

Connecticut

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

Under a new law, except in cases of a bona fide occupational qualification or need, an employer or its agent cannot, because of an intern's race, color, religious creed, age, sex, gender identity or expression, sexual orientation, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness (i.e., "protected class"):

- Refuse to hire any individual seeking an internship;
- Refuse to allow any intern to work;
- Bar or discharge any intern from providing internship services;
- Discriminate against an intern in terms, conditions or privileges of service to the employer; or
- Advertise an internship opportunity in a manner that would restrict such internship to, or discriminate against, individuals of a protected class.

Also, an employer or its agent cannot discharge, expel or otherwise discriminate against an intern because s/he has opposed any discriminatory employment practice or because an intern has filed a complaint or testified or assisted in any proceeding under the fair employment practices laws.

Additionally, an employer or its agent cannot engage in sexual harassment toward an intern or individual seeking an internship. Sexual harassment is any unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an internship; 2) submission to or rejection of such conduct by an intern or an individual seeking an internship is used as the basis for workplace decisions affecting the person; or 3) such conduct has the purpose or effect of substantially interfering with an intern's work performance or creating an intimidating, hostile or offensive working environment.

Under the law, an intern is an individual who performs work for an employer for the purpose of training, provided: 1) the employer is not committed to hire the individual at the conclusion of the training period; 2) the employer and the individual agree that the individual is not entitled to wages for the work performed; and 3) the work performed: A) supplements training given in an educational environment that may enhance the individual's employability; B) provides experience for the individual's benefit; C) does not displace any employee of the employer; D) is performed under the supervision of the employer or an employee of the employer; and E) provides no immediate advantage to the employer and may occasionally impede the employer's operations.

Finally, an existing statute has been amended to provide that a "discriminatory practice" includes a violation of the new law.

Conn. Gen. Stat. § 31-40y (Effective Date 10/01/2015).

II. Pre-Employment Inquiry Guidelines

Coverage

Connecticut has become the latest state to “ban the box.” The law applies to any employer with one or more employees, including the state or any political subdivision of the state. Unlike other ban-the-box laws, Connecticut’s statute does not appear to apply to the screening of independent contractors.

Unlawful Practices

Connecticut law prohibits employers from:

- rejecting an applicant or terminating an employee because of erased records, and
- rejecting an applicant or terminating an employee because of a prior conviction for which the individual has received a provisional pardon or certificate of rehabilitation.

The amendments add that an employer is further prohibited from inquiring about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application, unless:

- the employer is required to do so by an applicable state or federal law, or
- a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

Thus, the amendments appear to permit such an inquiry at other points in the hiring process so long as the inquiry is not made on the initial employment application.

Notice Requirements Applicable to the Exceptions

If one of the two exceptions noted above applies and an employer is permitted to inquire about criminal history on an employment application, the employer must include certain notices along with the criminal history inquiries. The notices, which must be clear and conspicuous on the application, must state:

- The applicant is not required to disclose the existence of any arrest, criminal charge, or conviction the records of which have been erased pursuant to sections 46b-146, 54-76o or 54-142a of the Connecticut General Statutes;
- Criminal records subject to erasure under state law are those records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or dropped, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon; and
- Any person whose criminal records have been erased shall be deemed to have never been arrested and may so swear under oath.

Enforcement

Employees or prospective employees may file complaints with the Connecticut Labor Commissioner alleging violations of the law.

Conn. Gen. Stat. § 31-51i and Conn. Gen. Stat. § 54-142e (Effective Date 01/01/2017).

III. Family and Medical Leave

The Connecticut Family and Medical Leave Act allows an eligible employee to take up to 16 workweeks of leave during any 24-month period for one or more of the following reasons:

- upon the birth of a son or daughter of the employee;
- upon the placement of a son or daughter with the employee for adoption or foster care;
- to care for the spouse, or a son, daughter, or parent of the employee, if such spouse, son, daughter or parent has a serious health condition;
- because of a serious health condition of the employee; or
- to serve as an organ or bone marrow donor.

