

Employment Legislation Summary

2007 SESSION

CONNECTICUT GENERAL ASSEMBLY

In its 2007 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2007. 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.

Penalties for Concealing Employment or Other Information Related to Workers' Compensation Insurance Premiums

Public Act 07-89 authorizes the Commissioner of Labor to issue a "stop work" order to any employer that fails to obtain workers' compensation insurance or provide satisfactory proof of self-insurance for its workers' compensation liability. Such a stop work order can also be issued to an employer that intentionally defrauds or deceives a workers' compensation insurer by knowingly misrepresenting an employee as an independent contractor, or by providing false, incomplete or misleading information to the insurance company on the number of employees it employs in order to pay a lower premium for workers' compensation insurance. Under existing law an employer who knowingly and willfully fails to obtain insurance or self-insurance is already subject to a Class D felony charge.

The law authorizes the Commissioner of Labor to investigate complaints that an employer misrepresented an employee as an independent contractor or provided misleading information to the insurance company on the number of employees it has in order to pay lower premiums. The Commissioner can subpoena witnesses

and records and issue fines for hindering an investigation. If a stop work order issues, the employer must stop all business operations, but only as to the specific business location or the employment for which the alleged violation exists. The order is effective upon service on the employer or the particular place of business and service can be effected by posting a copy of the order in a conspicuous place at that location. The order remains in effect until the Commissioner orders it released based on a finding that the employer has complied with the workers' compensation requirement, or after a hearing requested by the employer. Employers can request a hearing in writing within 10 days of the stop work order. Effective date: October 1, 2007.

Certain Noncompete Agreements to be Restricted

PA 07-237 establishes prohibitions regarding certain non-competition agreements.¹ The act specifically affects employment agreements with broadcast employees and, under certain circumstances, security guards. The new law prohibits a contract for services between a broadcasting industry employer and a broadcast employee from containing a provision that the broadcast employee: (1) refrain from working in a specified geographic area for a specified period after ending employment; (2) disclose the terms or conditions of an employment offer, or the existence of one, from another broadcasting industry employer following the expiration of the employment contract; or (3) agree to a subsequent contract or an extension or renewal of the existing one on the same terms and conditions offered by a prospective employer.

The act applies to agreements between (1) "broadcast industry employers," defined as owners or operators of broadcast television or radio stations, including

¹A non-competition agreement is an agreement between an employer and an employee that bars the employee from working in a particular occupation, business, or geographic area for a certain time after ending employment with the employer. Courts have upheld non-competition agreements if their restrictions are reasonable.



associated broadcast entities but excluding cable stations and networks and (2) their employees other than those primarily performing sales and management functions. This law allows someone to sue in Superior Court for damages, court costs, and reasonable attorney's fees for a violation.

The act also prohibits an employer from requiring an employee who is a security guard to agree to a non-competition agreement if (1) it prohibits the employee from having the same or a similar job at the same location and (2) the job is for another employer or as a self-employed person. This prohibition does not apply if the employer proves that the employee has obtained the employer's trade secrets. This part of the act also allows someone to sue under this provision in Superior Court for damages, an injunction, and equitable relief as the court deems appropriate, for violations. It also allows the labor commissioner to ask the attorney general to sue in the Hartford Superior Court for restitution on behalf of an injured person, injunctions, and equitable relief as the court deems appropriate.

The new law takes effect for agreements regarding security guards on October 1, 2007 and will be applicable to agreements entered into, renewed, or extended on and after that date. For agreements regarding broadcast industry employees it is effective July 1, 2007 and applicable to agreements entered into, renewed, or extended on and after that date.

Municipal Survivor Benefits

Under PA 07-161 a municipality that provides survivor pension benefits for paid police or firefighters who die in the line of duty must continue to provide the benefits upon the remarriage of the surviving spouse. Under current law, CGS Section 7-433b, such benefits include the workers' compensation survivor benefit plus municipal pension benefit, and the combined benefits cannot exceed 100% of the weekly pay that employees in the same position as the deceased employee receive during the compensable period. The act now specifies that the combined weekly benefit cannot exceed 100% of the pay for the same position at that position's maximum rate. By law, workers' compensation survivor benefits end when the surviving spouse remarries or the dependent children reach 18.

