

Waterbury Regional Chamber HR Council

Review of Connecticut Legislative Session & Developments at the Federal Level

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Disclaimer

This information is for educational purposes only to provide general information and a general understanding of the law. It does not constitute legal advice and does not establish any attorney-client relationship

Agenda

Connecticut Legislative Developments

- Expansion of CT Paid Sick Leave Law

Significant Federal Developments

- FTC Non-Compete Rule
- DOL Salary Level Test
- EEOC Harassment Guidance
- EEOC Final Regulations for Pregnant Workers Fairness Act

Summary of CT's Current Paid Sick Leave Law

Covers employers with 50 or more Connecticut employees (excludes manufacturers)

Applies only to “service workers” of covered employers

- Earn 1 hour of paid sick leave for every 40 hours worked (up to 40 hours per year)
- Frontloading time permitted
- Entitled to use accrued paid sick leave if (a) completed 680 hours of employment, and (b) worked an average of 10 hours or more per week in recently completed calendar quarter
- Service workers may carry over up to 40 unused accrued hours (but use may be capped at 40 hours per year)

Summary of CT's Current Paid Sick Leave Law

Covered “service worker” may use paid sick leave for:

Employee’s own—or their child’s or spouse’s:

- illness, injury or health condition;
- medical diagnosis, care or treatment of their mental or physical illness, injury or health condition; or
- preventative care

One “mental health wellness day” - a day which an employee attends to their emotional and psychological well-being.

Summary of CT's Current Paid Sick Leave Law

If the employee or their child is a victim of family violence or sexual assault and needs time off for:

- medical care, psychological or other counseling for physical or psychological injury or disability,
- obtaining services from a victim services organization,
- relocating due to family violence or sexual assault, or
- participating in any civil or criminal proceedings related to or resulting from family violence or sexual assault.

CT's NEW Paid Sick Leave Law – P.A. 24-8

- Expands coverage to more (nearly all) employers
- Extends coverage to more (nearly all) employees
- Increases rate of accrual
- Expands categories of permissible uses
- Expands list of family members for whom paid sick leave may be taken
- Modifies rules for availability of leave
- Restricts employers from requiring minimum notice and/or documentation
- Adds new notice, record retention and other obligations on employers

Covered Employers

Current law: 50 or more employees

New law - Gradual expansion of coverage:

Effective
January 1, 2025:
Employers with 25 or
more employees

Effective
January 1, 2026:
Employers with 11 or
more employees

Effective
January 1, 2027:
Employers with 1
or more
employees

Threshold is
determined by a
company's payroll
for the week
containing
January 1

Excluded Employers

Current law	New law
<p>Excludes manufacturers and certain nationally chartered nonprofits</p>	<p>Covers all employers (including manufacturers and certain nationally chartered nonprofits referenced above), except:</p> <ul style="list-style-type: none"> • Employers that participate in a multiemployer health plan that is maintained pursuant to a collective bargaining agreement between a construction-related union and employer • Self-employed individuals are also excluded

Eligible Employees

Current law	New law
<ul style="list-style-type: none">• Applies only to “service workers”• Excludes exempt, per diem and temporary service workers	Applies to ALL employees of a covered employer, except for “seasonal employees,” defined as those working 120 or fewer days during a year

Accrual

Current law	New law	Frontloading option
<ul style="list-style-type: none"> • Accrual begins upon hire • Accrual rate of 1 hour of paid sick time for every 40 hours worked, capped at 40 hours per year 	<ul style="list-style-type: none"> • Accrual rate accelerated to 1 hour of paid sick time for every 30 hours worked, capped at 40 hours per year • Presumption that exempt employees work 40 hours per week for purposes of accrual 	<ul style="list-style-type: none"> • Current and new law allow for frontloading of paid sick leave in lieu of accrual method • Frontloaded time must meet or exceed to what employee would have earned using accrual method

Eligibility to Use Accrued Sick Time

Current law	New law
<p>Covered service worker may not use accrued sick time:</p> <ul style="list-style-type: none">• Until employee has worked 680 hours, and• Unless employee worked an average of 10 or more hours per week in most recent completed calendar quarter	<p>Covered employee may use accrued paid sick time on and after 120 calendar days of employment</p>

Carryover – No Change

Covered employees entitled to carry over up to 40 hours of sick time from one year to next

Employers can limit use of sick time to maximum of 40 hours per year

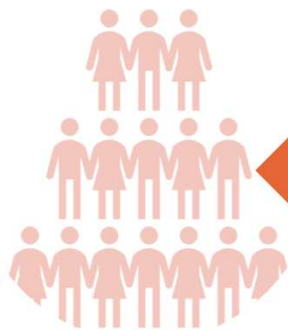
Exception:
Employers who frontload sick time that meets requirements of the law are not required to permit carryover

