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UPDATE
Labor and Employment

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New Year, New Employment Policies: Legal Developments Affecting Employers in 2012

The first quarter of 2012 is an ideal time to review some important legal developments affecting Connecticut employers and to consider a checklist of actions that may be necessary to comply with applicable laws, regulations, and best practices. This alert briefly summarizes significant legislative and regulatory developments in the labor and employment law field, with a particular emphasis on Connecticut, and addresses certain issues that employers may wish to consider during their annual review and update processes.

PAID SICK LEAVE

Connecticut Public Act 11-52 (Act), which took effect on January 1, 2012, mandates that employers with 50 or more employees annually provide eligible service workers with a paid sick leave that accrues at a rate of one hour of paid sick leave for each 40 hours worked, up to a maximum of 40 hours of sick leave per calendar year. "Service workers" are defined as hourly, nonexempt employees who work in an occupation covered by one of 68 federal Standard Occupational Classification System titles, which include receptionists, secretaries, administrative assistants, janitors, security guards, librarians, food service workers, computer operators, retail sales persons, and many others. Additionally, the new law requires covered employers to provide newly hired service workers with notice of their rights under the Act. Employers may comply with the notice provision by displaying a poster, in both English and Spanish, in a conspicuous place that is accessible to service workers at the employer's place of business; a copy of the Connecticut Department of Labor's poster in English and Spanish is available at http://www.ctdol.state.ct.us/wgwkstnd/SickLeave.htm. The Act also includes an antiretaliation provision covering all employees, not just service workers. All Connecticut employers should determine if the Act affects them and, if so, review their leave policies, as well as any related policies such as discipline policies or attendance policies, for compliance. For more information about this Act, please see our July 2011 update "Connecticut Employers Prepare Now to Comply With Nation's First Paid Sick Leave Law."

AFFIRMATIVE ACTION COMPLIANCE

Is your company or organization prepared if the Office of Federal Contract Compliance

Programs (OFCCP) comes knocking at your door in 2012? The OFCCP was very active in 2011 and is estimated to have completed approximately 3,500 compliance reviews last year. Heightened activity in the months to come is anticipated as the OFCCP has budgeted for 5,000 compliance reviews for 2012. As required by federal laws and regulations, and certain federal and state contracts, any contractor subject to affirmative action compliance should review its affirmative action program and prepare its 2012 affirmative action plan. The failure to engage in required outreach and recruitment of protected veterans and the disabled is a common violation, as is the failure to keep proper records. In fiscal year 2010, the OFCCP collected almost $10 million in back pay. The OFCCP typically requires contractors to respond to compliance reviews within 30 days, and contractors must have evidence of good faith compliance efforts readily available to present to the OFCCP or potentially face enforcement actions, which may include financial penalties.

SOCIAL MEDIA POLICIES

The use of social media is a rapidly changing area of employment law. The National Labor Relations Board (NLRB) has become very active in policing the substance of social media policies and the actions of both union and nonunion employers with regard to social media. If an employee's online activity is deemed to be protected concerted activity under the National Labor Relations Act (NLRA), then an employer may not prohibit that activity in its social media policy. The NLRA protects both union and nonunion employees from adverse employer action when coworkers are engaged in concerted protected activity, and therefore, both union and nonunion employers may want to review their social media/networking policies to ensure that they are not overly broad and do not improperly restrict employees from engaging in protected concerted activity. For more information, please read our February 2011 update "Facebook Firing Case Resolved Prior to NLRB Hearing: Will the NLRB Be Knocking at Your Door Next?"

WORKPLACE VIOLENCE PREVENTION AND RESPONSE IN HEALTH CARE SETTINGS

Connecticut Public Act 11-175 (Act) requires health care employers to take certain measures to protect the health and safety of their employees. "Health care employer" is defined as any institution with at least 50 full- or part-time employees. "Institution" is broadly defined to include many types of establishments, including facilities that care for the elderly, individuals with mental health issues, individuals with physical disabilities, and individuals with substance abuse problems and establishments engaged in preventing and diagnosing health conditions. Under the Act, as of October 1, 2011, health care employers are required to establish and maintain a workplace safety committee, to conduct a "risk assessment," to undertake certain patient care assignments if an employee has been abused or threatened, to maintain detailed records of incidents of workplace violence, and to report certain occurrences to local law enforcement. Health care employers should consider how best to comply with the Act's provisions.

EMPLOYEE HANDBOOK REVIEW

Employee handbook policies or procedures may create legal liabilities for employers. As such, it is good practice for employers to annually review and update their handbooks as necessary to reflect changes in the law.

