OVERVIEW OF EMPLOYMENT LAWS FOR CONNECTICUT EMPLOYERS

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I. FEDERAL AND STATE ANTI-DISCRIMINATION STATUTES

A. General Parameters

1. Hold employers (and individual managers under certain circumstances) liable for discriminatory conduct in the workplace based on certain "protected traits" in any aspect of employment, including: recruitment; hiring; training; compensation; assignments; transfer and promotion; leaves of absence; employment benefits; discipline; termination; layoff and recall; and retirement plans.

2. Discriminatory practices under these laws include harassment on account of a protected trait; retaliation against an individual for filing a charge of discrimination, participating in an investigation or opposing discriminatory practices; employment decisions based on stereotypes or assumptions about the abilities or performance of persons having a protected trait; and denying employment or other terms of employment to a person because of association with someone having a protected trait.

3. Prohibits disparate treatment and disparate impact discrimination.

    a. Disparate treatment occurs when an employer takes adverse action directly against employees on the basis of their protected trait (i.e., terminating an employee because he is 60 years old and/or disabled and/or a Muslim).

    b. Disparate impact occurs when an employer utilizes employment practices that are neutral on their face but adversely impact a protected group on account of the protected trait. (For example, an employer who requires all applicants to possess a high school diploma would be discriminatory, if the requirement excluded a disproportionate number of minority employees from employment and the employer was unable to demonstrate a business necessity for the high school diploma requirement).

4. Two types of evidence can be used to establish claims of discrimination: direct and circumstantial evidence.

    a. Direct evidence is a document or the testimony of an eyewitness that directly supports a party's claim. For example, direct evidence of discrimination would be a written statement on an employment application from an interviewer stating: "Do not hire her because she is a woman." Or, direct evidence might be a co-worker overhearing the

supervisor telling the HR manager that he fired the employee because he was an Arab.

b. Circumstantial evidence is evidence that tends to prove a disputed fact through proof of other facts. The fact-finder is asked to infer a fact from other facts through reason, common sense and experience. The inferred fact must be logical, reasonable and more probably true than not true. Example of circumstantial evidence: Suppose you are inside a room that has no windows. Suppose a person walks in wearing a wet raincoat, wet boots and carrying an umbrella. Even though you cannot see whether it is raining outside, you would probably conclude that it must be raining. The wet raincoat, boots and umbrella are all circumstantial evidence that it is raining.

c. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. The decision must simply be based on the preponderance of evidence (i.e., more likely than not true).

5. Enforced by Equal Employment Opportunity Commission ("EEOC") (and CT Commission on Human Rights & Opportunities – "CHRO").

   a. Administrative charge must first be filed within 300 days of the alleged conduct before filing lawsuit in court.

   b. The CHRO (and, potentially, the EEOC as well) conducts investigation and issues determination as to whether discrimination occurred.

   c. Although employees must first file discrimination charges with the CHRO/EEOC employees can pursue lawsuits in court if the CHRO (or EEOC) have dismissed claim without finding discrimination occurred or if they request that the CHRO (or EEOC) release its jurisdiction over the complaint under certain circumstances.

6. Damages typically include back pay and lost employment benefits, reinstatement and/or front pay, compensatory damages (i.e., for emotional distress), punitive damages, and attorney's fees.

a. Under federal law, compensatory and punitive damages are capped based on size of employer.

(1) $50,000 for employers with 15 to 100 employees.
(2) $100,000 for employers with 101 to 200 employees.
(3) $300,000 for employers with 501 or more employees.

b. Under Connecticut law, there is no cap on award for compensatory and punitive damages.

c. Discrimination claims filed in court are decided by juries.

d. Generally under federal law, there is no personal liability for supervisors and co-workers.

e. Under Connecticut law, an individual manager/supervisor can be held personally liable if he or she “aids” in the alleged discrimination or harassment, or if he or she acts in retaliation against someone who brought a complaint or discrimination or harassment.

B. Title VII of the Civil Rights Act of 1964

1. Applies to employers with 15 or more employees.

2. Prohibits discrimination in the terms and conditions of employment on the basis of race, color, religion, sex, pregnancy or national origin.

- Race/Color: ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful discrimination (or harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance).

- Religion: an employer is required to reasonably accommodate the religious belief of an employee or applicant, unless doing so would impose an undue hardship. Some reasonable religious accommodations that employers may be required to provide workers include leave for religious observances, time and/or place to pray, and ability to wear religious garb. Employers cannot inquire about an applicant's future availability at certain times to work (such as on Saturday or Sunday), maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious

holiday, unless the employer can prove an undue hardship. Example of undue hardship would be if all employees are required to work on a Saturday or Sunday without being allowed to switch off for any reason.

- Gender: In addition to prohibiting any adverse action based on a person's gender, Title VII prohibits sexual harassment as a form of gender discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when: (a) submission to or rejection of this conduct explicitly or implicitly affects an individual's employment ("quid pro quo") or (b) unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment ("hostile environment"). Generally, a victim is expected to directly inform the harasser that the conduct is unwelcome and must stop. If not, the victim is generally expected to use any employer complaint mechanism or grievance system available. Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

  (i) The victim as well as the harasser may be a woman or a man. The victim can be same or opposite sex.
  (ii) The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
  (iii) The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
  (iv) Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

- Pregnancy: An employer cannot refuse to hire someone because of her pregnancy or its prejudices against pregnant workers or the prejudices of co-workers or customers, as long as she is able to perform the major functions of her job. In addition, if an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee (for example, by providing modified tasks, alternative assignments, disability leave or leave without pay). An employer may not prohibit an employee from returning to work for a predetermined length of time after childbirth.

Finally, employers must hold open a job for a pregnancy related absence for as long the employee is "reasonably" disabled by the pregnancy (usually, 6-8 weeks).

- National Origin: It is unlawful to take any adverse employment action or otherwise discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. For example, an employer cannot treat an employee differently because she wears a hijab (a body covering and/or head-scarf worn by some Muslims) or not hire a man with a dark complexion and an accent believed to be Arab. Furthermore, a rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule and employees must further be allowed to speak in their native language while not performing work activities (i.e., during lunch).

C. The Age Discrimination in Employment Act ("ADEA")

1. Applies to employers with 20 or more employees.

2. Protects employees age 40 and older from discrimination due to age in hiring, firing, or conditions of employment.

3. Prohibition against age discrimination does not preclude employer from taking actions on basis of age when age is a bona fide occupational qualification.

4. Prohibition does not preclude employers from offering voluntary early retirement incentive programs.

D. The Americans With Disabilities Act ("ADA")

1. Applies to employers with 15 or more employees.

2. Prohibits discrimination against a "qualified individual with a disability." A qualified disabled employee is one who, with or without reasonable accommodation, can perform the essential functions of the position in question, without posing a direct threat to the safety of himself or others. For example, a blind applicant for the position of bus driver is not a qualified disabled applicant

because he cannot safely perform the essential functions of a bus driver, with or without reasonable accommodation.

3. There are three ways to meet the definition of a disabled person under the ADA. First, a person with a substantial limitation of a major life activity (such as walking, talking, seeing, hearing, breathing, learning, or working) is disabled. Second, a person with a record of such an impairment is disabled (e.g., past history of cancer). Third, an individual who is "regarded" as disabled is protected by the ADA, even though they may not have a substantial limitation of a major life activity. For example, an individual with a facial disfigurement that is kept away from customers by the employer is treated as if they were disabled, even though not limited in any major life activities.

4. The ADA excludes from its coverage individuals with certain disorders, including compulsive gamblers, kleptomaniacs, current illegal drug users, and current users of alcohol who cannot perform their job duties or whose employment presents a threat to the property or safety of others.

5. The ADA does not provide protection for individuals with impairments applicable to a single job or to those with temporary, non-chronic injuries.

6. The ADA imposes significant restrictions on the use of medical information when hiring.

    a. Medical examination of a prospective employee may only be required after an offer of employment has been made.

    b. Employment may be conditioned on passing a complete medical examination.

    c. Job offer may not be withdrawn based on medical examination unless the medical impairment with or without reasonable accommodation prevents applicant from performing essential functions of job or individual poses a direct threat to himself or others and there is no reasonable accommodation that would enable the employee to safely perform the job.

7. The ADA imposes a duty on employers to provide a reasonable accommodation to qualified disabled applicants or employees unless the accommodation would pose an undue hardship. The reasonable accommodation must remove workplace barriers, which can include either physical obstacles (inaccessible facilities or equipment) or work procedures or rules (when or where work is performed, when breaks are taken, or how tasks are accomplished).

8. There are an unlimited number of possible accommodations. The EEOC's regulations and court decisions have identified some examples, including leave of absence for treatment; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquiring or modifying equipment; modifying exams or training programs; and providing qualified readers or interpreters. Employers do not have to provide an accommodation that causes an undue hardship (i.e., an accommodation which causes significant difficulty or disruption in the workplace, or significant expense based on an employer's resources).