Reasons for Leave – Current Law

Reasons for Leave – New Law



Expands use of sick time to include “family members” using same definitions as Connecticut’s Family and Medical Leave Act



Includes: spouses, siblings, children, grandparents, grandchildren, and parents, as well as individuals who are “related to the employee by blood or affinity whose close association the employee shows to be equivalent to those family relationships”

Reasons for Leave – New Law



The employee's or family member's:

- Illness, injury, or health condition
- Medical diagnosis, care or treatment for mental or physical illness, injury, or health condition
- Preventative medical care for the service worker or the service worker's spouse or child



For certain circumstances where the employee or a family is a victim of family violence or sexual assault, provided that the employee is not the alleged perpetrator.



One mental health wellness day per year for the employee

Reasons for Leave – New Law

Closure by order of a public official, due to a public health emergency, of either (a) an employer's place of business or (b) a **family member's** school or place of care;

A determination by a health authority, employer of the employee, employer of a family member, or a healthcare provider that an employee or employee's family member poses a risk to the health of others due to an exposure to a communicable illness, whether or not the employee or family member contracted the communicable illness

Employee Notice and Documentation

Current law	New law
<ul style="list-style-type: none">– Employers may require 7 days' notice when service worker's need to use sick leave is foreseeable, or as soon as is practicable if need for leave is not foreseeable– Employers may request reasonable documentation if the service worker uses paid sick time for 3 or more consecutive workday absences	<ul style="list-style-type: none">– <u>Eliminates</u> employer's right to require 7 days' notice when need for leave is foreseeable– <u>Eliminates</u> employer's right to require an employee to provide documentation that covered paid sick leave is being taken for a permitted purpose

NEW - Records Retention



Covered employers must retain sick time records for a period of three years, including:

- Number of hours of paid sick time accrued or provided to the employee
- Number of hours used by the employee during the calendar year



CTDOL may inspect the sick time records and assess penalties for failure to keep required records

Miscellaneous



Finding replacements to cover shifts:

- An employer may not require an employee to find coverage for his or shift when using sick time



Employer Notice obligations

- Display a poster in a conspicuous place accessible to employees (CT DOL to create a model poster for covered employers)
- Provide written notice to employees by January 1, 2025, or at the time or hire, whichever is later
- See https://portal.ct.gov/dol/knowledge-base/articles/wage-and-workplace-standards/paid-sick-leave?language=en_US

What Should Employers Do Now?



Review coverage under new law



Review current paid time off policies



Evaluate whether current policies comply with new law



Revise leave policies and practices



Educate managers



Prepare to provide and post relevant notices

Federal Developments

“Chevron Deference” Overturned

Under *Chevron* decision, federal agencies granted a high degree of deference to interpret and apply statutory law

- If a federal statute was silent or ambiguous, courts allowed agencies to regulate the matter so long as the agencies’ actions were “reasonable”

In June 2024, U.S. Supreme Court overturned *Chevron*

- Going forward, courts will no longer defer to an agency’s own interpretation of the statute. Courts will employ the traditional tools of statutory interpretation to ensure an agency is acting within the scope of power granted to it by Congress

Significant potential impact on agencies such as EEOC, DOL, OSHA and NLRB

FTC Non-Compete Final Rule - **BLOCKED**

Would have
been effective
Sept. 4, 2024

Would have prohibited nearly all post-employment non-competes for all workers, including employees and independent contractors

Non-competition agreement was broadly defined:
- Would not have included confidentiality, non-disclosure or non-solicitation agreements

Would have required employers to provide notice to current and former employees with banned non-compete agreements that they are no longer enforceable

FTC Non-Compete Rule - **BLOCKED**

Exceptions

- Existing agreements with a “senior executive” (defined as worker earning more than \$151,164 and who is in a policy-making position)
- Bona fide sales of businesses
- Entities over which the FTC lacks jurisdiction (e.g., banks and certain non-profit organizations)

FTC Non-Compete Rule - **BLOCKED**

- In August, a Texas federal judge blocked the Final Rule on nationwide basis as “an unlawful agency action” :
 - FTC lacked the substantive authority to issue the Final Rule because Congress only authorized it to issue procedural or “housekeeping” rules to address unfair methods of competition, not substantive rules.
 - Rule was arbitrary and capricious—a standard that considers the reasonableness of an agency’s action—“because it is unreasonably overbroad without a reasonable explanation” and would impose “a one-size-fits-all approach with no end date.”

