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ADVISORY

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CONNECTICUT SIGNIFICANTLY EXPANDS COVERAGE OF FAMILY AND MEDICAL LEAVE ACT, ADOPTS PAID LEAVE

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On May 31, Connecticut's legislature approved comprehensive legislation establishing paid family and medical leave and drastically increasing both the employers covered by the state family and medical leave law and the employees eligible for such leave. This bill is now headed to Governor Lamont for signature, who has already expressed his support for the legislation and his intent to sign it. While employees will not be eligible to take paid leave until 2022, the law will bring significant changes and obligations for Connecticut employers of all sizes.

The Connecticut Family and Medical Leave Act ("CFMLA") currently requires that employers with 75 or more employees in Connecticut provide eligible employees with 16 weeks of unpaid leave in a 24-month period. As of January 1, 2022, eligible employees will be entitled to 12 weeks of paid leave in a 12-month period under the CFMLA, with two additional weeks available to eligible employees who experience a pregnancy-related serious health condition that results in incapacitation.

The paid leave will be funded by employee payroll contributions. Beginning January 1, 2021, an employee payroll tax of up to 0.5% will be implemented. Employers will be responsible for deducting and withholding this tax. Paid leave compensation is capped at 60 times the minimum wage. Currently, the minimum wage is set to be $13 per hour at the time that payments take effect, so employees could receive a maximum of $780.00 per week while on leave, or up to $900 a week once Connecticut's minimum wage reaches $15 per hour in 2023.

In addition to making family and medical leave paid, this new law also expands other critical components of the CFMLA. Significantly, the new law covers all private employers that have at least one employee (down from the current threshold of 75 employees), thus covering many more businesses.

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The new law will also make more employees eligible for leave by lifting the existing requirement that employees must work for an employer for 12 months and for 1000 hours in the preceding twelve months before becoming eligible for leave. Under the new law, employees are eligible for leave after working for an employer for just three months, with no minimum requirement for hours worked.[1]

The permissible reasons for taking leave are also expanded. In addition to caring for a spouse, child, or parent, eligible employees may also take leave to care for a grandparent, grandchild, sibling, and any other "individual related to the employee by blood or affinity whose close association to the employee show to be the equivalent of those family relationships." The DOL is expected to provide guidance clarifying the relationships this provision is intended to cover.

The new law may be particularly burdensome for smaller businesses who may struggle to backfill positions to cover twelve-week leaves, and who may not have personnel trained to administer family and medical leaves. Employers of all sizes are encouraged to begin assessing leave policies now and consider how they may need or wish to revise current policies to comply with the impending changes.

[1] To be eligible, employees must also have earned at least $2,325 during their highest earning quarter of the first four of the five most recently completed quarters. Sole proprietors or self-employed people may also voluntarily enroll in the program

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NEW CONNECTICUT LAW EXPANDS EMPLOYER TRAINING OBLIGATIONS AND OTHER KEY PROVISIONS OF ANTI-DISCRIMINATION LAWS

Damages at the CHRO. In another win for employees, P.A. 19-16 expands the potential damages that can be assessed by the CHRO at the public hearing stage if it concludes that a discriminatory employment practice has occurred. Currently, CHRO hearing officers are authorized by statute to award reinstatement and back pay as forms of relief. Effective October 1, 2019, the CHRO may award the amount of damages suffered by the complainant, including the "actual costs incurred by the complainant" as well as "reasonable attorney's fees and costs."

Damages in Court. In 2016, the Connecticut Supreme Court ruled that the CFEPA does not authorize courts to award punitive damages in cases of employment discrimination. In a rebuke of that ruling, the legislature has expressly permitted the award of punitive damages, as deemed appropriate, beginning October 1, 2019.

Conclusion

The changes made by the new law will impact every single employer in the state with regard to training and notice requirements, and employers must be prepared to comply with these expanded obligations. Notably, Connecticut's "Time's Up" law follows on the heels of similar legislation in New York, mandating interactive sexual harassment prevention training for all New York employees on an annual basis. Employers with staff in either state should promptly review their internal policies to ensure consistency with both laws and maintain comprehensive records of their compliance.

As to the changes regarding the damages available to employees or former employees alleging violations of the CFEPA, employers and their counsel will need to consider these enhanced damages when evaluating a claim or potential claim of discrimination or harassment. Perhaps more importantly, the increased financial liability underscores the need to establish comprehensive anti-discrimination policies and to respond promptly to any – and all – complaints of discrimination or harassment.