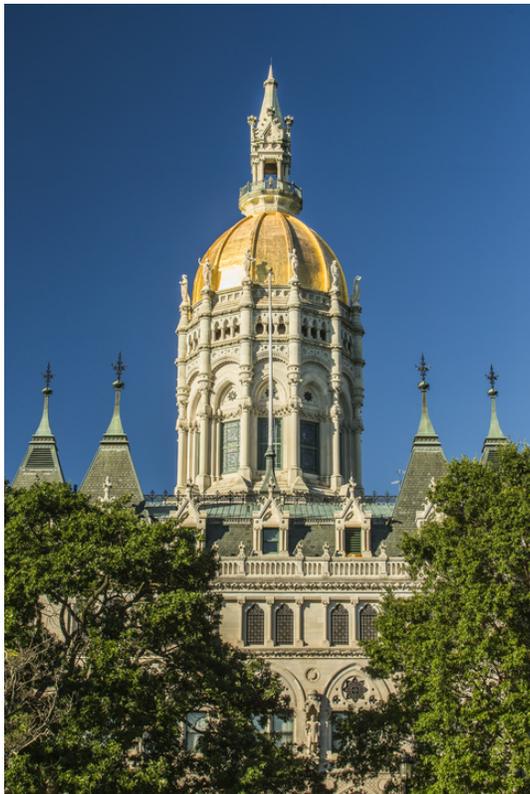


The Aftermath: Developments From The 2021 Session of The Connecticut General Assembly Affecting Employers (Part One)

Working Together

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The 2021 Regular Session of the Connecticut General Assembly concluded on June 9, 2021. While not as groundbreaking as the last full legislative session in 2019, important bills regarding public sector union rights, racial discrimination (the CROWN Act), and accommodations for breastfeeding in the workplace were enacted. The following are brief descriptions of some of these employment-related bills. We will provide you with further/updated information with respect to these and other bills, along with relevant information on bills emerging from the Special Session of the General Assembly (currently underway), in a subsequent blog post.

BREASTFEEDING IN THE WORKPLACE

PUBLIC ACT 21-27 (“An Act Concerning Breastfeeding In The Workplace”), which was signed by the Governor and takes effect on **October 1, 2021**, amends current laws regarding lactation rooms in the workplace to require (provided there is no undue hardship) that such lactation rooms 1) be free from intrusion and shielded from the public while the employee expresses milk, 2) include or be situated near a refrigerator (or an “employee-provided portable cold

storage device”) where the employee can store expressed breast milk, and 3) include access to an electrical outlet.

HAIR-BASED RACIAL DISCRIMINATION

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PUBLIC ACT 21-2 (“An Act Creating A Respectful and Open World For Natural Hair”) (the CROWN Act), which was signed by Governor and took effect upon passage (March 4, 2021), amends the Connecticut Fair Employment Practices Act to prohibit discrimination on the basis of ethnic traits “historically associated with race,” including but not limited to “hair textures” and “protective hairstyles.” Such “protective hairstyles” are defined as including, but not limited to “wigs, headwraps and hairstyles such as individual braids, cornrows, locs, twists, Bantu knots, afros and afro puffs.”

PREVAILING WAGE AND CONTRACTORS

H.B. No. 6378 (“An Act Codifying Prevailing Wage Contract Rates”), which has yet to be signed but would take effect on October 1, 2021, codifies as the “prevailing wage rates” for covered construction contracts those rates established in “dominant” collective bargaining agreements or understandings between employers and labor organizations for the same work in the same trade or occupation in the town in which the project is being constructed.

SALARY RANGES FOR VACANCIES

PUBLIC ACT 21-30 (“An Act Concerning The Disclosure Of Salary Range For A Vacant Position”), which was signed by the Governor and takes effect on October 1, 2021, will require employers to disclose to job applicants the salary ranges for vacant positions upon request or by the time an offer of compensation is made. This Act also requires employers to provide wage ranges to employees upon a position change. Furthermore, this Act revises the state’s gender-based equal pay act by requiring employers to provide employees, regardless of sex, with “comparable” pay for “comparable” work (instead of the current “equal” pay for “equal” work).

