

Employment Legislation Summary

2008 SESSION

CONNECTICUT GENERAL ASSEMBLY

In its 2008 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2008. 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.

Increase in the Minimum Wage

Public Act 08-92 increases the state's minimum wage from the current \$7.65 per hour to \$8.00 per hour, effective January 1, 2009. The rate will increase again, to \$8.25 per hour, effective January 1, 2010. Although the federal minimum wage rate is lower, Connecticut employers must follow state law and pay the higher rate.

Tip Credit Will Increase

The tip credit permits hotels and restaurants to pay service employees and bartenders less than minimum wage, so long as these employees customarily and regularly receive tips that are sufficient to make up the difference. PA 08-113 increases the tip credit, to 11% (up from 8.2%) for bartenders and to 31% (up from 29.3%) for waiters/waitresses.

Comprehensive Ethics Reform

Public Act 08-3, passed in Special Session, will permit state courts to revoke or reduce any retirement or other benefit

due to state or municipal officials or employees who commit certain crimes related to their employment. Under the Act, the Attorney General must apply to the Superior Court for an order to revoke or reduce the benefits of a public official or employee who, on and after the bill's passage, is convicted of or pleads guilty or *nolo contendere* (no contest) in federal or state court to:

1. committing or aiding or abetting the embezzlement of public funds from the state, a municipality, or a quasi-public agency;
2. committing or aiding or abetting any felonious theft from the state, a municipality, or a quasi-public agency;
3. bribery connected to his or her role as a public official or employee; or
4. felonies committed willfully and with intent to defraud to obtain or attempt to obtain an advantage for himself or herself or others through the use or attempted use of his or her office.

The Attorney General must notify the prosecutor in these criminal cases of the pension revocation statute and that the pension may be used to pay any fine, restitution, or other monetary order the court issues.

The new Act also makes it a class A misdemeanor for public servants to fail to report a bribe, expands illegal campaign finance practices to cover certain solicitations by chiefs of



staff, and makes several changes to state codes of ethics such as limiting gift exceptions, prohibiting state contractors from hiring certain former public officials and state employees, restricting the Office of State Ethics' (OSE) authority to issue subpoenas, prohibiting *ex parte* communications during OSE hearings on ethics complaints, limiting Citizens' Advisory Board members who can act on ethics complaints, and subjecting the governor's spouse to the code. PA 08-3 also requires OSE to provide mandatory training to legislators on the Code of Ethics for Public Officials. Finally, it amends the Freedom of Information Act to require public agencies to post, on available web sites, meeting dates, times, and minutes already required by law to be publicly noticed or disclosed by other means.

There will be limited exceptions to the reduction or revocation of benefits under this new law, as follows:

1. no revocation or reduction may prohibit or limit benefits that are the subject of a qualified domestic relations order (e. g., child support);
2. no pension may be reduced or revoked if the IRS determines that the action will negatively affect or invalidate the status of the state's or a municipality's government retirement plans under Section 401 (a) of the Internal Revenue Code of 1986; and
3. the pension benefits of a public official or employee who cooperated with the state as a whistleblower before learning of the criminal investigation may not be revoked or reduced if the court determines or the Attorney General certifies that the official or employee voluntarily provided information to the Attorney General, state auditors, or a law enforcement agency against a person more blameworthy than the official or employee.

Additionally, no pension may be revoked if the court determines that to do so would constitute a unilateral breach of a collective bargaining agreement. Instead the court may issue an order to reduce the pension by an amount necessary to (1) satisfy any fine, restitution, or other monetary order issued by the criminal court and (2) pay the cost of the official's or employee's incarceration. However, per PA 08-3, after October 1, 2008 no collective bargaining agreement can contain any provision that would limit the application of the reduction or revocation provisions PA 08-3 enacts.

Employment of 15-year-olds

Under prior law 15-year-olds could work as baggers, cashiers or stock clerks in retail businesses under the following conditions:

1. only when school is not in session for at least five consecutive days, except work in retail food stores which was allowed on any Saturday;
2. up to eight hours a day or 40 hours in a week; and,
3. between 7 a.m. and 7 p.m., except between July 1 and the first Monday in September, when 9 p.m. was permissible.

These conditions ended under a statutory sunset provision that expired on September 30, 2007. Public Act 08-108 restores these conditions and also applies retroactively to cover the employment of 15-year-olds under these conditions after the sunset date and up to the effective date (the Act was effective from its passage).

Technical Corrections to Child Labor Laws

Although titled a technical corrections law, Public Act 08-75 focuses on extending additional civil penalties to preexisting penalties in a variety of employment regulation statutes. For example, existing law prohibits the use of “professional strikebreakers,” and imposes a fine of between \$100 to \$1,000, and possible prison time as well. The new Act makes violators of this law, and several others within General Statutes Chapter 557 (employment regulation), subject to the same general \$300 per violation civil penalty currently applicable to violations of Chapters 558 (wage and hour) and 568 (Workers’ Compensation). A preexisting \$600 penalty for violations of child labor laws remains unchanged.

