

in this issue: JULY 2004

On July 1, 2004, Virginia employers learned the state legislature had inadvertently repealed the law that allowed many businesses to require employees to work weekends.

Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment and labor law matters.

Virginia Employers, Employees Unsure of Rights After Day of Rest Law Amended

By Nancy N. Delogu and Sue M. King

UPDATE: July 2004

On July 2, 2004, a Virginia judge issued a 90-day emergency order to prevent the law from going into effect. Eleven days later, the Virginia Legislature met in emergency session to correct its error and reinstate the law as it existed prior to July 1, 2004. Employers should be aware that not all businesses are entitled to take advantage of the exemptions to the "day of rest" requirements.

Legislative error has caused widespread consternation among Virginia employers who discovered on July 1, 2004, that the Commonwealth's little-known "day of rest" laws have been amended to permit all non-managerial employees to insist upon Sunday off.

The Virginia law directs all employers to provide all employees at least one 24-hour day of rest in each work week, absent an emergency. Non-managers may elect Sunday as their day of rest, and Saturday Sabbath observers are permitted to select Saturday as the designated rest day if the employee actually refrains from all secular business and labor on that day. The obligation of the employer to grant the employee time off is triggered upon the filing of a written notice by the employee with the employer of the choice to observe either of these days as a day of rest.

Until July 1, the Virginia Code listed dozens of exceptions to these statutes, permitting employers in industries as diverse as transportation, sports, medicine,

food service and restaurants, and tourism to require employees to work on weekends. That version of the statute had been in effect since the mid-1970's.

The change does not affect employers that were not originally covered under any of the exemptions, which would appear to include various retail outlets, as well as not-for-profit organizations and "works of charity."

On July 2, 2004, Judge Markow of the Circuit Court in the City of Richmond granted a petition by the Virginia Chamber of Commerce and several prominent Virginia employers and enjoined the Virginia Department of Labor and Industry from enforcing the revised day-of-rest law for 90 days. This temporary injunction alleviates the immediate threat of the law's impact on business operations during the Fourth of July weekend. However, the judge indicated that he could decide to lift the injunction prior to that time. Meanwhile, the Virginia Legislature — which ended its session in late March, long after its traditional 60-day legislative session was set to conclude — may be called into an emergency session in order to consider legislation to correct the admittedly unintended consequences of the new law.

Depending upon whether the legislature "fixes" the law or the courts enjoin its enforcement, employers who may have assumed that they were exempt from

granting Sundays off under the old version of the law may ultimately be required to grant their non-managerial employees' requests for Sundays off. As a result of all the news coverage of this issue, employees who may not have known that they could, in fact, insist upon Sunday off may now seek to enforce the law.

The statutory penalties for violating this statute remain the same. Violations will result in a misdemeanor charge, and upon the conviction of the misdemeanor charge, the employer is to be fined between \$250 and up to \$500 for each offense. Additionally, non-managerial employees compelled by an employer to work on the chosen day of rest will be due wages at the rate of three times the regular rate of pay for all hours worked by the employee on the designated day of rest. Supervisory employees and agents of the employer will not be fined or penalized individually for violations of this statute when such violations are caused, directed or authorized by the employer.

Employers receiving requests and inquiries from employees about the day-of-rest law are strongly encouraged to consult with legal counsel.

Nancy N. Delogu is a shareholder, and Sue M. King is an associate in the Washington D.C. office of Littler Mendelson, P.C. If you would like additional information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Ms. Delogu at nndelogu@littler.com, or Ms. King at smking@littler.com.
