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Employment Legislation Summary

2015 SESSION
CONNECTICUT GENERAL ASSEMBLY

In its 2015 session, the General Assembly passed a number of new laws affecting employers. Except as otherwise noted, the changes are effective **October 1, 2015**. *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.*

The State Budget

Civil Actions for past due payments to employee welfare funds; "Labor Peace Agreements" for certain state-funded hospitality projects; and paid FMLA implementation

Public Act 15-5 implements the state budget but also contains three sections affecting labor and employment laws. The first is section 112, which allows an employee to sue for unpaid wages over an employer's past due payments to an employee welfare fund. Employee welfare funds provide healthcare, disability, or retirement benefits for employees. To be covered, the payment must be past due under a written contract's terms or the rules and regulations adopted by the fund's trustees. The new law states that such past due amounts "shall be considered wages," bringing them under the preexisting wage and hour laws. Thus, the act allows an employee to be awarded up to twice the amount owed, plus costs and attorney's fees.

The labor commissioner can also (1) collect the past due payments, plus interest, or (2) bring a legal action to recover up to twice the amount owed, plus costs and attorney's fees. The act applies to all employers; however, it appears that the federal Employee Retirement Income Security Act (ERISA) may preempt this provision from applying to private sector employers and employees. Since ERISA generally does not apply to public employers and their employees, the net result appears to be that only public sector employers, including the state itself, will be affected by this new act.

The act also allows such an aggrieved employee to bring a civil action against (1) a sole proprietor or general partner, or officer, director, or member of a corporation or LLC who failed to make the required payment, or (2) any employee of a corporation or LLC, who was designated to make the payment but failed. Under the act these people can be found personally liable for the amount due, plus costs and attorney's fees. However, it appears that ERISA may also preempt this provision from applying to private sector employers and their employees. Section 112 takes effect October 1, 2015.

Next, section 113 of the new act requires the state, in certain state-backed "hospitality projects," to require contracts for hotel or concession area operation or management services to include a labor peace agreement between the contractor, including any of its subcontractors, tenants, or licensees, and the labor organization representing or seeking to represent the hotel's or concession area's employees.

Under the act, a "labor peace agreement" is an agreement that requires the labor organization and its members to refrain from engaging in labor

activity that may disrupt the hotel's or concession area's operations, including strikes, boycotts, work stoppages, and picketing. The requirement applies if the state has a "substantial proprietary interest" in the hospitality project. The state has such an interest if (1) it invested at least $6 million in the hospitality project or 20% of the project's costs, whichever is less, and must be reimbursed under a finance agreement, or (2) the project has a contract, lease, or license that entitles the state to receive rents, royalties, or other payments in connection with a property provided by the state and based on the project's revenue. The labor peace agreement must stay in effect until the state's financial investment is fully repaid.

For purposes of the new act, a "hospitality project" is a (1) capital project involving a restaurant, bar, club, cafeteria, or other food and beverage operation within a hotel's premises, or (2) concession area used to provide food and beverage or news and gift services within the premises of a state-owned or operated facility that is financed or contracted for by the state. A "capital project" is any acquisition, construction, rehabilitation, or remodeling of any structure (1) used or intended to be used for commercial purposes, and (2) financed in whole or in part with funds or property from, or arranged by, the state, including grants, loans, bonds, revenue bonds, tax increment financing, real property conveyances, or other means. ***Effective Date: January 1, 2016.***

Finally, the labor commissioner, in consultation with other state agencies, must establish procedures to implement an employee-funded paid family and medical leave (FML) program. Under PA 15-5 she must contract with a consultant to create an implementation plan for the program by October 1, 2015. At minimum, the plan must:

1. include a process to evaluate and establish mechanisms by which employees who elect to participate must contribute a portion of their salary or wages to this employee-funded paid FML program by possibly using existing technology and payroll deduction systems;

2. identify mechanisms for timely claim acceptance and processing; fraud prevention; and any staffing, infrastructure and capital needs associated with administering the program;

3. identify mechanisms for timely distributing employee compensation and any associated staffing, infrastructure, and capital needs; and

4. identify funding opportunities to assist with start-up costs and program administration, including federal funds.