9. Generally, it is the employee's duty under the ADA to first request an accommodation. There is no requirement for the employee to use "magic" language, or even use the term "reasonable accommodation" in making the request. An employer should consider any notification that a job modification is needed because of a medical condition to be a request for reasonable accommodation due to a disability. Once an accommodation has been requested, the employer has a duty to initiate an interactive process with the employee to identify the individual's functional limitations and the potential reasonable accommodation that is needed. The employee can be required to sign a limited release allowing the employer to seek specific medical records about the disability, and/or to submit a list of specific questions to the employee’s health care professional. An employer may require an employee to go to a health professional of the employer's choice, at the employer's expense, if there are unresolved questions about the individual's condition, or if the employee provides insufficient information from his/her health care professional to substantiate the disability or need for the accommodation.

10. A reasonable accommodation does not include waiving discipline. An employer is entitled to hold all employees (those with and without disabilities) to the same performance and conduct standards. An employer does not need to forgive an employee for breaking rules, even if it is later determined that the misconduct

was the result of a disability (i.e., an employee disciplined for tardiness still can be disciplined even if s/he later reveals that the tardiness was due to morning treatments for her disability). Once a disability is known, an employer may have to provide a reasonable accommodation so that the employee does not break work rules in the future (i.e., may have to modify employee's future work schedule so s/he can get morning treatments without being tardy).

11. The ADA prohibits employers from disclosing an employee's medical information (with limited exceptions). However, the mere fact that someone is receiving reasonable accommodation is not necessarily medical information. The safest approach is not to disclose the fact of reasonable accommodation to other employees, except to those with a "need-to-know." The EEOC has taken the position that the employer would not violate the ADA by telling other employees that, in order to comply with its legal obligations or for legitimate business reasons, it has made a modification for the particular employee, but that the law prohibits the employer from making any further disclosure.

E. Genetic Information Nondiscrimination Act ("GINA")

1. Applies to employers with 15 or more employees.

2. Prohibits the use of genetic information in employment, restricts employers from requesting, requiring, or purchasing genetic information, and strictly limits the disclosure of genetic information.

3. There are limited, narrow exceptions to the rule that an employer may not request, require, or purchase genetic information about an applicant or employee, including:

   - Where the information is acquired inadvertently;
   - As part of health or genetic services, including wellness programs, provided on a voluntary basis;
   - In the form of family medical history, to comply with the certification requirements of the Family and Medical Leave Act ("FMLA"), state law or certain employer leave policies;
   - When the information comes from sources that are commercially and publicly available, such as newspapers, court records, websites.

4. Any employer who seeks a medical authorization from an employee to allow for communications with the employee's doctor (such as when verifying FMLA status or when an employee asks for a reasonable accommodation under the ADA), or who sends a medical certification form or questionnaire to the employee's doctor, must ensure that the following "disclaimer" language is included in any such form: "Pursuant to The Genetic Information Nondiscrimination Act (GINA), employers are prohibited from requesting or requiring genetic information of an employee (or family member of an employee), except as specifically allowed by this law. Accordingly, to comply with this law, we will not ask any health care provider to provide and the health care provider should not provide any genetic information when responding to any questions seeking medical information about the employee (or the employee's family member). "Genetic information" as defined by GINA, includes "an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

F. Connecticut Fair Employment Practices Act ("CFEPA")

1. Applies to employers with 3 or more employees.

2. Like federal anti-discrimination laws, Connecticut prohibits discrimination in the terms and conditions of employment on the basis of race, color, religion, sex, pregnancy, national origin, age and/or disability, harassment on the basis of these protected traits and retaliation for opposing discriminatory practices.

3. The requirements of proof of discrimination under CFEPA are generally the same as those under the federal anti-discrimination laws and the complaint process is similar.

4. Distinctions under CFEPA from the federal anti-discrimination laws include the following:

   - Connecticut also prohibits discrimination on the basis of marital status, veteran status, sexual orientation and gender identity/expression.

- Unlike under federal anti-discrimination laws, there are no “caps” on compensatory (emotional distress) and punitive (punishment) damage awards under CFEPA.

- Under CFEPA, an employer is prohibited from discriminating against someone on the basis of their age, whether they are in their teens or a senior citizen or any age in between (i.e., don’t need to be over age 40 to assert claim)

- Connecticut law contains a potentially broader definition of what constitutes a “disability” (any chronic condition).

- An individual manager/supervisor can be held personally liable under the state law if he or she “aids” in the alleged discrimination or harassment.

- Connecticut law requires that all employers with three or more employees provide two hours of training on the topic of sexual harassment to all employees within six months of hire and retraining at least every ten years.

- If an employer takes corrective action (including but not limited to relocating the complaining employee, assigning such employee to a different work schedule or making other substantive changes to the complaining employee's terms and conditions of employment) in response to such employee's claim of sexual harassment, the employer is required to obtain the written consent of the complaining employee before doing so.

- Within three months of an employee's start date, Connecticut employers are required to provide information to every employee about the unlawfulness of sexual harassment and the remedies available to victims of sexual harassment to each employee, either by direct email with a subject line that includes the words "Sexual Harassment Policy" (or words of similar import) or by posting that information on the employer’s website or by providing a link (by email, text or in writing) to the CHRO’s website.

- Connecticut law requires employers to provide “Pregnancy Discrimination and Accommodation in the Workplace Notice” that must be posted in the workplace to all new hires upon hire and to any existing employee within 10 days after she notifies the employer of her pregnancy or conditions related to her pregnancy (or the employer otherwise becomes aware of pregnancy).

- Connecticut law requires the employer to provide reasonable accommodations to an applicant, intern or employee due to her pregnancy, childbirth or need to breastfeed or express milk at work, unless doing so would pose an undue hardship (e.g., the accommodation would require a significant difficulty or expense in light of the circumstances). Possible reasonable accommodations (depending on the circumstances) include: being permitted to sit while working; providing more frequent or longer breaks; periodic rest; assistant with manual labor; job restructuring; light duty assignments; modified work schedules; temporary transfers to less strenuous or hazardous work; time off to recover from childbirth; and break time and appropriate facilities for expressing milk.

G. The Civil Rights Act Of 1866 ("Section 1981")

1. Applies to private and public employers of any size.

2. Prohibits racial discrimination in all aspects of contractual relationships, including written and oral employment contracts.

3. No administrative prerequisites to filing lawsuit in court.

4. Allows uncapped emotional distress and punitive damages.

5. Individuals may be personally liable.

H. The Civil Rights Act Of 1871 ("Section 1983")

1. Applies to persons acting "under color of any" state or local law.

2. Does not apply to purely private conduct; there must be some state involvement.

3. Prohibits discrimination on the basis of race, color, sex, religion, or national origin.

4. No administrative prerequisites to filing lawsuit in court.

5. Allows uncapped emotional distress and punitive damages.

I. The Equal Pay Act ("EPA")

1. Applies to employers of any size.

2. Prohibits employers from discriminating on the basis of sex by paying persons of one sex less than persons of the opposite sex for equal work on jobs requiring equal skill, effort and responsibility and which are performed under similar working conditions.

3. The EPA is not violated if wage differentials are based on factors other than sex, such as seniority, merit pay or differences in ability, skill, experience, education, or prior training.

4. Damages include back pay for two years (or three years if there is a willful violation of the law); liquidated damages (e.g., two times back pay); attorney's fees and costs.

J. The Lilly Ledbetter Fair Pay Act

1. Applies to employers of any size.

2. Allows individuals to file charges of alleged pay discrimination under Title VII, the ADEA and the ADA without regard to the normal 180/300-day statutory charge filing period.

3. Declares that an unlawful employment practice occurs when:

   a. A discriminatory compensation decision or other practice is adopted;

   b. An individual becomes subject to the decision or practice; or

   c. An individual is affected by application of the decision or practice, including each time there is a payment of compensation.

4. Allows individuals the right to challenge a wide variety of past practices that resulted in discriminatory compensation (including employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises) which may have started years earlier. Each new paycheck potentially serves as an unlawful employment practice for which an employee may timely file a charge.

K. Discrimination By Federal Contractors

1. Executive Order 11246 requires federal contractors (with contracts in excess of $10,000) to take "affirmative action" to prevent discrimination against employees on the basis of race, sex, religion, national origin, sexual orientation or gender identity.

2. Section 503 of the Rehabilitation Act requires federal contractors to take "affirmative action" to prevent discrimination against and to employ and promote individuals with disabilities.

3. Vietnam-Era Veterans' Readjustment Assistance Act, as amended by the Jobs for Veterans Act, requires federal contractors to take "affirmative action" to prevent discrimination against and to employ and promote certain designated categories of veterans.

