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The Aftermath: Developments From The 2019 Session of The Connecticut General Assembly Affecting Employers (Part One)

Working Together

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The 2019 Regular Session of the Connecticut General Assembly concluded on June 5, 2019. In light of the passage of several bills of great import (e.g., paid family and medical leave - along with other changes to the state's FMLA, measures addressing sexual harassment while also expanding remedies for employment discrimination claims, increases in the state's minimum wage), this may have been the most significant session of the General Assembly in terms of bills affecting the workplace in many years. The following are concise descriptions of these "major" employment law related bills. We will provide you with a description of the remaining employment bills in a subsequent blog post.

MINIMUM WAGE: **Public Act 19-4 ("An Act Increasing The Minimum Fair Wage"),** which was signed by the Governor on May 28, 2019, **increases the minimum wage** from the current $10.10/hour to $11.00/hour on October 1, 2019, $12.00/hour on September 1, 2020, $13.00/hour on August 1, 2021, $14.00/hour on July 1, 2022, and $15.00/hour on June 1, 2023, with the minimum wage thereafter being subject to annual indexing/adjustment for inflation (commencing on January 1, 2024).

The Act provides for a **lower minimum wage for those under the age of 18** (except emancipated minors) for the first 90 days of employment, namely, 85% of the minimum wage or $10.10/hour, whichever is greater; thereafter, such minors would receive the "typical" minimum wage, except those in institutional training programs specifically exempted by our Department of Labor. The Act provides that commencing October 1, 2020, no employer may take any action to displace (in whole or in part) an employee, including reducing the employee's hours, wages or employment benefits, for purposes of hiring persons under the age of 18 years at a rate below the minimum wage. If the Commissioner of Labor determines that an employer has violated this provision, the Commissioner shall suspend the employer's right to pay the reduced rate for employees for a period of time as specified in regulations that are to be adopted.

The Act provides that after two consecutive quarters of **negative growth** in the state's gross domestic product, the Commissioner of Labor shall report his or her recommendations in writing to the Governor regarding **whether any scheduled increases in the minimum wage should be suspended**. The Governor may then submit his or her recommendations regarding the suspension of such increases to the General Assembly.

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In addition, the Act revises the "**tip credit**" reduced minimum wage for certain hotel and restaurant employees. Effective July 1, 2019, the Commissioner of Labor will recognize, as part of the minimum wage, gratuities in an amount equal to the difference between the minimum fair wage and the employer's share per hour for persons 1) who are employed in the hotel and restaurant industry (including a hotel restaurant) and 2) who customarily and regularly receive gratuities. This "employer's share" is 1) $6.38 per hour for such persons other than bartenders, and 2) $8.23 per hour for bartenders. Furthermore, the Commissioner of Labor is required to conduct a study regarding workers in this state who receive gratuities. When the study is concluded, the Commissioner shall make recommendations regarding the optimal methods of obtaining the following information: 1) which groups of workers in this state receive compensation in the form of gratuities, 2) the demographics of such workers, 3) the amount of gratuities received by such workers, and 4) any difference in wage growth between workers who receive gratuities and workers who do not receive gratuities. The Commissioner shall then submit a report regarding this study to the General Assembly by January 17, 2020.

SEXUAL HARASSMENT AND DISCRIMINATION COMPLAINTS: As my colleagues, Mick LaVelle and Bob Hinton, have recently written in these pages in detail, http://workingtogether.pullcomblog.com/archives/new-legislation-grants-additional-powers-to-the-commission-on-human-rights-and-opportunities/, http://workingtogether.pullcomblog.com/archives/connecticuts-newly-signed-law-imposes-new-sexual-harassment-training-obligations/, **Public Act 19-16 ("An Act Combatting Sexual Assault and Sexual Harassment"),** which was signed by the Governor on June 18, 2019 and takes effect on October 1, 2019, greatly affects Connecticut employers not only with respect to actions they must take to prevent harassment in their workplaces, but also increases exposure to potential liability for employment discrimination claims in general.

This Act amends the current laws that require employers with three or more employees to **post a notice** stating that sexual harassment is illegal (and the remedies available to victims) by also requiring these employers to send a copy of this information to employees by email within three months of their hire if 1) the employer has provided an email account to the employee or 2) the employee has provided the employer with an email address. The email's subject line must be similar to "Sexual Harassment Policy." If an employer has not provided email accounts to employees, it must post the information on its website (if it has one). An employer can comply with this requirement by providing employees by email, text message, or in writing with a link developed by the Commission on Human Rights and Opportunities ["CHRO"] and available on its website about the illegality of sexual harassment and the remedies available to victims.