- Caution:
 - FTC considering appeal
 - Even without implementation of Final Rule, non-competes continue to be heavily scrutinized

DOL Finalizes Increase to Salary Level for Exempt Employees

Prior salary levels:	New salary levels:
<p>Executive, Administrative & Professional (EAP) exemptions: \$684/week (\$35,568 annualized)</p> <p>Highly Compensated Employee(HCE) exemption: \$107,432/year</p>	<p><u>July 1, 2024</u>: \$844/week (\$43,888 annualized) for EAP / \$132,964 for HCE</p> <p><u>January 1, 2025</u>: \$1,128/week (\$58,656 annualized) for EAP / \$151,164 for HCE</p> <p><u>July 1, 2027, and every three years thereafter</u>: Automatic updates based on then-current earnings data</p>

The US DOL did not propose any changes to the salary basis or duties tests

What Should Employers Do?

1

Determine whether any exempt employees have a salary level lower than the new proposed levels

2

Decide whether to increase the salary levels to meet or exceed the proposed level

3

Decide whether to convert to hourly

- If so, how?
- Be prepared for employee morale issues

4

Use this opportunity to evaluate and address any other wage and hour issues

EEOC Guidance on Workplace Harassment

- Released on April 29, 2024, and confirms that harassment based on any protected characteristic is a violation of law
- Provides numerous examples of conduct that may, if sufficiently severe or pervasive, rise to the level of unlawful harassment (including misgendering and misuse of pronouns)

Confirms Standards of liability:

Confirms standards of liability: If harasser is proxy or alter ego of employer, then actions of harasser are those of the employer

If harasser is a supervisor and the hostile work environment (HWE) includes a tangible employment action, then employer vicariously liable. This applies even if the supervisor is not a proxy or alter ego.

If harasser is a supervisor (not a proxy or alter ego) and the HWE does not include a tangible employment action, employer is vicariously liable but can limit liability or damages by asserting certain affirmative defenses

If harasser is not a supervisor or proxy/alter ego, employer liable if it was negligent in failing to prevent or response to harassment when the employer became aware of it

EEOC Guidance on Workplace Harassment

- Sex-Based Harassment includes harassment based: “on pregnancy, childbirth, or related medication conditions,” which “can include issues such as lactation; using or not using contraception; or deciding to have, or not to have, an abortion.”
- Age-Based Harassment includes “harassment based on stereotypes about older workers, even if they are not motivated by animus, such as pressuring an older employee to transfer to a job that is less technology-focused because of the perception that older workers are not well-suited to such work or encouraging an older employee to retire.”
- Disability-Based Harassment includes “harassment based on stereotypes about individuals with disabilities in general or about an individual’s particular disability”; “harassment based on traits or characteristics linked to an individual’s disability, such as how an individual speaks, looks, or moves”
- Associational Discrimination occurs where “the complainant associates with someone in a different protected class or harassment because the complainant associates with someone in the same protected class.”
- Perception-Based Harassment occurs where harassment is “based on the perception that an individual has a particular protected characteristic—for example, the belief that a person has a particular national origin, religion, or sexual orientation,” regardless of whether “the perception is incorrect.”

Pregnant Workers Fairness Act (PWFA)

Employers with 15 or more employees must make reasonable accommodations for workers or applicants due to *limitations* caused by pregnancy, childbirth, or related medical conditions unless it would pose an undue hardship

- “Limitation” is a lower threshold than a “disability”
- Ex. pregnant employee says, “I’m having trouble getting to work on time due to morning sickness”

Prohibits employers from:

- Denying opportunities based on woman’s need for reasonable accommodations;
- Forcing qualified employees to accept an accommodation other than a reasonable accommodation arrived at through an interactive process; and
- Requiring an employee to take leave (unpaid or paid) if another reasonable accommodation can be provided

PWFA Final Regulations

Expansive definition of pregnancy, childbirth and related conditions— includes past pregnancy, potential pregnancy, lactation (breastfeeding and pumping), use of contraception, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth or having or choosing not to have an abortion

The physical or mental condition does not have to be severe—it can be modest, minor or episodic. PWFA covers conditions that do not rise to the level of a disability under ADA

Provides a list of reasonable accommodations (e.g., more frequent breaks, seating, schedule changes or reduction in hours, remote work, light duty, etc.)

Employers may request supporting medical documentation from an individual requesting an accommodation only when it is “reasonable under the circumstances.”

Regulations took effect
June 18, 2024

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