

OVERVIEW OF DOL EMPLOYMENT LAWS



**Office of Program Policy
Connecticut Department of Labor
May 3, 2017**

Before the Interview

CONNECTICUT LAW

Commission on Human Rights and Opportunities (CHRO)

- **Employment discrimination laws**
- **Applies to CT employers with 3 or more employees**

CONNECTICUT LAW (CHRO)

Protected classes

- Race
- Color
- Religious creed
- Age (any age)
- Sex
- Gender identity or expression
- Sexual orientation
- Marital status
- National origin
- Ancestry
- Present or past history of mental disability
- Intellectual disability
- Learning disability
- Physical disability, including, but not limited to, blindness
- Genetic information

FEDERAL LAWS

Equal Employment Opportunity Commission (EEOC)

- **Title VII of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, sex, and national origin**
 - Applies to employers with 15 or more employees
 - Includes Pregnancy Discrimination Act

FEDERAL LAWS (EEOC)

- **Age Discrimination in Employment Act (ADEA) – (20 or more employees)**
 - 40 years or older
- **Americans with Disabilities Act Amendment Act (ADAAA) – (15 or more employees)**

The Interview Process and Pre-employment Issues

EMPLOYMENT APPLICATIONS AND CRIMINAL HISTORY CHECKS

- No employer shall inquire about an applicant's prior arrests, criminal charges or convictions on an initial employment application unless:
 - Required to do so by state or federal law
 - A security or fidelity bond is required for the position

EMPLOYMENT APPLICATIONS AND CRIMINAL HISTORY CHECKS

- **An employment application form that contains any question concerning the criminal history of the applicant shall contain**
 - **a notice that the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pertaining to:**

EMPLOYMENT APPLICATIONS AND CRIMINAL HISTORY CHECKS

1. a finding of delinquency or that a child was a member of a family with service needs
2. an adjudication as a youthful offender
3. a criminal charge that has been dismissed or nolle
4. a criminal charge for which the person has been found not guilty, OR
5. a conviction for which the person received an absolute pardon

EMPLOYMENT APPLICATIONS AND CRIMINAL HISTORY CHECKS

- Any person whose criminal records have been erased shall be deemed to have never been arrested with respect to the proceedings erased and may so swear under oath.

JOB INTERVIEW DOs & DON'Ts

● NATIONAL ORIGIN / RACE

DOs

- ▶ Are you eligible to work legally in the US?
- ▶ Can you speak or write fluently in language other than English?

DON'Ts

- ▶ Are you a US citizen?
- ▶ What is your ethnic background?
- ▶ Where were you born?
- ▶ What is your race?

JOB INTERVIEW DOs & DON'Ts

● **DISABILITY**

DOs

- ▶ Are you able to perform the essential functions of the job?
- ▶ Are you able to lift 25 lbs and carry 20 ft?
 - ▶ Demonstrate

DON'Ts

- ▶ Are you disabled?
- ▶ How much do you drink?
Ever go to rehab?
- ▶ How many days sick last year?
- ▶ Filed for workers' comp?
- ▶ Taking any medication?
- ▶ Ever go to counseling?

JOB INTERVIEW DOs & DON'Ts

● AGE

DOs

- ▶ Are you 18 years of age or over?
- ▶ Upon hire, can you show proof you are over the age of 16?

DON'Ts

- ▶ How old are you?
- ▶ When were you born?

JOB INTERVIEW DOs & DON'Ts

● GENDER (PREGNANCY & MARITAL STATUS)

DOs

- ▶ Are you available to work overtime?
- ▶ What shifts are you available to work?
- ▶ Would you relocate if necessary?

DON'Ts

- ▶ Are you married?
- ▶ Do you have children?
- ▶ Are you pregnant/ planning to have kids?
- ▶ Do you have childcare?
- ▶ What is your maiden name?

JOB INTERVIEW DOs & DON'Ts

● FINANCIAL / CRIMINAL BACKGROUND

DOs

- ▶ Have you ever been convicted of a crime?
 - ▶ (with exceptions)

DON'Ts

- ▶ Have you ever filed for bankruptcy?
- ▶ What is your credit rating?
- ▶ Do you own a home?
- ▶ Have you ever been arrested?

