

Employment Practices Liability

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Connecticut Employment Law Update for Laws Effective October 1, 2019

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During this year's legislative sessions, the Connecticut General Assembly passed multiple laws impacting employers, some of which are specific to public employers and many of which become effective October 1, 2019. This update will provide an overview of those laws.

If you have any questions about this legal update, or if you would like to schedule the mandatory sexual harassment awareness training, please contact any of the attorneys at Rose Kallor, LLP by calling (860) 361-7999 or at one of the following email addresses:

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Minimum Wage (Public Act 19-4): Pursuant to Public Act 19-4, the State's minimum wage rate will increase on a near annual basis as follows:

- \$11.00 per hour effective October 1, 2019
- \$12.00 per hour effective September 1, 2020
- \$13.00 per hour effective August 1, 2021
- \$14.00 per hour on July 1, 2022
- \$15.00 per hour on June 1, 2023

Beginning October 15, 2023, and annually thereafter, the Labor Commission will announce further adjustments to the minimum wage, which will be effective January 1 of the following year. Beginning January 1, 2024, and annually thereafter, the minimum wage adjustment will be based upon the percentage change in the employment cost index for wages and salaries for all civilian workers, as calculated by the U.S. Department of Labor. The Act calls for the Labor Commissioner to provide his or her recommendation in writing to the Governor regarding suspension of future increases to the minimum wage should two consecutive quarters of negative growth in the State's real gross domestic product occur, and based upon that, the Governor will make a recommendation to the General Assembly regarding suspension of minimum wage increases.

The Act further provides for two notable changes. First, the Act freezes the tip credit, applicable to hotel and restaurant employees who customarily receive tips, at \$6.38 for hotel and restaurant employees and \$8.23 for bartenders, provided these employees' tips make up the difference between the tipped minimum wage and the regular minimum wage. Second, the Act amends the training wage so that it is no longer available to "learners and beginners" and instead is limited to individuals under age 18, except emancipated minors. The Act further limits the training wage to the first 90 days of employment and is set at 85% of the minimum wage or \$10.10, whichever is greater.

Accordingly, employers should review their wage and hour practices to ensure their employees will receive wages consistent with the law beginning October 1, 2019. If employees are at minimum wage, employers should be prepared to increase wages as set forth in the above time-table.

Sexual Harassment & Anti-Discrimination Law (Public Act 19-16 and Public Act 19-93): Public Act 19-16, An Act Combatting Sexual Assault and Sexual Harassment, and Public Act 19-93, An Act Concerning Sexual Harassment and Sexual Assault, modifies existing law relating to anti-harassment.

First, employers with three or more employees are required to provide two hours of anti-harassment training to all of its employees within one year of October 1, 2019, and for employees hired on or after October 1, 2019, anti-harassment training must be provided within six months of the employee's hire date. Employers with less than three employees are required to provide anti-harassment training, within one year of October 1, 2019, to all supervisors, and within six months of a new supervisor assuming his or her duties. However, if an employer provided the required training within the prior year, it does not need to provide the training again. Periodic supplemental training is also required under the new law not less than every ten years. Under the new law, an employee now includes an individual hired by one's parent, spouse or child. The Connecticut Commission on Human Rights and Opportunities (CHRO) will develop and make available online training that fulfills the requirements under the new law.

Second, the law requires that employers provide employees, no later than three months after their start date, with a copy of materials outlining that sexual harassment is illegal and available remedies for victims of sexual harassment. The employer should provide this information via email if the employer provides email accounts to its employees, and the subject line should contain "Sexual Harassment Policy" or another similar phrase. If the employer does not provide email accounts to employees, but employees provide email accounts to the employer, the employer should provide the information via email, and post the information on the employer's website, if a website is maintained. An employer will be in compliance with the law if the employer provides its employees with a link to the CHRO's website concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment via email, text or in writing.

The CHRO may assign a representative to enter an employer's business, during normal business hours, to ensure compliance with notice-posting requirements and examine records related to the requisite anti-harassment training, provided however, that the representative can only enter within twelve months of an employee's complaint against an employer or when the CHRO reasonably believes that the employer has violated posting or training requirements, and the representative cannot unduly disrupt the employer's business operations. If the business location is a residential home, express permission to enter is required by the homeowner. Failure of an employer to post the requisite notices or provide training as outlined herein may result in a fine up to \$750.

Third, the law extends the time period within which a complainant has to file discrimination or sexual harassment complaints with the CHRO, from 180 days to 300 days after the date of the alleged act.

