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Employment Legislation Summary

2019 SESSION
CONNECTICUT GENERAL ASSEMBLY

In its 2019 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective ***October 1, 2019****. 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.*

Public Act 19-4 An Act Increasing the Minimum Wage

Public Act 19-4 increases the state's minimum hourly wage from its current $10.10 to (a) $11.00 on October 1, 2019; (b) $12.00 on September 1, 2020; (c) $13.00 on August 1, 2021; (d) $14.00 on July 1, 2022; and (e) $15.00 on June 1, 2023. In addition, beginning January 1, 2024, it indexes future annual minimum wage changes to the federal employment cost index (ECI).

In addition, the act makes changes to the "tip credit" law. Current law provides a tip credit to employers of hotel and restaurant staff and bartenders who customarily receive tips. The credit allows employers to count these employees' tips as a percentage of their minimum wage requirement, thus reducing the employer's share of the minimum wage, as long as the tips make up the difference. PA 19-4 freezes the employer's share of these employees' minimum wage requirement at their current values ($6.38 for hotel and restaurant staff, and $8.23 for bartenders) and requires the tip credit's value to correspondingly increase to make up the difference between the employer's share and the act's minimum wage increases. This allows employers to count these employees' tips towards the difference between the employer's share and the increasing minimum wage, as long as the tips make up the difference.

PA 19-4 also changes the "training wage" that employers may pay to learners, beginners, and people under age 18. Current law generally allows employers to pay these employees as low as 85% of the regular minimum wage for their first 200 hours of employment. The act eliminates the training wage exceptions for learners and beginners, and limits the training wage to only people under age 18, except emancipated minors. Thus, it requires learners and beginners who are at least age 18 to be paid the full minimum wage. It also requires the training wage to be the greater of $10.10 or 85% of the minimum wage and allows employers to pay the training wage to people under age 18 for the first 90 days, rather than 200 hours, of their employment.

Further, beginning October 1, 2020, the act prohibits employers from taking any action to displace, or partially displace, an employee in order to hire people under age 18 at a subminimum wage rate. This includes reducing an employee's hours, wages, or employment benefits. ***Effective October 1, 2019, except the provisions on the tip credit are effective upon passage.***

Public Act 19-25 An Act Concerning Paid Family and Medical Leave

Public Act 19-25 creates the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain employees taking leave for reasons allowed under the state's Family and Medical Leave Act (FMLA), which the act also amends, or the family violence leave law. It will provide employees with up to 12 weeks of FMLI benefits over a 12-month period. Also available will be two additional weeks of benefits for a serious health condition that results in incapacitation during pregnancy.

Under the act, benefit eligible employees will be those in the private sector, and certain "covered public employees," who earned at least $2,325 during their highest earning quarter within their base period (the first four of the five most recently completed quarters), or are sole proprietors or self-employed people who voluntarily enroll in the program. In addition, the employees must have worked for their employer in the previous 12 weeks.

The program is funded by employee contributions, with collections beginning in January 2021. The Paid Family and Medical Leave Insurance Authority, which the act creates, must annually determine the employee contribution rate, which cannot exceed 0.5%. The act also caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes (currently $132,900). A covered employee's weekly benefits under the program are generally calculated as 95% of his or her average weekly wage, up to 40 times the state minimum wage, plus 60% of his or her average weekly wage that exceeds 40 times the minimum wage, with total benefits capped at 60 times the minimum wage.

Alternatively, employers can provide benefits through a private plan, which must provide their employees with at least the same level of benefits, under the same conditions and employee costs, as the FMLI program. Private plans must meet certain requirements for approval, and employees covered by an employer's private plan do not have to contribute to the FMLI program.

PA 19-25 also changes various provisions of the state's FMLA, which generally requires certain private-sector employers to provide job-protected unpaid leave to employees for various reasons related to their health or their family members' health. Among other things, the act extends the FMLA to cover private-sector employers with at least one, rather than 75 employees, a significant expansion. It lowers the employee work threshold to qualify for job-protected leave from (a) 12 months of employment and 1,000 work-hours with the employer to (b) three months of employment with the employer, with no minimum requirement for hours worked, another significant change.

