SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW

Employment Legislation Summary

2010 SESSION

CONNECTICUT GENERAL ASSEMBLY

In its 2010 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2010. 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.

Employment Protection for Victims of Domestic Violence

Public Act 10-144 provides job protection and use of leave time rights to employees who are victims of domestic violence. The act prohibits an employer from terminating, penalizing, threatening, or otherwise coercing an employee with respect to his or her employment because the employee:

(1) is a family violence victim, or
(2) attends or participates in a civil court proceeding related to a case in which he or she is a family violence victim.

Current law already prohibits employers from taking such action in a number of other situations, including when the employee has been subpoenaed in a criminal case, is a crime victim participating in a criminal case, or has a protective or restraining order issued on his or her behalf. In addition, PA 10-144 doubles, from 90 to 180 days, the time an employee has to bring a civil action against an employer who takes any of these actions.

The act requires employers to allow family violence victims to take paid or unpaid leave (including compensatory time, vacation time, personal days, or other time off) during any calendar year in which the leave is reasonably necessary to:

(1) seek medical care or counseling for physical or psychological injury or disability,
(2) obtain services from a victim services organization,
(3) relocate due to the family violence, or
(4) participate in any civil or criminal proceeding related to or resulting from such family violence.

Employers will be allowed to limit unpaid leave taken under the act's provisions to 12 days per calendar year. However, it specifies that this leave does not affect any other leave provided under state or federal law. An Employer subject to the act is defined as a person engaged in business, including the state and any political subdivision of the state, who has at least three employees. It allows employers to require no more than seven days notice when the need to use leave is foreseeable, and notice as soon as practicable when it is not.

In addition, the act will require employees who take this leave, upon request, to provide the employer with a signed written statement certifying that the leave is for a purpose authorized under the act. Further, it permits employers to request that an employee provide a police or court record related to the family violence or a signed written statement that the employee is a victim of family violence from the employee or an agent of a victim services organization, an attorney, an employee of the Judicial Branch's Office of Victim Services or the Office of the Victim Advocate, a licensed medical professional, or other licensed professional from whom the employee has sought assistance with respect to the family violence.

The act requires the employer to keep any such written statement or police or court record confidential and not further disclose the information except as required by law or as necessary to protect the employee's safety in the workplace, but in these situations the employee must be given notice before the disclosure.

The act specifies that it does not:

(1) prevent employers from providing more leave than it requires,
(2) diminish any rights provided to any employee under an express or implied contract or a collective bargaining agreement, or
(3) preempt or override the terms of any collective bargaining agreement in effect on October 1, 2010.

Additionally, PA 10-144 specifies that it cannot be construed to require an employer to provide paid leave if the employee is not entitled to paid leave pursuant to the terms and conditions of his or her employment or the paid leave exceeds the maximum amount of leave due the employee during any calendar year. However, the act requires the employer to provide unpaid leave if paid leave is exhausted or not provided.

The act imposes the same penalty for violations as exists for violations of the laws protecting crime victims. That is, the employee has 180 days from the occurrence to bring a civil action for damages and an order requiring the employee's reinstatement or otherwise rescinding such action. If the employee prevails, the employee must be allowed a reasonable attorney's fee set by the court.

Small Employer Health Insurance Coverage

Public Act 10-04 establishes the "Connecticut Clearinghouse," from which individuals and small employers (limited to employers with 50 and fewer employees) may obtain information about health insurance policies and health care available in Connecticut. It requires the Health Reinsurance Association to administer the clearinghouse within available appropriations. HRA provides comprehensive health insurance to people who cannot obtain insurance from commercial insurers due to inclusion in the high risk pool. By law, all Connecticut health insurers and HMOs are (1) HRA

members and (2) assessed for its losses. HRA also serves as the state's acceptable alternative mechanism for complying with the guaranteed issue option in the individual market required under federal law (the Health Insurance Portability and Accountability Act). The law requires HRA to offer special health care plans to low-income individuals and certain small employers.

The new act makes changes in the laws related to small employer health insurance plans and redefines "small employer" and "eligible employee. " As a result, it broadens the scope of certain laws by including part-time employees working at least 20 hours a week, but also limits the laws by excluding seasonal employees. For the purposes of determining if an employer is a small employer, the act prohibits the employer from counting a person working fewer than 30 hours a week as an eligible employee.