FAIR CREDIT REPORTING ACT

Federal Trade Commission (FTC)

- **The employer may perform a credit and background check**
 - **Is good credit necessary for the job?**



CREDIT REPORT

- **CGS 31-51tt – prohibits use of credit report as condition of employment, UNLESS:**
 1. **Employer is financial institution**
 2. **Report is required by law**
 3. **Employer reasonably believes employee engaged in specific activity constituting violation of law related to employment, OR**
 4. **Report is substantially related to job**

CREDIT REPORT

“Substantially related to the employee's current or potential job” means the information contained in the credit report is related to the sought after position

DRUG AND ALCOHOL TESTING

- Law applies to employers who utilize only urinalysis drug testing
- Does not apply to:
 - Breath testing
 - Hair testing
 - Blood testing
 - Saliva testing
 - Other specimen testing

DRUG AND ALCOHOL TESTING

Pre-Employment - if employer wants to require a drug test, the employer must inform the prospective employee in writing at the time of application

- prospective employee excludes any employee currently employed or rehired by the employer within 12 months

DRUG AND ALCOHOL TESTING

Reasonable Suspicion

- No employer may require an employee to submit to a random urinalysis drug test unless:
 - ▶ employer has reasonable suspicion that the employee is under the influence of drugs or alcohol, and
 - ▶ which adversely affects or could adversely affect such employee's job performance

Employment Issues



WAGES

Overtime

- ***Non-exempt* employees - must pay overtime for hours worked over 40 hours per week**
 - **1 ½ times the employee's regular rate**
 - **No daily overtime (e.g., 9 hours on Monday) unless the entire week has over 40 hours.**

WAGES

Withholding - no employer may withhold or divert any portion of an employee's wages unless:

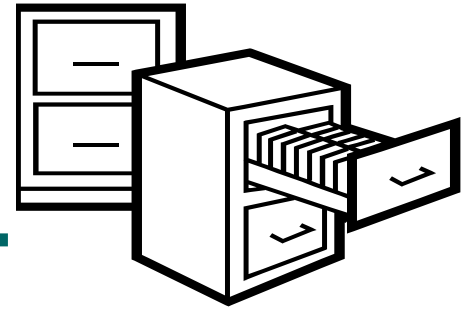
- 1. required or empowered to do so by state or federal law,
OR**
- 2. the employer has written authorization from the employee for deductions on a form approved by the Commissioner,
OR**
- 3. the deductions are authorized by the employee, in writing, for medical, surgical or hospital care or service, without financial benefit to the employer and recorded in the employer's wage record book**

WAGES

Executive, Administrative, and Professional Exemptions - generally, exempt employees:

- Are paid on a salary basis
- Are exempt from minimum wage and overtime requirements
- Perform duties which fall within the executive, administrative or professional exemptions

PERSONNEL FILES ACT



- **Personnel File** - means documents and reports, including emails and faxes, pertaining to a particular employee that are used or have been used to determine the employee's eligibility for promotion, additional compensation, transfer, termination or other adverse personnel action.

PERSONNEL FILES ACT

Personnel File - *does NOT mean:*

- stock option or management bonus plan records
- medical records
- letters of reference or recommendations from third parties including former employers
- materials that are used by the employer to plan for future operations
- information contained in separately maintained security files
- test information, the disclosure of which would invalidate the test, or
- documents which are being developed or prepared for use in civil, criminal or grievance procedures

PERSONNEL FILES ACT

- **Security Files** - means memoranda, documents or collections of information relating to investigations of losses, misconduct or suspected crimes, and investigative information maintained pursuant to government requirements and is not part of the personnel file provided:
 - It is NOT used to determine an employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action

PERSONNEL FILES ACT

- **Disclosure** - no individually identifiable information contained in the personnel file shall be disclosed to any person without employee's written authorization
 - unless the information is limited to the verification of dates of employment and the title or position and wage or salary
 - **there are limited exceptions**

