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Employment Legislation Summary

2011 SESSION
CONNECTICUT GENERAL ASSEMBLY

In its 2011 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2011. 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.

Gender Identity Discrimination Prohibited

Public Act 11-55 extends the list of protected classes under Connecticut's Fair Employment Practices Act, by prohibiting discrimination on the basis of gender identity or expression in employment, public accommodations, the sale or rental of housing, or the granting of credit. It similarly amends other laws over which the Commission on Human Rights and Opportunities (CHRO) has jurisdiction. The act explicitly authorizes people to file discrimination complaints with CHRO if they believe they have been discriminated against on the basis of their gender identity. CHRO had issued a declaratory ruling in 2000 that the prohibition against sex discrimination in the laws over which CHRO has jurisdiction covers discrimination on the basis of gender identity or expression, but this new act fully codifies the agency's position.

The bill defines "gender identity or expression" as a person's gender-related identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. It specifies that gender-related identity can be shown by providing evidence in various ways, including:

(1) medical history;
(2) care or treatment of the gender-related identity;
(3) consistent and uniform assertion of such an identity; or,
(4) any other evidence that the identity is sincerely held, part of a person's core identity, and that the person is not asserting such an identity for an improper purpose.

The new law also gives CHRO jurisdiction to investigate complaints of discrimination on the basis of gender identity or expression against students by public schools, and authority to investigate this type of discrimination at private country clubs.

Discrimination on the basis of gender identity or expression is prohibited in various other contexts, including urban homesteading, public schools, boards of education, public libraries, electric suppliers, telephone or telecommunication providers, and discriminatory boycotts. The bill specifies that its provisions prohibiting discrimination on the basis of gender identity or expression do not apply to religious corporations, entities, associations, educational

institutions, or societies regarding the employment of people to perform work for them or matters of discipline, faith, internal organization, or ecclesiastical rules, customs, or laws.

The bill makes it a Class A misdemeanor to deprive someone of rights, privileges, or immunities secured or protected by state or federal laws or constitutions because of the person's gender identity or expression. This crime is punishable by imprisonment for up to one year, a fine of up to $2,000, or both. The bill makes it a Class D felony for anyone to violate a person's legal rights based on gender identity or expression while wearing a mask, hood, or other device designed to conceal his or her identity. A Class D felony is punishable by imprisonment for up to five years, a fine of up to $5,000, or both.

Paid Sick Leave Law

Under Public Act 11-52, employers with 50 or more people in Connecticut must provide certain hourly employees with paid sick leave. The act's language does not clearly state that it covers the public sector. However, from review of Office of Legislative Research analysis of the law, it appears that the state believes it does cover the public sector, including the state itself, municipalities and public school districts. Employees are to accrue such time at a rate of one hour of leave per 40 hours worked. The new act is limited to specific classes of employees. Among the covered employees are office workers, nurses and other health care workers, and food preparers and other food service workers.

Beginning January 1, 2012 covered workers will begin to accrue paid sick leave, but must meet certain eligibility requirements to use accrued leave. Specifically, they must have (1) worked for the employer for at least 680 hours after January 1, 2012, and (2) worked an average of at least 10 hours per week for that employer in the most recently completed calendar quarter. The accrued paid sick leave can be used for the employee's own illness, injury or related treatment, and also for the illness, injury or treatment of the worker's spouse or child. In addition, the accrued paid time can be used for reasons related to family violence or sexual assault.

If an employer already offers other types of paid time off that can be used for the same purposes as permitted under the new act, and such leave accrues at least as quickly as the new law requires, then the employer will be in compliance with the new requirements.

The law excludes manufacturers and certain national tax-exempt organizations from its requirements. Employers are not required to provide paid sick leave to day or temporary workers, or to employees properly classified as exempt from overtime, including salaried professionals.

The law is going to be administered by the Department of Labor which will have authority to investigate and impose penalties for non-compliance. There is also a provision that prohibits employers from retaliating or discriminating against employees who request or use sick leave accrued under the new law. Employers may require employees using sick leave for three or more consecutive days to produce reasonable documentation verifying the leave's purpose. Employees must provide notice of foreseeable use of sick leave at least seven days in advance, and as much leave as practicable for unforeseen leave.