The new law expands the permissible reasons for taking leave under the statute to allow an employee to take leave because of any qualifying exigency, as determined in regulations adopted by the U.S. Secretary of Labor, arising out of the fact that the employee's spouse, son, daughter or parent is on active duty, or has been notified of an impending call or order to active duty, in the armed forces. "Armed forces" means the U.S. Army, Navy, Marine Corps, Coast Guard and Air Force and any reserve component thereof, including the Connecticut National Guard, performing duty as provided in Title 32 of the United States Code.

Conn. Gen. Stat. § 31-51ll (Effective Date 06/07/2016).

IV. Wage and Hour Laws

A. Payroll Cards & Direct Deposit

Connecticut has joined the majority of states in allowing employers to use payroll cards to pay employees. The new law defines a "payroll card" as "a stored value card or other device used by an employee to access wages from a payroll card account and that is redeemable at the employee's election at multiple unaffiliated merchants or service providers, bank branches or automated teller machines." A "payroll card account" is defined as any bank or credit union account that is established through an employer to which transfers of wages, salary or compensation are made and accessed through a payroll card.

In order to use a payroll card as a method of wage payment, an employer must:

- Provide employees with clear and conspicuous written notice of the employer's payroll card program before starting the use of payroll cards. The notice must state: •That payment of wages, salary or other compensation by means of a payroll card account is voluntary and the employee may instead choose to receive wages, salary or other compensation by either direct deposit or by negotiable check;
- The terms and conditions relating to the use of the payroll card, including an itemized list of fees that may be assessed by the card issuer and their amounts;

- The methods available to employees both for accessing their full wages, salary or other compensation without incurring a transaction fee, and for avoiding or minimizing fees for use of the payroll card;
- The methods available to employees for checking their balances in the payroll card account without cost; and
- A statement indicating that third parties may assess additional fees.
- Provide each employee with the option of receiving wages, salary or other compensation by direct deposit and by negotiable check; and
- Secure each employee's voluntary, express authorization, in writing or electronically, to receive payment by means of a payroll card account without any intimidation, coercion or fear of discharge or reprisal from the employer for the employee's refusal to accept such payment of wages, salary or other compensation by means of a payroll card account.

Employees may withdraw their authorization to receive payment via payroll card by providing timely notice to the employer that s/he wishes to receive payment by direct deposit or negotiable check. The employer must begin payment by direct deposit as soon as practicable but not later than the first payday after 14 days from receiving both the employee's request and the account information necessary to make the deposit, or by check as soon as practicable but not later than the first pay day after 14 days from receiving the employee's request.

Employers are prohibited from making wage payment by means of a payroll card account a condition of employment or a condition for the receipt of any benefit or other form of remuneration for any employee.

In addition, the new law prevents employers that use payroll cards from passing on any associated costs to the employees. The payroll card account shall not allow for overdrafts, to the extent possible, and no fees or interest may be imposed for any overdrafts or for the first two declined transactions of each month. While a payroll card may include an expiration date for the card itself, funds in a payroll card account do not expire. Prior to the card's expiration date, the employer must issue the employee a replacement card, without charge, during the period when wages, salary or other compensation are applied to the payroll card account by the employer and for 60 days after the last transfer of wages, salary or other compensation is applied to the payroll card account by the employer.

Each pay period, but not more frequently than each week, an employee who receives wage payment via payroll card must be allowed to make at least three withdrawals from the payroll card account at no cost. One withdrawal may be for the full amount of the employee's net wages, salary or other compensation for the pay period at a depository financial institution or other convenient location.

The legislation repeals the provisions of the state's wage payment law regarding an employer's obligation to provide a record of hours worked. Under the new law, an employer is required to furnish with each wage payment, either in writing or—with the employee's explicit consent—electronically, a record of hours worked, gross earnings showing straight time and overtime as separate entries, itemized deductions and net earnings.

Conn. Gen. Stat. § 31-71b and Conn. Gen. Stat. § 31-13a. The provisions providing for payroll card use are not yet codified (Added by P.A. 16-125, § 1).

