

**1992 STATE-BY-STATE UPDATE SURVEY
OF DEVELOPMENTS IN LEGISLATIVE
PROPOSALS ON "JUST CAUSE" EMPLOYMENT
TERMINATION LAW FOR PRIVATE
NONUNIONIZED EMPLOYEES**

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ABSTRACT

The purpose of this article is to update the ten year survey of bills proposing employment termination law for private non-unionized employees (JIER vol. 1: pp. 93-104) with the data for 1991-1992 and to focus that data on the extent and nature of "just cause" provisions in proposed employment termination legislation. The results of the survey of 50 state legislatures found that 42 percent had seen the introduction of bills relating to termination and that eleven states (22%) considered bills that included a "just" or "good" cause standard. Of these seven states, Delaware, Hawaii, Iowa, Maine, Massachusetts, Oklahoma, and Pennsylvania had bills that were based on a version of the Uniform Law Commissioners Model Employment Termination Act.

This article reports the preliminary findings of a follow-up study of fifty states and five territories concerning developments in proposed legislation on employment termination protection for employees of privately owned, nonunionized employers during the period January 1991 to June 1992. The survey was designed to determine whether there had been developments in state legislatures relating to just-cause provisions contained in the Uniform Law Commissioners' Model Employment Termination Act (META).

RESEARCH METHOD

In June 1992 a questionnaire was prepared requesting specific information on attempts by representatives of state legislatures to introduce bills to enact employment legislation relating to employment termination in general and "just or good cause" provisions in particular [1]. The questionnaire was designed to provide information on the content, and legislative status of employment termination bills introduced over the preceding sixteen months for fifty-six United States jurisdictions comprising fifty states, the District of Columbia, and five U.S. territories and to supplement a more extensive ten-year survey conducted in 1990 [2]. After revision, the questionnaire was mailed, in June 1992, to those members of state legislative research bureaus who had completed the original 1991 survey. Fifty-six questionnaires were mailed, with a return requested by June 29, 1992. In addition, a separate survey was developed and simultaneously mailed to the majority and minority leaders of the house and senate of each state. This report refers only to the survey of legislative bureaus.

Initially, a completed questionnaire was received from each of thirty states. Nonresponding states were subsequently encouraged to complete their survey or to answer the questionnaire over the telephone. This resulted in information being completed from all fifty states, the District of Columbia, and one territory. For the purposes of the statistics on this report the territories were excluded and Washington DC was considered a state. This, therefore, represents a 100 percent response rate in the survey of state legislative agencies.

FINDINGS

In reporting the findings I have considered the data in terms of the following issues: 1) states without bills on employment termination rights; 2) states with bills on termination; 3) states with a "just or good cause" provision in their termination bills; 4) states that specifically used the META as a model.¹

States Not Considering Bills on Employment Termination Rights: Based on the responses to this survey, the states in Table 1 indicated they had no bills introduced since January 1991 concerning employment termination or at-will

¹ Louis Maltby, of the American Civil Liberties Union and an advisor to the ULC Drafting Committee, prefers a more restrictive definition to qualify bills as based upon META. He points out that a bill only qualifies as modelled on META if it retains the conceptual integrity of the Model Act. To do so it would require that there be: a) preemption of the common law; b) a "just" or "good" cause provision; and c) mandatory binding arbitration. For the purposes of the classification in this article, however, I have used the broader definition since my purpose is to show the extent to which *any* aspects of META have shaped the drafting of state termination law.

Table 1. States Without Proposed Employment Termination Legislation, 1991-1992

Alabama	Maryland	Rhode Island
Alaska	Michigan	South Carolina
Arkansas	Mississippi	Tennessee
California	Montana	Texas
Colorado	Nebraska	Utah
Georgia	New Jersey	Vermont
Idaho	New Mexico	Virginia
Illinois	Ohio	Wisconsin
Louisiana	Oregon	Wyoming
Kansas	North Dakota	Total: 29

employment relating to the employment of private, nonunionized employees. The twenty-nine states that have not considered a bill relating to termination represent 58 percent of the responding states. In interpreting these results, it should be remembered that Montana, like the territories of the Virgin Islands and Puerto Rico, already has enacted statutory law on the termination question.

