Employment Legislation Summary

2009 SESSION **CONNECTICUT GENERAL ASSEMBLY**

In its 2009 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective October 1, 2009. 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.

Equal Pay for Equal Work

Public Act 09-101 amends the preexisting law prohibiting employers from discriminating based solely on gender when determining the amount of compensation to pay employees. The amendments do all of the following:

1. expand possible employer defenses against gender wage claims;
2. permit, rather than require, a court to order awards when an employer is found to violate the law;
3. extend the period to make a claim of discrimination from one to two years following a violation;
4. expand existing whistleblower protections to include those who testify or assist in a gender wage proceeding;
5. permit possible compensatory and punitive damages for violations of the whistleblower protections; and
6. repeal the $200 fine for each wage discrimination violation or for retaliatory action against an employee bringing a gender wage complaint.

The new act also allows an employee or employees to bring a civil action for alleged violations without going to the Commissioner of Labor if the Commissioner declines to bring such an action, and damages can include back pay, compensatory and punitive damages, attorney's fees, costs and equitable relief. In addition, it expands whistleblower protections to include not only employees who file complaints or take other actions regarding gender wage discrimination but also those persons who oppose a discriminatory pay practice or assist in any proceeding regarding such a practice.

PA 09-101 also expands defenses available to employers against gender wage claims. While current law allows employers to recognize length of service or merit rating as legitimate factors in setting wages, the amendments permit employers to defend their pay practices if earnings are set in relation to quantity or quality of production, or pay differentials are based upon a *bona fide* factor other than gender, such as education, experience or training, with certain limitations.

Penalties under the Personnel Files Act

In addition to amending the law on gender discrimination in employee compensation (see above), PA 09-101 also imposes a $300 penalty for violations of the state's Personnel Files Act (the "PFA," CGS Ch. 563a). The Labor Department imposes the penalty, and can do so for each separate violation in the

same $300 amount. In addition, the Labor Department can ask the attorney general to initiate civil action to recover any unpaid penalties. By law, when the attorney general helps recover penalties for violations of Chapter 557 (employment regulation regarding minors, people with disabilities, apprentices, family and medical leave, certain employee rights, and other employment issues), Chapter 558 (various wage laws), and workers' compensation insurance fraud, the money is credited to the Labor Department to use to enforce the laws that generated the penalties. PA 09-101 now authorizes PFA penalties to be used to support enforcement of the PFA or any of the other laws previously mentioned.

Confidentiality of Certain Employer Data

The Unemployment Compensation Act requires employers to provide the Connecticut Labor Department with employee information that must be kept confidential other than to department employees. There are exceptions to this under specific confidentiality agreements with regional workforce development boards as a part of their duties under the federal Workforce Investment Act. PA 09-33 permits the department to make such information available to a private entity under contract with the U. S. Department of Labor to administer grants that benefit the state Labor Department. It requires private entities to enter into the same confidentiality agreements that the law requires of the regional workforce development boards.

Each such agreement must contain safeguards to protect the information's confidentiality. Among the safeguards the agreements must include are the following:

1. a statement from the private entity of the purposes and specific use of the information along with a statement that it will only be used for these purposes;
2. a requirement that the entity store the information in a location that is physically secure from unauthorized access and, when the information is maintained electronically, in a way that prevents such access;
3. a requirement that the entity establish procedures to ensure that only authorized individuals, including its agents, have access to information stored in computers;
4. a requirement that the entity also enter into written agreements, which the administrator must approve, with its authorized agents extending the "requisite" safeguards contained in its agreement with the administrator; and
5. a requirement that the entity instruct all people with access to the information about the legal sanctions (presumably for unauthorized disclosure) and require each employee and agent authorized to "review" the disclosed information to acknowledge in writing that they have been advised of the sanctions.

Under the act, an entity's employees or agents violating these provisions may be fined up to $200, imprisoned for up to six months, or both. They are also banned from any further access to confidential information.

Injured Military Service Member Leave Under Connecticut FMLA

Effective upon passage, Public Act 09-70 permits an employee to take up to 26 weeks of unpaid leave from work under the state family and medical leave acts (either the private sector CT FMLA or the state employee leave statutes) to care for

an immediate family member or next of kin who is a current member of the U. S. armed forces, National Guard, or the military reserves and 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.

Following the template established by amendments to the federal FMLA providing the same type of leave, PA 09-70 provides for 26 weeks of leave over a 12-month period under the private sector law and 26 weeks of leave over a two-year period under the state employee law. Under both these statutes the leave is a one-time benefit for each armed forces member per serious injury or illness incurred in the line of duty.

