

## Rhode Island

### Employment Law Workbook Addendum

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

#### Topics

##### **I. Discrimination**

Rhode Island has passed a bill amending the state's Fair Employment Practices law. The bill requires an employer to reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition, including lactation or the need to express breast milk. Reasonable accommodation must be provided only if an employee or prospective employee is able to perform the essential functions with the reasonable accommodation.

#### **Reasonable Accommodation**

Reasonable accommodations under the statute Include:

- more frequent or longer breaks;
- time off to recover from childbirth;
- access to equipment;
- seating;
- temporary transfer to a less strenuous or hazardous position;
- private non-bathroom space for lactation purposes; or
- modified work schedules.

#### **Prohibitions**

The law provides that an employer cannot:

- make an employee take leave if there is another reasonable accommodation that can be provided;
- deny employment opportunities based on the refusal to reasonably accommodate an employee; or
- refuse to provide accommodation if the employer provides or would provide similar accommodations to other classes of employees such as those who are injured or disabled not due to pregnancy.

#### **Notice and Posting**

The law requires an employer to provide written notice of the right to reasonable accommodations to:

- new employees;
- existing employees within 120 days after the effective date; and
- within 10 days of an employee's announcement of her pregnancy.

### **Exceptions**

An employer does not have to provide an accommodation if the employer shows that doing so would cause undue hardship. An “undue hardship” is significant difficulty or expense to the employer. To determine whether the accommodation places an undue hardship on the employer, the following factors should be considered:

- The nature and cost of accommodation;
- The financial resources of the employer;
- The number of employees; and
- The number, type, and location of its facilities.

A reasonable accommodation does not require that an employer create additional employment that the employer would not otherwise have created or would create for other classes of employees, such as those who are injured or disabled not due to pregnancy.

R.I. Gen. Laws § 28-5-7.4 (Effective Date 06/25/2015).

## **II. Pre-Employment Inquiry Guidelines**

Rhode Island’s new law permits employers to grant a preference in hiring and promotion to a veteran. A veteran is an individual that served on active duty in the U.S. Armed Forces and received an honorable or general discharge. An employment policy that provides such a preference must be in writing and uniformly applied to employment decisions regarding hiring and promotion.

In applying the preference, an employer may require that a veteran submit a Department of Defense DD Form 214 or similar documentation of separation from the U.S. Armed Forces as proof of eligibility for the preference.

R.I. Gen. Laws § 30-21-14 (Effective Date 07/06/2016).

## **III. Family and Medical Leave**

### **A. Volunteer Emergency Responder Leave**

#### **Leave Entitlement**

The new law creates a leave of absence for volunteer emergency responders. Upon prior notice by an employee, an employer cannot discharge or take any other disciplinary action against the employee due to the employee’s failure to report for work at the commencement of his or her regular working hours, where the failure is due to responding to an emergency in his or her capacity as a volunteer member of a fire department or ambulance department. The employee must inform his or her employer or immediate supervisor of all reasons for any failure to report to work as required.

The new law defines “responding to an emergency” as responding to, working at the scene of, or returning from a fire, rescue, emergency medical service call, hazardous materials incident, or a natural or man-made disaster, where the emergency occurs during a period other than normal working hours of the employee. “Volunteer member” means a volunteer, call, reserve, or permanent-intermittent firefighter or emergency medical technician, but does not include any person who received compensation for over 975 hours of services rendered in such capacity during the preceding six months.

### **Compensation During Leave**

Volunteer emergency responder leave is unpaid. An employer is not required to compensate any employee for any period of his or her normal working hours during which he or she fails to report for work.

### **Certification of the Need for Leave**

An employer may request that an employee submit a statement signed by the chief of his or her fire department or ambulance department certifying the date and time the employee responded to and returned from the emergency.

### **Reinstatement**

The new law also creates a reinstatement obligation. Any employee who is terminated or against whom any disciplinary action is taken in violation of the statute shall be immediately reinstated to his or her former position without reduction of pay, seniority, or other benefits, and shall receive any lost pay or other benefits during any period for which such termination or other disciplinary action was in effect.

R.I. Gen. Laws § 28-5-43 (Effective Date 07/15/2015)(REPEALED)

## **B. Volunteer Emergency Responder Leave**

Rhode Island law prohibits an employer from discriminating against, disciplining, or discharging an employee who is absent from work to respond to an emergency as a volunteer member of the fire or ambulance department. The new law renumbers the existing law to create the Volunteer Firefighter and Emergency Protection Act as its own chapter and clarifies the judicial procedure required to remedy employer violations.

R.I. Gen. Laws § 28-6.13 (Effective Date 06/22/2016).