PA 07-161 is effective October 1, 2007.

Prohibition on Diminishing or Eliminating Municipal Retiree Benefits

PA 07-221 takes effect from date of passage and bans a municipality or special taxing district from diminishing or eliminating a pension or retirement system right or benefit granted to a retiree at the time the employee retires. The new act is similar to an existing law that prohibits any diminishment or elimination of rights or benefits granted to an individual under any municipal retirement or pension system (CGS § 7-450), except that the bill specifically supersedes the law creating the Waterbury Financial Planning and Assistance Board (SA 01-1). The act permits a municipality or special taxing district to change the retirement plan administration if the rights and benefits provided after the change are at least equivalent to the rights and benefits provided previously.

Social Security Retirement Age and Municipal Retirement Annuity Program

PA 07-211 increases the age, from 65 to the eligibility age for full Social Security retirement benefits, after which a Tier I state retiree no longer receives the additional temporary retirement benefit. Under federal law, the full normal Social Security retirement eligibility age is increasing each year by two-month increments until it reaches age 66 in 2008 (if someone turns 65 in 2007, he or she would not be eligible for full federal benefits until reaching age 65 and 10 months). It will stay at age 66 for 11 years, then gradually increase again until reaching age 67 in 2025. Current state retirement law provides the additional temporary benefit only until the retiree reaches age 65.

The act also requires the comptroller, upon the request of a political subdivision of the state, to allow employees of the subdivision to join the state 403(b) deferred compensation program for state education employees. It permits the comptroller to set additional terms and conditions under which the employees can join the program. This annuity program is authorized under federal tax law. Political subdivisions of the state include towns, cities, boroughs, special tax districts, fire districts, water district and other similar entities. The act takes effect October 1, 2007, except that the provision

requiring the comptroller to allow participation in the annuity program takes effect upon passage.

Loans to Municipalities to Fund Pension Systems

PA 07-204 creates a municipal pension solvency loan program to provide municipalities with funds for their unfunded employee pension liabilities. The bill authorizes up to \$25 million in state bonds for the program. Loans will be made at the same interest rate the state pays on the bonds, notes, or obligations it issues to fund the program. The act permits the bonds to be either general obligation or revenue bonds. The act requires the state treasurer to administer the program and establish a priority list of eligible towns and a ranking system for making the loans. The treasurer must consider the amount of a municipality's unfunded pension liability and whether the loan can eliminate or substantially eliminate the liability. Loan agreements must contain penalty provisions for municipalities that fail to contribute to their pension funds as required under the agreement. The treasurer must adopt regulations to implement the legislation. The act takes effect July 1, 2007.

Family and Medical Leave for Municipal Employees, and Organ Donor Leave

Under PA 07-245 each political subdivision of the state must provide its employees who are party to a civil union with the same family and medical leave benefits under the federal Family and Medical Leave Act (FMLA) as are provided to an employee who is a party to a marriage. The act also requires that each political subdivision of the state permit its employees leave time to serve as an organ or bone marrow donor. Finally, the act adds civil union status to the term "marital status" (with certain specific technical exceptions).

Time for Filing a Workers' Compensation Appeal

PA 07-31 makes a procedural change to the timing of appeals of Workers' Compensation Commissioner decisions. The act delays the start of the twenty (20) day deadline to file an appeal of a claim decision to the Compensation Review Board until a ruling has been made on a filed motion. Under current law the filing period begins to run as soon as a Commissioner issues a decision on a claim. Effective October 1, 2007.

Notice to Injured Employees of Discontinuation or Reduction in Workers' Compensation Benefits

This act extends from ten (10) to fifteen (15) days the time period during which an employee can request a hearing before the Workers' Compensation Commission after receiving notice of an impending reduction in or discontinuation of a Workers' Compensation benefit. Under law, an employee has a right to request a hearing in such cases. The bill also makes changes to the required notice form (a "Form 36") that is used to notify an employee of a benefit reduction or discontinuation. Also, the act increases the maximum penalty for an employer's or an insurer's undue delay of a compensation payment due to that party's fault or neglect from \$500 to \$1,000, and a Compensation Commissioner can assess the penalty to be paid to the claimant in such a case. PA 07-80 takes effect on October 1, 2007