Joint Enforcement Commission and Employee Misclassification Advisory Board

Public Act 08-156 establishes a permanent enforcement commission to address the problem of employers avoiding state and federal labor, employment and tax laws by misclassifying employees. The most common misclassification is treatment of employees as independent contractors, which allows the employer to avoid Workers’ Compensation premiums and unemployment taxes. The commission will meet four times a year to coordinate civil prosecution of violations of state and federal law involving misclassification and to report any suspected violations of state criminal statutes to the chief state’s attorney. In addition, the Act creates the Employee Misclassification Advisory Board to advise the enforcement commission on job misclassification in the construction industry. The Act is effective July 1, 2008.

Unemployment Benefits for Military Spouses

Public Act 08-40 makes permanent a provision of the Unemployment Compensation Act that makes military

spouses eligible for unemployment benefits when they voluntarily leave a job to accompany their spouse required to relocate for active duty service in the military. Current law was limited to spouses who leave their jobs between July 1, 2007 and June 30, 2008. The Act is effective July 1, 2008.

Professional Employer Organizations and Employee Misclassification

Under Public Act 08-105, a Professional Employer Organization (“PEO”) will be defined as businesses that provides “professional employer services” for their clients and have entered into co-employment agreements with their clients’ employees. The term PEO will include such businesses regardless of whether they conduct business as a PEO or as, for example, a staff leasing company, employee leasing company, administrative employer or any other name. Professional employer services means entering a coemployment relationship in which a majority of the employees providing services to a PEO’s client are covered employees under the arrangement.

The Act also requires each PEO operating in Connecticut on January 1, 2009 to register by March 1, 2009 with the DOL, which will keep a list of registered PEOs.

The Act sets standards for contracts between PEOs and their clients, prohibits PEOs from committing willful violations of the Act’s provisions and authorizes the Commissioner of Labor to penalize violators.

This Act also creates a permanent enforcement commission to address the problem of employers who misclassify employees in order to avoid state and federal labor, employment and tax law obligations.

Construction Safety Training for Prevailing Wage Projects

Currently, all employees performing manual labor on state or municipal building construction or repair contracts of \$100,000 or more must prove they completed a 10-hour construction safety and health course that meets federal OSHA Training Institute standards. The required proof of training is an OSHA institute issued course completion card, or other proof the Commissioner of Labor deems appropriate. PA08-83 expands the safety training requirement to any public works project, including sewage and water treatment plants, site work, road and bridge work, parking lots and other public projects. The Act also makes the training requirement apply according to the prevailing wage project thresholds, and therefore the requirement will apply to repair and renovation projects of \$100,000 or more and new construction projects of \$400,000 or more. It removes a prior requirement that proof of training be sent to the Commissioner of Labor within 30 days after the date the contract is awarded, and instead requires the proof to be submitted with the first certified payroll for the first week that each employee begins work on the project. The Commissioner of Labor is to adopt implementing regulations by January 1, 2009. The Act is effective January 1, 2009.

State Employee Leave Time and Military Service

Under Public Act 08-15, Department of Corrections employees in teaching or professional positions in DOC's Unified School District #1 will now have up to one year (previously 120 days) to use excess accumulated leave time upon return from service in the National Guard or the military reserves. Excess leave time is accrued vacation, equivalent leave time or sick time that accrues while the employee is on active military service that exceeds any limit on such time contained in state statutes, regulations or collective bargaining agreements. Other state employees are also able to use such leave time between the date of their discharge from active service and

date of return to state employment, not later than 120 days after returning to state employment or not later than 120 days after they are credited with such excess time, whichever is later. This Act is effective upon passage.

Workers' Compensation Coverage for Firefighters and Police

Public Act 08-61 establishes a rebuttable presumption that a municipal firefighter, police officer or constable, who is hired after July 1, 1996 and suffers a "cardiac emergency" while on duty, has suffered a work related injury. Specifically, the Act creates a rebuttable presumption that the ailment causing the cardiac emergency is due to the injured worker's occupation. Cardiac emergency is defined as cardiac arrest or a myocardial infarction. Municipal employers will be able to rebut the presumption by a preponderance of the evidence. This shifts the burden to the employer, where ordinarily the claimant in a Workers' Compensation Act case bears the burden of proving that a cardiac emergency was caused by the his or her occupation. The Act will require that a claimant have successfully passed a preemployment physical examination, conducted by a licensed physician designated by the employing department, which did not reveal any evidence of cardiac emergency. The Act does not take effect until July 1, 2009.

Workers' Compensation Commission to Send Forms

Under Public Act 08-3, the Workers' Compensation Commission ("WCC") must send an injured employee "Form 30C," the form used to file a claim for benefits under the Workers' Compensation Act. The WCC must provide the form in person or send it out by mail to the employee's current address on file with his/her employer, within five business days of receipt by the WCC of a first report of injury for that employee. Under current law, any employee injured in the course of employment must immediately notify his or

her employer, and employers must file weekly first reports of injury with the WCC documenting any injuries resulting in an employee missing work for at least one day.