B. Wage Payment

Connecticut law requires an employer to pay an employee weekly on a regular pay day. The employer must designate the pay day in advance. The amendment gives an employer the option to pay once every two weeks on a regular pay day as designated in advance by the employer. The law provides that the Labor Commissioner may, upon application, permit any employer to establish regular pay days less frequently than weekly. However, employees must be paid in full at least once in each calendar month on a regularly established schedule. The amendment provides that an employer may apply to the Labor Commissioner to establish regular pay periods less frequently than once every two weeks.

Conn. Gen. Stat. § 31-71b and Conn. Gen. Stat. § 31-71i.

C. Wage Discussion / Disclosure & Retaliation

Under a new Connecticut law, an employer cannot:

- Prohibit an employee from disclosing or discussing the amount of his or her wages or another employee's wages that have been disclosed voluntarily by the other employee;
- Prohibit an employee from inquiring about another employee's wages;
- Require an employee to sign a waiver or other document that denies the employee his or her right to disclose or discuss the amount of his or her wages or another employee's wages that have been disclosed voluntarily by the other employee;
- Require an employee to sign a waiver or other document that denies the employee his or her right to inquire about another employee's wages;
- Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who discloses or discusses the amount of his or her wages or another employee's wages that have been disclosed voluntarily by the other employee; or
- Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who inquires about another employee's wages.

However, the law does not require an employer or employee to disclose the amount of wages paid to any employee. Wages are defined as compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

An aggrieved individual can file a private lawsuit within two years of a violation. If successful, s/he can be awarded compensatory damages, attorneys' fees and costs, punitive damages, and other legal and equitable relief the court deems just and proper.

Conn. Gen. Stat. § 31-40z (Effective Date July 01, 2015).

D. Damages for Minimum Wage, Overtime, and Wage Payment Violations

Connecticut has changed how damages are awarded for violations of the minimum wage and overtime laws, as well as various wage payment provisions. The amended provisions include those related to weekly wage payment, direct deposit, final wages, paying employees when wages are disputed, wage deductions, wage statements, wage notices, and paying fringe benefits when employment ends.

Most important, the standard changes from discretionary (may recover) to mandatory (shall recover). In addition, the amendments provide that an employee must be awarded twice the amount of unpaid wages or, if the employer had a good-faith belief its underpayment complied with the law, the difference between what was owed under the law and what was paid. Though not changed by the amendments, the laws provide for reasonable attorneys' fees and costs, and prohibit an employer and employee from entering into an agreement that contradicts the aforementioned laws.

Conn. Gen. Stat. § 31-68 and Conn. Gen. Stat. § 31-72 (Effective Date 10/01/2015).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

A. Connecticut Retirement Security Program

The new law establishes the Connecticut Retirement Security Authority ("Authority") to create a state-run retirement plan, the Connecticut Retirement Security Program ("Program"), to provide retirement security for workers in the state who do not have access to an employer-sponsored retirement plan or a payroll-deduction individual retirement account. The Program will consist of Roth individual retirement accounts (IRAs) for covered employees.

Qualified Employers and Covered Employees

The law applies to all "qualified employers." Qualified employers are defined as private sector employers that employ at least five people who are each paid at least \$5,000 in wages in the preceding calendar year. Qualified employers must also have been in existence at all times during the current and preceding calendar year. Qualified employers that maintain a qualified plan as described in Internal Revenue Code section 219(g)(5) are exempt from the new law's requirements.

"Covered employees" are employees who have worked for a qualified employer for a minimum of 120 days and are at least 19 years old. The definition of "covered employee" excludes the types of employment listed in section 31-222(a)(5) of the Connecticut General Statutes.

Notification to Employees

The Authority will create and distribute informational materials to employers. Qualified employers are required to provide informational materials (1) to current employees no later

than January 1, 2018, and annually thereafter, and (2) to new employees no later than 30 days after the hiring date or the date the employee meets the definition of covered employee.

Employee Enrollment

Covered employees will be automatically enrolled in the plan no later than 60 days after the employer provides the employee with the required Program informational materials. The default employee contribution rate will be 3% of an employee's pay, which will fund a private Roth IRA account selected from the available vendors. Employees will be able to increase or decrease the contribution rate. Covered employees may opt out of the program by electing a contribution level of zero. Employers will not be required to match contributions.