Fourth, if employers take corrective action in response to a complaint of sexual harassment (such as employee relocation, assignment to a different work schedule, or other substantive changes to an employee's terms and conditions of employment), the corrective action should not modify the complaining employee's conditions of employment unless such employee agrees, in writing, to the modification. However, if written consent is not obtained, the CHRO may find that corrective action taken by an employer was reasonable and not detrimental to the complaining employee based on the evidence presented to the CHRO by the complaining employee and employer.

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Finally, the new law amends the types of remedies that the CHRO can provide, including an order to eliminate the discriminatory employment practice complained of and to make the complainant whole, including damages suffered by the complainant and attorney's fees. It also permits the CHRO to bring a lawsuit in state court when the executive director determines that a civil action is in the public interest and if the parties to the administrative hearing mutually agree, in writing, to the bringing of such civil action by commission legal counsel. Where a discriminatory practice is established by clear and convincing evidence, the court may order the employer to pay the CHRO's fees and costs, up to \$10,000, and a state court can award punitive damages in employment discrimination lawsuits, effectively overruling the Connecticut Supreme Court's decision in *Tomick v. United Parcel Service, Inc.*, 324 Conn. 470 (2016).

Public Acts 19-16 and 19-93 are extensive and includes revisions to the law beyond those that are highlighted here. Accordingly, employers should work with their employment attorneys to ensure full compliance with the law.

Laws Relating to Public Safety Employees (Public Act 19-17 and Public Act 19-111): First responders can now receive Workers' Compensation benefits for Post-Traumatic Stress Disorder (PTSD) and are protected from Retaliation.

As of July 1, 2019, police officers, parole officers, and firefighters can receive certain Workers' Compensation benefits for PTSD caused by enumerated "qualifying events" while serving in their duties, such as witnessing a deceased minor, a person's death or an incident involving a person's death, or a traumatic physical injury which causes the loss of a vital body part; witnessing an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; having physical contact with and treating an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or carrying an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause. However, the law limits the time allowable to collect benefits and also allows an offset by the amount of other benefits an officer or firefighter may receive under certain conditions and provides a process for employers to contest PTSD claims.

Under the law, "post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder as specified in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders." Diagnosis must be made by a mental health professional who has examined the employee and determines that the PTSD is a direct result of a qualifying event, provided: (1) the post-traumatic stress disorder resulted from the officer or firefighter acting in the line of duty and, in the case of a firefighter, such firefighter complied with Federal Occupational Safety and Health Act standards adopted pursuant to 29 CFR 1910.134 and 29 CFR 1910.156; (2) a qualifying event was a substantial factor in causing the disorder; (3) such qualifying event, and not another event or source of stress, was the primary cause of the post-traumatic stress disorder; and (4) the post-traumatic stress disorder did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement or similar action of the officer or firefighter.

The time limit for receiving temporary total incapacity benefits and temporary partial incapacity benefits is 52 weeks from diagnosis and four (4) years from the date of the qualifying event.

Finally, effective today, October 1, 2019, the new law contains an anti-retaliation provision which protects police officers who seek mental health treatment. An employer shall not discharge, discipline, discriminate against or otherwise penalize a police officer solely because the police officer seeks or receives mental health care services or surrenders his or her firearm, ammunition or electronic defense weapon used in the performance of the police officer's official duties to such law enforcement unit during the time

the police officer receives mental health care services.

The provision does not protect employees who (1) seek or receive mental health care services to avoid disciplinary action, or (2) refuse to submit to an examination prior to returning to duty.

Before the officer returns to full duty, including receipt of his or her firearm, the employer shall request that the officer submit to an examination by a mental health professional. The purpose of the examination is to determine whether the police officer is ready to report for official duty. The examination shall be paid for by the employer.

In addition, the law requires the General Assembly's Labor and Public Employees Committee will study the cost and impact of expanding the law to emergency medical services personnel and select Department of Corrections employees.

Also, effective October 1, 2019, municipalities may provide additional compensation for certain retired public safety employees, which includes paid firefighters and police officers, as set forth in Public Act 19-111. By a two-thirds vote of a municipality's legislative body or board of selectmen, a municipality may provide retirement benefits to public safety employees who: 1) has a permanent and severe disability caused by a serious bodily injury which was suffered in the line of duty within the scope of his or her employment as a public safety employee; 2) retired from service as a public safety employee as a result of such disability; and 3) is under the age of sixty-five. Such compensation under this law shall be an amount equal to the difference between Workers' Compensation and any other benefits, and the regular rate of pay of such employee at the time of his or her retirement, and shall be paid annually to the employee until he or she reaches age sixty-five. If a municipality provides for compensation under the new law, it shall establish procedures for evaluating a retired public safety employee's eligibility for such compensation.