## **IV. Wage and Hour Laws**

### **A. Deductions from Paychecks**

Rhode Island law authorizes an employer to make deductions and withholdings from an employee’s wages for certain specified purposes. The new law prohibits an employer from deducting or withholding any amounts not authorized by federal or state law or by court order without first obtaining the employee’s written or electronic approval. In addition, the new law provides that an employer is subject to treble damages, payable to the employee, of the amount that was deducted or withheld without the employee’s authorization.

R.I. Gen. Laws § 28-14-3.2 (Effective Date 07/20/2016).

### **B. Wage Payment Remedies**

Rhode Island's wage payment law permits the state Department of Labor and Training to pursue wage claims on behalf of employees. The amended law allows a wage claimant to bring a civil action against the employer, without the Department's assistance, within three years of the alleged violation. An employer may be liable for two times the wages owed to the employee, attorneys' fees, and litigation expenses if a wage claimant prevails in a civil suit against the employer.

The amendments also provide that an employer that does not pay wages and fines within 30 days of being found guilty of wage payment violations may have its business license revoked by the state. Further, the amendments alter the definition of employee for minimum wage purposes to include any individual suffered or permitted to work by an employer.

R.I. Gen. Laws § 28-12-2, R.I. Gen. Laws § 28-14-17, and R.I. Gen. Laws § 28-14-20 (Effective Date 7/12/2016).

### **C. Payroll Cards & Direct Deposit**

Rhode Island has amended its law governing how wages can be paid. Before the amendments, payment by direct deposit was allowed if an employee made a written request to have wages deposited into an account at a financial organization s/he designated, and the employer consented. Under the amended law, payment by payroll card is also permitted. Additionally, payment by direct deposit or payroll card will be allowed upon an employee's electronic request.

If an employer pays wages to a payroll account:

- The employee must be able to make at least one withdrawal from it each pay period – without charge – up to and including the full amount of net wages for that pay period. If wages are paid more frequently than weekly, the employee must be entitled to one free withdrawal each week.
- Employees must be provided a means of checking their account balance – either through an automated phone system or online – without cost, regardless of the number of inquiries made.

A payroll card account is one that is directly or indirectly established through an employer to which wages, salary, or other compensation is transferred. The account must have federally-required consumer protections.

R.I. Gen. Laws § 28-14-10.1 (Effective Date 07/15/2015).

### **D. Minimum Wage Increase**

On January 1, 2016, Rhode Island's minimum wage will increase from \$9.00 to \$9.60 per hour for non-exempt employees. Although the minimum wage will change, state legislators did not amend a separate statute governing how much tipped employees are paid. Accordingly, when the minimum wage increases, the maximum tip credit increases from \$6.11 to \$6.71 per hour, whereas the minimum cash wage that must be paid to tipped employees will remain \$2.89 per hour. If an employer uses a tip credit when paying a tipped employee's wages, the employee's cash wage and tips must equal at least the minimum wage per hour.

R.I. Gen. Laws § 28-12-3 (Effective Date 01/01/2016).

### **E. Tipped Employee Minimum Cash Wage Increase**

After years of the minimum wage and maximum tip credit increasing, Rhode Island will raise the minimum cash wage that must be paid to tipped employees. Effective January 1, 2016, the minimum cash wage paid to tipped employees increases from \$2.89 to \$3.39 per hour, the state-wide minimum wage increases from \$9.00 to \$9.60 per hour, and the maximum tip credit an employer may take increases from \$6.11 to \$6.21 per hour. Effective January 1, 2017, the state-wide minimum wage remains \$9.60 per hour, the minimum cash wage paid to tipped employees increases to \$3.89

R.I. Gen. Laws § 28-12-5 (Effective Date 01/01/2016).

**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**

Rhode Island law prohibits drivers from operating a motor vehicle while using a wireless handset or wireless communication device to compose, read, or send text messages. However, a driver may operate a motor vehicle while utilizing a hands-free wireless handset and texting. The law defines "hands-free" as using an internal feature or function of the device or an attachment or addition, including but not limited to, an earpiece, headset, remote microphone or short range wireless connection, that allows the user to operate the device without the use of hands except to activate, deactivate or initiate a feature or function.

The amendment clarifies the meaning of "use" of a wireless handset or wireless communication device. "Use" means to operate a wireless handset or wireless communication device in a manner not consistent with hands-free operation. The amendment also creates an exception for drivers of pilot/escort vehicles, who are permitted to use a portable electronic device to communicate hazard-related information to the escorted vehicle.

R.I. Gen. Laws § 31-22-30 (Effective Date 06/17/2015).

**VIII. Workers' Compensation**

No new laws or regulations enacted in 2015 or 2016.

**IX. Miscellaneous**

**A. National Guard Reemployment Rights**

Rhode Island law ensures that members of the Rhode Island National Guard are eligible for the rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). In addition, Rhode Island grants leave of absence and reemployment rights to Rhode Island National Guard members upon completion of training for any military service. The amendment extends these protections to National Guard members of states other than Rhode Island who work for a Rhode Island employer.

