

Guest column: Tennessee's new business laws will hurt workers, citizens

By Bryce W. Ashby and Michael J. LaRosa, Special to The Commercial Appeal

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For the past two years, with little oversight from the media or general public, Tennessee's legislature and Gov. Bill Haslam have overseen a dramatic shift in the rights of workers in the state. Three major changes in employment laws went into effect Tuesday that dramatically alter workers' rights in Tennessee and will harm the citizens, residents and taxpayers of our state.

The first new law establishes a redesigned workers' compensation system. As originally designed, the workers' compensation system balanced the interests of employers and employees. Thus, employees forfeited the right to sue employers for on-the-job injuries in exchange for an insurance system that guaranteed medical coverage, pay during treatment and compensation for permanent disabilities. Additionally, the system separated injured employees from federal and state government social safety nets, thus placing responsibility for worker safety on private industry. The cost to employers also created broad incentives for safer workplaces.

Tennessee's new system fundamentally changes this equation and has the potential to put taxpayers on the hook for injured employees, all in the name of "business-friendly" practice.

There are many objectionable measures in the new legislation: For example, under the old workers' compensation system, the standard for compensability of claims was to be liberally construed in favor of the injured worker. Now, workers are not entitled to such a presumption. This most likely will mean that far fewer workers' injuries will be covered by workers' compensation insurance.

The second provision in the new system removes a worker's right to appeal claims to state court when seeking full benefits from the insurer. Under the new system, workers lose the independence of the courts in favor of an initial adjudication by administrative judges appointed by the administrator of the Workers' Compensation Division of the state Department of Labor and Workforce Development — an appointee of the governor. Appeals are decided by a newly created panel of three judges, all appointees of the governor. What should be a clean, neutral decision has clearly been politicized by our Republican leadership in Nashville.

Third, the legislation significantly changes the formula by which permanent benefits are calculated. Individuals with significant impairments to their ability to work will receive less money from their employer's insurance carrier and will be more likely to seek benefits from state and federal social safety nets. Our Republican-controlled General

Assembly and Republican governor have shifted the responsibility for injured workers from profit-motivated private employers to “we the taxpayers.”

Unfortunately, these are not the only new changes to our employment laws in Tennessee. The General Assembly also fundamentally eliminated a worker’s ability to make a claim for retaliatory discharge, or what’s more commonly called “whistle-blower” claims.

During the 30 years before July 1, an employee who refused to participate in or spoke out against illegal activity that threatened the safety and well-being of Tennesseans could bring a claim if she could demonstrate that the protected activity was a motivating factor in her termination. Now, that same employee must show that the protected activity was the “sole” factor in the decision to terminate her employment.

Since unscrupulous employers do not typically volunteer their reasons for firing employees, a “sole” factor standard is exceedingly difficult to meet. For example, an employee with an unexcused absence or several late arrivals might find herself unprotected even if the employer admits that the whistle-blowing was “a” factor among others.

While this is bad news for honest, ethical workers in Tennessee, it also endangers the public at large: Consider the truck driver who refuses to drive a semi-truck that fails to meet state safety standards or the worker who wants to report her company’s mishandling of toxic chemicals. Their employment is now in jeopardy if they decide to do what’s in the best interest of all Tennesseans — report these hazards. Instead of encouraging courageous employees, the state of Tennessee has chosen to change established law to dissuade whistle-blowing, putting all of us, potentially, in danger.

Finally, as of July 1, the General Assembly and Haslam have capped the damages that whistle-blowers and victims of workplace discrimination and retaliation can be awarded by juries. For example, a 16-year-old who takes her first job with a company that has fewer than 15 employees and then is subjected to repeated sexual harassment, intimidation and unwanted sexual contact is limited to an award of \$25,000 for the emotional pain and mental anguish she will suffer for the rest of her life. Instead of leaving this decision to a jury of her peers, the General Assembly has decided to side with business and limit what she can recover in damages.

The conservatives who pushed these legislative changes have touted them as “wins” for business. They’re right about rewarding business, but with every winner, there’s a loser. And the losers in these reforms are individual workers and all of the citizens of the state of Tennessee.

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