LAYOFFS, RECALLS, AND SENIORITY RULES

S.B. No. 658 (“An Act Requiring Employers To Recall Certain Laid-Off Workers In Order Of Seniority”), which has yet to be signed by the Governor but would take effect upon passage (if and when signed), would require hotels, lodging houses, food service contractors, and building service enterprises with at least 15 employees to notify employees laid off between March 10, 2020 and December 31, 2024 (whether due to a lack of business, a reduction or furlough of the employer’s workforce, the COVID-19 related State of Emergency declared by the Governor on March 10, 2020, or other economic, non-disciplinary reasons) about available positions for which a laid-off employee is qualified. An employee would be deemed to be qualified if the employee: 1) held the same or similar position at the time of the most recent separation from active service with the employer; or 2) is or can be qualified for the position with the same training that would be provided to a new employee hired for the position. The employer shall offer the position in the order of preference set by 1) and 2) above; where more than one employee is entitled to preference for a position, the employer shall offer the position to the employee with the greatest length of service at the employment site.

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An offer of employment to a laid-off employee shall be in the same classification or job title at substantially the same employment site, and with substantially the same duties, compensation, benefits and working conditions as applied to the laid-off employee immediately prior to March 10, 2020. A laid-off employee who is rehired shall be permitted to work for not less than thirty work days, unless there is just cause for their termination.

If the laid-off employee declines an employer's job offer due to age or an underlying health condition of the employee or family members, the laid-off employee has the right to accept the position until the end of the COVID-19-related state of emergency currently scheduled to expire on July 20, 2021. If an employer hires someone else instead of a laid-off employee, the bill requires the employer to give the laid-off employee a written notice that identifies the other person, including their demographic data, and the reasons for the decision. The bill prohibits employers from retaliating against laid-off employees for exercising their rights under the bill, and it allows a laid-off employee aggrieved by a violation of the bill's provisions to bring a civil action in Superior Court.

The bill contains exceptions for circumstances where there has been a change in ownership or organization of the employer after the employee was laid off, or the employer relocates the operations to a different employment site not more than twenty-five miles away from the original employment site. The bill also provides that its provisions may be waived in a collective bargaining agreement (if the waiver is in clear and unambiguous terms). The bill further provides that it should not be construed to invalidate or limit the provisions of any contract or agreement that provides equal or greater protection for laid-off employees; also, it would not be a violation for an employer to follow an order of preference for recall required by a collective bargaining agreement that is different from the order of preference required by this bill.

WORKERS' COMPENSATION AND PTSD/PTSI

S.B. No. 660 ("An Act Expanding Workers' Compensation Benefits For Certain Mental Or Emotional Impairments Suffered By Health Care Providers In Connection With Covid-19"), which has yet to be signed by the Governor but would take effect upon passage (if and when signed), would expand workers' compensation benefits for post-traumatic stress injuries resulting from witnessing certain traumatic events (e.g., certain deaths or maiming) so as to include EMS personnel, Department of Correction employees, and "telecommunicators." This bill would also provide such benefits to health care providers involved in responding to COVID-19, or who witness death or "traumatic physical injuries" linked to COVID-19.

PUBLIC SECTOR UNIONS

PUBLIC ACT 21-25 ("An Act Concerning Access to Certain Public Employees By The Exclusive Bargaining Representative of a Public Employer Bargaining Unit"), which was signed by the Governor and takes effect on October, 1, 2021, requires (among other things) that public sector employers provide their unions

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(or other representative employee organizations) with certain specified employee information in an editable digital format and in a format otherwise agreeable to the unions. This requirement applies both to new hires and (beginning January 1, 2022) to current employees. This Act requires such employers to provide unions with access to new employee orientations. Upon request of the union, employers may have to bargain the structure, time and manner of access to such orientations. In the absence of agreement, this issue would then be subject to compulsory arbitration. This Act requires employers to provide unions with access to employees (even during the workday) and to government buildings/facilities to conduct meetings with bargaining unit members. The Act also gives unions access to the employers' e-mail systems to communicate with the employees they represent.

