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SUMMARY OF TWO NEWLY ENACTED ARIZONA LAWS THAT BENEFIT EMPLOYERS

I. BUSINESS BILL OF RIGHTS LAW.

A law expanding the “Bill of Rights” for Arizona businesses has just taken effect as a result of the Arizona Legislature’s actions during the 2014 term. Key provisions of the law were drafted by Julie Pace and David Selden of The Cavanagh Law Firm, and NFIB took the lead to stand up for companies’ rights and work with the State Legislature to get the bill of rights adopted. The Arizona Chamber of Commerce was instrumental to take the lead on the Unemployment and Severance Bill to avoid double-dipping. This summary address both of the new laws.

A. Summary.

The law expands the Business “Bill of Rights” and extends those rights so that they will apply to OSHA inspections by the Arizona Division of Occupational Safety and Health (“ADOSH”) and audits by the Arizona Department of Economic Security (“DES”).

The key provisions of the new law are:

1. At the beginning of state government audits or investigations, the agency must disclose certain basic information about the business’ rights.
2. The agency must later furnish information to the affected business about the status and results of the investigation.
3. Businesses will be able to recover attorneys’ fees when the government asserts claims against them in lawsuits or administrative proceedings that are not substantially justified.

B. Rights During Government Inspections.

At the beginning of OSHA inspections or DES audits on unemployment compensation issues, those agencies are now required to inform each business of the following:

1. The purpose and legal authority for the inspection or audit;
2. The employer’s right to have an authorized on-site representative accompany the

- inspector or auditor, except during confidential interviews;
3. The right to receive copies of any documents taken by the agency;
 4. The right to receive a split of any samples taken and copies of any analysis performed on the samples;
 5. Copies of any documents relied upon to determine compliance with regulations;
 6. The right to be notified if a conversation is recorded;
 7. All witnesses must be told that their statements may be included in the inspection or audit report;
 8. The agency must disclose the name of its official to whom a business may submit a complaint; and
 9. The agency must disclose that the business may complain to the Arizona Ombudsman's Office if the agency representative does not satisfactorily resolve a complaint to the agency.

C. Rights After Government Inspections.

After an inspection, the government agency must:

1. Give a copy of any inspection report to the business either at the time of the inspection or within 30 days thereafter; and
2. Provide a status update to the business every 30 days thereafter until
 - a. Either the completion of the agency action; or
 - b. A decision that there will not be any agency action resulting from the inspection.

Under the law, businesses will be able to recover their attorneys' fee if they prevail against the state government on the major issues in lawsuits or administrative proceedings that the government brings against them, if the judge or hearing officer determines that the government's position was not substantially justified.

This attorneys' fees provision should make the government thoughtful and cautious before bringing cases against business. It should also provide more settlement leverage for businesses. Discourage government lawyers from pursuing tactics that needlessly cause extra expenses to business, as the government might ultimately be responsible for those expenses.

D. Legislative History.

The Legislation was sponsored by Representative Tom Forese and was passed unanimously by both the Arizona House, by a vote of 59 to 0 and the Arizona Senate, by a vote of 28 to 0. The National Federal of Independent Businesses was instrumental in pushing the bill and worked closely with Julie Pace and David Selden at The Cavanagh Law Firm in drafting key language to prevent objections from various state agencies from blocking the final approval of the bill.

II. LEGISLATION TO PREVENT DOUBLE-DIPPING OF UNEMPLOYMENT BENEFITS AND SEVERANCE PAY.

A second employment law to benefit Arizona employer is HB 2115, which will prevent employees from double-dipping by receiving unemployment benefits at the same time that they are receiving severance pay if the severance pay is equivalent to their former wages.

Unemployment benefits are intended to buffer employees from a loss of income when they lose employment through no fault of their own. Unemployment benefits are not intended to provide a windfall in which employees income is increased by received unemployment benefits on top of severance pay.

The new law does not deprive people of receiving unemployment benefits altogether, but provides that the unemployment benefits will be paid only when the severance pay runs out – if the employee is still unemployed at that time. For severance pay that is paid in a lump sum, there will be a formula that determines the amount of weeks for which the severance pay is equivalent, and eligibility for unemployment benefits will begin after those numbers of weeks have elapsed.

The new law overturns the results of an Arizona Court of Appeals decision in January 2014 and reinstates the intent of changes to the unemployment law that were made 20 years ago. By doing so, the law gives an incentive for employers to provide severance pay, which of course is a benefit for employees as well.

This legislation, HB 2115, was sponsored by Representative Karen Fann. The bill was written by David Selden of The Cavanagh Law Firm, who also drafted the law 20 years ago that originally fixed this problem, and which the Court of Appeals circumvented in its January 2014 decision.

The attorneys in the Employment, Labor, Immigration and OSHA Group at the Cavanagh Law Firm emphasize representing employers in matters relating to the wage and hour audits, DOL cases, classification of independent contractors, classification cases before DES involving independent contractors, unemployment cases before the Arizona Department of Economic Security, OSHA and ADOSH investigations, handling fatalities at work, handling I-9, E-Verify and immigration compliance strategies and audits, providing training to supervisors and employees on a variety of topics, handling and assisting with investigations, drafting and updating employee handbook and policies, addressing drug and alcohol policies, and advising companies regarding ADA and FMLA and counseling, discipline, and terminations. Please contact Julie Pace at 602.322.4046 or jp pace@cavanaghlaw.com or David Selden at 602.322.4009 or dselden@cavanaghlaw.com.

