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The Revolution Has Been Postponed, Not Cancelled

By Stephen D. Haner

4/14/2020 -- The revolution has merely been postponed, not cancelled.

Governor Ralph Northam has asked the General Assembly to put off until May 1, 2021 the implementation of several key pro-union changes in Virginia's labor and employment laws, including a 31 percent increase in the minimum wage.

Saturday, April 11 was the deadline for Northam's consideration of the 2020 General Assembly's output. He had to choose whether to sign, veto or propose amendments to hundreds of successful bills. The amendments he proposed will be put to a vote in the General Assembly reconvened session on April 22.

Will enough legislators of his own Democratic Party join him in disappointing the key constituency of the Democratic Party? Union leaders expressed their fury in the wake of his announcements, so that battle is joined. In the meantime, do not ignore the dozens of other bills which were signed which also damage the business climate in Virginia going forward.

When you see all of the "pro-worker" legislation signed and touted by the Governor in one combined list, it is crystal clear that liberal Democrats (and there appears to be few centrist Democrats left) believe many Virginia employers were refusing to pay, misclassifying, punishing, discriminating against or otherwise abusing workers until the new Democratic majority came along to offer salvation.

Business owners and their advocates pushed back on the claims they were bad actors, but even the most ethical and careful now need to fear lawsuits. The long list of bills includes several creating new ways for employees to sue their employers, for actual damages, punitive damages and attorney's fees, with no consequences for frivolous or even malicious claims.

Along with new causes of action for employees, business owners must also be concerned about civil actions brought by aggrieved job applicants and even customers under expanded anti-discrimination rules, also accompanied by the opportunity to collect punitive damages and attorney's fees. How much to pay employees and whether they are unionized may be the least of the new challenges.

Four highly controversial proposals sought by the unions were subjected to amendments, as the economic crisis from the COVID-19 shutdown underlined and strengthened business complaints about their impact. The Governor's proposed delays add weight to those arguments of economic harm, but the short respite he proposes won't really soften the blows.

The four measures (each with duplicate bills) he proposes to delay are:

- House Bill 395 and Senate Bill 7, which raise the minimum wage to \$9.50 per hour as of January 1, 2021. Under the Governor's amendments, the minimum wage would increase beginning May 1, 2021. With additional General Assembly approval, the minimum would rise to \$15 by 2026. It also applies the minimum level to more workers.
- House Bill 833 and Senate Bill 8, which requires payment of "prevailing wages" as defined by the federal Davis-Bacon Act by contractors doing business with certain government bodies, unless the contracts are for less than \$250,000.
- House Bill 582 and Senate Bill 939, which permit localities (but not the state) to enter into collective bargaining agreements with local employees.
- House Bill 358 and Senate Bill 182, which allow state and local bodies to require project labor agreements for construction, manufacture, maintenance, or operation of public works. Under the Governor's amendments, this law would take effect May 1, 2021.

The final three proposals were all set to go into effect July 1 of this year, so they would be delayed by ten months if the Governor's amendments are approved. That delay would push their implementation beyond the November elections, and would allow the 2021 General Assembly a chance to revisit the issues before implementation.

Should the amendments be rejected April 22, and they will if Democratic legislators unify in opposition, the bills go into effect as originally scheduled. The Governor could take the additional step of vetoing bills after his amendments are rejected, but he won't.

As the United States, and perhaps Virginia, went from record low to record high unemployment *in a fortnight*, the value of jobs – both to those employed and those who live off the taxes generated – has been underlined. Millions of jobs that disappeared in the crisis at one level of cost to employers will now cost substantially more (for entry level low skill positions one third more) to restore. Will they all come back? A great economic experiment now begins.

The business groups normally so successful in the General Assembly fought these measures, seeking to defeat them or amend them into form that would be less damaging to future growth. No one realized at the time that the real issue would be economic recovery, not economic growth.

To his credit, Governor Northam listened to the many Virginians who correctly pointed to the changed circumstances, and he has proposed a brief pause. The same arguments are being made to the legislators who must approve or reject the pause. Each individual measure needs its own examination, but the overall impact of the package is clear: Virginia now distrusts its employers, distrusts the free market, and as was said often during the recent session, what has passed is merely prologue.