States Having Considered Bills on Employment Termination: Table 2 shows the states that have considered or are considering bills on employment termination, when these bills were introduced, whether the bill was enacted or any other action taken, and whether the bill was based on the META. The twenty-one states represent 42.0 percent of the fifty states that have considered one or more bills relating to matters of employment termination. Of these states, eleven (52.4%) considered a bill that included a just-cause provision, representing 22.2 percent of all states. Of these, none saw a bill with a just- or good-cause standard enacted. Four states enacted bills relating to termination issues, but generally, these related to whistle blowers' protection, lawful off-the-job practices, and replacement workers and strikers. Finally, of the bills introduced in the study period, seven states (Delaware, Hawaii, Iowa, Maine, Massachusetts, Oklahoma, and Pennsylvania) were based on a version of the META. None have been enacted to date. In 1993 both Nevada and New Hampshire considered bills based on META (NV, AB343; NH, HB513) and North Carolina enacted a bill (HB384) to refer META to a study committee. Thus, to date, ten states have considered bills based on META.

Table 2. States Having Considered Bills Relating to Employment Termination, 1991-1992

State	Bill No.	Date Intro.	Disposition	"Just Cause"		Modeled on Meta	
				Yes	No	Yes	No
Arizona	HB2169		Not enacted		X		X
Connecticut	HB5228	1/91	Comm no action (n/a)	X			X
	HB5539	2/92	Public hearing n/a		X		X
Delaware	HB293	6/91	Not enacted	X		X	
	HB437	2/92	Not enacted		X		X
Florida	HB1753	1/92	Vetoed by Gov		X		X
Hawaii	HB177	1/91	Not enacted	X		X	
	HB3466	1992	Vetoed by Gov ^a		X		X
	HB3467	1992	ENACTED ^b		X		X
Indiana	HB1805	1/91	Comm n/a		X		X
Iowa	SSB2158	2/92	Comm n/a	X		X	
Kentucky	HB462	2/92	ENACTED ^c		X		X
Maine	LD351	2/91	Both hos. reject	X		X	
Massachusetts	HB1452	12/92	Comm	X		X	
	HB2600	12/92	Comm	X		X	
Minnesota	SF2336	3/92	ENACTED ^d		X		X
Missouri	HB81	1/91	Comm n/a	X			X
	HB1319	1/92	Comm hearings	X			X
Nevada	AB665	5/91	Comm vote to postpone ^e		X		X
	AB667	5/91	Comm vote to postpone		X		X
New Hampshire	HB678FN	2/91	Voted inexpedient by Ho		X		X
New York	A1985	1/91	Comm n/a	X			X
	S.4171-A	3/91	Gov vetoed ^f		X		X
	S.6935-C	2/92	ENACTED ^g		X		X
	A.9399	2/92	Assembly version		X		X
N. Carolina	HB1394	5/92	Hos. refused to concur		X		X
Oklahoma	HB1057	2/92	Comm n/a	X		X	
Pennsylvania	HB2150	11/91	1st reading		X		X
	HB2154	11/91	Ref to comm.	X		X	
South Dakota	SB258	1/92	Comm vote to table		X		X
Washington	HB2787	1/92	Comm n/a	X			X
	SHB2274	1/92	Gov vetoed ^g		X		X
W. Virginia	13 bills ^h	various			X		X

^aUnlawful to discharge, refuse to hire or disadvantage an employee for most lawful off-work activity except where this affects employment in various ways.

^bMakes it unlawful to discriminate against those who exercise right to join or take part in union activity.

^cWhistle blower statute.

^dUnlawful to discharge, refuse to hire an employee for lawful off-work enjoyment of consumable products except under certain specified circumstances.

^eEliminates presumption of at-will employment. A bill draft was requested to propose META for 1993 (AB343).

^fMakes it unlawful to discriminate against employees engaging in legal activities during non-working hours. This version of earlier vetoed bill 4171-A precisely defines the terms of application and excludes employers who act in good faith and does not prohibit them from distinguishing between employees based upon their recreational use of consumable products for the purposes of differential health policy coverage.

^gUnlawful to refuse to hire, discharge, or disadvantage an employee because the employee consumes lawful products off the employer's premises during non-working hours.

^hMany bills introduced but most relate to employment practices, hiring of permanent replacement workers and unfair labor practices relating to strikers.

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ENDNOTES

1. This survey was conducted in conjunction with a National Science Foundation-supported study grant (No: SES-8921248) entitled: "The Relationship Between State Law and Private Justice." The design of the questionnaire was developed in conjunction with members of the National Conference of Uniform State Laws, and benefited from the constructive suggestions of Professor Theodore St. Antoine, Mr. Stanley Fisher, and Mr. Gary Brian Gulliver.
2. The results of the earlier study were reported in S. Henry, A State-by-State Comparison of Recent Developments in Employment Termination Law for Nonunionized Employees, *Journal of Individual Employment Rights*, 1, pp. 93-104, 1992.

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