

Legislative Report: Regular Session



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The 2017 regular session ended the last week of June with the Republicans in both chambers holding veto-proof majorities during the session. Previous sessions under the same circumstances did not help relieve the challenging times faced by many of North Carolina's working people, and indeed it made them harder. The General Assembly, in those sessions, radically slashed unemployment benefits, undermined our public schools, changed the tax code to benefit the wealthy, denied Medicaid benefits for 500,000 citizens,

enacted the most draconian voter-suppression law in the nation, eliminated incentives to keep good paying jobs in the state, enacted needless expansions of the so-called right-to-work law, passed the infamous HB2, enacted broad "ad-gag" legislation, and made laws making life even more difficult for immigrant workers. As with the past few legislative sessions, legislative leaders this year generally ignored the interests of working people and continued attacking their unions.

Below is a brief description of some of the legislative activity from the regular session. This brief review is not intended to be complete or in-depth. If you have any questions about the bills discussed below or about any bills not discussed, please let us know.

A "Right-to-Work" Constitutional Amendment?

HB 819, for which a comparable bill was introduced in the Senate, would put to a vote on the November 2018 ballot whether to enshrine North Carolina's "Right-to-Work" law in our state Constitution. The law has been on the books since 1947, and no considerable effort to repeal it has occurred since that time. Thus, HB 819 is entirely unnecessary, and putting the issue, which few people fully understand, on the ballot is simply an attempt to turn out the conservative base in the 2018 elections. The bill passed the House but did not move in the Senate. However, we expect that the Senate will pass it in next year's short session, just prior to the elections, so that opponents will have less time to educate voters about the issue. In the House, all but one Democrat present voted against and every Republican present voted for the bill.

Attack on the Farm Labor Organizing Committee

SB 375 would have removed the right of public

sector and agricultural sector employees to have payroll dues deduction. The legislature can do this because neither public employees nor agricultural employees are covered by the National Labor Relations Act. In the Senate vote, every Democrat present voted against the bill and all but two Republicans present voted in favor. Due to the work of the State Employees Association of North Carolina, the North Carolina Association of Educators, the Teamsters, the International Association of Fire Fighters, the Farm Labor Organizing Committee (FLOC), us, and others, the bill stalled in the House at the very end of the session.

However, in the very last days of the session, during a conference committee meeting, two growers, Rep. David Lewis and Sen. Brent Jackson added an amendment to SB 615, a long and uncontroversial bill dealing with changes in agricultural matters.

The amendment did two things. First, it outlawed dues deductions for agricultural workers, the most vulnerable of our state's workers. Second, the bill outlawed settling lawsuits against growers by requiring them to consent to enter into a collective bargaining agreement. That second provision took direct aim at FLOC's success in suing growers for their various abuses of their employees and having those growers agree to entering into collective

bargaining agreements to help settle the claims. The last-minute amendment drew the support of all the Republican Senators voting and was opposed by all but one Democrat voting. In the House the amendment was not voted upon, just the overall bill. All but one Republican voting supported the bill. Most, but not all, of the Democrats voting, opposed the bill. The legislation is now law.

Unemployment Insurance

Unemployment benefits provide financial support for workers who have lost their jobs through no fault of their own. In 2013, the fund from which unemployment benefits are paid was broke, largely because taxes on employers were inadequate to deal with the recession. The legislature's answer then was not to ask more from employers but instead to cut dramatically the amount and duration of benefits for the unemployed and to make it more difficult to be eligible for any benefits at all. The fund is now more than solvent, which means that at least some of the benefit cuts, which put our state among the very worst for workers in the country, could be restored. But the decision to restore benefits rests in the hands of state lawmakers who made the initial cuts, and they chose to do nothing on this issue during the regular session. Hopefully, the issue will be revisited at the Unemployment Insurance Oversight Committee meetings that will be held between the regular session, now concluded, and the short session next year.

Workers' Compensation

Approximately two dozen bills affecting the workers' compensation system were introduced. Among those bills that passed was legislation moving the Industrial Commission from the Department of Commerce—part of the Executive Branch, and thus, under the control of Governor Cooper—to the Department of Insurance, which is currently under the control of a Republican. Another bill authorized \$250,000 for the Industrial Commission to hire private counsel, apparently to use defending against a lawsuit by Governor Cooper challenging the lawfulness of legislation passed during a special session just before he took office stripping him of certain appointment powers at the Industrial Commission.

Lawmakers also passed bills providing that franchisees and their employees are not the employers of the franchisor for any purpose. Although often discussed in the context of workers' compensation, the legislation also applies to other

employment issues and is part of a national effort by employer groups to protect franchisors, including fast food restaurants, from being held as joint employers under federal labor law.

