



Relationships



Communication



Budgeting
and Staffing



Know-How



Results

2017 Legislative Update: New Legislation Affects All West Virginia Employers

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Today's Presenter



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2017 Statistics



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Results

- Under the cloud of the (ongoing) budget effort:
 - 1802 bills introduced
 - 262 bills completed legislative action
 - 245 became law with 17 vetoes
 - 1 veto (SB330) was overridden

2017 Overview



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Results

- Volume of tort reform bills lower than in years past
- Still some significant developments

Unemployment Benefits



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Results

- SB222 – Unemployment Benefits for Striking Workers
 - Significant change
 - Current law – indecipherable
 - If employees strike, no benefits
 - If a lockout or permanently replaced, benefits

Medical Malpractice



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Results

- SB338 dealt with claims against long term care facilities (primarily) under the MPLA
- Definition of occurrence amended to reduce number of claims per patient/resident
- Statute of limitations for claims against nursing home or assisted living facilities is one year
- Venue lies in county in which facility is located
- Changes apply to claims that arise on or after July 1, 2017

Application of Payments by Financial Institutions



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Results

- SB344 addresses how creditors must apply payments received from debtors
- Payments must be applied in the order in which they fall due
- Partial payments may be held in a suspense account until a full payment may be applied
 - Notice requirements imposed on creditor
- Delinquency charges may still only be assessed once on an installment however long it remains in default

Sunday Hunting



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Results

- SB345 permits Sunday hunting on private land with permission of the landowner
- Local referendum requirement stricken from current code

Consumer Credit Protection Act



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Results

- SB563 made broad changes to the state's CCPA
- Compromise bill
- Balloon Payments
 - Strict compliance no longer required
 - “Substantially similar” language in promissory note is sufficient
- Definition of “debt collector”
 - No longer includes an attorney licensed to practice law in WV
 - Unless under management of a non-lawyer

Consumer Credit Protection Act



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Results

- Notice of representation
 - Must be sent by certified mail, not email
 - Cease direct contact within three business days
- Pleadings privilege
 - No pleading may form basis of CCPA claim unless a material violation of:
 - Coercion
 - Misrepresentation
 - Fees
 - Fees not in contract

Consumer Credit Protection Act



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Results

- Statute of Limitations
 - Remains at 4 years unless claim relates to setting aside a foreclosure sale
 - Then statute runs until one year after foreclosure is final
 - Counterclaims are subject to statute of limitations
- Right to Cure
 - Modeled after UDAP section
 - Requires consumer to give creditor a notice of the right to cure any violation prior to filing suit under Articles 2, 3, 4 and 5

Consumer Credit Protection Act



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Results

- Right to Cure
 - Consumer must send written notice including alleged violation and factual basis for violation of statute
 - Creditor or debt collector has 45 days to make a written offer of cure
 - Consumer then has 20 days to accept or reject
 - If an action is brought, the creditor or debt collector may avail itself of a complete defense if the cure was performed
 - If the trier of fact finds defense justified, the creditor or debt collector is entitled to fees and costs
 - Creditor or debt collector not liable for attorney's fees unless actual damages, civil penalties and other relief (excepting attorney's fees) exceeds cure offer

Whistle Blower



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Results

- HB2006
 - Increases penalties under West Virginia Whistle Blower Act
 - Fine now up to \$5,000 (as opposed to \$500)
 - Personal liability as opposed to government liability
 - Finding of violation can be used as basis for removal from office/termination

Circuit Court Jurisdiction



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Results

- Last session, jurisdictional limit for magistrate courts was raised
- HB2731 is the companion for circuit court
 - Was \$2,500
 - Now \$7,500

Drug Testing



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Results

- As promised last year, private sector drug testing bill has passed both houses
- HB2857 creates the West Virginia Safer Workplaces Act
 - Mirror of last year's bill
 - Permits drug and alcohol testing in accordance with written policy in compliance with the Act
- Significant liability protection for employers

Multiple Defendant Filing Fees



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Results

- HB2980 makes it more expensive to sue multiple defendants
 - Additional \$15 per defendant starting with the second
 - \$10 to the county general fund
 - \$5 to the State Police Forensic Crime Lab Fund

