

2012 SESSION CONNECTICUT GENERAL ASSEMBLY

*In its 2012 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective **October 1, 2012**. The following material summarizes these new laws, but the specific provisions should be reviewed in the context of specific situations. These new statutes are available online through the General Assembly website at <http://www.cga.ct.gov/>. We will be happy to send you copies of any of these new Public Acts upon your request.*

Family Care Providers and Personal Care Attendants May Now Collectively Bargain with the State

Public Act 12-33 permits certain family child care providers and personal care attendants (PCAs) to enter into collective bargaining negotiations with the state through a labor union. The topics of bargaining can include reimbursement rates, benefits, payment procedures, contract grievance arbitration, training, professional development, and other requirements and opportunities. However, the Act explicitly states that child care providers and PCAs are not state employees. Therefore, other than bargaining rights, these workers do not have any of the rights, obligations, privileges, and immunities statutorily provided to state employees.

Although this law establishes a collective bargaining and arbitration process for these workers, and grants them many of the same rights and duties given to state employees under the collective bargaining law for state employees, it excludes certain subjects from collective bargaining and prohibits any provision in a contract or arbitration award from reducing child care provider or PCA services. In addition, the new law requires the General Assembly to approve any contract or arbitration award that would require additional appropriations to maintain existing service levels.

PA 12-33 also creates a PCA Workforce Council to study and plan for improving PCA quality, stability, and availability. Finally, it requires the Department of Social Services and this new council to compile and maintain lists of covered child care providers and PCAs, respectively, and it provides liability protection for the state under certain circumstances. PA 12-33 is effective July 1, 2012

Family and Medical Leave Benefits for Certain Municipal Employees

Under PA 12-43 the number of work hours school paraprofessionals in educational settings need to qualify for family and medical leave benefits is significantly reduced. Under federal law, all municipal employees, school paraprofessionals included, can qualify for benefits under the Family and Medical Leave Act (FMLA) only if they have been employed for at least 12 months and worked at least 1,250 hours ("actual hours worked") in the previous 12 months. The hours requirement was potentially a barrier to receipt of FMLA benefits for many paraprofessionals who typically never reached 1,250 hours during their 10-month work year.

However, this new law requires boards of education to provide benefits equal to those provided by the

federal FMLA to paraprofessionals who have (1) been employed by the board for at least 12 months and (2) worked at least 950 *hours* for the board during the 12 months prior to commencing a leave. PA 12-43 also reduces the work requirement, from 1,250 to 950 hours for the paraprofessionals to request leave to serve as an organ or bone marrow donor.

It is important to note that the act requires the Commissioner of Labor to adopt implementing regulations and it specifies that the paraprofessionals cannot begin accruing the necessary 950 hours before then. The act was effective upon passage.

Palliative Use of Marijuana Approved

Beginning October 1, 2012 persons who meet the requirements of PA 12-55 will be able to start “palliative use” of marijuana to alleviate the symptoms of certain debilitating medical conditions that the new act specifies. Employers and certain others will need to be careful going forward as the new law contains certain provisions to protect qualifying patients.

Specifically, the new law prohibits certain specific actions if they are based *solely* on a person’s status as a qualifying patient or primary caregiver under the act, as follows:

- (1) K-12 schools and institutions of higher education, whether public or private, may not refuse to enroll someone or discriminate against a student;
- (2) landlords may not refuse to rent a dwelling unit to someone or take action against a tenant (such as actions for possession or recoupment) and,
- (3) employers of at least one employee, including the state or its political subdivisions, may not refuse to hire someone, and may not fire, penalize, or threaten an employee;

However, this provision does not restrict an employer’s ability to prohibit the use of intoxicating

substances during work hours or to discipline an employee for being under the influence of such substances during work hours.

The act specifies that these provisions must not be construed to permit the palliative use of marijuana in a way that violates other provisions prohibiting palliative marijuana use in certain settings, for example, ingesting marijuana at work, school, or other specified settings, or using it in a way that endangers the health of others.



Wage Payment Flexibility Extended to Three State-Aided Institutions

Public Act 12-83, effective from passage, now allows three specific private institutions to negotiate with their respective employee unions for a different wage payment schedule than the weekly payment required by law. The new law extends this opportunity, which has been available for many years to public school districts, so that they have flexibility in negotiating payroll schedules for 10 month employees over a full calendar year period.