4. In general, only contractors with 50 or more employees and contracts of at least $50,000 are required to maintain written affirmative action programs.

5. Sanctions for noncompliance can include termination and debarment from future government business, and the imposition of fines and penalties.

II. OTHER FEDERAL EMPLOYMENT STATUTES

A. The Federal Family and Medical Leave Act ("FMLA")

1. Applies to employers with 50 or more employees.

2. Eligibility requirements include working for employer for 12 months and 1,250 hours.

3. Provides eligible employees with up to 12 weeks of unpaid family and medical leave annually for reasons including the employee's own serious health condition; caring for the serious health condition of an employee's child, spouse or parent; family bonding for the birth, adoption or foster care placement of the employee's child; or due to a qualified exigency when an employee's spouse, child or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces (including a member of the National Guard or Reserves).

4. Provides eligible employees with up to 26 weeks of leave to care for a serious injury or illness of a covered service member.

5. Requires employers to continue health insurance benefits in effect during FMLA leave, subject to the same terms and conditions under which coverage would have been provided if the employee had continued in employment for the period of the leave.

6. Requires reinstatement to original job or equivalent job at end of leave.

7. Damages include reinstatement, lost wages, benefits or other compensation due to violation, liquidated damages, and attorneys' fees and costs.

B. Whistle Blower Claims

1. Several statutes protect employees who report their employer's suspected statutory violations from discrimination/retaliation on account of their whistleblower activities. Examples:

   - The Sarbanes-Oxley Act protects employees who report issues with corporate accountability.

   - The False Claims Act allows employees to recover money for reporting an employer's attempt to fraudulently procure payments on government contracts.

C. The Federal Wiretapping Act

1. Employer is prohibited from intercepting or recording a telephone conversation unless one party to the conversation consents to the recording or employer can demonstrate a business use for the recording.

2. Does not preempt more restrictive state statutes which may require all-party consent to the interception of a conversation and/or its recording (as is the case under Connecticut law).

3. Damages can be awarded for (1) actual damages suffered by the plaintiff, or $10,000, whichever is greater; (2) punitive damages; and (3) reasonable attorney's fees and costs. Criminal penalties may also be imposed.

D. The Fair Credit Reporting Act ("FCRA")

1. Applies to an employer's use of background "consumer reports" to investigate applicants for employment and/or to make employment decisions about existing employees.

a. "Consumer reports" include information about credit status, character, general reputation, or criminal background of a consumer.

b. A "consumer" includes an applicant for employment or a current employee.

2. An employer cannot obtain a report for employment purposes unless a clear and conspicuous disclosure has been made to the individual and the individual has authorized the procurement of the report.

3. An employer cannot use a report in connection with an employment decision unless it first provides to the individual a copy of the report and a summary of the individual's rights under the FCRA (except in the case of an investigation into misconduct).

4. Failure to comply with the requirements of the FCRA may subject the employer to fines, punitive damages and attorney's fees and costs.

E. The Employment Retirement Income Security Act ("ERISA")

1. Provides minimum standards to assure employees receive benefits promised by their employers pursuant to employee benefit and welfare plans.

2. Employees who have been terminated with the specific intent to interfere with the attainment of any pension and welfare benefits due may file suit to collect lost wages and benefits, loss of future wages and benefits, and attorneys' fees and costs. In addition, an employer who has violated its fiduciary or reporting obligations may be subject to the imposition of administrative fines and penalties.

F. Consolidated Omnibus Budget Reconciliation Act ("COBRA")

1. Requires employer to allow employees who have terminated their employment under a variety of circumstances to have continuing health insurance coverage at the employees' expense.

a. Qualifying events include job termination, reduced work hours, death of employee, or divorce from an employed spouse.

b. Benefits must continue for period of time (generally 18 months) after qualifying event unless employee otherwise retains coverage.

2. Applies to employers of any size pursuant to Connecticut law. Connecticut law extends eligibility for benefits generally to 30 or 36 months following qualifying event.

G. The Occupational Safety and Health Act ("OSHA")

1. Applies to all employers engaged in a business affecting commerce.

2. Requires employers to provide employees with a work environment free from recognized hazards that cause or are likely to cause death or serious physical harm.

3. OSHA inspectors, by law, can enter any covered workplace to inspect for non-compliance with standards.

4. Employers with 10 or more employees must maintain OSHA-specific records of job-related injuries and illnesses.

5. Covered employers must post certain notices.

a. OSHA "Job Safety and Health Protection" poster must be posted in the workplace.

b. OSHA Form 200 listing on-the-job injuries and illnesses for the prior year must be posted from February 1 to March 1.

c. Any OSHA citation received must be posted at or near the place of the alleged violation.

H. The Immigration and Nationality Act ("INA")

1. Prohibits employers from knowingly employing any unauthorized alien.

2. All employers must complete Form I-9 for each new employee within three (3) business days of the date employment begins and maintain the form in its files for three (3) years after the date of hire or one (1) year after the date the employee's employment is terminated, whichever is later.

3. The Form I-9 should not be completed as part of the application process, as it contains age, national origin, and alienage information, which may not be considered in making employment-related decisions.

4. Employers are not required to sponsor employees/applicants for visas.

5. It is unlawful for employers to give preference to U.S. citizens in hiring or employment opportunities, unless these are legal or contractual requirements for particular jobs.

I. Employee Polygraph Protection Act ("EPPA")

1. Prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

2. Employers may not use or inquire about the results of a lie detector test or discharge or discriminate against an employee, prospective employee, or a former employee for refusal to take a test, on the basis of the results of a test, or for filing a complaint or participating in a proceeding under the Act.

3. Damages include legal and equitable relief, such as employment, reinstatement, promotion and payment of lost wages and benefits. Civil penalties up to $10,000 per violation may be assessed.

J. Worker Adjustment and Retraining Notification Act ("WARN")

1. Applies to employers with 100 or more employees.

2. Requires that such employers provide 60-day notice to employees or their unions, and to local and state authorities in following circumstances:

   a. There is a closure of one of more worksites; or

   b. A layoff of 500 full time employees, or 50 full time employees who represent at least 33% of the workforce, at a single site, in a period of 30 days.

3. Failure to give notice may entitle employees to up to 60 days of back pay and benefits.

4. Fines of $500 for each day of failure to give notice to local or state authorities may be assessed.

K. The Labor Management Relations Act ("LMRA")

1. Governs claims between employers and unions covered by collective bargaining agreements.

2. Prohibits employers from interfering with employees' protected union activities, and from discharging or discriminating against employees in the pursuit of unionizing efforts.

3. Damages include injunctive relief, reinstatement, lost wages and benefits, and litigation costs, attorneys' fees and union expenses to employees whose rights were violated.

L. The National Labor Relations Act ("NLRA")

1. Guarantees the rights of employees to:
   - Form, join or assist a union;
   - Bargain collectively through representatives of the employees' own choosing for a contract with their employer setting their wages, benefits, hours, and other working conditions;
   - Discuss their terms and conditions of employment or union organizing with their co-workers or a union;
   - Take action with one or more co-workers to improve their working conditions by, among other means, raising work-related complaints directly with their employer or with a government agency, and seeking help from a union;
   - Strike and picket, depending on the purpose or means of the strike or the picketing;
   - Choose not to do any of these activities, including joining or remaining a member of a union.

2. Under the NLRA, it is illegal for an employer to:
   - Prohibit employees from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms;
   - Question employees about their union support or activities in a manner that discourages them from engaging in that activity;
   - Fire, demote, or transfer an employee, or reduce hours or change a shift, or otherwise take adverse action against an employee, or threaten to take any of these actions, because the employee joins or supports a union, or because the employee engages in concerted activity for mutual aid and protection, or because an employee chooses not to engage in any such activity;

- Threaten to close the workplace if workers choose a union to represent them;
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support;
- Prohibit employees from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances;
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

M. Uniformed Services Employment and Reemployment Rights Act ("USERRA")

1. Applies to all employers, regardless of size.

2. Applies to employees who perform duty, voluntarily or involuntarily, in the "uniformed services," which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. In addition, certain disaster response work (and authorized training for such work) is considered "service in the uniformed services."

3. Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.

4. Requires the pre-service employer to reemploy service members returning from a period of service in the uniformed services to the job and benefits they would have attained had they not been absent if those service members meet five criteria:

   a. The person must have held a civilian job;

   b. The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;

   c. The cumulative service period must not have exceeded 5 years;

d. The person must not have been released from service under dishonorable or other punitive conditions; and

e. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

5. Requires employers to provide a notice of the rights, benefits, and obligations under USERRA.

6. Prohibits employment discrimination against a person on the basis of past military service, current military obligations, or an intent to serve.

III. CONNECTICUT EMPLOYMENT LAWS

A. New Hire Reporting Requirements

1. All employers must report new hires (including re-hires) to the Connecticut Department of Labor within 20 days of the date of hire.

