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Employment Law Newsletter

Winter 2019

Updike, Kelly & Spellacy, P.C. combines its historic Connecticut roots and entrepreneurial spirit to provide to our clients proactive and innovative representation and solutions to the complex issues and needs of our clients in the area of employment law. As part of this commitment to our mission, we offer you this periodic e-newsletter. From all of us at Updike, Kelly & Spellacy, P.C., we hope it provides you with helpful information. If you have questions about these topics or others, please feel free to contact us.

U.S. Department of Labor Implements Changes in Overtime Law

The United States Department of Labor (DOL) issued its final rule to implement changes to overtime payment requirements under the Fair Labor Standards Act's (FLSA), and will go into effect January 2, 2020. Under the final rule:

- The minimum salary required for an employee to qualify for the executive, administrative and professional overtime exemptions has **increased from \$455 (or \$475 under Connecticut law) to \$684 per week (totaling \$35,568 a year)**. Workers earning less than \$35,568 a year would have to be paid overtime, regardless of their role.

- Nondiscretionary bonuses and incentive payments (including commissions) paid annually or more frequently may be used to satisfy up to 10 percent of the standard salary level.

2019 Connecticut Employment and Labor Law Highlights:

Employers in Connecticut are now finding themselves on the cusp of having to navigate several challenges pertaining to new protections and benefits afforded to employees.

Here's what you need to know about these recent changes:

SEXUAL HARASSMENT

All Connecticut employers with **three or more** employees are now subject to expanded notice and training

requirements regarding the prevention of sexual harassment in the workplace. There will also be longer timeframes to file complaints and enhanced remedies for victims of discrimination, including sexual harassment, in the workplace. The following changes are **effective as of October 1, 2019**:



Training Requirements:

- Employers with three or more employees shall be required to provide two hours of sexual harassment training to **all** employees no later than October 1, 2020.
- All employees hired on or after October 1, 2019, must obtain such training within six months of hire.
- The fine for failing to provide training will be \$750. Failing to provide training will now be a “discriminatory practice” that may allow employees to bring an action at the CHRO (or court).

Notice and Posting Requirements:

- Within three months of an employee's start date, employers must email the employee a copy of the CHRO Sexual Harassment Policy Posting with a subject line that includes the words “Sexual Harassment Policy” (or similar words). Failing to do so will result in a fine of \$750.

Corrective Action Requirements:

- If an employer takes corrective action in response to an employee's claim of sexual harassment, the action shall not change such employee's conditions of employment unless such employee agrees, in writing, to any change in the conditions of employment.

Extended Time to File Complaints and Increased Damages:

- **The deadline for filing a charge of discrimination with the CHRO for events that allegedly occurred on or after October 1, 2019 shall be extended from 180 days to 300 days.** This new deadline applies to *any claim of discrimination or harassment*, not just sexual harassment.
- The CHRO is now authorized to award reasonable attorney fees to complainants.
- **The new law allows plaintiffs who prevail on their discrimination claims in court to recover punitive damages.**
- The CHRO is now authorized to assign legal counsel to bring a legal action in court when doing so would be in the public interest and where all parties agree.

Workplace Inspections

- The CHRO is now expressly authorized to enter an employer's business during business hours to ensure compliance with the posting requirements and to review all records, policies, procedures and training materials maintained by the employer.

PAID FAMILY MEDICAL LEAVE

Connecticut has now enacted the most-generous paid-family-leave bill in the nation. This new law makes sweeping changes to the existing Connecticut Family and Medical Leave Act (CTFMLA). The following changes are subject to further clarifications when the Connecticut Department of Labor issues new regulations by January 1, 2020:

Eligibility, Benefits and Contributions

- Starting **January 1, 2022**, CTFMLA will now apply to all private sector employers with at least **one employee**. Such private sector employers will be required to provide employees with up to 12 weeks of paid leave in a 12-month period to care for their own serious health condition or that of family members.
- Pregnant employees are eligible for an additional two weeks of paid FMLA.
- Employees will be allowed to use up to two weeks of any employer-provided paid sick leave time to care for themselves and any of the family members listed above.
- Employees will be allowed to use the paid 12-week benefit when taking leave for the birth, adoption or foster care placement of a child.
- State government employees who belong to unions are exempt from the requirement. However, a public-sector municipal employer with "covered employees" will be required to provide paid FMLA.
- Employees will be eligible for paid FMLA if they have worked for their employer

for at least **three months** immediately before their request for leave. There is **no minimum requirement for hours worked**.

- Commencing January 2021, every employee will have to fund the FMLA program by contributing 0.5 percent of their income via a mandatory payroll tax to a state FMLA trust fund.
- Wages subject to the paid-leave tax will be tied to the amount of annual earnings subject to Social Security taxes, currently \$132,900.

