



MARCH 2013

Now Is the Time to Review Your Organization's Policies

If you haven't done so recently, now is the time to dust off the employee handbook and review company policies and procedures for compliance with federal and state law.

In 2012, Connecticut enacted laws that employers should consider when reviewing and revising employee handbooks. In addition, legal developments over the last year, such as social networking and the Supreme Court's decision that upheld the Affordable Care Act in its entirety, have presented new challenges to employers that may not have been previously addressed in their handbooks. This update briefly summarizes the significant legislative and legal developments of 2012 that have the potential to create compliance headaches for Connecticut employers.

PAID SICK LEAVE

[Connecticut's paid sick leave law](#) took effect on January 1, 2012, making the Nutmeg State the first and only state in the country requiring employers to provide paid sick leave to employees. Specifically, the law requires employers with 50 or more employees to 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.

PALLIATIVE USE OF MARIJUANA

An Act Concerning the Palliative Use of Marijuana (Act) was signed into law by Governor Malloy on May 31, 2012. Under the new law, it is legal for certain individuals to possess limited quantities of marijuana for "palliative use."

Critical to employers, companies may not refuse, under the Act, to hire, discharge, penalize, or threaten an employee or potential employee based solely on status as a qualifying patient. Employers may, however, continue to prohibit the use and/or possession of intoxicating substances, including marijuana, at work.

As to drug testing, nothing in the Act changes an employer's obligation to abide by

Connecticut's long-standing drug testing laws, including the requirement that an employer have "reasonable suspicion" that an employee is under the influence, in a way that work performance could suffer, before requiring the employee to submit to drug testing. Keeping in mind that THC can remain present in the body for several weeks, a qualifying patient could very well test positive for marijuana during a job screening while not actually being under the influence of marijuana at that time. Thus, an employer who relies only on a urine test to decide the fate of an employee who tests positive for marijuana, without further inquiry, does so at its own risk.

SOCIAL MEDIA POLICIES

On May 30, 2012, the National Labor Relations Board's (NLRB) acting general counsel issued a third social media memo summarizing recent cases that his office reviewed regarding social networking policies. See [Office of the General Counsel, Division of Operations-Management, Memorandum OM 12-59 \(May 30, 2012\)](#). Last year, the NLRB determined that strict social networking policies can have a chilling effect on the free exercise of employee rights afforded by the National Labor Relations Act when an employee reasonably construes the policy language to prohibit protected activity.

Currently pending before the Connecticut General Assembly is a proposed bill that aims to protect employee privacy by barring employers or potential employers from requiring employees to provide passwords to their personal social media or e-mail accounts as a condition of employment. See [An Act Concerning Employee Privacy](#).

CONNECTICUT FAMILY MEDICAL LEAVE ACT

On September 24, 2012, in *Velez v. Comm'r of Labor*, the Connecticut Supreme Court held that out-of-state employees cannot be counted to determine whether an employer meets the 75-employee minimum threshold for the Connecticut Family Medical Leave Act (CTFMLA). Thus, an employer with fewer than 75 employees in Connecticut is not subject to any of the provisions of the CTFMLA regardless of how many employees the company employs outside of the state; however, employers with 50 or more employees, including those in Connecticut and elsewhere, are subject to the federal Family Medical Leave Act (FMLA).

FAIR CREDIT REPORTING ACT

As of January 1, 2013, employers are required to update the Fair Credit Reporting Act (FCRA) notices mandated by the federal government to reflect that the Consumer Financial Protection Bureau has taken over enforcement from the Federal Trade Commission. While the changes are more editorial than substantive, employers should review their background check authorization forms and notices to make sure they reflect these changes.

AFFORDABLE CARE ACT

2013 is also a critical year for all employers, regardless of whether they currently offer health coverage to their employees, to strategically evaluate their workforce, business structure, and overall employee welfare benefit philosophy in preparation for complying with health care reform (frequently referred to as "Obamacare"). Beginning in 2014, a "large employer" may be subject to a substantial financial penalty under the "employer mandate" if it does not offer affordable health care coverage to all of its full-time employees. A large employer is defined as an employer with at least 50 full-time or full-time equivalent employees. Determining who is

counted as an employee for this purpose is a complicated process that will require a substantial analysis by the employer and its advisors. Employers who offer health coverage, whether insured or self-insured, should also take time in 2013 to analyze their programs to determine if they meet the many new requirements of health care reform. If you have any questions about health care reform, please contact a member of the [Robinson & Cole Employee Benefits and Compensation Practice Group](#).

TAKE AWAY FOR EMPLOYERS

In light of the significant compliance hurdles posed by these employment law developments, employers should consider reviewing their handbooks and revising their policies and procedures accordingly. There is no one-size-fits-all employee handbook for all employers, and whether and/or how an employer is required to implement certain employment laws may depend on a number of factors.

MORE INFORMATION

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