B. Drug Testing

1. Allows drug testing (urinalysis) of prospective employees (excluding rehires who worked in previous twelve-month period).

2. Requires notice to prospective employee at time of application for employment that drug testing is required.

3. Requires that positive drug test results be provided to prospective employee and kept confidential.

4. Allows drug testing during employment only when there is "reasonable suspicion" that employee is under the influence of drugs at work.

5. Allows random drug testing in very limited circumstances.

6. Drug testing law does not apply to employers when utilizing breath testing, hair testing, blood testing or saliva testing but best practice remains to have legitimate, reasonable basis to require employees to be tested with these methods.

C. Connecticut Family and Medical Leave Act

NOTE: The following applies to Connecticut employers until January 1, 2022 when existing law will be replaced by a paid family and medical leave act law enacted in June 2019.

1. Applies to private sector employers with 75 or more employees.

2. Eligibility requirements include working for employer for 12 months and 1,000 hours.

3. Provides eligible employees with up to 16 weeks of unpaid family and medical leave within any two-year period.

4. Provides eligible employees with up to 26 weeks of leave to care for a serious injury or illness of a covered service member.

5. In addition to allowing the same types of leave for the reasons afforded under Federal FMLA, Connecticut FMLA allows leave to care for parent-in-law and to serve as organ or bone marrow donor (neither allowed under Federal FMLA)

6. Requires employers to continue health insurance benefits in effect during FMLA leave, subject to the same terms and conditions under which coverage would have been provided if the employee had continued in employment for the period of the leave.

7. Requires reinstatement to original job at end of leave (or to equivalent job but only if none of the duties or original job are still being performed).

8. Damages include reinstatement, lost wages, benefits or other compensation due to violation, liquidated damages, and attorneys' fees and costs.

D. Connecticut Paid Sick Leave Act

1. Applies to any employer (defined as a person, firm, business, educational institution, nonprofit agency, corporation, LLC or other entity) if it has at least 50 employees working within Connecticut on its payroll in any one quarter in the previous year as determined annually on January 1st. Manufacturers (classified in Sectors 31-33 in the North American Industrial Classification System) and nationally chartered 501(c)(3) organizations that provide recreation, childcare and educational services (such as the YMCA) are exempt.

2. Any part-time or full-time "service workers" paid on an hourly basis or classified as non-exempt are eligible to take paid sick leave under the Act after they have completed 680 hours of employment and worked at least an average of 10 or more hours per week for the employer in the most recent complete calendar quarter. Day or temporary workers (who perform work on a per diem or occasional or irregular basis) are not eligible.

3. There are 69 different categories of eligible "service workers" specifically identified as covered by the Act based on the definitions contained in the Bureau of Labor Statistics Standard Occupational Classification System ("SOC").[1]

4. Qualifying sick leaves under the Act can be taken for any illness, injury or health condition of the service worker or his/her spouse or child or for preventative medical care for the same. A service worker who is the victim of family violence or sexual assault may also take paid leave for medical care and for other reasons related to the family violence or sexual assault (such as to obtain services from a victim services organization; to relocate due to the violence and/or assault; or to participate in any civil or criminal proceedings related to the violence and/or assault).

[1] The categories of "service workers" covered under the Act are as follows: Food Service Managers; Medical and Health Services Managers; Social Workers; Social and Human Service Assistants; Community Health Workers; Community and Social Service Specialists, All Other; Librarians; Pharmacists; Physician Assistants; Therapists; Registered Nurses; Nurse Anesthetists; Nurse Midwives; Nurse Practitioners; Dental Hygienists; Emergency Medical Technicians and Paramedics; Health Practitioner Support Technologists and Technicians; Licensed Practical and Licensed Vocational Nurses; Home Health Aides; Nursing Aides, Orderlies and Attendants; Psychiatric Aides; Dental Assistants; Medical Assistants; Security Guards; Crossing Guards; Supervisors of Food Preparation and Serving Workers; Cooks; Food Preparation Workers; Bartenders; Fast Food and Counter Workers; Waiters and Waitresses; Food Servers, Nonrestaurant; Dining Room and Cafeteria Attendants and Bartender Helpers; Dishwashers; Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; Miscellaneous Food Preparation and Serving Related Workers; Janitors and Cleaners, Except Maids and Housekeeping Cleaners; Building Cleaning Workers, All Other; Ushers, Lobby Attendants and Ticket Takers; Barbers, Hairdressers, Hairstylists and Cosmetologists; Baggage Porters, Bellhops and Concierges; Child Care Workers; Personal Care Aides; First-Line Supervisors of Sales Workers; Cashiers; Counter and Rental Clerks; Retail Salespersons; Tellers; Hotel, Motel and Resort Desk Clerks; Receptionists and Information Clerks; Couriers and Messengers; Secretaries and Administrative Assistants; Computer Operators; Data Entry and Information Processing Workers; Desktop Publishers; Insurance Claims and Policy Processing Clerks; Mail Clerks and Mail Machine Operators, Except Postal Service; Office Clerks, General; Office Machine Operators, Except Computer; Proofreaders and Copy Markers; Statistical Assistants; Miscellaneous Office and Administrative Support Workers; Bakers; Butchers and Other Meat, Poultry and Fish Processing Workers; Miscellaneous Food Processing Workers; Ambulance Drivers and Attendants, Except Emergency Medical Technicians; Bus Drivers; Taxi Drivers and Chauffeurs; Radiologic Technicians.

5. Service workers are entitled to immediately accrue at a rate of one hour for each 40 hours worked (regular or overtime hours), up to a maximum of 40 hours of paid sick leave for each calendar year.

6. Service workers who do not use their entire allotment of paid sick leave benefits in one calendar year may carry over up to 40 accrued hours to the next calendar year (but may not use more than 40 hours in each calendar year).

7. If an employer terminates a service worker, whether voluntarily or involuntarily, it is considered a break in service. If the employer later rehires the service worker, it need not recognize any previously accrued unused hours of paid sick leave unless it agrees to do so.

8. The 40 hours of sick leave must be paid at a rate equal to the service worker's normal hourly rate or the minimum wage under Connecticut law, whichever is greater. Service workers whose wage rates vary must be paid the average hourly wage he/she earned in the pay period prior to the period in which he/she takes sick leave.

9. An employer is <u>not</u> obligated to pay accrued sick leave benefits upon a service worker's termination unless the employer provides for such payment in its policies or in a collective bargaining agreement.

10. The Act operates as a floor below which employers subject to the Act may not fall. However, an employer will be deemed fully compliant with the Act if the employer offers any form(s) of paid leave benefits that satisfy the minimum 40 hours of paid sick leave under the Act. For these purposes, other paid leave benefits might include paid vacation, personal days or other paid time off. To get "credit" for compliance under the Act for having existing paid leave policies, employers must ensure such policies are not predicated on longer eligibility provisions, do not mandate different accrual methods and do not restrict the use of paid time in any manner that is inconsistent with the types of leave mandated by the Act.

11. Employers may require service workers to provide up to seven days notice of the need to take paid sick leave under the Act if the need for leave is foreseeable; if the leave is not foreseeable, then the service worker must give notice as soon as practicable.

12. Employers may require documentation from a health care provider for leaves taken for three or more consecutive days for leave taken due to the illness, injury or health condition, or for preventative medical care, for the service worker or his/her spouse or child. Employers may require a court record or documentation from a victim services organization or the police or counselor for leave taken due to family violence or sexual assault issues.

13. Employers are required to provide notice, at the time of hiring, regarding the service worker's entitlement to sick leave, and to specifically advise service workers that employers are prohibited from retaliating against them (as further described below) and that the service worker has a right to file a complaint with the Connecticut Department of Labor for violations of the Act (as further described below). Employers may comply with this notice obligation by posting a notice (in both English and Spanish) in a conspicuous location incorporating these requirements.

14. The Act prohibits employers from taking retaliatory action or otherwise discriminating against employees because the employee requests or uses paid sick leave or files a complaint with the Connecticut Department of Labor regarding leave under the Act. Note that the anti-retaliation provision applies more broadly to any employee of an employer who is covered by the Act, not just the service workers who are entitled to take leave under the Act. The Act does not prohibit disciplinary action against any service worker who takes leave for a purpose other than those specified in the Act.

15. Complaints for violations of the Act will be handled by the Connecticut Department of Labor, which is empowered to hold hearings, and which may assess a civil penalty of $500.00 for a violation of the retaliation and discrimination provisions, and a civil penalty of $100.00 for each violation of the substantive provisions (or notice provision) of the Act. The Labor Commissioner is also empowered to require an offending employer to rehire or reinstate an employee and to pay back wages and benefits.

E. Personnel Files, Medical Files, and References

1. A personnel file is defined as papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to make employment decisions concerning an employee (particularly any adverse employment action).