Under the private sector CT FMLA the 12-month period begins on the first day of military caregiver leave. Existing provisions of both the private sector CT FMLA and state employee statutes regarding such matters as written certification of medical need, intermittent leave, and other items, are unchanged and will apply to this new form of leave. Also, the act specifies that leave taken pursuant to private sector CT FMLA does not run concurrently with a transfer to "light duty" work in lieu of regular work duties under the Workers' Compensation Act.

PA 09-70 defines "armed forces" as the Army, Navy, Marine Corps, Coast Guard, and Air Force and any reserve component, including the Connecticut National Guard performing duty as provided under federal law. It also defines "son or daughter" as a biological, adopted or foster child, stepchild, legal ward, or a child for whom the eligible employee or armed forces member stood in loco parentis and who is any age. Regarding "next of kin" for leave purposes, the act specifies the term as the service member's nearest blood relative, other than his or her spouse, parent or child, in the following order of priority:

1. blood relatives who have been granted legal custody of the service member by court decree or statutory provisions,
2. siblings,
3. grandparents,
4. aunts and uncles, and
5. first cousins.

If the service member has designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, then the designated individual is deemed to be the member's next of kin.

As with employees taking leave under the existing family and medical leave laws, the act requires the employer to restore the military caregiver to his or her previous position or an equivalent one.

Specific provisions regarding state employees require (a) prior written certification for the leave from the service member's physician, including the probable leave duration, and (b) before leave begins the employee must sign a statement of intent to return to work.

Certified Payrolls for Public Construction Projects

Public Act 09-25 amends the state's prevailing wage law (CGS 31-53) to require contractors and subcontractors working on public construction projects to submit their certified payrolls to the contracting agency by first-class, postage-prepaid mail. Current law requires only that these employers submit

their payrolls. Also under current law, it is a class D felony to (1) knowingly file a false certified payroll or (2) fail to file a certified payroll that meets the requirements set in the public projects prevailing wage law.

In addition, certified payrolls must include a statement signed by the employer indicating: (1) records are correct; (2) the wage rate paid to each covered employee is at least the prevailing wage rate; (3) the employer has complied with the prevailing wage law; (4) the employer is aware that knowingly filing a false certified payroll is a class D felony; and (5) several other requirements are met. Covered employees include each person performing the work of a mechanic, laborer, or worker. A class D felony carries a fine of up to $5,000, up to five years imprisonment, or both.

Evidence of Workers' Compensation Coverage – Public Works Project Contractors

Public Act 09-104, effective from passage, allows applicants to meet the "sufficient evidence" requirement necessary to renew a license or permit to operate a business by providing the name of the applicant's insurer, the policy number, and the effective coverage dates, certified as truthful and accurate, instead of presenting a hard copy of the insurance certificate. Prior law required a hard copy of a certificate of self-insurance issued by a workers' compensation commissioner, a certificate of compliance issued by the insurance commissioner, or a certificate of insurance issued by a stock or mutual insurance company.

Volunteer Ambulance Companies – Workers' Compensation Premiums

Public Act 09-88 requires the state-licensed workers' compensation risk rating organization to file with the insurance commissioner a method of computing workers' compensation premiums for volunteer staff of municipal or volunteer ambulance services that does not base the premium primarily on the number of ambulances the service owns. This new law requires the method to be based primarily on ambulance usage as determined by the estimated annual number of service call responses. The new method applies to workers' compensation policies issued or renewed on or after October 1, 2009. The bill defines municipal or volunteer ambulance services as a volunteer organization or municipality that the public health commissioner has licensed to transport patients.

Protecting the Integrity of CONN-OSHA Investigations

Under current law, a state and local public employee who gives notice to the labor commissioner of a potential occupational safety and health violation or situation with an imminent threat of danger of physical harm may ask and have his or her name removed from any record published, released, or made available regarding the potential violation or danger. Public Act 09-106 provides the same confidentiality protection to an employee whose name is not part of the original complaint notice, but who at any time provides information to the commissioner regarding the potential violation or danger. By law, once the commissioner receives such a notice, she may enter the workplace without advance notice for an inspection. Also, she may compile, analyze, and publish, in either summary or detail form, all reports of information obtained under this provision.

Nursing Home Employees - Pain Management Training

Effective July 1, 2009, Public Act 09-108 will require all nursing home facilities, other than residential care homes, to provide at least two hours of annual training in pain recognition and administration of pain management techniques to (1) all licensed and registered direct care staff, and (2) nurse's

aides who provide direct patient care. Current law requires this for all Alzheimer's special care units or programs. The law defines a "nursing home facility" as a nursing home, residential care home, or rest home with 24-hour nursing supervision. Although residential care homes are included in the definition of nursing home facilities, they are not licensed as nursing homes. They provide some limited assistance with activities of daily living but do not provide nursing care.

