

July 7, 2015

New Connecticut Law Prohibits "Pay Secrecy"

On July 2, Gov. Dannel P. Malloy signed into law Public Act No. 15-196, titled "An Act Concerning Pay Equity and Fairness" (the "Act"). The Act was originally introduced by Gov. Malloy and was designed to narrow the wage gap between men and women in Connecticut's workforce by halting "pay secrecy" – a practice the Connecticut Legislature identified as "hinder[ing] pay discrimination from being pinpointed." The Act encourages wage transparency by permitting employees to voluntarily discuss their wages with other employees and/or with third parties. The Act is effective on the date it was signed by the Governor.

Prohibitions Under the Act

The Act applies to all Connecticut employers, regardless of size. Under the Act, employers shall not:

1. Prohibit an employee from disclosing or discussing the amount of his or her wages or the wages of another employee of the employer that have been disclosed voluntarily by the other employee;
2. Prohibit an employee from inquiring about the wages of another employee of the employer;
3. Require an employee to sign a waiver or other document that denies the employee his or her right to disclose or discuss the amount of his or her wages or the wages of another employee of the employer that have been disclosed voluntarily by the other employee;
4. Require an employee to sign a waiver or other document that denies the employee his or her right to inquire about the wages of another employee of the employer;
5. Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who discloses or discusses the amount of his or her wages or the wages of another employee of the employer that have been disclosed voluntarily by the other employee; or
6. Discharge, discipline, discriminate against, retaliate against or otherwise penalize any employee who inquires about the wages of another employee of the employer.

The Act defines wages as "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation." The definition of "wages" contained in the Act mirrors the definition found throughout Connecticut wage and hour laws. See e.g., Conn. Gen. Stat. § 31-71a(3). The definition of "wages" under those laws has been interpreted broadly and generally includes nondiscretionary bonus payments, but generally does not include discretionary bonuses or severance payments.

Voluntary Disclosure

The Act provides that the disclosure of an employee's wages must be voluntary. The Act does not require any employee to disclose or discuss his or her wages, but it protects any employee who voluntarily elects to make such disclosure or inquiry of another employee. Similarly, employers are not required to disclose the amount of wages paid to an employee.

Overlap With Federal Law

Section 7 of the National Labor Relations Act (NLRA) guarantees employees, whether unionized or not, the right to engage in "concerted activities for mutual aid or protection." The National Labor Relations Board (NLRB) interprets this provision to provide two or more employees the right to discuss their pay and wages. Under Section 8 of the NLRA, employers are prohibited from "restraining" an employee's right to engage in "concerted protected activity" under Section 7, and employers also are prohibited from retaliating against employees for exercising those rights. *See e.g., Alternative Energy Applications, Inc.*, 361 NLRB slip op. 139 (Dec. 16, 2014). Similar to this interpretation of the NLRA, the Act statutorily permits employees in Connecticut to discuss, disclose or inquire about their or other employees' wages.

Additionally, under federal laws such as the Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009, employers are prohibited from engaging in discriminatory compensation practices based on gender between employees who are performing substantially similar work.

Private Right of Action

The Act provides employees in Connecticut with a private right of action. Employees may file a complaint alleging a violation of the Act in any court of competent jurisdiction. The language of the Act appears to contemplate collective or multiple-plaintiff lawsuits, as it states any action brought for violation of the Act "may be maintained . . . by any one or more employees." Employers found in violation of the Act's prohibitions may be subject to significant damages, including compensatory damages, punitive damages, attorney fees and costs, and other legal and equitable relief. Any action alleging a violation of the Act must be brought within two years of the alleged violation.

Awareness and Compliance

As noted above, the Act became effective on July 2. Employers should immediately notify their legal, human resources and supervisory personnel of the new prohibitions under the Act and review their handbooks, contracts and policies in order to ensure compliance.

For additional information regarding this Act, or if you have any questions or concerns regarding employment law issues, please feel free to contact any of the attorneys in the side bar.