



## 2016 SESSION CONNECTICUT GENERAL ASSEMBLY

*In its 2016 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2016. 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/>.*

### Public Act 16-83 - Fair Chance Employment - “Ban the Box”

Effective January 1, 2017 Public Act 16-83 prohibits employers from asking about a prospective employee’s prior arrests, criminal charges or convictions on an initial employment application unless (1) the employer must do so under state or federal law, or (2) the prospective employee is applying for a position for which the employer must obtain a security or fidelity bond or the equivalent.

The new act allows a prospective employee to file a complaint with the labor commissioner alleging a violation, and subjects violators to a \$300 per violation civil penalty. It also allows complaints to the commissioner alleging an employer’s violation of existing law on employment-related criminal record checks.

Under current law, employers must not require an employee or job applicant to disclose an arrest, criminal charge, or conviction of which the records have been erased under certain conditions. Current law also mandates that employers include a notice on job applications that states, among other things, that an applicant is not required to disclose these matters. The law prohibits employers from denying employment to an applicant, or discharging or discriminating against an employee, based solely on such matters or a prior conviction for which the employee or applicant received a provisional pardon or certificate of rehabilitation. It also requires employers to comply with certain requirements

related to the confidentiality of a job application’s criminal history section.

### Public Act 16-29 - The Connecticut Retirement Security Program

This Act creates the Connecticut Retirement Security Authority (“authority”) to establish a program for Roth individual retirement accounts (IRAs) for eligible private-sector employees, who are to be automatically enrolled in the plan unless they opt out. The authority will be administered by a nine-member Connecticut Retirement Security Authority Board, which the PA 16-29 establishes as a quasi-public entity under state law.

The Act’s requirements apply to all “qualified employers,” i.e., private sector employers that employ at least five people, each of whom was paid at least \$5,000 in wages in the preceding calendar year. However, the Act exempts a qualified employer that maintains a retirement plan recognized under the federal tax code or one approved by the authority. “Covered employees” are those who have worked for a qualified employer for a minimum of 120 days and are at least age 19 years old. Qualified employers must automatically enroll each covered employee in the program no later than 60 days after the employer provides the employee with the informational material on the program the Act requires.

If the employee does not affirmatively opt in (contribution options are provided), the employer must

nevertheless enroll the employee with a contribution of at least 3% but not more than 6% of the employee's taxable wages (up to normal IRS limits). A covered employee may then opt out of the program by electing a contribution level of zero. PA 16-29 authorizes the authority to charge administrative fees to help defray program costs, and it also contains penalties for employers that fail to remit contributions or that fail to enroll employees.

Under the Act, the individual Roth IRAs (i.e., after tax contributions only) will be established and maintained through the authority's program or a third-party entity in the business of establishing and maintaining IRAs. Program assets will be held in trust or custodial accounts meeting IRS requirements. PA 16-29 requires the authority to offer Roth IRAs with a number of specified features, including options for age-appropriate target date funds and procedures for distributions from individual accounts in accordance with applicable IRS rules. Interest, investment earnings, and investment losses will be allocated to each participant's IRA. A participant's benefit under the program will be equal to the balance in such participant's IRA as of any applicable measurement date set for the program.

The powers of the authority will be vested in a board of directors, with the governor selecting the board chair with the advice and consent of the General Assembly. The board or its executive director, if one is appointed, will supervise the program's administrative affairs and activities.

***PA 16-29 is effective upon passage for the provisions creating the authority and establishing its procedures, but the IRA program will not be implemented until 2018.***

## Public Act 16-125 - Authorization for Employers to Pay Wages Using Payroll Cards

This Act allows, but doesn't require, employers to pay their employees through "payroll cards" under certain conditions. An employee must voluntarily and expressly authorize, in writing or electronically, without any intimidation, coercion, or fear of discharge or

reprisal from the employer, that he or she wishes to be paid with a card. No employer can require payment through a card as a condition of employment or for receiving any benefits or other type of remuneration. In addition:

1. Employers must give employees the option to be paid by check or through direct deposit,
2. The card must be associated with an ATM network that ensures the availability of a substantial number of in-network ATMs in the state,
3. Employees must be able to make at least three free withdrawals per pay period, and
4. None of the employer's costs for using payroll cards can be passed on to employees.

Under PA 16-125 a "payroll card" is a stored value card (similar to a bank account debit card) or other device, but not a gift certificate, that allows an employee to access wages from a payroll card account. The employee can choose to redeem it at multiple unaffiliated merchants or service providers, bank branches, or ATMs. A "payroll card account" is a bank or credit union account (1) established through an employer to transfer an employee's wages, salary, or other compensation; (2) accessed through a payroll card; and (3) subject to federal consumer protection regulations on electronic fund transfers.

PA 16-125 also allows the labor commissioner to adopt regulations to ensure compliance with the bill's payroll card provisions and, within available appropriations, study payroll card use and the actual incidence of associated fees. By October 1, 2018, the commissioner must determine whether to conduct the study and report his decision and the study's status or results, if applicable, to the Labor and Public Employees Committee.

The new Act also allows employers, regardless of how they pay their employees, to provide them with an electronic record of their hours worked, gross earnings, deductions, and net earnings (i.e., pay stub). To do so, however, the (1) employee must explicitly consent; (2) the employer must provide a way for the

employee to access and print the record securely, privately, and conveniently; and (3) the employer must incorporate reasonable safeguards to protect the confidentiality of the employee's personal information.