2. Personnel files must be kept in a locked, secured location and be accessed only by those with a "need to know."

3. Medical records are papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work-related or upon which an employer relies to make employment-related decisions.

7. Medical records should not be maintained as part of the personnel file and should be kept separately in a locked, secured location.

8. Employers must allow a current employee to inspect his/her personnel file within seven (7) days of a written request and also permit that employee to copy the file at the time of the inspection. Former employees have a right to inspect their file within ten (10) days of a written request if the employer receives the request within one (1) year of the employee's departure.

9. Inspection of the personnel file by a former employee must take place at a mutually agreed upon location. If the employer and former employee cannot agree on a location, the employer has ten (10) days from the date of receiving the written request to mail a copy to the former employee.

10. Employers must provide employees with a copy of "any documentation of any disciplinary action imposed on the employee" within one (1) business day after the discipline is imposed.

11. Employers must "immediately provide" an employee with a copy of "any documented notice of that employee's termination of employment."

12. Employers are required to include in every documented disciplinary action, notice of termination and performance evaluation, a "clear and conspicuous" statement that an employee may submit a written statement explaining his/her position if he/she disagrees with any information in the above-mentioned documents. The employee's statement must be maintained as part of the employee's personnel file and must be included in "any transmittal or disclosure from the personnel file to a third party."

13. The Connecticut Department of Labor has discretion to decide a penalty for violation of the Act: up to $500 for a first violation related to an individual employee or former employee and up to $1000 for subsequent violations relating to that individual employee or former employee. In deciding upon a penalty, the Labor

Commissioner is to consider all factors to "insure immediate and continued compliance," including the character and degree of impact of the violation and any prior violations.

14. Disclosure of personnel or medical insurance information of a present or former employee to other parties without a written authorization from the employee is generally forbidden. The only information that may be disclosed without a written authorization is verification of dates of employment and job title.

12. References should only be provided, if at all, only after a written authorization (containing a release of liability) is obtained from the employee, and should only contain relevant and truthful job-related information.

F. Criminal History Requests to Applicants or Employees

1. Employers are prohibited from requiring an employee or job applicant to disclose the existence of any arrest, criminal charge or conviction that has been "erased" under Connecticut law.

2. Employers are prohibited from discharging, refusing to hire or otherwise discriminating against an employee or applicant on the basis of an arrest, charge or conviction that has been "erased."

3. Prior to interviewing an applicant, employers are prohibited from having any questions on the initial employment application seeking information about an applicant's prior arrests, criminal charges or convictions, or from otherwise obtaining any such information by other means (such as by getting a criminal background report). Limited exceptions to the prohibition against asking for this information from an applicant prior to an interview would be where an employer is required to do so by an applicable state or federal law; *or* where a security or fidelity bond or an equivalent bond is required for the position. Otherwise, the employer must wait <u>until after the interview</u> of the applicant to make any such inquiry or to obtain a criminal background report of the applicant.

4. Employers who seek information from any applicant after the interview regarding an applicant's criminal history must clearly and conspicuously state the following in writing:

   a. The applicant is not required to disclose the existence of an arrest, criminal charge, or conviction for which records have been erased.

b. The types of records subject to erasure under Connecticut law.

c. Any person whose criminal records were erased will be considered to have never been arrested and may so swear under oath.

5. The portion of any employment document that contains information concerning the criminal history record of an applicant or an employee can be reviewed only by members of the personnel department, the person(s) in charge of employment (if the employer has no personnel department); and any employee or agent involved in interviewing the applicant.

G. Salary History

1. Employers are prohibited from asking applicants about their wage or salary histories or from engaging any third-party (such as background check agency) to ask about a job candidate's prior pay.

2. Employers may:

a. ask an applicant what his/her desired wage/salary is;

b. inform an applicant about what the wage/salary range may be for the position and ask if the applicant remains interested;

c. verify salary information from prior employers only if that information was voluntarily disclosed by an applicant (without any request to do so by the employer); and

d. inquire about the structure of an applicant's prior compensation package (i.e., whether the prior compensation included commissions, bonuses, stock options, retirement benefits, etc.) but not about the value or amount of those components.

H. Credit Reports

1. Except for certain circumstances, Connecticut employers are prevent 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.

2. A “credit report” is something that contains information about the credit score, credit account balances, payment history or savings or checking account numbers or balances of the applicant or employee.

3. This prohibition does **not** apply when: (a) the employer is a financial institution (i.e., bank, savings and loan association, credit union, insurance company, investment advisor or broker-dealer); or (b) when the report is required by law; or (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 in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant.

4. As to the last exception, a credit report is considered “substantially related” to the individual’s prospective or current job when the position: (a) is a managerial job which involves the direction or control of a business, division, unit or agency of a business; or (b) involves access to customer or employee personal or financial information (other than information customarily provided in a retail transaction; or (c) involves a fiduciary relationship to the employer (including having the authority to issue payments, collect debts, transfer money or enter into contracts; or (d) provides an expense account or corporate debit/credit card; or (e) provides access to confidential or proprietary business information or trade secrets (which are the subject or efforts that are reasonable under the circumstances to maintain its secrecy; or (e) involves access to an employer’s nonfinancial assets valued at $2,005 or more.

5. Any employer who violates this law will be subject to a penalty of $300 for each violation as assessed by the Connecticut Department of Labor.

I. Crime Victims/Witnesses

1. Prohibits employers from taking any adverse action against an employee because the employee obeys a legal subpoena to appear in a Connecticut court as a witness or victim in any criminal proceeding.

2. Prohibits firing or otherwise penalizing, threatening or coercing an employee for attending a court proceeding or participating in a

police investigation related to a criminal case in which employee is "crime victim."

3. May be subject to lawsuit by employee where damages include reinstatement and/or attorneys' fees.

4. Violation may result in being found guilty of criminal contempt and fines up to $500 or jail time up to 30 days or both.

J. Family Violence Victims

1. Employees who are victims of family violence must be permitted to take up to twelve (12) days of leave during any calendar year in which the leave is reasonably needed for one or more of the following reasons: (1) to seek medical care or counseling for physical or psychological injury or disability; (2) to obtain services from a victim services organization; (3) to relocate due to the family violence; or (4) to participate in any civil or criminal proceeding related to or resulting from such family violence.

2. The leave may be unpaid, unless the employee chooses to use any available paid time off for such leave or the law otherwise requires payment for any such leave taken.

3. Employees who seek such leave must provide at least seven (7) days notice of the need for such leave if foreseeable, or notice as soon as practicable if the need for such leave is not foreseeable.

4. The employer may require certification from the employee, and/or an agent of a victim services organization, and/or the Judicial Branch's Office of Victim Services or the Office of the Victim Advocate, and/or a licensed medical professional or other licensed professional form whom the employee has sought assistance with respect to the family violence certifying that the employee is a victim of family violence. Any such certification provided must be maintained in a confidential manner and can only be disclosed as required by law or to protect the employee's safety in the workplace, provided that the employee is given notice prior to any such disclosure.

5. The employer may not discriminate or take adverse actions against any employee for being a victim of family violence or for having to attend or participate in a court proceeding related to a civil case in which the employee is a family violence victim.

K. Emergency Responders

1. An employer may not discharge, or cause to be discharged, or in any manner discriminate against any employee who is an active volunteer firefighter or member of a volunteer ambulance service or company because such employee is late arriving to work or absent from work as a result of responding to a fire or ambulance call prior to or during the employee's regular hours of employment.

2. Employees are required to: (a) submit to the employer a written statement signed by the chief of the volunteer fire department or the medical director or chief administrator of the ambulance service or company, as the case may be, notifying the employer of the employee's status as a volunteer firefighter or member of a volunteer ambulance service or company; (b) make every effort to notify the employer that the employee may report to work late or be absent from work in order to respond to an emergency fire or ambulance call prior to or during the employee's regular hours of employment; (c) If unable to provide prior notification to the employer of a late arrival to work or an absence from work in order to respond to an emergency fire or ambulance call, submit to the employer a written statement signed by the chief of the volunteer fire department or the medical director or chief administrator of the volunteer ambulance service or company, explaining why the employee was unable to provide such prior notification; and (d) at the employer's request, submit a written statement from the chief of the volunteer fire department or the medical director or chief administrator of the volunteer ambulance service or company verifying that such employee responded to a fire or ambulance call and specifying the date, time and duration of such response.

L. Jury Duty

1. Employers are required to pay full-time employees (defined as 30 hours or more per week) serving as jurors their regular wages for the first five days of jury service.

2. Employers may not discharge, threaten, or coerce employees who must comply with a jury summons.

M. Unemployment Compensation

1. All employers must register in the unemployment compensation system by filing an Employer Status Report.

2. Basic liability for contribution to the unemployment fund arises upon payment of wages of $1,500.

3. Employer “charge rates” are established on a yearly basis and are determined by an employer’s payroll and past liability for benefits.