STATE PROHIBITION ON USE OF EMPLOYEE CREDIT REPORTS

Connecticut Public Act 11-223 (Act), which took effect on October 1, 2011, generally prohibits

employers from requiring an employee or prospective employee to consent to a request for a credit report as a condition of employment. Employers with one or more employees, except for financial institutions, are restricted from requesting any report that contains information about an employee's payment history, savings or checking account numbers or balances, credit score, and credit account balances. Although there are several exceptions, all employers should consider whether the Act affects them. There may be a civil penalty of $300 for each unlawful inquiry. For more information about this Act, please read our August 2011 update "Connecticut Legislature Enacts Several Significant Laws Affecting Employers, Including Restrictions on the Use of Credit Reports."

INCREASED PENALTIES FOR REPEAT OFFENDERS OF THE PERSONNEL FILES ACT

Do you know what lawfully belongs in a personnel file? If employees request their personnel file, how do you respond? Who reviews personnel files before they are given to employees? Connecticut's Personnel Files Act (PFA) requires private-sector employers to provide employees with access to their personnel files. The PFA also prohibits employers from disclosing certain individually identifiable information contained in an employee's personnel file to unaffiliated third parties without prior written employee consent. Connecticut Public Act 11-12, which took effect on October 11, 2011, increases the civil penalties for violations of the PFA from $300 for any violation to $500 for first-time violations and to $1,000 for repeat violations related to the same employee. Employers should review applicable policies for compliance to avoid paying increased penalties.

CHRO-EXPEDITED CASE PROCESSING

Connecticut Public Act 11-237 (Act), which took effect on October 1, 2011, makes a number of changes to the discrimination and retaliation complaint adjudication procedures of the Commission on Human Rights and Opportunities (CHRO). Among others, the Act makes the following changes: (1) it authorizes the CHRO's executive director to assign CHRO legal counsel to represent the CHRO in whistleblower-retaliation complaint hearings and appeals; (2) it amends the merit assessment review (MAR) process, including requiring a mandatory mediation session within 60 days from the date of notice that a complaint was not dismissed by the MAR process or notice of complaint reinstatement; (3) it permits requests for early legal intervention if a complaint is not resolved after mandatory mediation conferences; (4) it gives the CHRO's executive director or designee the authority to dismiss a complaint if the complainant, after proper notice and without good cause, fails to attend a fact-finding conference; and (5) it shortens the time period after which a complainant may request a release of CHRO jurisdiction from 210 days to 180 days.

LEAP YEAR PAYROLL

Employers who pay their employees on a biweekly basis may encounter some challenges in 2012, which is a leap year. In a leap year, there are 52 full weeks plus an additional 2 days, for a total of 366 days. This year, the additional two days are a Sunday and a Monday, December 30 and 31, which means that Sunday and Monday will occur 53 times during 2012. As such, any employer with a Sunday or Monday payday will have an extra biweekly payroll in 2012. Most employers will not be affected by these extra days on the calendar; however, an employer that issues paychecks on a Sunday or a Monday should review its payroll practices to prepare for an extra payroll date.

OSHA POSTING REQUIREMENT - FORM 300A

Is your Form 300A posted? The U.S. Department of Labor's Occupational Safety and Health Administration (OHSA) requires that employers with 10 or more employees (unless otherwise exempt) post the OSHA Form 300A in a visible common area at their establishment from February 1 to April 30, 2012. The Form 300A is a summary log, which includes the number of job-related injuries and illnesses that occurred in the prior year as recorded on the OSHA Form 300, and must be certified by a company executive (as defined by OSHA). After April 30, 2012, employers may remove the posting. For additional information and a copy of the Form 300A, please see the OSHA Forms for Recording Work-Related Injuries and Illnesses.

GREATER DISABILITY PROTECTIONS

New regulations governing the Americans with Disabilities Amendments Act (Act) took effect on May 24, 2011, affecting all private, state, and local government employers with 15 or more employees. These regulations significantly broaden protection for employees, expand the class of individuals covered by the Act, and lower the bar of evidence necessary for coverage. Employers may wish to review and, if necessary, modify their policies and procedures to be consistent with the new regulations. For more information about these regulations, please read our May 2011 update "New ADAAA Rules Expand Disability Protections."

PROHIBITION ON GENDER IDENTITY DISCRIMINATION

Connecticut Public Act 11-55 (Act), which took effect on October 1, 2011, prohibits employers from discriminating against any applicant or employee on the basis of gender identity or expression. "Gender identity or expression" is defined to mean a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity can be shown by providing evidence such as medical history, care or treatment of the gender-related identity, a consistent assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held, is a part of the person's core identity, or is not being asserted for an improper purpose. The Act applies to most employers with three or more employees. Covered employers should review and, if necessary, revise their antidiscrimination policies to comply with the new law.

Please contact one of the following attorneys in our Labor & Employment Practice Group with any questions regarding these changes.

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