Finally, employers must provide notice to employees at time of hire of the rights and protections of the law which may be met by a reference in a letter of hire, a handbook that is distributed at the time of hiring or a workplace posting.

Penalties for Violating Personnel Files Act to Increase

Public Act 11-12 increases the penalties for violations of state's Personnel Files Act from:

(1) $ 300 to $ 500 for a first violation; and,
(2) $ 300 to $ 1,000 for any subsequent violations related to the same employee.

Should it be necessary, upon a complaint from the Commissioner of Labor the Attorney General must initiate a lawsuit in civil court to recover these penalties. The Personnel Files Act requires employers to provide employees with access to their personnel file and medical records maintained by the employer, and it prohibits the disclosure of such files, except in certain circumstances, without the employee's consent.

Preventing Workplace Violence in Health Care Institutions

Public Act 11-175 will (1) require certain health care employers to develop and implement workplace violence prevention and response plans, (2) require health care employers to report incidents of workplace violence to local law enforcement, and (3) establish criminal penalties for assault of a health care employee. In addition, it requires the Commissioner of Labor to adopt implementing regulations. PA 11-175 takes effect on July 1, 2011 for the provisions on workplace safety committees, risk assessment, violence prevention plans, and patient care assignment. Other provisions will be effective October 1, 2011.

By October 1, 2011 each health care employer must convene a workplace safety committee to address health and safety issues pertaining to health care employees. PA 11-175 defines "health care employer" as any institution with 50 or more full- or part-time employees, including facilities caring for or treating mentally ill persons or substance abusers, licensed residential care facilities for persons with intellectual disabilities, and community health centers. "Institution" includes hospitals, residential care homes, health care facilities for the handicapped, nursing homes, rest homes, home health care agencies, homemaker-home health aide agencies, assisted living services agencies, outpatient surgical facilities, infirmaries operated by educational institutions, and facilities (including state facilities) providing health services.

The law defines "health care employee" as a person directly or indirectly employed by, or volunteering for, a health care employer who is involved in direct patient care, or has direct contact with the patient or the patient's family when either collecting or processing information needed for patient forms and record documentation, or escorting or directing the patient or patient's family on the health care employer's premises.

The workplace safety committee must include representatives from the institution's administration; physician, nursing and other direct patient care staff; security personnel; and any other staff determined appropriate by the employer. At least 50% of the membership must be nonmanagement employees. The committee must select a chairperson from its membership, must meet at least quarterly, and must make meeting minutes and other records of proceedings available to all employees.

By October 1, 2011, and annually thereafter, each health care employer must prepare an assessment of the factors that put any health care employee at risk for workplace violence. By January 1, 2012, and annually afterwards, using its findings from the assessment, the health care employer must develop and implement a workplace violence prevention and response plan in collaboration with the workplace safety committee.

Under the new law, a hospital may use an existing committee to assist with the plan if, as required by the act, at least 50% of the committee members are nonmanagement employees. The employer, when

developing the plan, can consider any guidance on workplace violence provided by a government agency, including the federal Occupational Safety and Health Administration, the federal Centers for Medicare and Medicaid Services, the state departments of Public Health (DPH) and Labor (DOL), as well as any hospital accrediting organization. A health care employer can meet the act's requirements for a workplace violence prevention and response plan by using existing policies, plans, or procedures if, after performing the risk assessment, and in consultation with the safety committee, the employer determines that they are sufficient.

To the extent practicable, a health care employer must adjust patient care assignments so that an employee requesting an adjustment does not have to treat a patient who the employer knows has intentionally physically abused or threatened the employee, but without failing to give due consideration to its obligation to meet the needs of all patients. PA 11-175 specifies that patient behavior that is a direct manifestation of a patient's condition or disability, including physical abuse or threatening behavior, is not considered intentional physical abuse or threatening of an employee. An employee who has been physically abused or threatened by a patient may request that a second employee be present when treating the patient in situations where the employer determines that adjusting the patient assignment is not practicable.