Electronic Payment of Unemployment Taxes or Payments

This Act requires employers of 250 or more employees, who pay unemployment compensation taxes or make unemployment payments in lieu of taxes, to make such payments electronically starting with the first calendar quarter of 2009. Public Act 08-60 will also apply to any agent making such payments on behalf of one or more employers with a total of 250 or more employees. Since 1991 employers of this size have been required to file their quarterly wage reports electronically.

Volunteer Service by Emergency Personnel or Paid Firefighters and Contract Language Prohibition

Effective upon passage, Public Act 08-131 permits municipalities with paid emergency personnel and municipalities with volunteer personnel to enter into agreements authorizing paid personnel to serve during their personal time as active members of a volunteer fire department in the municipality in which they live. Municipalities entering into such agreements must consider model guidelines that the state's Fire Administrator is to develop under existing law. The Act permits municipalities to ask the Labor Commissioner to help them resolve any issues arising from such agreements.

Separately, and also effective from date of passage, Section 2 of PA 08-131 prohibits municipalities from entering into any contract prohibiting paid firefighters or paid emergency personnel from serving as active members of a volunteer fire department, during their personal time, in the municipality where they live.

State Police Survivor Benefits

Pursuant to current law, the surviving spouse of a state police officer who dies from any cause before retiring is eligible for a survivor's benefit until she or he remarries. Public Act 08-64 changes this, eliminating the end of the benefit upon remarriage, and therefore making the survivor benefit a lifetime one. The Act does not change current law for dependent children, who receive a benefit until age 18 or the child's marriage, whichever is earlier. This Act is similar to PA 07-161, which required a municipality providing survivor pension benefits for paid police and firefighters who die in the line of duty to continue to provide such benefits after the surviving spouse remarries.

Jury Duty

Under current law, employers must pay their regular full time employees the employees' regular wages for up to the first five days of jury service an employee attends. Now, Public Act 08-103 specifies that any employee who serves eight hours of jury duty in a day shall be considered to have worked a legal day's work and it prohibits employers from requiring such a "juror-employee" to work more than eight hours. Violations of the law will become matters of criminal contempt, subject to up to 30 days in prison, fines of up to \$500, or both.

State Employees Taking Leave for Guide-Dog Training

Permanent full-time state employees, and quasi-public agency employees, who are blind or physically disabled, will be able to use up to 15 days of accumulated paid sick leave to take guide dog or assistance dog training. Under PA 08-04, the employee must have been employed at least 12 consecutive months and participate in training that prepares the employee to handle a guide or assistance dog for the employee's own use. The training must be provided by a

member organization of the professional association of guide dog or assistance dog schools. The employing agency can require up to seven days advance notice of the employee's intention to take the leave, and can require reasonable documentation to support the request.

Notice of Motor Vehicle Fatality to Family or Household Member

Public Act 08-67 includes a provision concerning notice of a motor vehicle fatality to a family or household member. For any such fatal accident, the police officer or agency that investigated the accident in the regular course of duty must use reasonable efforts to identify and notify a member of the victim's family or household as soon as practicable. The Act specifies what the notification must include, and requires the Police Officer Standards and Training council and each police department or agency to adopt a policy for carrying out this requirement.

Special Health Care Plans for Small Employers

Public Act 08-33 eliminates the requirement that insurers offer "special health care plans." This Act also limits the employers to whom insurers must offer a small employer plan. Under prior law, insurers had to offer a small employer plan to any small employer (50 or fewer employees, including a sole proprietor) for which it denied other coverage. PA 08-33 now limits the insurers' duty by applying it only to a sole proprietor. Therefore, an insurer must promptly offer a sole proprietor the opportunity to purchase a small employer plan if (1) the insurer denies coverage that the sole proprietor requested or (2) the insurer or its producer does not offer, for any reason, coverage that the sole proprietor requested. (For example, a sole proprietor may have applied for, and been denied, coverage under an individual health insurance policy. At that time, the insurer would have to offer a small employer plan to him or her.) By law, an insurer may require

proof that the person has been self-employed for three consecutive months. The Act also makes several changes to insurance laws on the offer and sale of health insurance plans to small employers to resolve inconsistencies between state and federal law. The Act is effective upon passage.

Independent Contractor Status for Certain Escort Car Drivers

PA 08-150 (generally addressing DMV issues), includes a provision making escort car drivers independent contractors, rather than employees, for purposes of unemployment compensation law, if they meet the Act's conditions. Escort car drivers, under permit from the Department of Transportation (DOT), accompany oversized or overweight vehicles on state highways. As independent contractors they are not eligible for unemployment compensation benefits and the entity that hires them is not responsible for paying unemployment taxes on the drivers' pay. PA 08-150 removes escort vehicle drivers from the definition of employee under the unemployment compensation law if they:

1. are engaged in the business or trade of providing such escort motor vehicle;
2. are and were free from control and direction by any other business or other person in connection with the actual performance of such services;
3. own their own vehicle and statutorily required equipment and exclusively employ this equipment in providing such services; and,
4. are treated as independent contractors for all purposes, including, federal and state taxation, workers' compensation, choice of hours worked, and choice to accept referrals from multiple entities without consequence.