The act requires an insurer or producer marketing small employer group health insurance plans to offer a small employer, upon its request, a premium quote for covering employees working at least (1) 30 hours a week or (2) 20 hours a week.

The act also makes technical and conforming changes. The act becomes effective in two stages: July 1, 2010 for the Connecticut Clearinghouse and January 1, 2011 for the small employer provisions.

Purchase of Prescription Drugs by Nonstate Public Employers

Under Public Act 10-131, which is effective from date of passage, the state comptroller is now required to offer nonstate public employers the option to purchase prescription drugs through the state's bulk purchasing authority under PA 09-206. The comptroller must also establish procedures for doing this. The prescription drugs must be purchased for the employers' employees, employees' dependents, or retirees. The act defines "nonstate public employer" as:

(1) a municipality or other state political subdivision, including a board of education, quasi-public agency, or public library and
(2) the Teachers' Retirement Board.

In making the offer, PA 10-131 requires the comptroller to offer nonstate public employers the option of purchasing prescription drugs through the State Employees' Bargaining Agent Coalition (SEBAC) collective bargaining agreement with the state, but only if the Health Care Cost Containment Committee (HCCCC) gives the comptroller written notice that doing so is consistent with that agreement. (HCCCC is a state labor and management committee that exists under agreement with SEBAC.)

The act permits the comptroller to proceed without the written notice if she establishes a prescription drug purchasing program for nonstate public employers that is separate from the program for state employees.

The act requires nonstate public employers to pay the full cost of their own claims and prescription drugs. It also authorizes the comptroller to offer a nonstate public employer participating in the prescription drug purchasing program the option of purchasing stop-loss coverage from an insurer at a rate she negotiates. Finally, it permits two or more nonstate public employers to join together to purchase prescription drugs for their employees, employees' dependents, and retirees. It specifies that such an arrangement does not constitute a multiple employer welfare arrangement (MEWA) as defined under federal law.

As noted, the comptroller must establish procedures for allowing nonstate public employers to purchase prescription drugs through the state's bulk purchasing program. The procedures must include all of the following:

(1) eligibility requirements,
(2) the enrollment process,
(3) duration of participation,
(4) payment requirements,
(5) withdrawal from the arrangement, and
(6) termination of the program.

Municipalities and Boards of Education may Jointly Purchase Employee Health Insurance

Under PA 10-174 two or more municipalities or local or regional boards of education will be permitted to enter into a written agreement to act as a single entity to provide medical or health care benefits for their employees under certain conditions. Existing law permits municipalities to jointly perform any function that each has authority to perform separately.

The act stipulates that such an agreement is subject to the conditions of any union contract the municipality or board has with its employees. Also, it requires the municipal legislative body to approve an agreement before a municipality or a local or regional board of education may enter into it if:

(1) there is an existing arrangement between a municipality and the board of education serving the municipality to provide medical or health care benefits to the employees of both; or
(2) a municipality and the board serving the municipality have separate medical or health care benefits plans for their respective employees and both benefit plans are paid for by the municipality's general fund.

In addition, the act requires that the agreement must establish:

(1) the group's membership,
(2) the benefits plan duration,
(3) payment requirements for the benefits,
(4) procedures for a municipality or board of education to withdraw from the agreement, and
(5) procedures for the group to terminate the benefit plan.

PA 10-174 further specifies that a group formed under its provisions is not a multiple employer welfare arrangement (MEWA) as defined under ERISA, or a "fictitious group." Insurance law prohibits a fictitious group organized for insurance rating purposes where differences in rates are based solely on membership in the group. However, the prohibition does not apply to health insurance.

In addition, the act requires that any insurance producer who sells, solicits, or negotiates insurance on behalf of an insurer to a municipality or a board of education to fully disclose in writing, at the municipality's or board's request, the amount of any fees or compensation the producer receives from the insurer for services under the written memorandum required by existing law or the 1944 Federal Investment Advisors Act.

Employee Misclassification Joint Enforcement Commission Recommendations are Adopted by the Legislature

A significant area of concern for employers is increasing enforcement action in Connecticut and nationwide regarding misclassification of workers as independent contractors rather than as employees. In Connecticut, any employer who misrepresents either the number of its employees or casts them as independent contractors to defraud or deceive an insurance company in order to pay lower workers' compensation insurance is (1) guilty of a class D felony , (2) subject to a stop work order, and (3) liable to the Labor Department for a $300 civil penalty.