PERSONNEL FILES ACT

- **If employee requests personnel file, employer must permit inspection or provide a copy within 7 business days**
- **If former employee requests personnel file, employer must permit inspection or provide a copy within 10 business days**

PERSONNEL FILES ACT

Civil Penalty

- **Subjects any employer, officer, agent, or other person who violates the provisions of the Personnel Files Act to a \$500 civil penalty for each violation**
- **Labor Commissioner to consider relevant factors when assessing the penalty**

MEAL PERIODS

- No person shall be required to work for 7 ½ or more consecutive hours without a period of at least 30 minutes (consecutive) for a meal
- Such period shall be given at some time after the first 2 hours of work and before the last 2 hours
- **Can waive**

MEAL PERIODS

- **Exemption** – by Labor Commissioner if:
 1. **requiring compliance would be adverse to public safety**
 2. **the duties of a position may only be performed by one employee**
 3. **the employer employs less than five employees on a shift at a single place of business provided the exemption shall only apply to the employees on such shift,**
OR
 4. **the continuous nature of an employer's operations, such as chemical production or research experiments, requires that employees be available to respond to urgent or unusual conditions at all times and such employees are compensated for break and meal periods**

WORK WEEK

Sec. 53-303e

- No employer shall compel any employee engaged in any commercial occupation or in the work of any industrial process to work more than 6 days in any calendar week
- An employee's refusal to work more than 6 days in any calendar week shall not constitute grounds for his dismissal

ELECTRONIC SURVEILLANCE

- **No employer shall operate any electronic surveillance device or system to record or monitor activities of employees in areas designed for the health or personal comfort of the employees or for safeguarding of their possessions**
 - **Ex: rest rooms, locker rooms or lounges**
- **Includes:**
 - **recording of sound or voice**
 - **closed circuit television system, or**
 - **any combination thereof**

ELECTRONIC MONITORING

- **Electronic Monitoring** - means the collection of information on an employer's premises concerning employees' activities or communications by any means other than direct observation
 - including the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic or photo-optical systems
 - NOT including the collection of information
 - (A) for security purposes in common areas of the employer's premises which are held out for use by the public, OR
 - (B) which is prohibited under state or federal law

ELECTRONIC MONITORING

Written Notice

- employer who engages in any type of electronic monitoring shall give prior written notice to all employees who may be affected, informing them of the types of monitoring that may occur
- notice concerning the types of electronic monitoring which the employer may engage in must be posted in a conspicuous place which is readily available for viewing by its employees

BREASTFEEDING

- **Employer must make reasonable efforts to provide room to express milk/breastfeed**
 - ▶ not bathroom stall
 - ▶ during break or meal period
- **“reasonable efforts” – not impose an undue hardship on employer**
- **Cannot discriminate against or discipline employee**

BREASTFEEDING

- **Federal law / FLSA** – employer must provide reasonable break time to express milk, for up to 1 year after birth
 - ▶ not a bathroom
 - ▶ does not apply to employers under 50, but only if undue hardship
 - ▶ applies to non-exempt employees

Retaliation



RETALIATION

- **Most anti-discrimination statutes contain an anti-retaliation provision making it unlawful for an employer to “retaliate” against an employee who has sought to exercise rights protected under that statute.**

RETALIATION

Anti-Retaliation Provisions

- **FMLA (DOL)**
- **Paid Sick Leave (DOL)**
- **Wage statutes (DOL)**
- **Unemployment Compensation Act (DOL)**
- **CONN OSHA (DOL)**
- **Discrimination statutes within the jurisdiction of CHRO and EEOC**
- **Workers' Compensation**

RETALIATION

Protected Activities

- **Filing a claim within a statute's protection**
- **Testifying in any agency proceeding protected by statute**
- **Exercising any right afforded by the statute on behalf of him or herself or other employees**

RETALIATION

Examples of Protected Activities

- **Filing for partial unemployment benefits because of a cut in hours**
- **Testifying on behalf of a co-worker at an Unemployment Compensation hearing**
- **Filing a wage complaint because of the failure to receive overtime pay**
- **Filing an FMLA complaint because intermittent leave has been denied**