The Act amends the anti-sexual harassment **training requirements.** Employers with three of more employees must provide two hour of such training to all of their employees (not just supervisory employees) within one year of October 1, 2019 (and six months after any employee is hired). There is an exception for those employers who provided such training to all of their employees after October 1, 2018. The training

requirement for employers with less than three employees is limited to supervisory employees. The Act requires CHRO (by October 1, 2019) to develop and make available to employers a free online training and education video or other interactive method that fulfills the Act's training requirements. The Act provides that employers who fail to provide such notices and training may be fined up to $1,000 (and authorizes CHRO to enter an employer's premises during normal business hours to assure compliance with these mandates). Previously, the maximum fine for a failure to post was only $250.

This Act requires an employer to obtain an employee's consent in writing to "immediate corrective actions" that an employer may take to remediate sexual harassment, such as employee relocation, reassignment, or a different employee work schedule.

The Act extends the deadline for filing a discriminatory employment practices complaint with CHRO (for complaints alleging an act of discrimination occurring on or after October 1, 2019) from 180 days after the alleged act to 300 days. This Act also expressly grants parties to CHRO administrative hearings the right to inspect and copy documents from the other party. This Act grants CHRO the authority to award damages and attorneys' fees in employment discrimination cases; the Act indicates that the amount of attorneys' fees awarded shall not be contingent upon the amount of damages requested or awarded. It is not clear if this grant of authority to CHRO will apply to only complaints filed on or after October 1, 2019, or all complaints pending with CHRO. The Act also gives courts the authority to award punitive damages in state court employment discrimination complaints. The Act gives CHRO the authority to directly bring a civil action in the courts concerning alleged discriminatory practices, instead of a case proceeding to a typical CHRO administrative hearing, if CHRO determines that 1) this would be in the public interest and 2) the parties mutually agree, in writing, to the case proceeding in this way.

FAMILY AND MEDICAL LEAVE: **Public Act 19-25** ("**An Act Concerning Paid Family And Medical Leave**"), which was signed by the Governor on June 25, 2019, provides paid family and medical leave benefits to all eligible employees (namely, all private sector employees except private schools, all non-union state employees, public sector employees whose unions collectively bargain for them to join this program, and sole proprietors or self-employed persons who have voluntarily enrolled in the program) who have earned $2,325 from one or more employers during the employee's highest earning quarter during the previous five quarters. Specifically, this Act creates a "Family and Medical Leave Insurance Program" that will offer 1) up to 12 workweeks of "family and medical leave compensation" to covered employees during any 12 month period, and 2) two additional weeks of compensation to such an employee for a serious health condition that occurs during a pregnancy that results in incapacitation.

The Program will be funded by employee contributions to the "Family and Medical Leave Insurance Trust Fund", to be collected from covered employees starting on January 1, 2021, and would begin to provide compensation to covered employees starting on January 1, 2022. The Trust Fund will be managed by the

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Paid Family and Medical Leave Insurance Authority, which will annually determine the employee contribution rate (which cannot exceed .5%). The benefit is supposed to be 1) 95% of the covered employee's base weekly earnings up to 40 times the minimum wage, plus 2) 60% of that covered employee's base weekly earnings that exceeds 40 times the minimum wage; the total weekly benefit cannot exceed 60 times the minimum wage. However, if employee contributions are insufficient to maintain the Program's solvency, the Act authorizes the Authority to reduce benefits as may be necessary. Employers would be allowed to meet their obligations under this Act via a private plan; such a private plan must be approved by the Authority and must, among other things, provide the same rights and benefits offer under the Program.

The Act also makes other changes to the state's Family and Medical Leave Act ["FMLA"]. Effective January 1, 2022, the Act 1) extends the applicability of the **state's** FMLA to **all private employers with at least one employee** (as opposed to the current 75 employee threshold)**,** 2) changes the state FMLA's minimum eligibility requirement for employees, from working at least 12 months for the current employer and at least 1000 hours during the previous 12 months, to having been employed three months prior to the request for leave (regardless of how many hour worked), 3) aligns the maximum amount of leave under the state FMLA with the federal FMLA requirement (i.e., 12 weeks of leave during any 12 month period), 4) broadens the definition of "parent" and adds siblings, grandparents, grandchildren and "any other individual related by blood or whose close association with the employee is the equivalent of a family member" to the list of family members for whom an employee can take FMLA "caregiver" leave, and 5) limits an employer's ability to require an employee taking FMLA leave to use his or her employer-provided paid leave (so that the employee is able to retain at least two weeks of such paid leave). This Act further would create a "non-charge" against an employer's unemployment compensation experience rating when an employer lays off an employee due to the return of another employee who had been out on FMLA leave.

Tags: Minimum Wage, Sexual Harassment