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New Year, New(ish) Connecticut Employment Laws

Although 2021 is a wrap, there are new Connecticut laws for employers to unwrap in 2022. We have summarized the key changes to Connecticut employment law that employers should be aware of, including some that are just going into effect and others that have been put into place over the past year.

Connecticut FMLA

As we previously discussed here, Connecticut's Family and Medical Leave Act (CFMLA) expanded considerably as of January 1, 2022. CFMLA now applies to all Connecticut employers with at least one employee; previously, it applied only to those with 75 or more employees. Instead of the previous requirement that an employee must have worked at least 1,000 hours during the preceding 12 months to be eligible for leave, employees now are eligible for CFMLA leave if they have worked for their employer for at least three months prior to seeking leave. Whereas CFMLA previously provided for up to 16 weeks of job-protected leave in a two-year period, it now provides for up to 12 weeks of job-protected leave in a 12-month period, plus an additional two weeks for a serious health condition resulting in incapacitation that occurs during pregnancy. Employers may require employees to use accrued paid time off during covered leave, but employees must be permitted to retain at least two weeks of such paid time off. The reasons for which eligible employees may take leave have expanded to include caring for their siblings, grandparents or grandchildren with a serious health condition, as well as for "any person related by blood or whose close relationship with the employee is the equivalent of a family member." The statute containing the CFMLA amendments may be found here.

Paid Family and Medical Leave

As a result of the same statute that enacted the CFMLA amendments discussed above, Connecticut paid family and medical leave (PFML) benefits became available on January 1, 2022. PFML provides income replacement (with weekly benefits not to exceed 60 times the minimum wage) for leave taken for generally the same reasons as under CFMLA. Eligible employees may receive up to 12 weeks of PFML benefits in a 12-month period, plus an additional two weeks for a serious health condition that results in incapacitation during pregnancy. PFML benefits are administered by the Connecticut Paid Leave Authority, whose website may be found here. Employees submit applications for paid leave benefits directly to the Paid Leave Authority. As with CFMLA, employers may require that employees use available paid time off concurrently with their receipt of PFML benefits, but employees must be permitted to retain at least two weeks of such time off. PFML benefits are funded by payroll deductions that began on January 1, 2021.

Wage Range Disclosure Law

As we previously discussed here, effective October 1, 2021, Connecticut employers are required to disclose the wage range for vacant positions to both job applicants and existing employees. Employers must provide an applicant for employment the wage range for a position for which the applicant is applying upon the earlier of (a) the applicant's request or (b) when the applicant receives an offer of compensation. Employers must provide an employee the wage range for the employee's position upon (a) the hiring of the employee, (b) a change in the employee's position or (c) the employee's first request for a wage range. The statute specifies that when determining the wage range for a position, employers "may include reference to any applicable pay scale, previously determined range of wages for the position, actual range of wages for those employees currently holding comparable positions or the employer's budgeted amount for the position." The wage range statute also

expands the prohibition against sex-based compensation decisions by prohibiting employers from paying workers less than the employer pays employees of the opposite sex for "comparable" work. Previously, the prohibition applied only to pay disparities for "equal" work. The statute may be found here. The Connecticut Department of Labor's guidance regarding the wage range disclosure law may be found here.

CROWN Act

As we previously reported here, the Creating a Respectful & Open World for Natural Hair (CROWN) Act amends the definition of "race" under the Connecticut Fair Employment Practices Act to include "ethnic traits historically associated with race," including hair texture and protective hairstyles such as "wigs, headwraps and hairstyles such as individual braids, cornrows, locs, twists, Bantu knots, afros and afro puffs." The CROWN Act took effect on March 4, 2021. Employers should review their dress code and grooming policies to ensure they are not discriminating against employees on the basis of hair textures and protective hairstyles or other ethnic traits historically associated with race. The CROWN Act may be found here.

Breastfeeding Protections in the Workplace

Public Act 21-27, effective October 1, 2021, amends state law to add three new parameters to the existing requirement that employers provide a private room close to the work area where employees can express their milk. Under the new law, unless it creates an undue hardship, employers must ensure that the room (1) be free from intrusion and shielded from the public while such employees express breast milk, (2) include or be situated near a refrigerator to store breast milk and (3) include access to an electrical outlet.

Age Discrimination in Employment Applications

Public Act 21-69, effective October 1, 2021, makes it discriminatory conduct under the Connecticut Fair Employment Practices Act for employers to include questions on an initial employment application that would disclose an applicant's age, unless age is a bona fide occupational qualification or such information is required to comply with state or federal law. Employers that have not done so already should update their initial employment applications to remove any questions regarding age, date of birth and dates of attendance at or graduation from an educational institution.

Legalization of Recreational Marijuana

On June 22, 2021, Connecticut enacted the Responsible and Equitable Regulation of Adult-Use Cannabis Act, legalizing the recreational use of cannabis in Connecticut. This law contains several provisions that will become effective July 1, 2022, and will impact employers. Some of the key employment-related provisions under the new law are the following:

- Employers may continue to prohibit employees from working under the influence of cannabis, or from possessing or using cannabis while performing their work duties or on their employer's premises. Any such policy must be maintained in writing (in physical or electronic form).
- Employers generally are prohibited from taking adverse action against an employee or prospective employee based on the individual's use of cannabis outside of the workplace before such employee or prospective employee became employed, unless doing so would cause the employer to violate a federal contract or lose federal funding.
- Employers may take adverse employment action based on a positive cannabis drug test result under certain circumstances, provided that the employer maintains an established drug testing policy making clear that a positive test may result in adverse employment action.
- Employers may continue to conduct workplace drug testing in accordance with Connecticut law. Specifically, employers may take adverse employment action when they have (i) a reasonable suspicion of an employee's use of cannabis while performing work duties or on call, or (ii) they determine that an employee manifests "specific, articulable symptoms of drug impairment while working at the workplace or on call that decrease or lessen the employee's performance of the duties or tasks of the employee's job position." The new law outlines what symptoms may evidence impairment.

Employers in a number of industries are exempt from the employment-related provisions. Likewise, employees in certain positions are not entitled to the protections under the new law.

Minimum Wage Increase

Effective August 1, 2021, Connecticut's minimum wage increased from $12 per hour to $13 per hour. The minimum wage will increase to $14 per hour on July 1, 2022, and to $15 per hour on June 1, 2023. Beginning January 1, 2024, Connecticut's minimum wage rate will be indexed to the employment cost index, which is calculated by the U.S. Department of Labor.

Takeaways

As 2022 begins, employers must be mindful of the new employment laws in Connecticut that took effect in 2021 and those going into effect this year. Employers should review their policies to ensure compliance with these new laws and are encouraged to reach out to counsel to make sure they keep up with the law as it continues to evolve.

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