Penalties and Liability

The new law contains penalties for employers that fail to remit contributions or that fail to enroll covered employees. The failure to remit penalty can be up to \$5,000 per offense. For failure to enroll, the labor commissioner may bring a civil action to enroll the employee and to obtain costs and attorney's fees.

The new law further provides that participating employers will not have any liability for investment decisions made by the employer or the Authority if:

- The plan allows the participating employee to select investments at least quarterly;
- The employee is given notice of investment decisions made in the absence of the employee's direction, a description of all the plan investment alternatives and a brief description of procedures available to change investments; and
- The employee is given at least annual notice of the actual investments made on behalf of the employee.

Authorized Deductions

The new law amends the statute governing deductions from wages to permit employee enrollment in the automatic contribution arrangement.

Conn. Gen. Stat. § 31-71e and Conn. Gen. Stat. § 31-71j.

B. Health Insurance Reform

Connecticut law prohibits group health insurance policies issued to employers with fewer than 20 employees from reducing coverage when a person, because of age, is eligible for but not enrolled in Medicare. The law also prohibits employers with 20 or more employees from discriminating against a person over the age of 65 in terms of benefits. The amendment expands the prohibition to prohibit a group health insurance policy issued to any employer, regardless of size, from including a provision that reduces payments on the basis that an individual is eligible for Medicare due to age, disability, or end-stage renal disease. The amendment also provides that if the individual enrolls in Medicare, any reduction must be only to the extent Medicare provides coverage.

The new law also amends Connecticut insurance law to conform to the Patient Protection and Affordable Care Act (ACA). Connecticut law defines a "small employer" as an employer with one to 50 employees, including a self-employed person. The amendment redefines "small employer" to mean "an employer with between one and 100 employees, not including a sole proprietor." To conform to the ACA, the amendment also:

- expands the prohibition on preexisting condition provisions, which limit or exclude benefits because a person had a health condition before coverage was effective;
- eliminates a requirement for entities to offer people covered under a group policy a right to convert to individual coverage upon termination of group coverage (i.e., conversion privilege), which is no longer necessary because of guaranteed issue requirements;
- prohibits entities from using gender, industry, and group size as rating factors for small employer group health insurance policies;
- allows entities to use (a) provider networks and administrative expenses as rating factors for individual and small employer group health insurance policies and (b) tobacco use as a rating factor for individual health insurance policies; and
- requires small employer group health insurance policies to provide a special enrollment period for certain eligible employees and dependents, similar to current law for late enrollees.

Conn. Gen. Stat. § 38a-183, Conn. Gen. Stat. § 38a-199, Conn. Gen. Stat. § 38a-208, Conn. Gen. Stat. § 38a-214, Conn. Gen. Stat. § 38a-218, Conn. Gen. Stat. § 38a-481, Conn. Gen. Stat. § 38a-513, Conn. Gen. Stat. § 38a-476, Conn. Gen. Stat. § 38a-478g, Conn. Gen. Stat. § 38a-505, Conn. Gen. Stat. § 38a-512a, Conn. Gen. Stat. § 38a-537, Conn. Gen. Stat. § 38a-551, Conn. Gen. Stat. § 38a-552, Conn. Gen. Stat. § 38a-556, Conn. Gen. Stat. § 38a-557, Conn. Gen. Stat. § 38a-564, Conn. Gen. Stat. § 38a-566, Conn. Gen. Stat. § 38a-567, Conn. Gen. Stat. § 38a-567, 3 Conn. Gen. Stat. § 8a-569, Conn. Gen. Stat. § 38a-574, Conn. Gen. Stat. § 38a-543, Conn. Gen. Stat. § 5-248a, Conn. Gen. Stat. § 5-259, Conn. Gen. Stat. § 12-201, Conn. Gen. Stat. § 12-211, Conn. Gen. Stat. § 12-212a, Conn. Gen. Stat. § 17b-265, Conn. Gen. Stat. § 17b-284, Conn. Gen. Stat. § 17b-299, Conn. Gen. Stat. § 17b-611, Conn. Gen. Stat. § 19a-7b, Conn. Gen. Stat. § 31-51o, Conn. Gen. Stat. § 38a-472d, Conn. Gen. Stat. § 38a-480, and Conn. Gen. Stat. § 38a-573 (Effective Date 07/10/2015).

