What's New in Connecticut? 3 Laws to Take Effect on October 1

September 28, 2017

The turning of the calendar to October in Connecticut means more than just leaf peeping and apple picking. For employers, October 1, 2017, is the date that several new laws impacting employers will go into effect. This year’s fall batch includes additional protections for pregnant employees, a new notice process for workers’ compensation claims, and clarification of the eligibility of certain professional drivers for unemployment benefits.

Pregnancy and Accommodations in the Workplace

The most notable new law for Connecticut employers is the Act Concerning Pregnant Women in the Workplace. The Act amends the Connecticut Fair Employment Practices Act (CFEPA) in significant ways, and was signed into law by Governor Dannel P. Malloy on July 6, 2017. The Act’s stated aim is to “improve workplace protections for pregnant women” under the CFEPA, and it does so through heightened requirements for employers to provide reasonable accommodation to pregnant women, and further defines what a “reasonable accommodation” is for a pregnant woman in the workplace.

Connecticut law currently provides some workplace protections for pregnant women. Under the CFEPA, it is an unlawful practice for an employer to

1. terminate a woman’s employment because of her pregnancy;
2. refuse to grant an employee a reasonable leave of absence for disability resulting from her pregnancy;
3. deny to an employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer; and
4. fail or refuse to reinstate an employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits upon her signifying her intent to return unless, in the case of a private employer, the employer’s circumstances have so changed as to make it impossible or unreasonable to do so.

The Act keeps these safeguards and expands upon them, especially with regard to reasonable accommodations. Under the Act, it is now unlawful for an employer to

1. limit, segregate, or classify an employee in a way that would deprive her of employment opportunities due to her pregnancy;
discriminate against an employee or job applicant on the basis of her pregnancy in the terms or conditions of her employment;

fail or refuse to make a reasonable accommodation for an employee or job applicant due to her pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on the employer;

deny employment opportunities to an employee or job applicant if the denial is due to a request for a reasonable accommodation due to her pregnancy;

force an employee or job applicant affected by pregnancy to accept a reasonable accommodation if she (1) does not have a known limitation related to her pregnancy, or (2) does not require a reasonable accommodation to perform the essential duties of her job;

require an employee to take a leave of absence if a reasonable accommodation can be provided in lieu of such leave; or

retaliate against a pregnant employee in the terms, conditions, or privileges of her employment, based upon her request for a reasonable accommodation.

The Act also defines key terms as used in the Act:

“Pregnancy” means pregnancy, childbirth, or a related condition, including, but not limited to, lactation.

“Reasonable accommodation” means, but shall not be limited to, being permitted to sit while working, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

“Undue hardship” means an action requiring significant difficulty or expense when considered in light of factors such as (1) the nature and cost of the accommodation; (2) the overall financial resources of the employer; (3) the overall size of the business of the employer with respect to the number of employees, and the number, type and location of its facilities; and (4) the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

The Act requires that employers provide written notice to employees regarding pregnancy discrimination and the right to reasonable accommodation. Employers must provide such notice (1) to existing employees by January 28, 2018; (2) within 10 days to any employee who notifies the employer of her pregnancy; and (3) to new employees at the commencement of employment. Employers may comply with the notice requirements by displaying a Connecticut Department of Labor (CTDOL) poster with information about the Act in a conspicuous place, accessible to employees, in both English and Spanish.

Finally, the Connecticut Commission on Human Rights and Opportunities (CHRO) is the agency with jurisdiction to take in and investigate complaints from employees. Such complaints must be filed within 180 days of the alleged act of discrimination. The Act also requires the CHRO to develop instructional courses and public education efforts to inform employers, employees, employment agencies, and job seekers, about their rights and responsibilities under the Act.