4. Employers must maintain accurate records of employment, including Social Security numbers for all employees.

5. Employers must complete an unemployment notice whenever an employee is terminated for any reason, regardless of whether the employee resigned or was discharged, and provide it to the employee upon termination or mail it to his/her last known address. An unemployment separation packet may be obtained from the CT Dept. of Labor’s website at www.ctdol.state.ct.us/tic/sep-pack.html.

N. Workers’ Compensation

1. Grants paid insurance benefits to employees who suffer work-related injuries, illness or death without regard to fault or negligence on the part of the employer or employee.

2. Liability for such injuries is limited under the law.

3. Employers must complete a First Report of Injury form for work-related injuries to the Workers’ Compensation Commissioner.

4. Employers must provide “light duty” work where available to an employee who is unable to perform his usual work but is not totally incapacitated. The duty to provide light duty jobs (where available) ends when: (a) the employee's medical treatment or rehabilitation is discontinued; or (b) the employee has reached a maximum level of rehabilitation in judgment of the workers' compensation commissioner.

5. Employers with 25 or more employees must establish workplace safety committees consisting of management and workforce representatives.

O. Recording of Telephone Calls

1. Recording a telephone conversation absent the consent of all parties to the call is illegal under Connecticut law.

2. Consent may be obtained verbally by a recorded message at the beginning of the call or by a recorded tone warning parties every 15 seconds that they are being recorded.

P. Electronic Surveillance in the Workplace

1. Video surveillance is generally permissible, except in areas reserved for employee use only.

2. Electronic monitoring of employees' activities or communications may only be conducted if prior written notice of such monitoring has been provided to employees and a notice is posted in a conspicuous place.

Q. Protection of Personally Identifiable Information

1. Connecticut law requires private sector employers to protect personal information, including but not limited to a Social Security number, a driver's license number, a state identification number, a passport number, an alien registration number or a health insurance identification number.

2. Employers must publish and post a privacy protection policy for Social Security numbers and other personally identifiable information.

3. Employers must safeguard, destroy or encrypt files and documents containing personal information prior to disposal.

R. Smoking

1. Employers with 20 or more employees must maintain at least one work area as non-smoking.

2. Employers may not discriminate against employees who use tobacco products away from work in their private life.

S. Garnishment of Wages

1. Employers must comply with any lawful order of garnishment or execution upon an employee's wages.

2. Employers may not discipline, suspend or discharge employee whose wages are garnished unless employee has been subject to seven wage garnishments in one calendar year.

T. Social Media Checks

1. Employers may check all public information available on social networking sites to obtain information regarding applicants (or employees) and may use such publically available information when making employment decisions (in same lawful manner as background information is otherwise obtained and used).

2. Best practice to follow FCRA rules (obtain authorization prior to checking and provide opportunity for explanation/verification before taking adverse action).

3. Connecticut employers cannot require applicants (or employees) to provide social networking passwords as condition of employment (several other states and local governments also have such bans).

4. Best practice to implement social media policy that is compliant with current restrictive view of the National Labor Relations Board ("NLRB"), until courts say otherwise.

5. Examples of appropriate restrictions on employee's use of social media:
    a. Representing or appearing to be speaking on behalf of the employer unless expressly authorized to do so
    b. Making recommendations or providing testimonials that reasonably could be construed as the employer's recommendations or testimonials
    c. Defaming the employer's services, clients, management employees, or business operations/strategy (i.e., knowingly providing false information; not just disparaging the employer).
    d. Promoting or endorsing violence
    e. Promoting illegal activity, including the use of illegal drugs
    f. Directing any discriminatory or derogatory comment towards or about any individual or group based on race, color, religion, gender, pregnancy, national origin, ancestry, age, disability, marital status, military/veteran status, sexual orientation, genetic information, gender identity or any other applicable legally protected status.
    g. Disclosing any confidential and proprietary information belonging to the employer or obtained by the employee as a result of his or her employment with the employer such as customer data; account information; marketing information or methods; pricing

information; financial statements and accounting issues; operating procedures and systems; security measures; legal matters; and/or agreements with customers, vendors or other business entities. [NOTE: cannot restrict discussion of information pertaining to terms and conditions of employment lawfully obtained by employee].

h. Disclosing any information which would violate any laws applicable to the employer, its employees or its customers, including any privacy laws or laws pertaining to the protection of personnel files, medical files or personally-identifiable information.

i. Posting, uploading, or sharing any recording or images (including audio, pictures, and videos) taken in any work areas of the employer without express advance authorization from the person(s) being recorded or photographed (or from the employer's President with respect to any images of employer property in work areas). [NOTE: an exception to the rule concerning pictures and recordings of work areas would be if the employee were engaging in any activity protected by the National Labor Relations Act including, for example, taking pictures of health, safety and/or working condition concerns, or of strike, protest and work-related issues and/or other protected concerted activities, as long as such pictures, videos or audio recordings do not disclose any confidential information of the employer].

j. Advertising any products or services offered by the employer without advance authorization.

k. Using social media to conduct personal or non-employer business while on working-time.

l. Selling or endorsing any product or service that would compete with the products and services offered by the employer.

U. Medical Marijuana

1. Unless otherwise required by federal law or required to obtain federal funding, employers in Connecticut may <u>not</u> refuse to hire an applicant or discharge, penalize or threaten an employee solely on due to such person's status as qualified to use medicinal marijuana.

2. Regardless of whether a person is authorized to use medical marijuana, an employer is not restricted from prohibiting the use of intoxicating substances (such as marijuana) during work hours or

from disciplining an employee for being under the influence of intoxicating substances during work hours.

3. An employer may terminate or discipline an employee who reports to work impaired on account of his/her medical marijuana use.

4. Connecticut's medical marijuana law appears to provide a private right of action for applicants/employees to sue their employers, though the law is silent as to the types of remedies available.

5. Unclear whether and to what extent disability discrimination laws (such as the ADA and CFEPA) protect medical marijuana users from discipline or discharge based on claims that the adverse action was taken against them because of an underlying disability.

V. Pay Secrecy

1. Employers in Connecticut may not prohibit their employees from disclosing the amount of their wages or the wages of other employees who have voluntarily disclosed how much they make.

2. Employers in Connecticut are barred from prohibiting employees from inquiring about the wages of their co-workers.

3. Employees cannot be required to sign any waiver that denies their right to share wage information.

4. Employers may not discharge, discipline or discriminate or retaliated against employees for voluntarily sharing/discussing wages.

5. Employers are not required to disclose any employee's wages to any other employer (or other employer).

6. An employer could be found liable for compensatory and punitive damages, attorneys' fees/costs for violating the pay secrecy law.

W. Non-Compete Agreements

1. Generally permissible as long as reasonable in geographical scope and duration and necessary to protect an employer's legitimate business interests and obtained with necessary consideration given to employee (i.e., upon hire, with discretionary raise or bonus, etc.).

2. Employers cannot require certain security guards to enter into an agreement preventing them from engaging in the same or similar job at the same location where they were employed, for another employer or as a self-employed person (unless the employer proves that the security guard obtained trade secrets).

3. Employers cannot prevent broadcasters from being employed in a specific geographic area for a specific time period after their employment is terminated.

4. Any contract or agreement that restricts the right of an individual to provide homemaker, companion or home health services in any geographic area of the state for any period of time or to any specific individual is void and unenforceable.

5. The only circumstances when a covenant not to compete can be enforceable against a physician (defined as any individual licensed to practice medicine in Connecticut) is if it is part of an employment agreement made in anticipation of, or as part of, a partnership or ownership agreement **OR** the employment or contractual relationship is terminated by the employer "for cause" (with "for cause" defined in advance in the written agreement between the parties). Further, a valid non-compete provision for a physician may only restrict the physician from competing for up to 12 months following termination in a geographical area within fifteen (15) miles of the "Primary Site" where the physician worked for the employer (with "Primary Site" defined as the office, facility or location where a majority of the revenue derived from the employee's services was generated for the employer).

IV. STATE LAW CONTRACT AND TORT CLAIMS

A. Express and Implied Contracts

1. An express contract is an unambiguous written document establishing the duration and terms of employment or specifying the terms under which employment may be terminated.

2. An implied contract can consist of documents and/or communications that create an employment contract, such as terms of an offer letter, employee handbook, or oral representations.

3. To constitute an express or implied contract, there must be actual agreement between the employer and employee.

4. Damages for breach of an implied or express contract include lost wages and benefits and front pay or reinstatement.

5. Compensatory and punitive damages are generally not recoverable.

B. Detrimental Reliance

1. Quasi-contract claim with the following elements:

   a. A promise from the employer to the employee.

   b. The promise induced action or forbearance by the employee.

   c. The action or forbearance was undertaken in reasonable reliance on the promise.