Connecticut Healthcare Partnership
(Vetoed by Governor)

Public Act 09-147 requires the comptroller to convert the state employee health insurance plan, excluding dental, to a self-insured arrangement for benefit periods beginning July 1, 2009 and later. (Pharmacy benefits are self-insured already.) The act also authorizes the comptroller to merge, on or after January 1, 2010, any health benefit plans the comptroller arranges into the self-insured state plan. Further, it requires that a company contracting with the state to provide administrative services for the self-insured state plan must charge the state its lowest available rate.

The new law also requires the comptroller to offer employee and retiree coverage under the self-insured state plan to (1) nonstate public employers beginning January 1, 2010; (2) municipal-related and nonprofit employers beginning July 1, 2010; and (3) small employers beginning January 1, 2011.

The comptroller must take these steps (1) after the General Assembly receives written consent from the State Employees' Bargaining Agent Coalition (SEBAC) and (2) subject to specified requirements and conditions. Employers that apply and are approved for coverage must agree to benefit periods of at least two years. The comptroller is authorized to adopt regulations related to opening the state plan to these other groups.

As part of the extension to small employers, PA 09-147 requires a health care actuary to (1) review certain employer applications for coverage under the state plan, and (2) certify to the comptroller in writing if the group will shift a significantly disproportionate share of its employees' medical risks to the state plan. If so, the act requires the comptroller to decline the group coverage. PA 09-147 also:

1. requires the state to charge employers participating in the state plan the same premium rates the state pays, except it may adjust the rate for a small employer to reflect its group characteristics;
2. allows the comptroller to have state money withheld from a municipality participating in the state plan that fails to pay premiums and, with 10-days' notice, terminate a participating employer group that does not pay its premiums;
3. establishes a "state plan premium account" as a restricted grant fund, into which employer groups' premiums must be deposited and from which claims must be paid;
4. establishes two advisory committees to make recommendations to the Health Care Cost Containment Committee (HCCCC), a state labor and management committee that exists under agreement with SEBAC, about coverage for nonstate public employees and private sector employees;
5. permits two or more municipalities to enter into a written agreement to act as a single entity to obtain health insurance for their employees, subject to specified conditions, including insurance commissioner approval; and
6. excludes from the state insurance law definition of "small employer" a municipality obtaining health care benefits through the self-insured state plan.

The bill eliminates the dependent age limitation for certain children eligible for coverage under the state plan or a state-arranged plan. It conforms these plans to preexisting state insurance law that requires coverage for a child up to age 26 who meets certain criteria.

COBRA Continuation of Health Insurance

Effective upon passage, Public Act 09-03 allows certain individuals who had the right to continue being covered under their employer's group health insurance plan after they were terminated from their job, but chose not to apply for it or to maintain it, to elect to be covered by it and to benefit from the federal subsidy that will reduce the premium. PA 09-03 applies to former employees of employers with a workforce of fewer than 20 employees who were covered by Connecticut's "mini" COBRA law (CGS §§ 38a-538, 546, and 554).

The federal subsidy, under the American Recovery and Reinvestment Act of 2009, provides premium assistance for certain individuals receiving COBRA continuation coverage. Eligible individuals pay only 35% of their COBRA premiums and the remaining 65% is reimbursed to the coverage provider through a tax credit to the provider. The premium assistance only applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to nine months. Federal law permits eligible individuals to take advantage of the special nine-month federal subsidy being offered if state law allows them to.

PA 09-03 bill authorizes a person who (1) did not have continuation of group health insurance coverage under state law in effect on February 17, 2009, but (2) would be an "assistance eligible individual" as defined by federal law if such continuation of coverage had been in effect, to elect to continue such coverage if he or she makes such election within 60 days after receiving the notice the bill requires. An "assistance eligible individual" is any qualified beneficiary if (1) at any time during the period beginning September 1, 2008, and ending December 31, 2009, he or she is eligible for COBRA continuation coverage and elects such coverage, and (2) the qualifying event for COBRA continuation coverage consists of involuntary termination of the covered employee's employment and that event occurred between September 1, 2008 and December 31, 2009.

Continuation of coverage elected under the new act begins with the first period of coverage beginning on or after February 17, 2009, and does not extend beyond the period that such continuation of coverage would have been allowed under state law if such coverage had been elected when such individual became eligible to elect continuation of coverage. The act requires each insurer and health care center (an HMO) that has issued a group health insurance policy in conjunction with their group policyholders that are employers with fewer than 20 employees, to provide notice by April 18, 2009, of the election period the bill establishes for those former employees who are eligible to make an election under the bill.

If an individual elects continuation of coverage under PA 09-03, the period beginning on the date he or she became eligible for such continuation of coverage and ending on the date the first period of such coverage begins on or after February 17, 2009, must be disregarded for the purposes of determining whether coverage was continuous under state law. State law establishes certain rules regarding "continuation of coverage" that this provision addresses.