C. Employer Access to Social Media

Connecticut has enacted a new law governing employer access to an employee's and/or applicant's "personal online account," which is an online account used by the individual exclusively for personal purposes that are unrelated to any business purpose of his or her actual or prospective employer. Personal online accounts include, but are not limited to, email, social media, and retail-based Internet websites. The term does not include any account created, maintained, used or accessed by an employee or applicant for a business purpose of his or her actual or prospective employer.

Under the new law, an employer cannot:

- Request or require that an employee or applicant provide the employer with a username and password, password, or any other authentication means for accessing a personal online account;
- Request or require that an employee or applicant authenticate or access a personal online account in the employer's presence;
- Require that an employee or applicant invite the employer, or accept an invitation from the employer, to join a group affiliated with any personal online account of the employee or applicant.
- Discharge, discipline, discriminate against, retaliate against or otherwise penalize an employee who:

- Refuses to provide the employer with a username and password, password, or any other authentication means for accessing his or her personal online account;
 - Refuses to authenticate or access a personal online account in the employer's presence;
 - Refuses to invite the employer, or accept an invitation from the employer, to join a group affiliated with any personal online account of the employee; or
 - Files, or causes to be filed, any complaint – verbal or written – with a public or private body or court concerning the employer's violation of the law.
- Fail or refuse to hire an applicant because s/he refused to:
 - Provide the employer with a username and password, password, or any other authentication means for accessing a personal online account;
 - Authenticate or access a personal online account in the employer's presence; or
 - Invite the employer, or accept an invitation from the employer, to join a group affiliated with any personal online account of the applicant.

However, the law also contains numerous exceptions.

- Investigations: An employer can conduct an investigation: 1) to ensure compliance with applicable state or federal laws, regulatory requirements or prohibitions against work-related employee misconduct, based on receiving specific information about activity on an employee's or applicant's personal online account; or 2) based on receiving specific information about an employee's or applicant's unauthorized transfer of the employer's proprietary information, confidential information, or financial data to or from a personal online account operated by an employee, applicant or other source. An employer conducting an investigation can require an employee or applicant to allow it to access the personal online account for the purpose of conducting the investigation. However, an employer cannot require the employee or applicant to disclose the username and password, password, or other authentication means for accessing the personal online account.
- Employer Devices & Accounts: An employer can request or require that an employee or applicant provide it with a username and password, password, or any other authentication means for accessing: 1) any account or service provided by the employer or used for the employer's business purposes; or 2) any electronic communications device supplied or paid for – wholly or partly – by the employer. Additionally, an employer can, if it complied with state and federal law, monitor, review, access or block electronic data stored on an electronic communications device paid for – wholly or partly – by an employer, or traveling through or stored on an employer's network.
- Trade Secrets: An employer can discharge, discipline, or otherwise penalize an employee or applicant that has transferred – without the employer's permission – the employer's proprietary information, confidential information, or financial data to or from the employee's or applicant's personal online account.

- Compliance with Laws and/or Rules: The law does not prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.

An employee or applicant can file a complaint with the Labor Commissioner. If the individual prevails at a hearing on the complaint, he or she will be awarded reasonable attorneys' fees and costs. If the Commissioner finds an employee has been aggrieved by an employer's violation, the Commissioner can: 1) levy against the employer a civil penalty up to \$500 for the first violation and \$1,000 for each subsequent violation; and 2) award the employee all appropriate relief, including rehiring or reinstatement to his or her previous job, payment of back wages, reestablishment of employee benefits, or any other remedies the Commissioner deems appropriate. If the Commissioner finds an applicant has been aggrieved by an employer's violation, the Commissioner may levy against the employer a civil penalty up to \$25 for the first violation and \$500 for each subsequent violation.

Conn. Gen. Stat. § 31-40x (Effective Date 10/01/2015).