2. There must be a clear and definite promise that the employer could have reasonably expected to induce reliance.

3. Damages include the reasonable and foreseeable economic losses an employee actually incurred in reliance on the employer's promise.

4. Damage awards typically do not include lost wages, fringe benefits, or damages for non-economic injuries.

C. Wrongful Discharge in Violation of Public Policy

1. Employee must prove a demonstrably improper reason for his/her dismissal that violates an important public policy.

2. The existence of a statutory remedy will bar a wrongful discharge action based on the public policy embodied in a statute.

3. Cause of action is limited to employees at-will.

D. Negligent Infliction of Emotional Distress

1. Occurs when a reasonable person should have realized that his/her conduct involved an unreasonable risk of causing emotional distress and that the distress, if caused, might result in illness or bodily harm.

2. Arises in the employment context only when there is unreasonable conduct during the termination of employment.

3. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

E. Intentional Infliction of Emotional Distress

1. Employee must prove the following elements:

    a. Employer intended to inflict emotional distress or knew or should have known that emotional distress was a likely result of the conduct.

    b. The conduct was extreme and outrageous.

    c. Employer's conduct was the cause of the employee's distress.

    d. The emotional distress sustained by the employee was severe.

2. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

F. Defamation

1. Defamation is the non-privileged communication of a false statement that tends to harm the reputation of another. Libel is the publication of defamatory material through written or printed words. Slander is publication through spoken words.

2. Truth is a defense.

3. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

G. Negligent Misrepresentation

1. Employer must have made a false promise to an employee without having exercised reasonable care or competence in obtaining or communicating the information to the employee.

2. Employee must have justifiably relied on the information to his/her detriment.

3. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

H. Invasion of Privacy

1. An intrusion that is highly offensive to a reasonable person.

2. Four categories:

    a. Unreasonable intrusion upon the seclusion of another.

    b. Unreasonable publicity given to another's private life.

    c. Appropriation of another's name or likeness.

    d. Publicity that unreasonably places another in a false light before the public.

3. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

I. Civil Conspiracy

1. Conduct of two or more persons engaging in criminal or unlawful act.

2. Conduct of two or more persons engaging in lawful act by criminal or unlawful means.

J. Tortious Interference with Contractual Relations

1. Interference in a business relationship results in an injury due to some improper motive or improper means by the defendant.

2. Employer cannot be liable for interference in its own contracts with employees.

3. Individual supervisor liability if his/her conduct was not undertaken in good faith in the employer's interest.

4. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

K. Negligent Hiring

1. Injury is attributable to employer's negligence in failing to select a fit and competent person to perform a job.

2. Threat must have been foreseeable and there was some connection between the employee's work and the wrongful behavior committed by the employee.

3. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

L. Negligent Supervision

1. Arises when employer should have realized that permitting supervisor to engage in inappropriate conduct involved an unreasonable risk of causing emotional distress and that that distress, if caused, might result in illness or bodily harm.

2. Damages include lost wages and benefits, front pay, compensatory damages, and punitive damages.

V. WAGE AND HOUR LAWS

A. Connecticut Wage and Hour Laws

1. Requires at time of hiring that employer provide, in writing, employee's rate of pay, hours of employment, and wage payment schedule and make available to employee, either in writing or through a posted notice, any employment practices and policies regarding wages, vacation pay, sick leave, health and welfare benefits, and other comparable matters.

2. Requires payment of minimum wage of $11 (scheduled to increase to $12 per hour effective September 1, 2020; $13 per hour effective August 1, 2021; $14 per hour effective July 1, 2022; and $15 per hour effective June 1, 2023).

3. Requires that all hourly non-exempt employees be paid for all hours worked.

4. Requires that wages be paid on a weekly or bi-weekly basis unless a waiver to pay on another basis is approved by Commissioner of Labor.

5. Requires that wages be paid in cash or by check, or, if the employee requests it in writing, by direct deposit to his or her bank account or by paycard (new employees can be required to be paid by direct deposit).

    a. Payments must be accompanied by a pay stub indicating hours worked, regular, overtime and total wages, itemized deductions, and net earnings.

    b. Deductions and withholdings must be computed separately for vacation pay and regular wages.

    c. Deductions and withholdings may not be made from employees' wages, except as follows:

        (1) Employer is required or empowered to do so by state or federal law; or

        (2) An employee has provided written authorization for a deduction on a form pre-approved by the Commissioner of Labor; or

(3) An employee authorizes, in writing, a deduction for medical surgical or hospital care without financial benefit to the employer that is recorded in the employer's wage records.

7. If employer pays the employee by paycard (with the employee's written consent):

   a. The paycard must be associated with an ATM network that has a "substantial number" of in-network ATMs;

   b. Employees must be permitted to make at least three withdrawals without fees per pay period;

   c. None of the employer's costs for using paycards assessed to employees; and

   d. The employer must provide employees with the ability to check, free of charge, payroll account balances 24 hours a day, 7 days a week by automated telephone system, teller machine or electronically.

8. Requires that overtime (calculated at time and one-half) be paid for hours over 40 in a workweek if the employee is non-exempt. Does not require overtime pay to exempt employees.

9. Requires employers to allow employees one day off each calendar week.

10. Does not require premium pay for employees who work on weekend days unless it constitutes overtime work for non-exempt employees.

11. Does not require employers to grant paid holidays, to close on holidays, or to pay employees extra for working on holidays.

12. Requires payment of wages in certain time periods for terminations.

   a. For voluntary terminations, final wages are due not later than the next regular pay day either through regular payment channels or by mail.

   b. For involuntary terminations, final wages are due no later than the business day next succeeding the date of the discharge.

B. Overtime Exemptions

1. In General

    a. Exemptions are narrowly construed.

    b. Start with presumption of non-exempt status.

    c. Burden of proof is on employer to demonstrate that exemption is available.

    d. Job titles not controlling; actual job duties are the key.

    e. Salaried pay status is not enough to qualify for exemption.

2. Payment of a Salary (The Salary Basis Test)

    a. In order to be exempt, the employee must be paid on a salary basis.

    b. Subject to limited exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

    c. Exempt employees need not be paid for any workweek in which they perform no work.

    d. Pay deductions in <u>full day</u> increments for exempt employees are permissible in certain circumstances.

    e. Pay deductions in <u>less than full day increments</u> are allowed in certain circumstances.

    f. An employer loses exempt status if it has an actual practice of making improper deductions from salary.

    g. Isolated/inadvertent deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.

3. Executive Employees (Duties Test)

a. An employee will qualify as an exempt executive if:

(1) Employee receives salary of at least $684 per week (equivalent to $35,568 a year), effective January 1, 2020;

(2) Primary duty is management of the enterprise or a customarily recognized department or subdivision thereof;

(3) Employee customarily and regularly directs the work of at least two employees or equivalent (i.e., four half-time employees, or four full-time employees supervised in part by two different employees); and

(4) Employee has the authority to hire and fire other employees, or the employee's suggestions and recommendations as to hiring, firing or any other change of employee status (e.g., promotion, demotion, etc.) are given particular weight.

b. Key phrases for job descriptions of exempt executive employees:

- manages or supervises (more than 2; multiple) employees
- performs tasks without supervision/works independently
- uses initiative
- interviews, selects and trains employees
- sets/adjusts rates of pay and work schedules
- maintains production/sales records
- appraises productivity or issues performance evaluations
- recommends raises/promotions
- disciplines subordinates
- handles subordinates' complaints
- assigns/directs work of subordinates
- determines materials/supplies to be used or purchased
- provides for safety of subordinates
- plans work or projects
- forecasts needs/determines requirements

- analyzes work requirements/alternative course of action
- coordinates or prioritizes work

4. Administrative Employees (Duties Test)

   a. An individual will qualify as an exempt administrative employee if:

      (1) Employee receives salary of at least $684 per week (equivalent to $35,568 a year), effective January 1, 2020;

      (2) Primary duty is performance of office or non-manual work directly related to management or general business operations of the employer or the employer's customers; and

      (3) Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance;

   b. Key phrases for job descriptions of exempt administrative employees:

      - exercises independent discretion or judgment or initiative in . . .
      - Primary duty/key responsibility is making decisions or recommendations affecting the following management policies/business operations . . .
      - advises management
      - investigates and resolves the following significant matters
      - forecasts needs and plans requirements or projects
      - recommends purchases, strategies, programs
      - recommends/formulates policies and procedures
      - develops programs, policies, methods or procedures
      - analyzes alternative courses of action, alternative proposals
      - represents the employer in handling complaints, arbitrating disputes or resolving grievances
      - works independently/without immediate supervision

5. Professional Employees

a. An individual will qualify as an exempt learned professional employee if:

(1) Employee receives salary of at least $684 per week (equivalent to $35,568 a year), effective January 1, 2020.