One revision to current law will align CT FMLA more closely with federal FMLA: the maximum FMLA leave allowed will change from 16 weeks over a 24-month period to 12 weeks over a 12-month period and allows an additional two weeks of leave due to a serious health condition that results in incapacitation during pregnancy. However, unlike current law, the act limits the extent to which an employer may require an employee taking FMLA leave to use his or her employer-provided paid leave.

The new act adds to the family members for whom an employee can take FMLA leave to now include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or affinity whose close association the employee shows to be the equivalent of a spouse, sibling, son or daughter, grandparent, grandchild, or parent. Similarly, it expands the family members for which employers must allow their employees to use up to two weeks of any employer-provided paid sick leave.

Starting January 1, 2022 the act creates a "non-charge" against an employer's unemployment tax experience rate when an employee's separation from employment with the employer is due to the return of someone who was on bona fide FMLA leave. In effect, this allows an employer to lay off an employee who was temporarily filling the job of an employee on FMLA leave without increasing the employer's unemployment taxes. ***Effective upon passage, except the provisions that affect the terms of the current FMLA are effective January 1, 2022, and the employer notice requirements are effective July 1, 2022.***

Public Act 19-6 An Act Concerning Sexual Assault and Sexual Harassment

Public Act 19-6 makes various changes concerning sexual harassment, sexual assault, discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO), and related matters. Among other things it expands requirements for employers to train employees on sexual harassment laws, extends the time to file a CHRO complaint alleging employer discrimination, including sexual harassment, and it allows courts to order punitive damages in discrimination cases CHRO has released from its jurisdiction.

Current law requires employers with at least 50 employees to provide their supervisory employees with two hours of training on federal and state sexual harassment laws and remedies available to victims. The new act expands this requirement to cover (a) employers of any size and (b) non-supervisory employees for employers with at least three employees.

The act requires the new training to occur within one year of October 1, 2019, except that any employer who provided the act's training after October 1, 2018, is not required to provide it a second time.

The act requires CHRO to develop and make available to employers a free, online training and education video or other interactive method that fulfills the act's training requirements. As long as CHRO does so, the act's required employee training must take place within six months of the hiring date, starting October 1, 2019, for (a) all new hires by employers with at least three employees and (b) all new supervisory hires by smaller employers. Under the act, employers required to provide this training must provide supplemental training at least every 10 years to update employees on the content of the training and education. The act subjects employers to a fine of up to $750 if they fail to provide the training and education as required. The new act additionally classifies this inaction as a discriminatory practice.

Existing law requires employers with three or more employees to post in a prominent and accessible place a notice stating that sexual harassment is illegal and the remedies available to victims. PA 19-16 requires these employers to also send a copy of this information to employees by email within three months of their hire if the (a) employer has provided an email account to the employee or (b) employee has provided the employer with an email address. The email's subject line must be similar to "Sexual Harassment Policy." If an employer has not provided email accounts to employees, it must post the information on its website, if it has one. CHRO must develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims. An employer can comply with the requirement above by providing this link to employees by email, text message, or in writing.

The act specifies that for the above provisions on sexual harassment training and information, "employee" includes anyone employed by an employer, including someone employed by his or her parent, spouse, or child. This is an exception to the general definition of employee in the CHRO statutes, which excludes such family members.

CHRO's executive director will now have the authority to assign designated representatives to enter an employer's business location, during normal business hours, to ensure compliance with these requirements and requirements for employers to post notices on sexual harassment (see above). The designated representatives may also examine the employers' records, policies, procedures, postings, and sexual harassment training materials to ensure compliance with these posting requirements and the sexual harassment training requirements described above. Fortunately, the act requires these designated representatives, when carrying out these duties, to ensure they do not unduly disrupt the employers' business operations. In addition, the CHRO's authority is limited only to situations where the Executive Director of the CHRO "reasonably believes" the employer is in violation of certain legal provisions, or during the 12-month period following the date on which any complaint has been filed against an employer. Also, if the place of business is a residential home, the homeowner must first give express permission.