The new law also requires health care employers to keep records detailing workplace violence incidents, including the specific area or department where the incident happened, and upon request from DPH, an employer must report the number of incidents occurring on the employer's premises and the specific areas or departments where they occurred. Further, a health care employer must report to the local law enforcement agency any act that may constitute an assault or related offense under the Penal Code against an employee acting in the performance of his or her duties. Such report must be made within 24 hours of the act and include the names and addresses of those involved. However, the employer will not have to provide a report if the assault or related offense was committed by a person with a disability, and the act is a clear and direct manifestation of the disability. "Disability" means mental retardation, or a mental or physical disability. Finally, PA 11-175 makes assault of a health care employee a Class C felony, but specifies that a mental or physical disability or mental retardation of the defendant is a defense.

Health Care Providers Must Display Photo ID Badges at Work

Public Act 11-32 requires a health care provider performing direct patient care as an employee or on behalf of a healthcare facility or institution to wear a photo identification badge during work hours. The photo ID must be employer-issued and must be worn in plain view. The badge must state the (1) facility or institution's name, (2) health care provider's name, and (3) health care provider's license, certificate, or employment title.

Facilities or institutions covered by the new law, in consultation with the Department of Public Health, are to develop policies and procedures concerning the badge size, content, and format, and any necessary exemptions to ensure patient and health care provider safety.

PA 11-32 defines "healthcare facility or institution" as the following:

(1) hospital;
(2) nursing home;
(3) rest home;
(4) home health care agency;
(5) homemaker-home health aide agency;
(6) emergency medical services organization;
(7) assisted living services agency;
(8) outpatient surgical facility; or
(9) infirmary operated by an educational institution for the care of its students, faculty, and employees.

Increased Coordination of Department of Labor Investigations

Special Act 11-4 requires the Commissioner of Labor to review the Department of Labor's various enforcement and investigation responsibilities by January 1, 2012, and to develop and submit a plan to coordinate and consolidate those responsibilities. The goal is to promote timelier and more efficient action on alleged statutory violations. The plan must include recommendations to improve the efficiency of investigation of matters such as wage and hour violations, employee misclassification, unemployment and workers' compensation requirements and payments, and safety and health standards. In the past several years a number of similar initiatives have moved forward, such as increased coordination between the Department of Revenue Services and the unemployment agency's Field Audit Unit on employee misclassification matters.

Commission on Human Rights and Opportunities

PA 11-237 makes various changes that eliminate certified mail requirements for the Commission on Human Rights and Opportunities (CHRO). It allows CHRO attorneys to be involved in whistleblower complaints. It also makes clarifications regarding merit assessment reviews and provides an internal, automatic review of cases dismissed during the merit assessment review process. Further, if a complaint is not dismissed during the merit assessment review process, PA 11-237 requires a mandatory mediation conference within 60 days. If the complaint is not resolved through the mandatory mediation, the bill allows for a request of early legal intervention.

The bill also clarifies how private attorneys fees will be awarded. Lastly, the bill changes the time period that a complainant must wait to request a release of jurisdiction from the CHRO from 210 to 180 days, allowing complainants who wish to proceed in court to begin the process sooner.

Police Officers Accepting Employment with Another Department

Public Act 11-251 changes the laws affecting retirement benefits for municipal employees and elected officials under the Municipal Employees Retirement Fund (MERF), as well as police officers who move from one department in Connecticut to work with another Connecticut police department.

The act broadens the circumstances under which a retired municipal employee or elected official may simultaneously collect a salary and MERF pension benefits. Under current law, a person rehired by a municipality that participates in MERF may collect a pension only if he or she works for fewer than 90 days in a calendar year. A rehired employee who works for a longer period must reimburse MERF for the pension payments received during the 90 days. However, PA 11-251 allows a rehired worker to collect his or her pension if he or she is working for up to 20 hours a week, for an unlimited period. The provision applies to anyone who retired on or after January 1, 2000.

In addition, the act broadens the circumstances under which a municipal employee or elected officer may collect a disability pension. Under current law, the person must have completed at least 10 years of continuous service, unless the disability arose in the course of employment with the municipality, and she or he must be permanently and totally disabled from engaging in any gainful employment with the municipality. PA 11-251 allows a disabled worker to collect a disability pension and hold a position where he or she customarily works up to 20 hours per week. The provision applies to anyone who retired on or after January 1, 2000.

