parking lots as well as lots undergoing a 50% expansion renovation. The mandate also applies to big box stores, grocery stores, housing developments with more than twenty units, malls, hotels, and certain municipal buildings. The bill was amended during the final hours of session to apply only to new projects awarded subsequent to January 1, 2024 that receive any form of public funding. Public funding is defined as “funds derived from federal, state or municipal sources; in-kind remuneration from any federal, state or municipal source; gifts or grants from any federal, state or municipal source; revenue sharing or other federal, state or municipal payments of any nature, intergovernmental transfers; tax stabilization agreements, revenues resulting from the sale of state or municipal bonds; or by the sale or lease of any property owned by the federal government, the State of Rhode Island, and/or any municipality of the state.”

Gift Card Sales - H.5732SubA and S.759SubaAaa are headed to the Governor’s desk. The bills require all businesses 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. Failure to comply with the law can result in a penalty of up to $250 per violation. Once signed, the law would take effect upon passage.

New State Holiday for Employers - June 19th, referred to as Juneteenth, is set to become the newest state holiday for which employers are required to pay holiday pay to employees. H.5380 and S.444 passed and have already been transmitted to the Governor.

Ban on Polystyrene Containers – H.5090 SubA and S.14 SubB passed the House and Senate. These bills ban most food establishments from using polystyrene containers for food and beverages beginning January 1, 2025. Any establishment that fails to comply is subject to a fine of up to $100. Exemptions do exist for hospitals, agricultural fairs, nursing homes, etc.

Non-disclosure Agreements – S.342aa passed both the House and Senate, while the House companion bill, H.5929 SubA failed to make it through the final step of passage on the Senate floor. S.342aa makes it an unlawful employment practice to require an employee as a condition of employment, to execute a nondisclosure agreement or an agreement with a clause that requires alleged violations of civil rights remain confidential, or a non-disparagement agreement concerning alleged violations of civil rights or alleged unlawful conduct. It becomes effective upon enactment.

Bills That Did Not Make the Cut

Workplace Psychological Safety Act - S.821 SubA, died in the House Labor Committee. This bill proposed to create rules, and procedures for employers and penalties for employers that fail to comply, to curtail behaviors in the workplace including: exclusion, marginalization, spreading of lies, withholding vital information, abusive gestures, frequent request for work below competence level, long-term assigning of tasks beyond the employee’s duties without compensation, physical isolation, ignoring, regular inconsistent instructions, unmanageable workloads, taking credit for work, making snide comments or ridicule publicly, exclusion from work-related social gatherings, changes that could jeopardize future career prospects, discounting a person’s work proposals or opinions, persistent criticism, excessive monitoring, threat of dismissal, and changing work conditions or duties.

Parental and Family Medical Leave Expansion - S.145 passed the Senate but died in the House Labor Committee. The bill proposed to increase the amount of parental or family leave available to an employee from thirteen (13) weeks to twenty-four (24) weeks in any two (2) calendar years.

Wage Stubs and Employee Handbook Mandate - S.663 passed the Senate but died in the House Labor Committee. The bill would have required employers to provide wage payment information and a type of “mini employee handbook” to employees in each employee’s primary language.

Non-compete Clauses – S.888, sought to eliminate 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 were still enforceable under the legislation.