Public Act 10-12 now applies the same penalty to an employer who defrauds or deceives the state in the same way. The act also increases the civil penalty

for this violation by specifying that each day of the violation constitutes a separate offense.

The act specifies that any employer who is fully insured for workers' compensation and fails to pay the required state assessments for (1) administration of the Workers' Compensation Commission and (2) administration and funding of the Second Injury Fund (SIF), is guilty of a class D felony and subject to a stop work order. By law, a self-insured employer who fails to make the same assessments is already subject to these penalties. The SIF, which the state treasurer administers, is an employer-funded program that provides workers' compensation to employees whose employers did not provide it. By law and with few exceptions, employers must provide workers' compensation insurance for their employees.

Unemployment Compensation Extended Benefits - Payment by "Reimbursing" Employers

Public Act 10-46 now conforms state unemployment compensation law with federal law regarding "extended" unemployment benefits (extended benefits are benefits granted beyond (1) the standard 26-week period and (2) any additional benefits the federal government grants and pays for) paid by employers that are allowed to reimburse the unemployment compensation fund rather than pay unemployment taxes. Under federal and state law, the state, municipalities, and Native American tribes are allowed to reimburse the fund for unemployment benefits paid to their former employees, in lieu of paying taxes. Effective upon passage, PA 10-46 codifies the federal requirement that these employers pay 100% of the cost of any extended benefits.

The 1970 Federal-State Extended Unemployment Compensation Act (EUCA) (§ 204(a)(3)) requires that extended benefits provided by reimbursing employers be paid entirely by the employers. Under federal law, reimbursing employers, unlike other employers, do not have to pay regular unemployment taxes. They are allowed to reimburse the unemployment fund after a former employee begins collecting unemployment benefits.

The standard unemployment benefit period is 26 weeks. Due to the recession, the federal government created four periods of added benefits referred to as "additional benefits. " These four periods add 53 weeks for a total of 79 weeks of benefits. "Extended benefits" cover 20 weeks after the 79 weeks are completed.

Contractors May now Recover Unpaid Employee Pension Obligations from Subcontractors on Public Works Projects

The state's prevailing wage law requires contractors on all state and municipal construction jobs to pay the prevailing hourly wage, as determined by the Labor Department, to all mechanics, laborers, or other workers. The law is limited, and only applies to repair and renovation projects of $100,000 or more and new construction projects of $400,000 or more. Under the prevailing wage law, the Labor Department can require a contractor on a public project to pay the employee wages and benefits for a subcontractor who fails to do so.

Public Act 10-47 will permit contractors to bring a Superior Court civil action to recover the damages sustained by making such payments, together with costs and a reasonable attorney's fee. The act also gives the same legal recourse to a subcontractor required to cover wages or benefits not paid by a lower-tier subcontractor.

Clarification of Interest Penalties on Late Payments to Second Injury Fund

Under Public Act 10-11, the penalty for overdue Second Injury Fund assessments from employers or insurers is 15% of the assessment or $50, whichever is greater. Under prior law, it was unclear when an employer or insurer paid 15% or the $50 minimum. The fund, administered by the state treasurer, provides workers' compensation coverage to workers whose employers failed to provide it. Employers, and insurers on behalf of employers, pay an annual assessment into the fund. This act was effective from date of passage.

Police and Firefighter Workers' Compensation Claims for Certain Diseases

Under current workers' compensation law, "arising out of and in the course of employment" means an accidental injury or an occupational disease originating while an employee was engaged in the line of duty in the business or affairs of the employer on the employer's premises, or while engaged elsewhere in the employer's business or affairs by the employer's direction, express or implied. For a police officer or firefighter, it includes the period travelling from the employee's place of abode (i.e., home) to work, time at work, and departure from work until arrival home.

Under Public Act 10-37, a paid municipal or volunteer firefighter, municipal police officer, constable, or volunteer ambulance service member is eligible for workers compensation benefits for diseases, including the following, if they arise out of and are in the course of employment:

(1) hepatitis,
(2) meningococcal meningitis,
(3) tuberculosis,
(4) Kahler's Disease (multiple myeloma),
(5) non-Hodgkin's lymphoma,
(6) prostate cancer, or
(7) testicular cancer.