The act also requires the labor commissioner, by October 1, 2015 and in consultation with the treasurer, to contract with a consultant to perform an actuarial analysis and report on the employee contribution level needed to ensure sustainable funding and administration for a paid FML compensation program. The commissioner must submit a report on the implementation plan and actuarial analysis to the Labor and Appropriations committees by February 1, 2016. ***Effective upon passage.***

Loss of an Operator License Due to a Drug or Alcohol Testing Program and Unemployment Benefits

Public Act 15-158 expands the circumstances under which a private-sector employer can discharge or suspend an employee without affecting the employer's unemployment taxes. It creates a "non-charge" against an employer's experience rate for employees discharged or suspended because they failed a drug or alcohol test while off duty and subsequently lost a driver's license needed to perform the work for which they had been hired. (The law disqualifies a person from operating a commercial motor vehicle for one year if he or she is convicted of driving under the influence (DUI.))

In effect, this allows the discharged or suspended employee to collect unemployment benefits without increasing the employer's unemployment taxes. However, with only two exceptions, a preexisting provision of the Unemployment Compensation Act disallows the application of non-charge provisions to public sector employers. As a result the new act will not benefit those employers.

Pay Equity and Fairness

This new law prohibits employers, including the state and municipalities, from taking certain steps to limit their employees' ability to share information about their wages. Under Public Act 15-196, such sharing consists of employees of the same employer (1) disclosing or discussing the amount of their own wages or other employees' voluntarily disclosed wages, or (2) asking about other employees' wages. The term "employee" is broadly defined under the act as "any individual employed or permitted to work by an employer," thus including, among others, supervisors and managers too.

Specifically, the act bans employers from prohibiting their employees from such sharing or requiring employees to sign a waiver or document that denies their right to such sharing. The act prohibits discharging, disciplining, discriminating or retaliating against, or otherwise penalizing employees for such sharing.

The act allows employees to bring a lawsuit for alleged violation in any court of competent jurisdiction. Such action must be brought within two years after the alleged violation. Employers can be found liable for compensatory damages, attorney's fees and costs, punitive damages, and any legal and equitable relief the court deems just and proper. ***Effective Date: July 1, 2015.***

Minor Changes to the Subsidized Training and Employment Program

Public Act 15-127 makes several changes in the Subsidized Training and Employment Program (STEP) and the Unemployed Armed Forces Member STEP. Under current law these programs provide grants to qualifying businesses and manufacturers to help offset the cost of training and compensating eligible new employees and unemployed veterans during their first 180 days on the job.

The new act does the following:

1. prohibits eligible businesses and manufacturers from receiving STEP grants for new employees hired to replace workers they (a) currently employ or (b) terminated, unless they demonstrate just cause for replacing or terminating the workers;

2. (a) requires the Department of Labor (DOL) to monitor the outside consultants or Workforce Investment Boards (WIB) it retains to run the programs, (b) allows DOL to pay for the monitoring with the funds set aside for covering STEP's marketing and operations costs, and (c) reduces the amount of funds set aside to cover such costs;

3. allows DOL to use certain funds set aside for the Unemployed Armed Forces Member STEP's administrative costs to cover transportation costs for eligible employees;

4. renames the STEP "new apprentice" program as the "preapprentice program" and expands the eligible employees for which businesses may receive the grants; and

5. specifies that the state and its political subdivisions do not qualify for STEP grants.

The act also eliminates obsolete provisions relating to the Fair Wage Board statute, which was repealed in 2013. PA 15-127 is effective October 1, 2015, except for the provisions eliminating obsolete statutes, which are effective upon passage.

Employee Online Privacy

Public Act 15-6 prohibits employers from requesting or requiring an employee or job applicant to (1) provide the employer with a username, password, or other way to access the employee's or applicant's personal online account (see below); (2) authenticate or access such an account in front of the employer; or (3) invite, or accept an invitation from, the employer to join a group affiliated with such an account.

It bars employers from firing, disciplining, or otherwise retaliating against an employee who (a) refuses to provide this access, or (b) files a complaint with a public or private body or court about the employer's

request for access or retaliation for refusing such access. In addition, it prohibits employers from refusing to hire an applicant because the applicant would not provide access to his or her personal online account.

