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## Connecticut General Assembly Addresses Several Employment-Related Bills in Shortened Session

The “short” session of the Connecticut General Assembly’s biennial term ended on May 4, but there were several employment-related bills that passed in the session’s final days and hours. While most of these bills are still awaiting the Governor’s signature at the time of this Alert, and won’t become effective until October or January of next year, there are several worth consideration now. However, it is also important to note that these bills are subject to change during the General Assembly’s current Special Session.

This Alert will recap some of the most significant or complex changes:

### **“Ban the Box”**

“Ban the Box” legislation has been introduced nationwide. At its most basic, it is the notion that employers shouldn’t ask about prior criminal history or have employees check “the box” if they have a criminal record — thus, banning the “box.” HB5237 introduces that concept in Connecticut. It prohibits employers from asking about a job candidate’s prior arrests, criminal charges, or convictions on an initial job application. Two exceptions are provided by the bill: an employer can ask about these issues if it is required to ask about such information by state or federal law; and it can ask when a security or fidelity bond is required for the position at issue. Assuming the Governor signs the bill, this law will go into effect on January 1, 2017.

The bill that passed is substantially less restrictive on employers than many observers had expected. For example, nothing in the bill prevents an employer from requesting information about a candidate’s prior arrests, charges, or convictions after the “initial employment action,” such as at an interview. To comply with the bill, employers should simply remove any inquiry about these issues from initial job applications and online applications as well.

### **Biweekly Pay**

Current law requires that employers pay their employees weekly, and employers must seek and obtain a waiver from the Department of Labor (“DOL”) in order to pay their employees biweekly or semimonthly. SB220 allows employers to pay employees on a biweekly basis without obtaining a waiver. This modification will become effective when the Governor signs the bill.

SB220 also contains various technical changes to the unemployment compensation scheme and to drug testing, including eliminating the suggestion that the DOL develop regulations in this area. These changes will likely not be of interest to most employers, but it might be worth a look through the bill summary to see if something else touches on your industry.

## Payroll Cards

SB211 allows employers to use payroll cards — similar to a refillable debit card — instead of checks or direct deposit to pay their employees. However, there are a number of conditions that must be met for an employer to use payroll cards. At the outset, an employee must voluntarily authorize the use of a payroll card, either in writing or electronically. The employee's authorization must state that the employee was not coerced or intimidated into signing the authorization. Relatedly, employers cannot require employees to sign an authorization. Employees must be given an option to be paid by check or through direct deposit.

As noted earlier, a payroll card is similar to a debit card, and employees can use their card at merchants, banks, or ATMs. The bill sets certain conditions on the payroll card itself. The card must be associated with a large enough ATM network that employees have a substantial number of available ATMs in Connecticut to use. Employees may not be charged for any of the employer's costs for using payroll cards. Employees also may not be charged for the first three withdrawals per pay period.

Employers must also give their employees a means of accessing their payroll records securely and confidentially. This record may be provided electronically, but only with explicit employee consent.

Lastly, current law allows employers to pay employees through direct deposit only at an employee's written request. The bill allows an employee to request direct deposit electronically.

This bill will become effective on October 1, 2016, assuming it is signed by the Governor.

## Other Legislative Changes

Other employment topics impacted by new legislation include:

- **Connecticut FMLA** - SB262 expands the list of qualifying reasons for taking an unpaid leave of absence under Connecticut's Family and Medical Leave Act to include a "qualifying exigency" related to an employee's spouse, child, or parent being called up to active duty in the armed forces. This type of "qualifying exigency" is already covered by the federal FMLA. But by expanding it to Connecticut, employees will be eligible to receive 16 weeks of leave over a 24-month period.
- **Athletic Coaches and Referees as Employees** - HB5261 exempts coaches and referees who work for certain athletic programs from being considered "employees" for purposes of unemployment compensation and taxes. The bill applies to athletic activities in which the participants pay to participate or have their costs covered by the operator, and in which the participants engage in competition against other teams or train for such competition. Programs operated by colleges or universities or public schools are not covered by the exemption, which is set to go into effect on October 1, 2016.
- **Workers' Compensation Claims for Municipal Employees** - HB5364 requires that an employee of a municipality provide the municipal employer with a copy of the employee's notice of claim for compensation. The notice must be sent to the employer's town clerk. This bill will become effective July 1, 2016.
- **Background Checks for School Employees** - HB5400 requires that applicants for positions that involve direct student contact at a public school, charter school, or magnet school must disclose certain information about their backgrounds.



Specifically, applicants must provide the education employer with: (1) contact information for current and previous employers; (2) a written authorization for current and previous employers to share information about the applicant; and (3) a written statement regarding whether the applicant was ever investigated or disciplined for abuse, neglect, or sexual misconduct by an employer, the police, or a state agency. Similarly, education employers are required to receive and review these materials and make a “good faith effort” to contact an applicant’s current and previous employers. The employment-related elements of this bill are due to become effective on July 1, 2016.

- **Human Trafficking Training for Hotel Workers** - HB5621 requires operators of hotels, inns, and similar places of lodging to provide training to their employees at the time of hire on the “(1) recognition of potential victims of human trafficking, and (2) activities commonly associated with human trafficking.” Operators must also conduct “ongoing awareness campaigns” for employees on the “activities commonly associated with human trafficking.” Beginning on October 1, 2017, operators will need to certify in every employee’s personnel file that the employee completed this training.
- **Automatic Contributions to Retirement Accounts** - HB5591 creates a new state entity to oversee a program whereby certain private sector employees who do not already have access to an employer-sponsored retirement plan are automatically enrolled in a Roth individual retirement account (IRA). The program covers private sector employers with at least five employees earning at least \$5,000 per year, and it applies to employees who have worked for their employer for 120 days and are at least 19 years old. Every covered employer is required to enroll its eligible employees with an employee contribution between 3% and 6% (post-tax), subject to IRS limits. Employees can subsequently opt out of the program. The new state entity will be created effective upon the Governor’s signing, and the requirements for enrollment are effective July 1, 2016. However, Governor Malloy has indicated that he will veto this bill unless it is modified during the General Assembly’s special session, so employers should remain alert for future developments.
- **Workers’ Compensation Coverage for Firefighters with Cancer** - HB5262 creates a firefighters cancer relief program. The program provides wage replacement benefits for eligible current and former firefighters (including volunteers) who suffer from certain medical conditions linked to heat, radiation, or carcinogens. Firefighters are not eligible if they used tobacco products within fifteen years of applying for benefits. The benefits are to be funded through a fee on phone services. This bill will become effective on February 1, 2017.
- **Noncompetes for Physicians** - SB351 imposes limitations on noncompete agreements for physicians. Under the bill, a noncompete agreement is invalid if it restricts a physician’s ability to practice medicine for more than a year or more than fifteen miles from the physician’s current place of employment. This bill also states that a noncompete agreement must be necessary to protect a “legitimate business interest” and “reasonably limited” in time and scope to protect this business interest.

### **Questions or Assistance:**

If you have questions about these changes, please contact Daniel Schwartz at (860) 251-5038 or [dschwartz@goodwin.com](mailto:dschwartz@goodwin.com) or Christopher Engler at (860) 251-5143 or [cengler@goodwin.com](mailto:cengler@goodwin.com).

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