As with all workers' compensation claims, the disease must result in death or temporary or permanent total or partial disability in order to be eligible for benefits. However, since current law already covers any disabling injury or illness that arises out of and in the course of employment, it is unlikely that this act makes any actual changes in how the law will treat disease claims by these categories of workers.

Indemnification for Certain Police Officers

Under current law, a state, local, or State Capitol police officer who is found not guilty or has charges dismissed in a prosecution for a crime allegedly committed in the course of duty must be indemnified by his or her employer for economic loss, including legal fees. Under case law, an officer could recover attorney's fees related to the prosecution but not from a separate lawsuit to enforce the officer's right to indemnification. However, effective October 1, 2010 Public Act 10-68 allows the officer to recover attorneys' fees and costs from enforcing the indemnification provisions of existing laws.

Minor Revision to Connecticut Family and Medical Leave Act

Current law permits an employee to take unpaid family and medical leave to care for an immediate family member or next of kin who is a current member of the U.S. military, National Guard, or the reserves with a serious illness or injury incurred in the line of duty. The employee may take up to 26 weeks

of unpaid leave during a 12-month period if the family member is:

(1) undergoing medical treatment, recuperation, or therapy;
(2) otherwise in outpatient status; or
(3) on the temporary disability retired list for a serious injury or illness.

The law applies to a private sector employer with at least 75 employees. Military caregivers are treated, for the most part, like other employees taking unpaid leave under the Connecticut FMLA.

Effective from date of passage, Public Act 10-88 now requires a private-sector employee requesting military caregiver leave under FMLA to notify the employer at least 30 days before leave begins, or provide notice as soon as practicable if a treatment date is sooner. The law already applied this notice requirement to employees requesting family and medical leave due to their own serious health condition or that of a spouse, child, or parent, or to donate an organ or bone marrow.

Criminal Background Checks for Prospective State Employees

Effective October 1, 2010, Public Act 10-142 prohibits certain state employers from asking about a prospective employee's past convictions until the person is deemed otherwise qualified for the position. The prohibition does not apply if a statute specifically disqualifies someone from a position due to a prior conviction.

The applicable employers are the state; the executive and judicial branches, including any of their boards, departments, commissions, institutions, agencies, or units; boards of trustees of state-owned or -supported colleges, universities, or their branches; public and quasi-public state corporations; authorities established by law; and anyone designated by such employers to act in their interest with employees. The act does not cover the state Board of Labor Relations, Board of Mediation and Arbitration, or apparently the Legislative Branch. This means these employers may ask a prospective employee about prior convictions. Note, under current law, unaffected by PA 10-142, these and other state agencies are prohibited from denying a person employment solely because of a prior conviction.

State Employee Telecommuting Options

As of July 1, 2010, Public Act 10-169 will require the Department of Administrative Services commissioner to develop and implement guidelines, in cooperation with state employee unions, authorizing state employee telecommuting and work-at-home programs. This must be done within available appropriations. Under the act, a telecommuting or work-at-home assignment must meet the programs' guidelines. It eliminates the requirement that such an assignment must be determined to be cost effective.

The guidelines and the determination of whether a position is appropriate for telecommuting are not subject to collective bargaining, under the act, and it specifies that a telecommuting assignment can be terminated "as required by agency needs."

New Freedom of Information Act Exemption for Specific Categories of Public Employees

Effective from date of passage, Public Act 10-58 exempts from disclosure under the state Freedom of Information Act personnel, medical, or similar files about current or former employees of:

(1) the Department of Correction (DOC), including members and employees of the Board of Pardons and Paroles, and
(2) the Department of Mental Health and Addiction Services (DMHAS)

to people in DOC custody or supervision or confined in a facility of the Whiting Forensic Division of Connecticut Valley Hospital.

The exemption includes records of these departments' security investigations of such employees and also investigations of discrimination complaints by or against the employees. The act does not define a "similar file."

Under current law, if some other public agency receives a FOIA request from someone confined in a DOC or Whiting Forensic Division facility that agency must notify the DOC or DMHAS commissioner before complying with the request. The appropriate commissioner can withhold the record if he or she believes that the requested record is exempt from disclosure under FOIA as a safety risk, including the risk of harm to others, escape, or disorder in a facility.

SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW