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Connecticut Enacts New Leave of Absence Law for Domestic Violence Victims

Governor Rell recently signed the highly anticipated Public Act No. 10-144, which adopts several recommendations of a legislative task force impaneled to study domestic violence. The new law goes into effect on October 1, 2010, and imposes new obligations on employers with three or more employees that are designed to increase employment protections for victims of domestic violence.

Under current Connecticut law, employers are prohibited from terminating, penalizing, threatening, or otherwise coercing employees with respect to their employment because they (1) are subpoenaed to appear as a witness in a criminal proceeding; (2) are crime victims attending court proceedings or participating in investigations related to their cases; or (3) have a restraining or protective order issued on their behalf. Starting October 1, 2010, this prohibition will extend to employees who are victims of "family violence," thus protecting those employees when they attend or otherwise participate in civil court proceedings.

For purposes of the statute, "family violence" refers to an incident between family or household members that results in actual or threatened physical harm, bodily injury or assault. Verbal abuse or argument does not constitute family violence unless there is present danger and a likelihood that physical violence will occur. "Family or household member" includes: (1) current and former spouses; (2) parents and children; (3) individuals at least 18 years of age who are related by blood or marriage; (4) individuals at least 16 years of age who currently reside or formerly resided together; (5) individuals who have a child together, regardless of whether they have ever been married or lived together; and (6) individuals who are in, or

were recently in, a dating relationship.

Subject to the applicable terms of any collective bargaining agreement in effect as of October 1, 2010, the new law will further require employers to provide paid or unpaid leave to family violence victims when such leave is reasonably necessary to: (1) seek medical care or counseling for physical or psychological injury or disability; (2) obtain services from a victim services organization; (3) relocate because of the family violence; or (4) participate in any civil or criminal proceeding related to or resulting from the family violence. Employers may limit the unpaid leave to twelve (12) days per calendar year, but employees may be entitled to take other forms of leave, such as FMLA leave, if they are otherwise eligible under state and federal law. Employers are of course free to provide more leave than the law requires.

Employees who request leave under the new law may be required to provide up to seven (7) days notice for foreseeable leaves, as well as a statement signed by the employee certifying that the leave is being taken for a purpose authorized by the statute. If the need for leave is not foreseeable, the employer may require notice of intent to take the leave "as soon as practicable." Employers may, but need not, request a police or court record, or a signed, written statement from a licensed professional or victim services organization from whom the employee sought assistance, certifying that the employee is indeed a victim of family violence. Employers must maintain these records and statements in confidence; they may not be disclosed unless the employee is given prior notification and such disclosure is required by federal or state law or is necessary to protect the employee's safety in the workplace.

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If an employer violates the law, the aggrieved employee may bring a civil action within six months from the date of the alleged violation, requesting rescission of any adverse decision by the employer, damages, and reasonable attorney's fees.

With October 1st fast approaching, we recommend that employers begin to review their leave policies as soon as possible to ensure full compliance with all aspects of the new law. This review should include employee handbooks and manuals or any applicable personnel policies. In addition,

employers should consider conducting training sessions for managers, supervisors and human resource personnel to familiarize them with the intricacies of the new law and the significant impact it will assuredly have on their internal policies.

Wiggin and Dana attorneys have extensive experience counseling a broad range of clients in complex employment law issues. Please do not hesitate to contact us if you would like to discuss this new law or any related issues.

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