Finally, the act also allows police officers certified by POST and working at a Connecticut police

department to accept employment with another Connecticut police department without having to repeat minimum basic training, as currently required by POST. But they must still comply with entry-level requirements.

Resolution of Workers' Compensation Liens

An injured employee eligible for workers' compensation benefits can sue someone who is liable for damages as a result of the injury, except for their employer (who complies with the workers' compensation law) or a co-worker. Employers who have paid or are obligated to pay workers' compensation benefits to the employee can also sue such a third party, or join the employee's lawsuit, in order to be reimbursed for benefits paid. An employer or its insurance carrier has a lien on any judgment or settlement the employee receives if they provide notice of the lien before judgment or settlement.

If the employer and employee are both plaintiffs and recover damages, these are apportioned so that the employer's claim takes precedence, after deductions for reasonable and necessary expenses, including attorneys' fees incurred by the employee. However, effective July 1, 2011, under Public Act 11-205, if the employee brings the action, the employer's claim will be reduced by one-third of the amount to be reimbursed to the employer, unless the parties agree otherwise.

The reduction is solely for the employee's benefit. However, the reduction does not apply if reimbursement is to the state or a political subdivision, including a local public agency, as the employer, or the custodian of the state's Second Injury Fund. By law, if the employee, employer, or Second Injury Fund custodian brings the lawsuit, he or she must immediately notify the others in writing, and the others can join the suit. Under current law, if the others do not join the suit within 30 days, their right of action against the party in question abates. PA 11-205, however, provides that the right of action does not abate if the employer, insurer, or custodian fails to join the lawsuit but gives written notice of a lien.

Use of Credit Scores to Make Hiring Decisions Now Limited

Public Act 11-223 will, with certain limited exceptions, prohibit employers and their agents, representatives, or designees from requiring an employee or prospective employee to consent to a request for a credit report as a condition of employment. Under the new law, a "credit report" is one that contains information about the employee's credit score, credit account balances, payment history, or savings or checking account numbers and balances. The act covers employers with as few as one employee, and the state and its political subdivisions. The new act's prohibition does not apply when:

(1) the employer is a financial institution;
(2) a credit report is required by law;
(3) the employer reasonably believes the employee committed a violation of the law related to the employee's job; or
(4) the credit report is substantially related to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the report that is substantially job-related, and the employer discloses this to the employee or applicant in writing.

Information in a credit report will be "substantially related to the employee's current or potential job" when the position:

(1) is a managerial position that involves setting the direction or control of a business, division, unit or agency of a business;
(2) involves access to personal or financial information of customers, employees, or the employer, other than customary retail transaction information;
(3) involves a fiduciary responsibility to the employer, including authority to make payments, collect

debts, transfer money, or enter contracts;
(4) provides an expense account or corporate debit or credit card;
(5) provides access to confidential or proprietary business information;
(6) provides access to confidential employer information (such as a formula, pattern, compilation, program, device, method, technique, process, or trade secret) which has actual or potential independent economic value, because it is not generally known or readily ascertainable by proper means by others who could obtain economic value from the information, and there are reasonable efforts under the circumstances to keep the information secret; or
(7) involves access to the employer's nonfinancial assets of at least $2,005 in value including museum and library collections and prescription drugs and pharmaceuticals.

PA 11-223 allows an employee or prospective employee to file a complaint about a violation of its provisions with the Commissioner of Labor. The Commissioner must conduct an investigation and make findings within 30 days. If the findings warrant, the Commissioner must then hold a hearing. Employers who violate the act face a $300 civil penalty for each violation. At the request of the Commissioner, the attorney general must initiate a civil lawsuit to recover the penalties. Any amount recovered must be deposited in the General Fund.

Construction Safety Refresher Training

Under Public Act 11-63, the construction safety training requirement for certain plumbers and electricians on state and municipal public works projects subject to the state's prevailing wage law will change. By law, construction workers who receive prevailing wages on these projects must have taken a 10-hour federal Occupational Safety and Health Administration (OSHA)-approved construction safety course no more than five years before the project's start.