The institutions, referred to as “state-aided institutions,” are the American School for the Deaf, Connecticut Institute for the Blind, and Newington Children’s Hospital (which is now Connecticut Children’s Medical Center).

Wage and hour laws normally require employers to pay employees on a regular pay day that must not be more than eight days after the last day counted in the pay period. In addition to the statutory exception for boards of education, the law allows the Commissioner of Labor to grant other, limited, pay schedule exceptions. PA 12-83 is effective from passage.

Changes Ahead for Unemployment Initial Fact Finding Hearings and Appeal Hearings

Current law gives the Department of Labor's unemployment administrator or examiners, who make the initial determination of a claimant's eligibility for unemployment benefits, the discretion to hold hearings in person or by telephone or other electronic means. PA 12-125 will revise that discretion by prohibiting the administrator or examiner from unreasonably denying a request for an in-person hearing. This makes the default process telephonic or other type of electronic hearings as of October 1, 2012.

Current law also provides that when a claimant or employer appeals an administrator or examiner's decision the appeal is to be heard in person at a location reasonably convenient for the parties. However, effective October 1, 2012 the new law makes the telephone or other electronic means the default method for hearing these appeals. It does provide that if either party makes a request for an in-person hearing then the Employment Security Appeals Division must grant that request, but at a location the Division designates and regardless of its convenience for the parties.

New Workers' Compensation Benefit for Certain Firefighters

Public Act 12-126 extends workers' compensation coverage for mental or emotional impairment to a firefighter diagnosed with post-traumatic stress disorder (PTSD) if the PTSD is caused by that firefighter witnessing the death of another firefighter while engaged in the line of duty. To qualify for benefits the firefighter must be diagnosed by a licensed and board certified mental health professional who determines the PTSD stems from witnessing the death of another firefighter. Further, the firefighter's claim must not be subject to any other exclusion under workers' compensation law. The new

act extends this coverage to both volunteer and paid uniformed municipal firefighters.

The benefits available under the new law are limited to treatment from a practicing psychologist or psychiatrist on an approved list established by the Workers' Compensation Commission chairperson. This is different from full workers' compensation coverage in that it does not provide wage replacement benefits.

Previously, workers' compensation only covered a mental or emotional injury under two scenarios. In the first scenario, a mental or emotional injury is compensable if it arises out of a physical injury that occurs on the job or is job-related. In these cases, the workers' compensation claim starts with the physical injury and the employee is eligible for wage replacement and medical benefits.

In the second, a police officer's mental and emotional injury that arises from a job-related incident in which the officer was subject to the attempted use of deadly force or the officer used deadly force on another person is covered under worker's compensation, but the benefit is limited to treatment by an approved psychologist or psychiatrist. PA 12-126 is effective from passage and will apply to any claim filed on or after that date (the state senate passed the underlying bill on 05/09/2012; the house passed the bill on 05/02/2012)

Changes to FOIA Provision on Protection of Certain Residential Addresses

For many years CGS Section 1-217, a part of the Freedom of Information Act (FOIA), has prohibited any state or municipal public agency from disclosing the home addresses of certain public officials and employees, including municipal police officers, correction officers, judges and others. Public Act 12-3 now narrows this prohibition. Specifically, the new law permits certain municipal and election-

related documents to be disclosed without address redactions and limits to a covered individual's own employing agency, instead of all public agencies, the requirement to automatically keep his or her residential address confidential in certain documents.

PA 12-3 allows a covered individual to request address confidentiality from public agencies other than his or her own employer and it establishes procedures for these agencies to follow when receiving a FOIA request for certain records containing that individual's home address. The new law also prohibits public agencies, public officials, or employees of public agencies from being penalized for violating the disclosure prohibition unless the Freedom of Information Commission (FOIC) finds a willful and knowing violation.

Going forward, PA 12-3 requires the legislature's Government Administration and Elections Committee to establish an advisory committee to study possible alternatives to disclosing certain public records without redaction. Finally, the new law required the Labor Department to create a guide that instructs covered individuals on how to exercise their rights under the act and protect their home addresses from disclosure. The guide is already available through the DOL website: <http://www.ctdol.state.ct.us/FOI/FOIA-Guide.pdf>

PA 12-3 was effective from date of passage, except the provisions (1) limiting the automatic disclosure prohibition to the employing agency, (2) authorizing nondisclosure requests to non-employing agencies, and (3) establishing procedures for non-employing agencies to follow, which became effective June 1, 2012.



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