Finally, current law allows employers to pay employees through direct deposit only on an employee's written request. The Act will now allow an employee's request for direct deposit to also be an electronic request.

## Public Act 16-169 - Unemployment Compensation Appeals and Hearings, Employee Pay Periods

This Act makes numerous changes to the unemployment compensation statutes that generally give the Department of Labor (DOL) greater flexibility in processing unemployment claims and appeals.

Among other things, it:

1. Allows DOL to deliver certain unemployment notices and decisions by means other than the mail. For example, the Act permits DOL to notify employers about charges against their experience rates, or provide notice that a former employee successfully filed for benefits, through email or other means.
2. Starts the period in which a party can appeal a decision when the decision is "provided" (e.g. emailed), rather than mailed, to the party. This applies to (a) appeals of an examiner's, referee's, or review board's decision; (b) motions to reopen, set aside, vacate or modify decisions by referees or the board; and (c) appeals of determinations that claimants were overpaid benefits in error or due to fraud. For these appeals, the Act also specifies that electronically filed appeals are timely if they are "received," before their filing period deadlines.
3. Allows the labor commissioner to prescribe different ways, other than a hearing, for employers and claimants to present their evidence and testimony in certain unemployment proceedings.

PA 16-169 also:

1. Allows employers to pay their employees biweekly without first obtaining a waiver from DOL, as required under current law;
2. Allows unemployment claimants to change their tax withholding status for tax deductions from their benefits more than once each year; and
3. Eliminates a requirement that the labor commissioner adopt regulations that specify the circumstances in which an employer can require an employee to submit to a urinalysis drug test because of a reasonable suspicion that the employee is under the influence of drugs or alcohol. (This requirement was established in 1991, but was never formally implemented.)

The new Act also repeals obsolete or duplicative statutes and makes numerous minor, technical, and conforming changes.

## Public Act 16-112 - Municipal Employees Filing Workers' Compensation Claims

PA 16-12 adds a new step in the claims process and requires a municipal employee filing a claim with the Workers' Compensation Commission to send a copy of the notice of the claim to the town clerk of the municipality where he or she works. By law, an employee must notify his or her employer or a workers' compensation commissioner of the claim, and a state employee must send a copy of the notice to the administrative services commissioner. The notice must state the (1) date and place of the accident and nature of the injury, or date an occupational disease's symptom first became clear and the nature of the disease, and (2) name and address of the employee and person in whose interest compensation is claimed. **PA 16-112 is effective July 1, 2016.**

## Public Act 16-10 - Firefighters Cancer Relief Fund Established

The original proposal behind this new law would have created a rebuttable presumption under the Workers' Compensation Act that firefighting performed by volunteer, municipal, and state firefighters causes numerous types of cancer. However, as it progressed through the legislative session, it was fully revamped so that Public Act 16-10 instead creates the firefighters cancer relief account and the firefighters cancer relief program to provide wage replacement benefits to eligible paid and volunteer firefighters diagnosed with cancer.

The Act also establishes a new cancer relief subcommittee of the Connecticut State Firefighters Association to award benefits under the program. Firefighters are not eligible until July 1, 2019 (although another part of the bill states that eligibility starts in 2022, five years after the bill's effective date, and this may require further legislative clarification).

The account will be funded through a diversion of money from the enhanced emergency 9-1-1 program, which is funded through a monthly subscriber fee that the Public Utilities Regulatory Authority (PURA) imposes on phone service. The Act requires, to the extent permitted under federal law, an amount equal to one cent per month per access line to be remitted from the fee to be deposited in the account the bill establishes.

The term "firefighter" includes any (1) local fire marshal, deputy fire marshal, fire investigator, fire inspector, and other classes of inspectors and investigators for whom the State Fire Marshal and the Codes and Standards Committee have jointly adopted minimum qualification standards; and (2) uniformed member of a paid municipal, state, or volunteer fire department. An eligible firefighter's wage replacement benefits under the bill must be approved by the association subcommittee, which is authorized to determine the weekly benefit amount and the benefit duration, provided the weekly benefit does not exceed

100% of the average weekly earnings of all workers in the state for the year in which the cancer was diagnosed, and the benefits are not provided for more than two years.

PA 16-10 specifically prohibits a firefighter who receives benefits from the account from concurrently receiving unemployment or Workers' Compensation benefits or any other municipal, state, or federal wage replacement benefits. It also specifies that receiving benefits under the bill cannot be used as evidence for or an acknowledgement of liability under the Workers' Compensation Act. **PA 16-10 is effective on February 1, 2017**

## Vetoed - Public Act 16-68 - Athletic Activities, Coaches, Referees and the Employment Relationship

We reported on Public Act 16-68 in our initial electronic client alert covering new legislation on May 9th. Subsequently, however, the Governor vetoed this PA. Although the House voted to overrule the veto, the Senate sustained it, and so the PA remains vetoed.

The bill would have exempted coaches and referees who work for private or public athletic programs, other than public school districts, from employer-employee rules for purposes of unemployment taxes and compensation. Had it gone into effect on October 1, 2016, no employer-employee relationship would be deemed to exist between certain operators of organized athletic activities and certain individuals employed as coaches or referees of those organized athletic activities, except such operators and individuals could mutually agree, in writing, to enter into an employer-employee relationship.

This meant the employer would not be required to pay unemployment taxes and the employee would not be eligible for unemployment compensation from the employer in the event of the employee's loss of employment.