Operation of Hydraulic Loading/Unloading Equipment at Certain Solid Waste Facilities

This act will require the owner or operator of a solid waste, recycling or resources recovery facility that uses a floor level system to load solid waste into a combustion unit to have at least two employees present in the work area whenever solid waste is being moved with hydraulic loading or unloading equipment. PA 07-136 will apply to such facilities that (1) do not use overhead cranes to load solid waste into feed hoppers and (2) serve at least five municipalities. Employees will have to be familiar with how the equipment operates. However, the act will not apply if the facility has a properly working camera trained on the feed hopper area with an unobstructed view, or a device that stops the feeder from operating when someone enters the hopper. Effective October 1, 2007.

Professional License Renewals

PA 07-157 extends the grace period during which U. S. Armed Forces members discharged from active duty may renew certain Department of Public Health ("DPH") credentials that lapse while they are on active duty, from six months to one year after discharge. It establishes this same benefit for guard members whose credentials lapsed while they were performing military service

ordered by the governor. Under existing law, U. S. Armed Forces members discharged from active duty already get this benefit for four types of DPH licenses: dentistry, medicine, surgery, or respiratory care. The bill does not extend the benefit for these licensees to guard members serving under the governor's call.

The credentials the act covers are licenses, certificates, permits, and registrations. The DPH credentials affected are as follows:

emergency medical service; chiropractor; naturepathy; medical examining board; podiatrist; athletic trainer; physical therapist; occupational therapist; substance abuse counselor; radiographer and radiologic technologist; midwifery; nursing;. dental hygienist; optometrist; optician; respiratory care practitioner; perfusionist; pharmacist; psychologist; marital and family therapist; clinical social worker; professional counselor; veterinarian; massage therapist; dietitian-nutritionist; acupuncturist; paramedic; embalmer and funeral director; barber; hairdresser and cosmetician; electrologist; subsurface sewage disposal system installer; sanitarian; hearing instrument specialist; speech and language pathologist and audiologist; asbestos contractor, consultant, and worker; and lead abatement consultant, contractor, and worker.

The act does not cover the license for nurses aides. By law, applicants must complete any required continuing education or refresher training and submit the application and any other required documentation to DPH. The act takes effect on July 1, 2007.

Unemployment Alternative Base Period Now Permanent

PA 07-193 removes the sunset date of December 31, 2007 from the law establishing an alternative base period to calculate unemployment compensation benefit eligibility, thus making the alternative permanent. The alternative base period is used to determine the eligibility of unemployment compensation claimants who do not qualify under the regular base period. The regular base period is the first four of the

five most recently completed quarters prior to the quarter in which the claimant files a claim. By law, when determining a claimant's eligibility under the alternative period, DOL can use the four most recently completed quarters prior to the quarter in which the person filed the claim. But if the claimant was (1) receiving or eligible for workers' compensation or (2) properly absent from work under his or her employer's sick or disability leave policy before becoming unemployed, the alternative base period is the four most recent quarters in which he or she worked, as long as they were not previously used to claim unemployment compensation. The act also specifies that an appeal to Superior Court of an Employment Security Review Board decision may be based on a claim that the decision violated statutory or constitutional provisions. The act takes effect on October 1, 2007.

Connecticut's Career Certificate Program

PA 07-20 updates Connecticut's Career Certificate Program to reflect existing practices and federal requirements for this program under which the Education Commissioner awards career certificates to high school and postsecondary students who complete school-to-career programs. The act will require school-based instruction in workplace safety awareness. It explicitly requires that student employment under the program must comply with the state minimum wage law and the law prohibiting minors under 16 and under 18 from doing certain types of work, and generally must comply with laws governing employment of minors. The act is effective July 1, 2007.

State Employee Disaster Relief Leave

This act gives a state employee who is a certified American Red Cross disaster service volunteer up to 15 working days each year, rather than 14 calendar days, to participate in Red Cross specialized disaster relief services without loss of pay or charge to the employee's accrued leave time (vacation, sick, or earned overtime). By law, the leave must be (1) approved by the employee's supervisor and (2) requested by the Red Cross. PA 07-03 takes effect October 1, 2007.

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