In addition, PA 19-16 expands the definition of "discriminatory practice" in the CHRO statutes to include, among other things, an employer's failure to provide sexual harassment training or post certain notices as required by other provisions of the act. By expanding the definition of discriminatory practice, the act allows individuals aggrieved by any such violation, or CHRO itself, to file a complaint with CHRO alleging discrimination. ***Effective October 1, 2019, except the provisions requiring CHRO to post information on its website and make training materials available take effect July 1, 2019.***

Public Act 19-17 An Act Concerning Police, Firefighter and Parole Officer Workers' Compensation Benefits

Public Act 19-17 allows police officers, parole officers, and firefighters to receive certain workers' compensation benefits for post-traumatic stress disorder (PTSD) caused by their participation in certain "qualifying events." Such events include seeing, while in the line of duty, a deceased minor, someone's death, or a traumatic physical injury that results in the loss of a vital body part. The Workers' Compensation Act generally does not provide benefits for an employee's mental or emotional injury unless it arises from the employee's physical injury or occupational disease. Specifically, PA 19-17 establishes the eligibility requirements for these officers and firefighters to receive PTSD benefits with the following limitations and conditions: duration of such benefits is a maximum of 52 weeks; and benefits will only be available within four years after the qualifying event. In addition, the act reduces the amount of weekly PTSD benefits an officer or firefighter may receive by the amount of other benefits he or she receives

(e.g., from a pension, Social Security, or disability insurance), if the total benefits exceed the officer's or firefighter's average weekly wage. The act establishes a process for employers to contest PTSD claims.

PA 19-17 generally prohibits a law enforcement unit from disciplining police officers solely because they seek or receive mental health care services or surrender their work weapons or ammunition. It also requires law enforcement units to request that officers seek a mental health examination before returning their weapons or ammunition. Additionally, it provides civil liability protection to law enforcement units for an officer's actions with a personal firearm under certain conditions.

The act allows officers who were voluntarily admitted to a psychiatric hospital for psychiatric treatment to use their work weapons or ammunition within six months of being admitted and not be guilty of criminal possession of a handgun or firearm, ammunition, or an electronic weapon. ***Effective July 1, 2019, except the provisions on job protections for police officers, returning work weapons or ammunition, civil liability protections for law enforcement units and exemptions to the criminal possession law are effective October 1, 2019.***

Public Act 19-69 An Act Concerning Whistleblowers

Public Act 19-69 expands the state's whistleblower protection law to cover entities that receive state financial assistance under the commerce and economic and community development laws ("financial aid recipients"). It does so by making them "large state contractors" under the law. In general, the whistleblower law allows anyone to report specific kinds of misconduct by state agencies or large state contractors to the state auditors of public accounts for investigation.

Whistleblowers who believe they are being retaliated against may, among other actions, file a complaint with the chief human rights referee at the Commission of Human Rights and Opportunities (CHRO). By making state financial aid recipients large state contractors under the law, the act allows people to report to the state auditors about corruption occurring in a recipient's contract for assistance and requires the auditors to review the matter and make recommendations to the attorney general. The act prohibits the recipients from taking or threatening to take any personnel action against an employee (i.e. whistleblower) for disclosing information to the state auditors or assisting in a subsequent proceeding. In addition, the act requires the recipient's contract for state financial assistance to include a provision that makes the recipient liable for a civil penalty of up to $5,000 per offense, for a retaliatory personnel action taken against a whistleblower employee.

Public Act 19-117, Section 305 Non-Compete Agreements for Homemaker, Companions and Home Health Service Workers

This provision of the 2019 state budget prohibits contracts for provision of homemaker, companion, or home health services that restrict the right of an individual to provide such services in any geographic area of the state for any period of time or to a specific person (i.e. a "covenant not to compete" or non-compete agreement). Under this provision, such covenants are against public policy, void, and unenforceable. ***Effective upon passage.***

Public Act 19-107 An Act Concerning Rejection of Municipal Arbitration Awards

PA 19-107 extends the deadline for a municipality to reject an arbitration award to the next business day if the deadline falls on a weekend or holiday. Current law allows a municipality to reject an arbitration award within twenty-five (25) days after it receives the arbitrator's decision.

Public Act 19-95 An Act Concerning Employment Protection for Civil Air Patrol Members

PA 19-95 prohibits an employer, including the state and its political subdivisions, from discriminating against, disciplining, or discharging an employee because the employee is a civil air patrol member or is absent from work responding to certain emergencies or training as a civil air patrol member.

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