R.I. Gen. Laws § 30-11-3 (Effective Date 07/06/2016).

**B. Civil action against employer by employee under subpoena**

Rhode Island has enacted a new law to prohibit an employer from discharging, threatening, or otherwise taking any adverse action against an employee regarding his or her compensation, terms, conditions, location or privileges of employment as a result of the employee's absence from work to comply with a subpoena. The employee is required to promptly provide notice to the employer that the employee has been served with a subpoena to give evidence or testify before any court within or without the state of Rhode Island or before any judicial, quasi-judicial or another administrative body or entity with the authority to issue subpoenas. However, an employer is not required to compensate an employee for time missed from work for complying with a subpoena.

An employee alleging a violation of the new law must file suit within three years from the date of the violation. An employer that violates the new law may be liable for damages, which may include actual damages, compensatory damages, and reasonable attorneys' fees incurred by the employee.

R.I. Gen. Laws § 9-1-54 (Effective Date 06/06/2016).

### **C. Voluntary Employer Contributions**

Under the Rhode Island unemployment insurance statute, each employer has a separate account established within the state employment security fund into which an employer must contribute a pre-established amount of funds per year. The rate of contribution assigned to a particular employer's account is known as the employer's experience rate. Under the new amendment, any employer who has been assigned an experience rate, and who has filed all required reports and paid all contributions, interest and penalties due, may make a voluntary contribution to its account. A voluntary contribution is a contribution paid by an employer to its account in order to reduce the employer's experience rate for the ensuing tax year.

The voluntary contribution must be paid (1) no later than 30 days after the date on which the Department of Labor and Training has issued a notice of the employer's experience rate, or (2) within 120 days after the start of the calendar year for which the experience rate is effective, whichever is earlier. Timely paid voluntary contributions will be credited to the employer's account balance, and the employer will receive a recomputation of its experience rate for that calendar year. No voluntary contribution will be refunded in whole or in part.

R.I. Gen. Laws § 28-43-1, R.I. Gen. Laws § 28-43-3, and R.I. Gen. Laws § 28-43-5.1 (Effective Date 07/10/2015).

### **D. Identity Theft Protection Act Amendment**

Rhode Island has enacted the Identity Theft Protection Act of 2015 (Act) to repeal the state's existing data security statute (the Identity Theft Protection Act of 2005) and replace it with stronger data security measures. The Act broadens coverage to include additional individuals, business entities, and municipal agencies that are not subject to the existing law. The Act also expands the definition of "personal information" and requires security breaches to be reported to law enforcement and consumer credit reporting agencies. The Act further requires covered entities to implement an information security program.

#### **Covered Entities**

The existing statute defines a covered entity as any state agency or person that owns, maintains or licenses computerized data that includes personal information. The Act makes the following entities subject to its provisions: any municipal agency, state agency or person that stores, collects, processes, maintains, acquires, uses, owns or licenses personal information about a Rhode Island resident.

## Definition of Personal Information

The existing statute defines "personal information" to be protected by the law as an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security Number;
- Drivers license number or Rhode Island identification card number; or
- Account number or credit or debit card number in combination with any required security code, access code or password that would permit access to the account.

The Act retains the above definition, but expands the list to include (1) medical or health insurance information; or (2) an e-mail address with any required security code, access code, or password that would permit access to an individual's personal, medical, insurance or financial account. "Medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional or provider. "Health insurance information" means an individual's health insurance policy number, subscriber identification number, or other unique identifier used by a health insurer to identify the individual. Personal information does not include publicly available information that is lawfully made available to the general public from federal, state or local government records.

## Content and Form of Notice

The required form of the notice to affected individuals remains unchanged from the existing statute, but the Act adds provisions describing the required content of the notice. The notification to individuals must include the following information to the extent known:

1. A general and brief description of the incident, including how the security breach occurred and the number of affected individuals;
2. The type of information that was subject to the breach;
3. Date of breach, estimated date of breach or the date range within which the breach occurred;
4. Date that the breach was discovered;
5. A clear and concise description of any remediation services offered to affected individuals, including toll-free numbers and websites to contact credit reporting agencies, remediation service providers, and the attorney general; and
6. A clear and concise description of:
  - The consumer's ability to file or obtain a police report;
  - How a consumer requests a security freeze and the necessary information to be provided when requesting the security freeze; and
  - The fees that may be required to be paid to the consumer reporting agencies.