Another bill, in which we were involved in reaching a compromise, responded to a recent North Carolina Supreme Court decision involving the presumption for medical compensation related to injuries not identified an original claim. Legislation also removed the presumption that newspaper deliverers are not independent contractors, seemingly done more to punish newspapers than help that group of employees.

Two pieces of legislation that we opposed and did not pass included a renewed attempt to make workers' compensation coverage for some truck drivers more problematic and another that effectively would have allowed employers to adopt a long list of safety rules, the violation of which would allow for a 10% reduction in compensation to the injured employee.

Misclassification of Employees

Workplace fraud is a severe problem in North Carolina, with some employers classifying their employees as independent contractors. This "misclassification" scheme results in employees being deprived of protections in areas such as minimum wage, overtime, and workers' compensation; penalizes those employers who obey the law; and costs our state over \$450 million a year in taxes. During the 2015-16 session, it appeared that legislation to address this problem, although not as strong as we would have liked, had sufficient support to pass, but ultimately it did not.

SB 407, new legislation that, while not as strong as the earlier bill but nevertheless a first step in the right direction, passed in the special session held on August 3rd, and Governor Cooper signed it shortly thereafter. The law calls for an employee classification group within the Industrial Commission to receive and investigate misclassification complaints; to coordinate with state agencies and prosecutors; to create a publicly available notice defining misclassification; to make an annual report to the governor and to the legislature; and requires businesses to report to occupational licensing boards if they are subject of an investigation of employee misclassification, with a failure to do so potentially leading to denial of their application.

The HB 2 “Fix”

The infamous HB 2 was repealed this session and replaced with new legislation. Some of our good friends in the legislature voted for the repeal, agreeing with Governor Cooper that it was an important first step that improves the law and that the overall package was the best that could be done given current political circumstances. Other good friends in the legislature voted against the repeal, maintaining that the replacement legislation was not a full repeal, perpetuated discrimination, and was, overall, unacceptable. Shortly after the replacement legislation was enacted, we provided our analysis of what the new law changed and what those changes mean. The language is ambiguous, particularly regarding employment matters that affect local governments’ ability to make requirements of employers in their jurisdictions or even their own contractors to offer protections to employees greater than whatever the General Assembly deems appropriate. Rather than take the space to repeat that analysis here, we are happy to provide it to those who did not see it or would like to see it again.

Stripping the Power of the Governor

The legislature continued to strip away the powers of the Governor. In addition to pulling the Industrial Commission out from under the Governor’s jurisdiction, the legislature also reduced the size of the Court of Appeals so that Governor Cooper is unable to replace some Republican judges reaching mandatory retirement age. Other legislation eligible for consideration in the short session would provide that the General Assembly and not the Governor will appoint district court and special superior court judges; require the Governor to fill any judicial vacancy with one of three candidates recommended by the party of the person previously in the seat; and change the prior law the legislature had enacted while Pat McCrory was governor that required the candidates from the party of the governor be listed first on the ballot. The General Assembly also radically undermined the ability of our new Attorney General, Josh Stein, to do the job he was elected to do by cutting \$10 million from the budget of the Department of Justice, with immediately resulting in the layoff of dozens of attorneys and other staff.

A Minimum Wage Increase and Other Legislation

Important legislation helpful to working people, most notably to raise the minimum wage, but also, among others, to offer assistance to those who work as caregivers, to give assistance to those who work in

restaurants, to require equal pay for equal work, and to require Citizen United disclosures—all introduced by Democrats—did not pass and in many cases never received a real hearing.

Legislation that improved the Charlotte firefighters’ retirement system and eligibility for the firefighters’ relief fund did become law. Legislation was also enacted to eliminate the waiting week and job search requirements for those unemployed as the result of a national disaster. A bill that would offer protection to law enforcement officer whistleblowers and another bill to clarify the reemployment rights of those injured while serving in the National Guard did not pass, but both bills remain alive for the short session. Also alive are several bills that could be harmful to working people, including a bill to expand the authority of company police (SB 162); a bill to offer qualified immunity from liability to drivers who hit protesters in public streets unless those protesters are covered by a permit (HB 330); and a bill that puts undocumented workers at greater risk (HB 35).

Again, this brief report is not meant to be all-inclusive, and we welcome any questions about any legislation, regardless of if we covered it in this report.

Promoting a pro-working people agenda can be particularly difficult in this political climate, but the work is as important as ever. We thank our community allies, most notably the North Carolina Justice Center, for its invaluable help and leadership; local unions that sent lobbyists to the General Assembly to promote those locals’ own agendas but also helped us with ours; the many legislators who worked so determinedly on behalf of working people. Most importantly, we thank all members of our affiliates who engaged in our efforts in so many ways.

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