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CLIENT ADVISORY

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Virginia General Assembly Update for Employers: Secret Ballots and Confidential Information

Virginia employers will want to take note of two bills that will become law on July 6, 2013. The provisions were introduced by Delegate Barbara J. Comstock and will affect businesses and labor organizations in the Commonwealth.

Labor Organization Secret Ballots

What the Bill Does

House Bill 1385 provides that a secret ballot vote is a “fundamental right” that cannot be infringed in any procedure designating, selecting or authorizing a “labor organization” to represent employees. Under this legislation, a “labor organization” is broadly defined as any organization, agency or employee representation committee or plan “in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” The bill will be codified as Virginia Code § 40.1-54.3.

Steps Employers Should Take

House Bill 1385 requires a secret ballot to be used when employees are deciding whether to select or authorize a labor union or other organization to represent them. The bill does not place any new legal duties on employers. However, this recognition of

employees right to secrecy vote may be very beneficial to employers if they are faced with union organizing efforts.

Release of Employee’s Personal Information

What the Bill Does

House Bill 1931 clarifies that, with some exceptions, employers are *not required* to provide third parties with any current or former employee’s personal identifying information, such as home and mobile telephone numbers, email addresses, shift times or work schedules. However, employers are and will continue to be required to supply such information pursuant to any other federal or state laws, or any court order, or warrant issued by a judicial officer, or in response to any subpoena or civil discovery request. The bill will be codified as Virginia Code § 40.1-28.7.4.

Steps Employers Should Take

This new measure does not forbid employers from releasing certain employee personal information to third parties, but it does allow an employer to adopt a policy restricting such disclosures.

Notably, employee references provided by a current or former employer to a prospective employer are not addressed in the legislation.

As a result, should an employer desire, it may refuse to provide a references (unless another law applies), even if the employee authorizes the disclosure. Whether an employer may use the statute to refuse an employee’s request to provide his personal information to a third party is a likely topic for future litigation. If such refusals are lawful, this might complicate employee efforts to gather facts and documents before filing a wage and hour or other similar employment claim.

As always, employers are encouraged to periodically review their policies regarding references and releasing employee information. Employers may consider limiting disclosures to minimize potential liability and claims. However, approval should be weighed against the value of providing and receiving substantive references.

If you have questions about these new statutes or other employment law issues, please contact Kimberly Daniel (kdaniel@hdjn.com) or Jonathan Sumrell (jsumrell@hdjn.com) at (804) 967-9604. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

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