Unemployment Compensation - "Quit to Follow"

Under current unemployment compensation law, an employee is not eligible for unemployment compensation (UC) if he or she quits a job without good reason. However, the law provides certain conditions under which an employee

who quits will remain qualified for UC, referred to as "quit to follow" circumstances.

One quit to follow condition arises when an employee quits to follow a spouse who must relocate because he or she is on active military duty. Effective upon passage, PA 09-03 expands this so-called "trailing spouse" provision to cover an employee who quits a job to accompany a spouse to a new place because the spouse's job relocated. The act requires it be impractical for the quitting employee to commute from the new place. It also specifies that the employer's UC account must not be charged with respect to the employee's voluntary quitting, so there is no impact on the employer's "experience rating" for UC tax rate purposes.

The act also makes changes to two other existing conditions under which an employee may quit work and still qualify for UC. The law provides an employee may quit to protect himself or herself or the employee's child, if the child lives with the employee, from becoming or remaining a victim of domestic violence. PA 09-03 removes the requirement that the child be living with the employee and extends the people who the employee may move to protect to include the employee's spouse or parent. By law, the employee must make reasonable effort to preserve the employment.

In addition, under current law, an employee may quit to care for a seriously ill spouse, child, or parent who lives with the employee. PA 09-03 removes the requirement that the person live with the employee. It removes the term "seriously ill" from current law and replaces it with an "illness or disability" that necessitates care for the ill or disabled person for a period of time longer than the employer is willing to grant leave, paid or otherwise. The act then extends the list of those who can document such an illness or disability beyond a licensed physician to include the following health care providers (essentially following the list of those who can certify a serious illness under FMLA):

1. a physician or osteopath who is authorized to practice medicine or surgery by the state in which he or she practices;
2. a podiatrist, dentist, psychologist, optometrist, or chiropractor authorized to practice in Connecticut or another state who performs within the scope of the authorized practice;
3. an advanced practice registered nurse, nurse practitioner, nurse midwife, or clinical social worker authorized to practice in Connecticut or another state who performs within the scope of the authorized practice;
4. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts; any medical practitioner from whom an employer or a group health plan's benefits manager will accept certification of a serious health condition to substantiate a claim for benefits;
5. any of the above practitioners who practices in a country other than the United States, who is licensed in accordance with the laws and regulations of that country; or
6. such other health care provider as the labor commissioner approves, performing within the scope of the authorized practice.

State Contracting Nondiscrimination Requirements

Under current law all state contracts and contracts of political subdivisions, other than municipalities, must contain provisions that protect people from discrimination based on race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability, or sexual orientation. Effective upon passage, PA 09-158 (1) limits the state and political subdivision contracts that

must contain an anti-discrimination provision, by exempting contracts between governmental or quasi-governmental entities; (2) expands the categories of protected people to include those with mental disabilities; and (3) establishes different supportive data that contractors must provide before entering a contract. Under the bill, "mental disability" means one or more mental disorders, as defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. PA 09-158 also now defines "marital status" as being single, married under Connecticut law, widowed, separated, or divorced. Please refer to the General Assembly website (see above) for other provisions affecting state contractors.

Employers Must Safeguard Employment Applications (Awaiting action by Governor)

Public Act 09-239 penalizes employers for failing to obtain and retain employment applications securely and to take reasonable measures to destroy or make them unreadable when disposing of them, at least by shredding them. An "employer" is an individual, corporation, partnership, or unincorporated association. This does not apply to state agencies or political subdivisions. A violation is subject to a civil penalty of $ 500 per violation, not to exceed $ 500,000 per event. Civil penalties received must be deposited in the privacy protection guaranty and enforcement account. PA 09-239 also makes numerous changes in laws relating to identity theft, Social Security numbers and the dissemination of personal identifying information, while broadening the definition of "identity theft." For further information on these additional provisions please refer to the General Assembly website (see above).

Employer Health Insurance Premium Payments for Terminated Employees

PA 09-126 allows employers to stop paying group health insurance premiums related to an employee and his or her dependents 72 hours after the employee quits or is terminated, if the employer makes an election that satisfies the bill's provisions. The act outlines related requirements and conditions for the employer and applicable insurer, HMO, hospital or medical service corporation, or fraternal benefit society to which the employer paid premiums for the insurance. PA 09-126 does not apply if (1) an employee is laid off or (2) a collective bargaining agreement requires that an employer pay an employee's insurance premiums after his or her termination.

An employer making a permissible election must notify the affected insurer, HMO, hospital or medical service corporation, or fraternal benefit society, and the employee within 72 hours of the employee's termination. The act also requires an employer to reimburse the affected employee his or her portion, if any, of premiums that the insurance carrier credits or refunds to the employer.