Once they have taken the 10-hour course, PA 11-63 allows plumbers and electricians subject to continuing education licensing requirements to substitute four-hour supplemental courses taught by an OSHA-authorized trainer in place of the additional 10-hour courses that would otherwise be required. Beginning July 1, 2012, instead of retaking the 10-hour course every five years to remain continuously qualified, they can take the 10-hour course once, followed by a four-hour supplemental course every five years.

The Commissioner of Labor must accept a student course completion card issued by a federal OSHA-authorized trainer and dated no more than five years before the electrician or plumber started working on the project as proof of compliance. Note that PA 11-63 does not change the training requirements for other construction workers. In addition, by January 1, 2012, the Commissioner must adopt regulations requiring that the four-hour course include an update on revised OSHA standards and a review of required construction hazards training. Any workers who do not comply with the safety training requirements can be removed from the project unless they can prove, within 15 days of being found in violation, that they have complied. *Effective upon passage.*

Healthcare Coverage

Public Act 11-58 requires the comptroller to offer employee and retiree coverage under "partnership plans" to both nonstate public employers (beginning January 1, 2012) and to nonprofit employers (beginning January 1, 2013). Nonstate public employers includes municipalities and local and regional boards of education. The new act also requires municipal employers of more than fifty persons, which sponsor fully insured group health insurance policies or plans for their active employees and retirees, to submit information about such group health plan to the comptroller by October 1 annually. PA 11-58 will also allow municipal employers to give certain claims data they request from health insurers to the comptroller upon his request and requires that the information be kept confidential.

Extended Unemployment Benefits Availability Increases for Some

PA 11-87 increases the availability of unemployment extended benefits (for weeks 79-99 of unemployment) by lengthening, from two to three years, the so-called "look-back period" that is used to determine when extended benefits are available. Current law provides two methods for determining if extended benefits are available. The first looks to the state's total unemployment rate (TUR), which counts both the unemployed who are eligible to receive benefits and those who are ineligible. The second method uses the state's insured unemployment rate (IUR), which counts only the unemployed who are eligible for benefits.

Under the TUR method, extended benefits are available when the state's total unemployment rate is at least 6.5%, as determined by the U.S. secretary of labor, and at least 10% higher than it was at the same time in either of the past two calendar years. Using this two-year look-back, if the state's TUR remains around 9% in the coming months extended benefits availability will end sometime in the fall because unemployment will not be 10% higher than it was at the same point in either of the last two years. Extending the TUR look-back to three years, when unemployment rates were lower, allows the benefits to remain available for a longer period of time.

Under the IUR method, extended benefits are available when the state's insured unemployment rate is (a) at least 5% and at least 20% higher than it was at the same time in each of the last two calendar years, or (b) at least 6%. The act also extends the IUR look-back to three years, but this will not increase extended benefit availability because this method requires unemployment to be 20% higher than it was in each of the previous years. If unemployment is not 20% higher than in each of the past two years, then it will not be 20% higher than in each of the past three years.

Using a two-year look back, access to extended benefits was projected to end sometime this fall. However, using a three-year look-back period will keep them available through at least the end of 2011. The federal government fully funds these benefits for former private sector employees; however, state, municipal, and tribal employers must continue to pay 100% of the cost of extended benefits. Under PA 11-87 the extended look-back period will remain in effect until December 31, 2011, or as long as the federal government continues to allow the extension and to provide 100% funding for it, whichever is longer. The act does not otherwise change the eligibility requirements or benefit amounts for individuals applying for extended benefits.

Workplace Violence Training for State Employees

By January 1, 2012, PA 11-33 requires the Department of Administrative Services (DAS) commissioner to develop an employee training program on workplace violence awareness, prevention, and preparedness. The training must be offered often enough to permit full-time state employees hired after January 1, 2012 to attend the training no later than six months after they are hired, as the act makes this a condition of his or her continued employment. Full-time employees hired before January 1, 2012 must attend the training, but PA 11-33 places no deadline on this.

The act eliminates the requirement that the DAS commissioner, in consultation with the mental health and addiction services and public safety commissioners, include workplace violence awareness, prevention, and preparedness in his annual training program; thus limiting this program.

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