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## *Connecticut Employment Law: Compliance with Recent Amendments*

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The most recent session of the Connecticut legislature has resulted in a number of amendments to state labor laws that should have employers evaluating their current practices and policies concerning employee leave, compensation, and personnel files. The following is a brief summary of the new legislation.

### **Additional Leave Rights for Employees**

Connecticut's Family and Medical Leave Act ("CFMLA") has been amended to allow greater protection to employees with family members serving in the military. Eligible employees may now take leave to care for family members on active duty who have been injured in the line of duty. The CFMLA military caregiver leave mirrors the leave that is now available under the federal Family and Medical Leave Act, pursuant to the federal act's latest regulations.

Military caregiver leave under CFMLA provides employees up to 26 weeks of unpaid leave during any 12-month period (this period is increased to 24 months for public employers). The 12-month period begins as soon as the leave begins. Military caregiver leave may be taken by the spouse, son or daughter, parent, or "next of kin" of the injured service member. The amendments define "next of kin" as the soldier's nearest blood relative in the following order of priority: blood relatives who have been granted legal custody, brothers and sisters, grandparents, aunts and uncles, and first cousins. The injured service member also can designate another blood relative as his or her "next of kin." As with other types of CFMLA leave, employees must be restored to the same or an equivalent position upon return from military caregiver leave.

The leave requires that the injured service member be a current member of the U.S. armed forces, National Guard, or the military reserves who is 1) undergoing outpatient medical treatment, recuperation, or therapy; 2) otherwise in outpatient status; or 3) on the temporary disability retired list for a serious injury or illness. The CFMLA provides that the leave be applied on a per-covered-service member, per-injury basis; therefore, an employee may take more than one period of leave if the leave is to care for different service members or for the same service member with a subsequent qualifying injury.

This change to CFMLA is effective immediately. Therefore, employers should immediately review and revise their FMLA policies to ensure compliance with the new state law and ensure that appropriate forms are used to document military caregiver leave.

## Gender-Based Pay Discrimination Claims

New amendments to the state law governing gender-based pay discrimination claims make it easier for employees bringing such claims, but also provide additional defenses for employers.

The amendments provide the following changes that are favorable to employees:

- (1) employees can initiate gender wage claims in civil court and no longer need to first bring such claims to the state Department of Labor;
- (2) employees now have two years to bring their claims instead of one year and if they can show the violation was "intentional" or "committed with reckless indifference," employees have three years to bring a claim;
- (3) state lawmakers -- following the lead of their federal counterparts with the *Ledbetter Fair Pay Act* -- have amended the state law to expressly provide that a new violation occurs each time an employee receives an allegedly discriminatory paycheck, thus greatly expanding the period within which an employee may bring a claim;
- (4) employees who oppose alleged gender discriminatory wage practices, or testify or assist in a state Department of Labor proceeding investigating such practices, are now expressly protected against retaliation resulting from such activity;
- (5) compensatory and punitive damages are now available, as well as legal and equitable relief and attorney's fees and costs.

Employers also gained additional defenses under the recent amendments. Previously, employers could defend state claims of gender wage discrimination by showing that the wage differential was not due to gender, but rather due to a seniority or merit-based system. The new law recognizes two additional defensible compensation systems that may result in a wage differential: (1) a system which measures earnings by quantity or quality of production; and (2) a system based upon a bona fide factor other than sex, such as education, training, or experience. Employers must overcome several hurdles to prevail on the second, new defense; the employer must demonstrate that the bona fide factor (a) is not based upon or derived from a sex-based differential in compensation, and (b) is job-related and consistent with business necessity. Moreover, the employee can defeat this defense if he or she can demonstrate that an alternative employment practice exists that would serve the same business purpose without producing such wage differential and the employer has refused to adopt such alternative.

These amendments to the gender discrimination laws go into effect on October 1, 2009. In light of the changes, employers are well-advised to immediately review their payroll practices with the help of counsel to avoid any discriminatory pay claims.

## Civil Penalties for Personnel Files Act Violations

Legislators also passed an amendment imposing a \$300 civil penalty for each violation of the state Personnel Files Act. Generally, the Personnel Files Act requires that employers maintain certain files for employees and provide the employee access to their "personnel file" (as that term is defined under state law) if the employee requests access in writing. The amendment, which takes effect October 1, 2009, allows the state Department of Labor to impose the \$300 civil penalty for violations, and the

Department may request that the state Attorney General initiate a civil action against the employer to recover unpaid penalties.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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