Second Chance Employment Act



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Results

- Third time is the charm – in the form of SB76
- Creates the Second Chance Employment Act
 - Individuals guilty of certain crimes can petition for those convictions to be reclassified
 - “Reduced misdemeanor”
 - Protections for employers
 - Immunity for negligent hiring claims

Wage Bond

- SB224 was nearly the last bill passed this session
- Revises wage bond requirements
 - 1 year instead of current 5 years
 - Exceptions:
 - In business in another state for 5 years
 - At least \$100,000 in assets
 - Subsidiary of a parent that has been in business for 5 years



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WV Workplace Freedom Act



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Results

- SB330 – Right to Work
- Makes technical corrections to the West Virginia Workplace Freedom Act enacted last year
 - Strikes two sentences
 - Governor's veto overridden

WV Medical Cannabis Act



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Results

- SB386 – Medical marijuana
- Truly effective July 1, 2019
- For employers, many blanks that need filled
 - Delayed implementation with rule making
 - Another legislative session before implemented
- Drug testing, recreational use in other states, etc.
- Employers may not discriminate against “certified persons”
 - But may still discipline for being under influence
 - Not required to permit use on premises

WV Physicians Freedom to Practice Act



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Results

- SB402 – addresses employment contracts between physicians and hospitals
- Limits temporal and geographic proximity terms of covenants not to compete
 - Limited to one year
 - 30 road miles from a physician's residence
- If employer terminates the contract, the restrictive covenant is not enforceable

Seasonal Employees

- SB606 – revises West Virginia's Minimum Wage and Maximum Hour Act
- Creates new exemption from definition of employee of a "recreational establishment"
 - Does not operate for more than 7 months in a calendar year, or
 - Qualifies under receipts formula
- Employee must be paid on a salary basis in an annual amount of, currently, \$18,200



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Products Liability



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Results

- HB2850 adopts the “innocent seller” doctrine in West Virginia
- No product liability action may be brought against a seller other than the manufacturer but ...
- 13 exceptions to that rule
 - Seller had knowledge of defect
 - Seller exercised substantial control over manufacturer
 - Manufacturer is insolvent

Medical Records



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Results

- HB2486 addresses protective orders in litigation
- Courts now restricted from imposing additional restrictions on defendants and insurers above existing law and regulations
- Insurance Commissioner required to review current state rules

Medical Records



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Results

- SB187 also addresses disclosure of medical records specifically mental health records
- Current code is revised to bring state law into line with HIPAA

Business Judgment Rule



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Results

- SB490 corrects a glaring omission in the state Corporation Act
- Liability standards on the books for corporate directors but ...
- Officers not addressed
- SB490 adopts same standards of liability for officers and directors

Judgment Interest



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Results

- HB2678 modifies judgment interest in the state
- Starting January 1, 2018, judgment interest in West Virginia may range from 4% to 9%

2017 Recap



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Results

- Less tort reform than in past two years
- Left on the table:
 - Employer-provided property/WPCA
 - Wage assignment forms/WPCA
 - Any requests?



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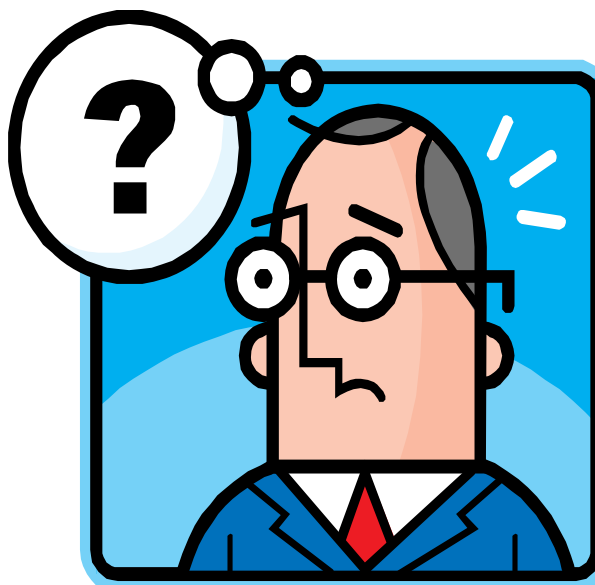


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QUESTIONS?



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