Notice and Documentation

- Starting July 1, 2022, employers will have to notify their employees at the time of hire and annually thereafter about their entitlement to paid family and medical leave, and family violence leave, and their right to file a benefits claim.
- Employees will be required to provide notice of the need for benefits to the Authority and the employer shall certify the employee's current compensation level and confirm the need for leave if the Authority so requires.

MINIMUM WAGE

As of October 1, 2019, Connecticut's minimum wage was increased to \$11 per hour. This is subject to future increases starting in September 2020.

WHISTLEBLOWER PROTECTIONS

The state's whistleblower protection laws have been updated and now cover entities that receive state financial assistance.

- The whistleblower law allows anyone to report specific kinds of misconduct by state agencies or large state contractors to the state auditors of public accounts for investigation. Large state contractors are precluded from taking or threatening to take any personnel action against an employee for disclosing information involving the contract for state aid. The ban on retaliation also applies to an employee who may testify or assist in a whistleblower proceeding.
- Whistleblowers who believe they are being retaliated against may file a complaint with the CHRO, or in a civil action (if they've exhausted all available administrative remedies).

NON-COMPETE AGREEMENTS (HOME HEALTH WORKERS)

A new law applicable to individuals who provide homemaker, companion or home health services precludes them from being subject to non-compete agreements.

- Any covenant not to compete is against public policy and **shall be void and unenforceable**.
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A Review of Other Changes in Employment and Labor Law in Connecticut:



There have been several other important developments in employment over the past year.

SALARY HISTORY

It is now **illegal** to:

- Ask applicants about their wage or salary histories;
- Engage any third-party (such as background check agency) to ask about a job candidate's prior pay.

Connecticut employers may:

- Ask an applicant what the applicant's desired wage/salary is;
- Inform an applicant about what the wage/salary range may be for the position and ask if the applicant remains interested;
- Verify salary information from prior employers that was voluntarily disclosed by an applicant without request; and
- Inquire about the structure of an applicant's prior compensation package.

PREGNANCY ACCOMMODATION

It is now **illegal** to:

- Fail or refuse to make a reasonable accommodation for an employee or person seeking employment due to her pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on such employer.
- Force an employee or person seeking employment affected by pregnancy to accept a reasonable accommodation if such employee or person does not have a known pregnancy-related limitation or does not require a reasonable accommodation;
- Require an employee to take a leave of absence if a reasonable accommodation can be provided instead;
- Single out pregnancy-related conditions for special procedures to determine an employee's ability to work;
- Treat a pregnant employee differently than any other temporarily disabled employee; and
- Disallow pregnant employees to work as long as they are able to perform their jobs.

Connecticut employers **must**:

- Provide a “Notice of Pregnancy Rights” to all new hires upon hire; and
- Provide the “Notice of Pregnancy Rights” to any existing employee within 10 days after she notifies the employer of her pregnancy or the employer otherwise becomes aware of pregnancy.

CRIMINAL HISTORY QUESTIONS & BACKGROUND CHECKS

- Employers in Connecticut are **prohibited** from asking applicants about their criminal history on an application or from obtaining criminal history report prior to an interview.

CREDIT CHECKS

- Employers in Connecticut are generally **prohibited** from requiring an applicant or employee to consent to a request for a “credit report” as a condition of employment and from using credit scores in making hiring or employment decisions.
- Employers in Connecticut are **not prohibited** from the above when: (a) the employer is a financial institution); (b) when the report is required by law; (c) when the employer “reasonably” believes the employee engaged in any activity that constitutes a violation of the law related to his/her employment; or (d) when the report is “substantially” related to the applicant or employee’s current or potential job or when the employer has a bona fide purpose for requesting or using the information that is substantially job-related and is disclosed in writing.

PAYCARDS/BI-WEEKLY PAY

- Employers in Connecticut may now pay an employee with a paycard if the employee agrees to receive their pay this way. Employers must still give their employees the option of direct deposit or payment by check.
- The paycard must be associated with an ATM network that has a “substantial number” of in-network ATMs. The employer may not assess their costs for using paycards to employees. Employees must be able to check the payroll account balances 24 hours a day, 7 days a week, for free.
- Employers in Connecticut may pay employees on a bi-weekly basis without obtaining approval from the Connecticut Department of Labor.

PERSONNEL FILES/DISCIPLINARY DOCUMENTS

- Employers must allow a current employee to inspect his/her personnel file up to twice times per year within seven days of a written request and make copies of it.
- Former employees have a right to inspect their file at an agreed upon location within ten days of a written request if the employer receives the request within one year of the employee’s departure.
- Employers must provide employees with a copy of “any documentation of any

disciplinary action imposed on the employee” within one business day after the discipline is imposed.

- Employers must “immediately provide” an employee with a copy of “any documented notice of [his/her] termination of employment.”

Do You Have A Question About Employment Law?

Updike, Kelly & Spellacy, P.C. provides a broad range of experience in all facets of employment law representing our clients before federal and state courts at both the trial and appellate level, as well as before state and federal administrative agencies in Connecticut.

See more about our employment law practice [here](#).



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