## **Reporting to Law Enforcement and Consumer Credit Reporting Agencies**

Similar to other states' data security laws, the Act adds new provisions requiring covered entities to report security breaches to law enforcement agencies and consumer credit reporting agencies. If more than 500 Rhode Island residents are to be notified, the covered entity must also notify the state attorney general and the major credit reporting agencies as to the timing, content and distribution of the notices and the approximate number of affected individuals. Notification to the attorney general and the major credit reporting agencies must be made without delaying notice to affected Rhode Island residents.

## **Information Security Program**

Finally, the Act requires covered entities to implement and maintain a risk-based information security program that contains reasonable security procedures and practices appropriate to the size and scope of the organization, the nature of the information and the purpose for which the information was collected, in order to protect the personal information from unauthorized access, use, modification, destruction or disclosure, and to preserve the confidentiality, integrity, and availability of such information.

A covered entity cannot retain personal information for a period longer than is reasonably required to provide the services requested, to meet the purpose for which it was collected, or in accordance with a written retention policy or as may be required by law. In addition, the covered entity must destroy all personal information, regardless of the medium in which the information maintained, in a secure manner, including but not limited to shredding, pulverization, incineration, or erasure.

A covered entity that discloses personal information about a Rhode Island resident to a nonaffiliated third party must require by written contract that the third party implement and maintain reasonable security procedures and practices appropriate to the size and scope of the organization, the nature of the information and the purpose for which the information was collected in order to protect the personal information from unauthorized access, use, modification, destruction, or disclosure. This provision will apply to contracts entered into on or after the Act's effective date.

## **Penalties**

The existing law imposes a penalty of \$100 per violation, not to exceed a total penalty of \$25,000 against a single defendant. The Act imposes tougher penalties: \$100 for each reckless violation and \$200 for each knowing and willful violation, with no cap on the total penalty. The attorney general may also bring an enforcement action against a covered entity for violation of the Act's terms.

The Act repeals sections R.I. Gen. Laws § 11-49.2-1 through R.I. Gen. Laws § 11-49.2-6 and will be codified R.I. Gen. Laws § 11-49.3-1 through R.I. Gen. Laws § 11-49.3-6 (Effective Date 07/02/2016).

## **E. Benefits Determinations; Recovery of Overpayments**

The Rhode Island employment security law provides that when a claimant is notified of his or her disqualification or ineligibility for benefits, i.e., a non-monetary determination, the claimant and the employer(s) must be notified in writing of the non-monetary determination, the reasons supporting the determination, and the period of disqualification. The amendments provide that the Department of Labor and Training ("Department") may, on its own motion and within one year of the determination, reconsider the non-monetary determination if it finds that an error has occurred or that the determination was a result of a mistake. If the initial determination was made as the result of nondisclosure or misrepresentation of a

material fact, the Department may reconsider the determination within one year from the date of the discovery of the undisclosed or misrepresented fact; however, no nondisclosure or misrepresentation shall be addressed that is older than six years as of the date of its discovery.

With respect to payment of benefits to a claimant pending an employer's appeal of a benefits determination, Rhode Island law provides that the claimant will be paid benefits pursuant to the determination while the appeal is pending. If the employer prevails on appeal, the claimant will not receive further payment of benefits during any remaining portion of the disqualification period, but any benefits paid or payable to the claimant are not recoverable by the employer. The amendments change this provision such that an employer may recover the overpayment if it establishes to the satisfaction of the Department that the erroneous payment was the result of fraud by the claimant. In the case of claimant fraud, the claimant may also be liable for penalties and interest in addition to the overpayment amount.

R.I. Gen. Laws § 28-44-39 and R.I. Gen. Laws § 28-44-40 (Effective Date 06/19/2015).

#### **F. Unemployment Eligibility**

Rhode Island has amended its employment security law to clarify and modify provisions related to a worker's eligibility for benefits as follows:

- Self-employed individuals performing services for an employer are not considered employees within the meaning of the law and are therefore not eligible for benefits.
- Employees who have been suspended without pay from work due to misconduct will be treated as employees who were discharged for proven misconduct with respect to eligibility for unemployment benefits.
- An individual is not eligible for benefits for any week of his or her partial or total unemployment unless during that week s/he is physically able to work full-time and be available for full-time work.

The employment security law further provides that it is unlawful to make or cause to be made any knowingly false or fraudulent material statement or representation for the purpose of obtaining or denying benefits. "Statement" includes, but is not limited to, the endorsement of a benefit check, application for registration, oral or written statement or report, proof of unemployment, or other documentation offered as proof of, or the absence of, entitlement to benefits or the amount of benefits. The amendments provide that "statement" also includes the receipt of unemployment benefits via direct deposit or electronic payment card.

R.I. Gen. Laws § 28-42-8, R.I. Gen. Laws § 28-42-16.1, R.I. Gen. Laws § 28-44-12, and R.I. Gen. Laws § 28-44-18 (Effective Date 06/19/2015).