Under the new act a "personal online account" is an online account the employee or applicant uses exclusively for personal purposes, unrelated to any of the employer's business purposes, including e-mail, social media, and retail-based Internet web sites. It does not include any account created, maintained, used, or accessed by an employee or applicant for the employer's business purposes.

PA 15-6 provides an exception for accounts and devices the employer provides. An employer may request or require an employee or applicant to provide access to any account or service (a) that is provided by the employer or by virtue of the employee's work relationship with the employer, or (b) that the employee uses for the employer's business purposes. Regarding devices, the exception applies to any electronic communications device the employer supplied or paid for, in whole or in part. The act defines an "electronic communications device" as any electronic device capable of transmitting, accepting, or processing data, including a computer, computer network and computer system, as defined in state law, and a cellular or wireless telephone.

The new act also has a limited exception for employer investigations. Employers conducting certain investigations can require employees or applicants to provide access to a personal online account, but they cannot require disclosure of the username, password, or other means of accessing the account. (For example, an employee under investigation could be required to privately access an account and then allow the employer to see the account's contents.)

Employers can require this access when conducting investigations to ensure compliance with (a) applicable state or federal laws, (b) regulatory requirements, or (c) prohibitions against work-related employee misconduct. Employers can also require access for investigations into an employee's or applicant's unauthorized transfer of the employer's proprietary information, confidential information, or financial data to or from a personal online account operated by an employee, applicant, or other source. The investigations must be based on the employer receiving specific information about the employee's or applicant's personal online account activity or unauthorized transfer of information.

Employers may discharge, discipline, or otherwise penalize an employee or applicant who transferred the employer's proprietary information, confidential information, or financial data to or from the employee's or applicant's personal online account without the employer's permission.

Covered employers include the state and its political subdivisions, but the act does not apply to a state or local law enforcement agency conducting a preemployment investigation of law enforcement personnel. In addition, PA 15-6 allows an employer, in compliance with state and federal law, to monitor, review, access, or block electronic data (1) stored on an electronic communications device paid for, in whole or in part, by the employer, or (2) traveling through, or stored on, an employer's network.

The act allows employees and applicants to file a complaint with the labor commissioner, who can impose civil penalties on employers of up to $25 for initial violations against job applicants and $500 for initial violations against employees. Penalties for subsequent violations can be up to $500 for violations against applicants and up to $1,000 for violations against employees. The commissioner can ask the Attorney General to bring a civil suit to recover any of the above civil penalties. Any party aggrieved by the commissioner's decision may appeal to the Superior Court.

Protections for Workplace Interns

Public Act 15-56 prohibits employers from discriminating against or sexually harassing their workplace interns. In effect, this new law simply gives interns protections similar to those of paid employees.

The new act defines an "intern" as a person working

for an employer (1) who is not paid by the employer, (2) who the employer has not committed to hiring, and (3) where the internship is designed to supplement training that may enhance the intern's employability. The act defines "employer" as any person engaged in business in the state, who provides a position for an intern, including the state and any political subdivision.

A violation of PA 15-56's provisions will be a "discriminatory practice" under state human rights law, which means the intern may file complaints of alleged violation with the Commission on Human Rights and Opportunities and pursue civil action in Superior Court. The discrimination the act prohibits flows from the same protected classes applied to employee discrimination claims: race, color, religious creed, age, sex, gender identity or expression, sexual orientation, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness, with exception for bona fide occupational qualifications or need. The act's prohibition covers hiring, firing, and advertising internships. The act also bans an employer from firing or taking other discriminatory steps against an intern for filing a complaint or testifying in a proceeding about a discrimination complaint.

Finally, in addition to the employer not committing to hiring the intern and both parties agreeing that the intern will not be paid for his or her work, the act sets out other conditions of an intern's working situation. The intern's work must:

1. supplement training given in an educational environment that may enhance the intern's employability,
2. provide experience for the intern's benefit,
3. not displace any of the employer's employees,
4. be performed under the employer's supervision or that of an employee of the employer, and
5. provide no immediate advantage to the employer providing the training and may occasionally impede the employer's operations.