Notice of Workers’ Compensation Claims from Employees
The Connecticut General Assembly tackled workers compensation issues in the 2017 legislative session, attempting to streamline the claims notice process so as "to ensure that an employer is expeditiously made aware of any workers' compensation claim made by an employee." Under existing law, a business must respond (either by contesting liability or paying benefits) within 28 days of the receipt of a workers' compensation claim by an employee, with such claims mailed to the employer's last known address. If the business fails to respond within the time period, a presumption arises that full liability has been acknowledged by the business. The problem with the current method is that it has sometimes led to claims being delivered to a general address, being lost after mailing with no proof of ever having been mailed, or claims taking extra time to reach the benefits administrator and delaying a company's response.

As of October 1, 2017, a new law—An Act Concerning the Provision of Notice of a Claim for Compensation by an Employee to an Employer or a Workers' Compensation Commissioner—aims to address these issues in two ways:

1. Businesses may opt to display a poster in a conspicuous location that designates a mailing address where claims for workers' compensation must be sent.
2. The poster should be displayed where other required labor law posters are located, i.e., in a conspicuous place where employees have access.
3. If a company opts to post an address for notices in this manner, the address must also be sent to the CTDOL, which will list the address on the CTDOL's website. The company is responsible for ensuring that this address is updated with the CTDOL and accurate at all times.
4. If a business follows these provisions in posting a contact address, the 28-day period only begins on the date that the notice of a claim is received at that address (i.e., if the employee sends to a different address, the countdown does not start).
5. Employees must mail the notice of claim for workers' compensation benefits to their employers by certified mail.

Professional Drivers and Unemployment Benefits

Effective October 1, 2017, an Act Concerning the Interstate Passenger Carrier Law goes into effect, making certain professional drivers exempt from coverage under the state's unemployment law. As a result, these drivers will not accrue unemployment benefits for their service, and businesses using these drivers are not required to pay unemployment taxes.

The exemption applies to drivers under a contract with another party, if that driver:

1. drives a vehicle that (a) can transport at least eight passengers, including the driver, and (b) has a gross vehicle weight rating over 6,000 pounds;
2. owns the vehicle or holds it under a "commercially reasonable" bona fide lease that is not with the contracting party or a related entity;
3. is paid based on factors that can include mileage-based rates, a percentage of any rate schedules, time spent driving, or a flat fee;
4. can refuse to work without consequence and can accept work from many contractors without consequence; and
5. is not considered an employee under the unemployment law's "ABC Test."
When determining if a driver meets the **ABC Test**, the new law prohibits the CTDOL from considering a driver an employee solely because the driver chooses to perform services only for the contracting party.

**Key Takeaways for Employers**

While the new laws that will take effect on October 1, 2017, resolve some difficulties and provide benefits for both Connecticut employees and employers, they also raise new questions and issues for companies.

This is particularly true with respect to the accommodation requirements of the Act Concerning Pregnant Women in the Workplace. The definitions of "reasonable accommodation" and "undue hardship" under the Act not only leave a lot of room for interpretation, but conflict in important ways with the definitions of those terms under federal law, such as the Americans with Disabilities Act of 1990 (ADA) and the Pregnancy Discrimination Act of 1978. Indeed, to illustrate the confusion that can sometimes result when a new law is implemented, the sample posters provided by the CTDOL state that the notice requirement obliges a company to display the poster and to provide employees individual notice. This is contrary to the plain language of the Act, which expressly states that an "employer may comply with the provisions of this section by displaying a poster" with the information regarding the protections of the Act. Employers will need to carefully review accommodation requests based upon pregnancy, with input from human resources and employment counsel, until the CTDOL and courts interpret and provide clear guidance on the rights and responsibilities conferred by the Act.

As an immediate practical matter, employers in Connecticut should update posters, and revise written handbook procedures and policies to reflect changes under the new laws, especially for pregnancy accommodation. Most large employers, especially those with multiple locations, will likely want to take advantage of the new workers' compensation notice provision, determine where claims should be sent, and provide on a poster and to the CTDOL the correct address where claims should be sent. The new law on unemployment benefits for professional drivers also provides useful clarification regarding eligibility for unemployment benefits, and companies in the transportation industry may want to review contract driver arrangements.

Because these laws are new, and are susceptible to revisions as issues in implementation arise, companies are well advised to keep up to date on the laws to ensure compliance.