Notwithstanding the new laws, employers must recognize that they may have other responsibilities to the employee when such employee is diagnosed with PTSD, or otherwise suffers a work-related injury. Commonly, these responsibilities arise under the Connecticut Fair Employment Act, the Rehabilitation Act of 1973, the Family and Medical Leave Act and/or the Americans with Disabilities Act. Therefore, employers should consult with their counsel to appropriately assist and respond to an employee who has experienced one of the qualifying events enumerated in the statute.

Whistleblower Protection (Public Act 19-69) Now Applicable to Employees of Entities that Receive State Financial Assistance:

Public Act 19-69 expands the current State's whistleblower law to be applicable to employees of entities that receive state financial assistance. While the law had applied to corruption within any state department, quasi-public agency or corruption occurring in any large state contract, Public Act 19-69 has added recipients of financial assistance to its definition. Now any person with knowledge of corruption by any entity receiving financial assistance that has failed to meet its financial obligations or has failed to satisfy any condition regarding such financial assistance may also provide such information to the Auditors of Public Accounts who shall review the matter and report their findings and recommendations to the Attorney General who shall conduct an investigation as proscribed in the law.

The Act now also prohibits the recipients of this financial assistance from taking any personnel action against employees for disclosing information to the state auditors or assisting in a subsequent proceeding, actions it had previously prohibited against state employees or employees of large contractors. The Act also requires the recipient's contract for state financial assistance to include a provision that makes the recipient liable for a civil penalty of up to \$5,000 per offense for any retaliatory personnel action taken against a whistleblower.

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Whistleblowers who believe that they are being retaliated against may file a complaint with the Chief Human Rights Referee at the Connecticut Commission on Human Rights and Opportunities. There are alternative remedies available which vary depending upon whether employees are State employees, employees of quasi-public agencies or employees of large state contractors. Employees of large state contractors may, after exhausting all administrative remedies available, bring a civil action in accordance with Conn. Gen. Stat. § 31-51m.

Municipal Arbitrations (Public Act 19-107): On June 28, 2019, the General Assembly passed Public Act 19-107, An Act Concerning the Review of Municipal Arbitration Awards, effective October 1, 2019. This Act amends Conn. Gen. Stat. § 7-473c(d)(12), which currently allows the legislative body of a municipal employer to reject an arbitration award by the State Board of Mediation and Arbitration within 25 days of receipt of the arbitration award by a two-thirds majority vote of the members of such legislative body present at a regular or special meeting called and convened for the purpose of rejecting the award.

Public Act 19-107 clarifies that if the 25th day falls on a weekend or a holiday, the deadline for the legislative body to reject the arbitration award should be extended through the next business day following the 25th day.

CMERS Contribution Rates (Public Act 19-124): Pursuant to Public Act 19-124, beginning July 1, 2019, the contribution rate for employees participating in the Connecticut Municipal Employees Retirement System (members) increased by 3% in increments of 0.5% over the next 6 years, pursuant to the following chart:

	Prior to Public Act 19-124	7/1/19 to 6/30/20	7/1/20 to 6/30/21	7/1/21 to 6/30/22	7/1/22 to 6/30/23	7/1/23 to 6/30/24	7/1/24 to 6/30/25 & each year thereafter
CMERS members with salary subject to Social Security	2.25%	2.75%	3.25%	3.75%	4.25%	4.75%	5.25%
CMERS members with salary NOT subject to Social Security	5%	5.5%	6%	6.5%	7%	7.5%	8%

Members who are covered by Social Security but earn more than Social Security's taxable income limit (currently \$132,900) must split their salary between the two contribution rates.

Given the increase in employee contributions, the CMERS 2018 Valuation report was revised June 17, 2019, and shows a general decrease in employer contribution rates. However, employer contribution rates will see an overall increase over time due to the unfunded liability, which is re-amortized every year, and subject to a five-year contribution rate smoothing schedule.

The Act also authorizes Bridgeport to issue up to \$125 million in pension deficit funding bonds, plus the issuance costs, for the purpose of funding the City of Bridgeport's Pension Plan A Fund (for public safety employees), provided, however, that the bonds mature within 25 years of the date of issue.

Non-compete Ban for Homemakers, Companions & Home Health Services (Public Act 19-117) : Buried deep in the budget bill, Section 305, effective July 1, 2019, provides that covenants not to compete restricting 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 a specific individual are deemed against public policy and are void and unenforceable.

The attorneys at Rose Kallor, LLP regularly represent and advise private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact Rose Kallor, LLP at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, CIRMA Communications Associate at jsmith@ccm-ct.org.

For more information about CIRMA's Employment Practices Liability Helpline Program, please contact your CIRMA Risk Management Consultant.



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