New Procedural Changes for CHRO Case Processing; and Defining "Domestic Worker"

Public Act 15-249 makes various procedural changes affecting discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO) including the following:

1. shortens certain time frames for CHRO's processing of complaints;
2. allows the respondent (i.e., the alleged wrongdoer) to elect to participate in pre-answer conciliation;
3. prohibits the same person from being assigned to conduct the mandatory mediation conference and investigate the complaint;
4. transfers certain responsibilities from the CHRO executive director to the CHRO legal counsel; and
5. makes minor, technical, and conforming changes.

PA 15-249 also brings domestic workers who work for employers with at least three employees under the employment-related anti-discrimination laws administered by CHRO. Among other things, this provides them with protections against employment-related discrimination based on their inclusion in one of the standard CHRO protected classes, such as their race, religion or gender, a right to a reasonable leave of absence for a disability resulting from a pregnancy and other pregnancy-related protections, and protections against sexual harassment. By law, employees covered under the CHRO statutes can enforce their rights by filing a complaint with the commission. The act takes effect on October 15, 2015, except for the provisions on domestic workers, which will not be effective until January 1, 2016.

Nurse Staffing Levels

Pursuant to Public Act 15-91 hospitals will be required to report annually to the Department of Public Health (DPH) on their prospective nurse staffing plans, rather than make the plans available to DPH upon request

as prior law required. It expands, in two stages, the information that must be included in the plans, such as the ratio of patients to certain nursing staff and differences between the prospective staffing levels and actual levels. In addition to the information already required by law, the act requires hospital nurse staffing plans developed and implemented after January 1, 2016 to include:

1. the number of direct patient care staff in three categories (registered nurses, licensed practical nurses, and assistive personnel), and the ratio of patients to each category, reported by patient care units;

2. the hospital's method for determining and adjusting direct patient care staffing levels; and

3. a description of supporting personnel assisting on each patient care unit.

Under the act, plans developed and implemented after January 1, 2017 also must include a description of any differences between the plan's staffing levels and actual staffing levels for each patient care unit, and the hospital's plan, if any, to address these differences or adjust staffing levels in future plans.

PA 15-91 also requires the DPH commissioner to annually report, beginning by January 1, 2016, to the Public Health Committee on hospital compliance with nurse staffing plan reporting requirements and recommendations for any additional reporting requirements.

Finally, the new act also requires certain health care employers to report to DPH annually, rather than upon the department's request, on the number of workplace violence incidents occurring on the employer's premises, and the specific area or department where they occurred. The first report is due by January 1, 2016, and the reports must cover incidents occurring in the prior year. For this purpose, a "health care employer" is any DPH-licensed institution (e.g., a hospital or nursing home) with at least 50 full or part-time employees. It includes facilities that care for or treat people with substance abuse issues or mental illness, Department of Developmental Services-licensed residential facilities for people with intellectual disability, and community health centers. PA 15-91 took effect on July 1, 2015, except the workplace violence provisions, which are not effective until October 1, 2015.

Employer's Failure to Pay Wages

With one exception, Public Act 15-86 requires, rather than allows, a court to award double damages plus court costs and attorney's fees if it finds that an employer failed to pay an employee's wages, accrued fringe benefits or arbitration award, or meet the law's requirements for an employee's minimum wage or overtime rates. Under the new act the double-damage requirement does not apply to employers who establish a good-faith belief that their underpayments were legal. Such employers must, however, pay full damages, plus court costs and attorney's fees. Existing law also allows the labor commissioner to collect unpaid wages and payments or bring a civil suit on the employee's behalf.

Labor and Free Market Capitalism Curriculum in Schools

The State Board of Education (SBE), within available appropriations and using available materials, is required by Public Act 15-17 to assist and encourage local and regional boards of education to include in their curricula labor history and law, including organized labor, the collective bargaining process, and existing legal protections in the workplace. In addition, this new curriculum item must include the history and economics of free-market capitalism and entrepreneurialism, and the role of labor and capitalism in developing the American and world economies. Under current law, SBE must similarly assist and encourage boards of education to include in their curricula topics such as the Holocaust, the Great Famine in Ireland, and African-American History.

Effective July 1, 2015