PAID SICK LEAVE

COVERED EMPLOYER

- **Employer means any entity that employs 50 or more individuals in CT**
 - based on the payroll for the week containing October 1, annually

SERVICE WORKER

- **Service worker –**
 - 69 categories of service workers
 - paid on an hourly basis or not exempt from minimum wage and overtime requirements
- **Service worker does not include day or temporary workers**

EXEMPT EMPLOYERS

- **Manufacturers**
- **Nationally chartered non-profits that provide:**
 - **Recreation**
 - **Child care, and**
 - **Education**

ACCRUAL and CARRY OVER

- **Accrue 1 hour per every 40 hours worked**
 - **Must be actual hours worked – not sick, vacation or other leave**
 - **Max out at 40 hours per year**
- **Carry over unused hours up to 40 hours**

RETALIATION FOR FILING A COMPLAINT

- **No retaliation for filing a complaint with DOL**
- **No retaliation for requesting or using paid sick leave**

FMLA



CT FMLA

- **75 or more employees in CT**
- **Does not apply to the state, a municipality, a local or regional board of education, or a private or parochial school**

FEDERAL FMLA

- **50 or more employees within a 75 mile radius**
- **Includes the state, a municipality, a local or regional board of education, and a private or parochial school**

EMPLOYEE ELIGIBILITY

2 Part Test

1. Worked for the employer for at least 12 months within the last 7 years prior to commencing FMLA leave and
2. Worked at least 1,000 hours in the 12 months immediately prior to commencing FMLA leave
 - **Federal FMLA - 1250 hours**

BASIC PROVISIONS

- Maximum 16 weeks of leave over a 24 month period **(Federal - 12 weeks every 12 months)**
- Job protected (return to same or, if not available, an equivalent)
- Benefits protected
- No interference or retaliation
- General rule - treat employee as though they never took leave

SUMMARY OF SERIOUS HEALTH CONDITION

- 1. Inpatient**
- 2. Incapacitated more than 3 consecutive calendar days plus two HCP visits (1st within 7 days, 2nd within 30 days)**
- 3. Incapacitated more than 3 consecutive calendar days plus one HCP visit (within 7 days) and regimen of treatment (prescription medicine, physical therapy, etc.)**
- 4. Chronic**
- 5. Pregnancy**
- 6. Restorative surgery/illness left untreated**
- 7. Long-term condition**

INTERMITTENT LEAVE

- **FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances**
 - **when medically necessary**
 - **for recovery from treatment or recovery from a serious health condition**
 - **for the care and comfort of a family member**
 - **for absences where employee or family member is incapacitated**

SUMMARY OF MEDICAL CERTIFICATION PROCESS

- 1. Medical Certification**
- 2. Cure/Clarification**
- 3. Second opinion**
- 4. Third binding opinion**
- 5. Recertification - every 30 days**
- 6. Clarification on recertification but no second or third opinion**

SICK LEAVE FOR FAMILY MEMBER'S SHC UNDER FMLA

Use of Sick Leave for Family Member

- Employee may use up to two weeks of accumulated sick leave for the serious health condition of a parent, spouse, son or daughter, or for the birth or adoption of a son or daughter of the employee
- Employer must have a bona fide written sick leave policy
- **This is only for CT, not Federal**

CONTACT NUMBERS AT DOL

- **Wage and Workplace Standards Division - CTDOL**
 - **Minimum Wage/Overtime: (860) 263-6790**
 - **Wage Payment: (860) 263-6790**
 - **Public Contract Compliance (Prevailing Wage): (860) 263-6790**
 - **Workplace Standards (Employment Regulation/Minors): (860) 263-6791**
 - **FAX (860) 263-6541**



CONTACT NUMBERS

- **CHRO**
 - Main Number (860) 541-3400
 - Connecticut Toll Free 1(800) 477-5737
- **EEOC**
 - 1 (800) 669-4000
- **FTC**
 - 1 (877) FTC-HELP (382-4357)

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