With respect to payroll deductions for dues paid to public employee unions, the Act requires: 1) public employers to rely on a union's certification that it has and will maintain the deduction authorizations signed by the individuals from whose pay the deductions will be made; 2) unions to indemnify public employers for any employee claims about deductions that relied on that certification; and 3) public employers to direct employee requests to cancel or change their deductions to the union rather than the employer. The Act explicitly prohibits public employers from (and makes it a "prohibited labor practice" for such employers to) deterring or discouraging public employees or job applicants from becoming or remaining members of a public employee union. Indeed, the Act prohibits an employer from allowing any entity to use the employer's email system to discourage either membership in a public employee organization or authorization of payroll deductions for the organization's dues.

UNEMPLOYMENT COMPENSATION

PUBLIC ACT 21-5 ("An Act Concerning The Removal Of COVID-19 Related Layoffs From The Unemployment Compensation Experience Account"), which was signed by the Governor and takes effect on October 1, 2021, provides that to the extent allowed by federal law "and as necessary to respond to the spread of COVID-19," for any taxable year commencing on or after January 1, 2022, the experience period shall be calculated without regard to benefit charges and taxable wages for the experience years ending June 30, 2020, and June 30, 2021.

S.B. No. 904 ("An Act Concerning The Labor Department's Executive Director"), which has yet to be signed by the Governor but would take effect upon passage (if and when signed), would specify that the Executive Director of the Department's Employment Security Division shall be in the classified service and devoted full-time to the duties of his or her office.

PREVAILING WAGE AND RENEWABLE ENERGY PROJECTS

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PUBLIC ACT 21-43 (“An Act Concerning A Just Transition To Climate-Protective Energy Production And Community Investment”), which was signed by the Governor and took effect upon passage (June 14, 2021), among other things, requires the developers of covered renewable energy projects, other than those selected in competitive bid processes before January 1, 2022, to meet prevailing wage standards if the project begins construction on or after July 1, 2021 and has a total nameplate capacity rating of at least 2 MW. In addition, projects that have a nameplate capacity of 5 MW or more must also enter into a community benefits agreement for the community in which the project is located.

TECHNICAL AND MINOR CHANGES

PUBLIC ACT 21-18 (“An Act Concerning Minor And Technical Changes To The Workers’ Compensation Act”), which was signed by the Governor and takes effect on October 1, 2021, has a title that largely speaks for itself. However, the Act changes the title of “workers compensation commissioners” to “administrative law judges.”

SPECIAL ACT 21-8 (“An Act Concerning A Disparity Study”) which was signed by the Governor and took effect upon passage (June 14, 2021), requires the Commission on Human Rights and Opportunities, in consultation with the Department of Administrative Services, to issue a request for proposals for the conducting of a “disparity study.” The study shall provide an analysis of existing statistical data concerning the state’s set-aside program, to determine whether its current form achieves the goal of facilitating the participation in state contracts of small contractors and minority business enterprises. **S.B. No. 141 (“An Act Establishing A Task Force To Study Cancer Relief Benefits For Firefighters”)**, which has yet to be signed by the Governor but would take effect upon passage, would establish a task force to study cancer relief benefits for firefighters. Such study shall include, but need not be limited to, an examination of 1) the adequacy of the current firefighters’ cancer relief program and 2) the feasibility and implications of providing workers’ compensation and other benefits, including death benefits, to firefighters who are diagnosed with cancer acquired as a result of occupational exposure to noxious fumes or poisonous gases. The task force is to submit its report with its findings and recommendations to the General Assembly’s Labor and Public Employees Committee by January 1, 2022.

Posted in Compensation, CT General Assembly (CGA), Unemployment, Workers' Compensation

Tags: Breastfeeding in the Workplace, CROWN Act, Independent Contractor, Prevailing Wage, Public-Sector Unions, Salary