(2) Primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; and

(3) Primary duty must be the performance of work requiring the consistent exercise of judgment and discretion.

b. Key phrases for job descriptions of exempt professional employees:

- applies professional training and experience to . . .
- uses independent judgment or discretion
- analyzes information, data, alternatives
- makes recommendations
- draws conclusions
- interprets information, data
- plans projects, work requirements

C. Travel Time as Hours Worked (For Non-Exempt Employees)

Under both the FLSA and Connecticut's wage and hour laws, employers are required to compensate **non-exempt (i.e., hourly) employees** for travel time under certain circumstances.

1. Travel Between Home And Work

a. Normal commuting time to and from an employee's regular worksite is not treated as compensable hours worked, so an employer is generally not required to pay an employee for commuting between home and work (unless otherwise required by an employment contract, industry custom or an employer's practice provide for compensation for such travel time).

b. It does not matter whether the length of the commute is short or long, or whether the employee works at a fixed location, or travels to a different job site each day within the normal commuting area for the employer's business (i.e., if in the particular business the different sites were the actual place of performance of the employee's principal activities, then the drive time is still considered the employee's normal commute and not compensable).

c. An employee seeking compensation for commuting time must demonstrate that the requirements and restrictions that the employer has placed on that time have imposed more than a minimal burden on him, transforming that time to an integral and indispensable part of the principal activity for which the worker is employed, undertaken predominantly for the benefit of the employer. The balancing of benefits and burdens is on a continuum, and the more that the employer's requirements burden the employee, preventing the employee from using that commuting time as he otherwise would have, the more likely a court will conclude that the time is for the predominant benefit of the employer. Even if some or all of the travel time is for the predominant benefit of the employer, that activity will still be non-compensable if the amount of time involved is de minimis.

d. Time spent in home-to-work travel by an employee in an employer-provided vehicle, or in activities performed by an employee that are incidental to the use of the vehicle for commuting, generally is not "hours worked" and, therefore, does not have to be paid. This is so even if the employer vehicle also transports some of the employer's materials, as long as using the vehicle is voluntary, and transporting its contents is simply incidental to the use of the vehicle for commuting to and from work. This provision applies only if the travel is within the normal commuting area for the employer's business and the use of the vehicle is subject to an agreement (in writing or based on a mutual understanding of practices between the employer and the employee).

e. If an employee drives a vehicle as part of an employer-sponsored carpool, the employee must be paid for the time spent driving. In this situation, the employee is caring for the vehicle and storing it, and so the employee is working. However, if driving the carpool vehicle is for the convenience of the employee and the vehicle is driven to work sites near

the employer's normal commuting area, then the employer does not have to pay the employee for travel time, as long as the employee agrees to this arrangement.

f. If an employee is required to report to a meeting place where he or she is to pick up materials, equipment or other employees, or to receive instructions before traveling to the worksite, then compensable time starts at the meeting place (i.e., any stops on his way to or from work on his employer's behalf, such as stopping at their warehouse to load extra materials on the truck, would create compensable time).

g. If an employee is otherwise performing work, which by coincidence occurs during his regular commute, he would then be on compensable time (i.e., if an employer is calling/texting an employee during the employee's regular commute to work and engaging the employee in a discussion concerning work-related issues, the time spent commuting is considered hours worked and compensable).

h. If an employee has a regular place of business but is asked on a particular day to travel directly from home to another site that is further away (or to leave that alternative site at the end of the day to go home), compensable time starts at the point at which the employee passes the length of time of his ordinary commute, and is then continuing travel for the benefit of his employer.

2. Travel During Workday

a. The general rule is that time spent by an employee in travel as part of the employee's regular workday must be considered hours worked. The key is whether the employee is engaged in travel as part of the employer's principal activity.

b. Time spent traveling to and from different worksites during the day is work time and must be paid.

c. An employee who reports to a meeting place to receive instructions or to perform other work, including obtaining tools, must be paid for the time spent traveling.

3. Out Of Town Travel (One-Day Assignment in Another City)

   a. When an employee must travel out of town for work but returns home the same day, all the time spent traveling during the day is compensable, regardless of the employee's regular work hours. However, an employer may deduct the time the employee would have spent commuting to his or her regular work location and/or for time traveling between home and any transportation center (i.e., when an employee travels by limousine, train or airline, the time traveling to the transportation center is treated as commuting).

4. Out Of Town Travel (Overnight)

   a. When travel requires an overnight stay, all travel time that occurs during the employee's regular working hours is considered compensable working time, regardless of what day of the week the travel takes place (i.e., if the travel occurs during normal working hours on non-workdays, the time is compensable).

   b. Time spent traveling to an airport terminal or train station is considered commute time and is not treated as hours worked, but the time spent waiting at the terminal until arrival at the destination is compensable when it falls during normal work hours.

   c. Any time spent for overnight travel that occurs outside of an employee's regular working hours as a passenger on an airplane, train, or other method of public transportation where the employee is free to use the time as he or she chooses and he/she performs no work, it is not considered hours worked, and therefore, it is not compensable.

   d. An employee must be paid for any time he or she is performing work while traveling. This includes time spent working during travel as a passenger that would otherwise be non-compensable (such as work performed outside of regular work hours).

   e. When an employee is traveling to an overnight stay and has the option to use public transportation (i.e., airplane, train, bus, etc.) but chooses to drive his or her own vehicle instead, the employer can either choose to pay for all time spent traveling or pay only the travel time that occurs during

normal work hours, regardless of what day of the week the employee travels.

f. If an employee volunteers to drive others in his or her own vehicle to the overnight stay, an employee's time could be unpaid for those travel hours outside the normal work hours.

5. Emergency Callbacks

a. Regular home-to-work travel on callbacks is not considered compensable time. Therefore, an employer is not required to pay travel time to employees who, after completing a full day's work, are called back to perform an emergency job at their normal workplace.

b. Home-to-work travel is compensable if an employee is called at home after completing a day's work and required to travel elsewhere to perform the emergency job. (i.e., when an employee, after completing a normal day's work, is required to travel from home to perform an emergency job for a customer of the employer, the employer must compensate the employee for all of the employee's travel time).

D. Waiting Time

1. Not compensable if:

a. Employee is completely relieved from duty and allowed to leave the job; or

b. Employee is relieved until a definite, specified time; and

c. The relief period is long enough for the employee to use the time as he/she sees fit.

2. Not compensable if employee arrives early to work and waits before starting duties.

3. Compensable if employee reports to work on time but must wait for work to be provided.

E. On Call Time

1. Compensable if such time is spent "predominantly for the employer's benefit."

2. On-call pay must be included in employee's regular rate of pay.

F. Meal and Break Periods

1. Requires employers to give a meal break of at least 30 consecutive minutes to any non-exempt employee who works seven and one-half or more consecutive hours (with limited exceptions including when there are less than five employees working a particular shift or function).

2. The meal break must occur after the first two hours of work and before the last two. Employees and employers may also enter into a written agreement providing a different schedule for the break period than the statute provides.

3. The meal break does not need to be paid unless work is performed.

4. Employee must be free to leave the work area for break period not to be counted as hours worked.

G. Training Time

Employees are entitled to be paid for time in training (at pay rate of at least minimum wage) unless the training:

1. Is conducted outside of regular work hours;

2. Is completely voluntary;

3. Results in no productive work being performed; and

4. Is not directly related to the employee's job.

H. Interns

1. Under the FLSA, to determine whether an intern must be considered a paid employee, the proper question is whether the intern or the employer is the primary beneficiary of the relationship.

2. The primary beneficiary test has two salient features. First, it focuses on what the intern receives in exchange for his work. Second, it also accords courts the flexibility to examine the economic reality as it exists between the intern and the employer.

3. The following (non-exhaustive) set of factors are considered:

   a. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

   b. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

   c. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

   d. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

   e. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

   f. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

   g. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship. NOTE: Employer should have a written agreement with the intern outlining the parameters of the internship and specifically stating that the internship is unpaid and that the intern is not guaranteed employment at the conclusion of the internship.

4. Under Connecticut law, an unpaid internship must be affiliated with a high school or college program in which the intern is receiving school credit for his or her participation. So in Connecticut, an employer must meet both the factors considered by courts for purposes of the FLSA and the additional Connecticut requirements that a school provide credit for an unpaid internship.

5. While school credit is not required under the FLSA, it is required under Connecticut law, and therefore, a Connecticut employer needs to establish a relationship with a high school/college to exercise oversight of the unpaid internship. An intern is considered to be someone who performs work for an employer for the purpose of training and the work performed should meet the following conditions: supplements training given in an educational environment that may enhance the employability of the person; provides experience for the benefit of the person; does not displace any employee of the employer; is performed under the supervision of the employer or an employee of the employer; and provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

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