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STATE

Littler on

Connecticut Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Connecticut employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

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1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Connecticut, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

Connecticut law favors employee status over independent contractor status. Employers should be especially cautious when engaging an individual as an independent contractor, as misclassification of workers is an active issue with the Connecticut Department of Labor (CTDOL) and the U.S. Department of Labor (DOL). For example, the DOL's Wage and Hour Division, the federal Occupational Safety and Health Administration, and the Employee Benefits Security Administration (EBSA) executed a common interest agreement with the CTDOL in 2011.[5] This Memorandum of Understanding (MOU) was renewed in 2022 and will expire on October 21, 2027. The parties to the MOU have agreed to share resources and information and to coordinate their enforcement actions regarding independent contractor misclassification.

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	**Purpose of Determining Employee Status**	**Purpose of Determining Employee Status**
Fair Employment Practices Laws	Commission on Human Rights & Opportunities	Federal common-law agency test.[6]

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15F.3d103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545F.3d338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] *See* U.S. Dep't of Labor & Connecticut Dep't of Labor, *Common Interest Agreement* (Sept.19, 2011), *available at* https://www.dol.gov/whd/workers/MOU/ct.pdf. Information on the current status of the agreement can be found at https://www.dol.gov/agencies/whd/about/state-coordination.

[6] Although the highest Connecticut court has not issued an opinion on the matter, at least one federal court has held that the federal common law of agency test should be applied in deciding independent contractor versus employee status under the Connecticut Fair Employment Practices Act (CFEPA). *DeSouza v. EGL Eagle Global Logistics L.P.*, 596F. Supp. 2d456, 463-64 (D. Conn. 2009). Further, the court cited to a nonexhaustive list of factors to be considered in determining an individual's employment status under this test:

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**Purpose of Determining Employee Status**	**Purpose of Determining Employee Status**
Income Taxes	Connecticut Department of Revenue Services	Internal Revenue Service (IRS) 20-factor test.[7]
Unemployment Insurance	CTDOL	Statutory test, adopting the ABC test.[8] "Service performed by an individual shall be deemed to be employment . . . irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the administrator that (I) such individual has been and will continue to be free from control and direction in connection with the performance of such

the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

DeSouza, 596F. Supp. 2d at 464 (quotations omitted). In a case involving whether an individual was an "employee" (versus a volunteer) under the CFEPA, the Connecticut Appellate Court acknowledged that federal law interpreting Title VII of the Civil Rights Act of 1964 ("Title VII") is applicable to CFEPA cases. *Commission on Human Rights & Opportunities v. Echo Hose Ambulance*, 113A.3d463, 470(Conn. App. Ct. 2015), *aff'd* 140 A.3d 190 (Conn. 2016). Moreover, the court added that a "remuneration test" should be applied as a threshold in determining if an employer-employee relationship exists. *Echo Hose Ambulance*, 113A.3d at470. The appellate court explained that, under the test, "a putative employee [must] establish that he or she has received direct or indirect remuneration from the alleged employer." *Echo Hose Ambulance*, 113A.3d at 470 (quotation omitted). Remuneration may be direct, such as salary, or indirect, such as job-related benefits including health insurance, vacation, sick pay, health insurance, or the promise of such. *Echo Hose Ambulance*, 113 A.3d at 471. Only after the threshold "remuneration test" is satisfied, would a court properly apply the common-law agency test or right of control test to determine employee status. *Echo Hose Ambulance*, 113 A.3d at 471.

[7] Connecticut Dep't of Revenue Servs., *Policy Statement PS 2007(7)*, 2007 WL 3405431, at *1 (Nov. 5, 2007) ("The criteria for determining whether staff is an employee or an independent contractor for federal tax purposes also apply for Connecticut tax purposes."); *see also* CONN. GEN. STAT. § 12-707(f)(1) (under Connecticut's income tax law, *employer* is defined as the term is defined in the Internal Revenue Code).

[8] CONN. GEN. STAT. § 31-222(a)(1)(B)(ii); *see also JSF Promotions, Inc. v. Administrator, Unemployment Comp. Act*, 828 A.2d 609, 613 (Conn. 2003) ("This statutory provision is in the conjunctive. Accordingly, unless the party claiming the exception to the rule that service is employment shows that all three prongs of the test have been met, an employment relationship will be found.") (citation omitted); Connecticut Emp't Sec. Div., Unemployment Comp. Tax Div., *Self-Assessment of the Employer-Employee Relationship for CT Unemployment Taxes*, *available at* https://www.ctdol.state.ct.us/uitax/abctest.pdf.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**Purpose of Determining Employee Status**	**Purpose of Determining Employee Status**
		service, both under his contract for the performance of service and in fact;[9] and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed;[10] and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed."[11]

[9] CONN. GEN. STAT. § 31-222(a)(1)(B)(ii). The "A" factor is "essentially the same criteria as the ["right to control"] independent contractor test at common law" and the existence of the right to control over the actual exercise is sufficient to meet part A of the test. *Daw's Critical Care Registry, Inc. v. Department of Labor*, 622 A.2d 622, 631-32 (Conn. Super. Ct. 1992) (quotation omitted); *see also Standard Oil of Conn. v. Administrator, Unemployment Comp. Act*, 134 A.3d 581, 590-91 (Conn. 2016) (noting that "past agency interpretations of part A have been highly fact specific and not uniformly upheld on appeal to the Superior Court").

[10] CONN. GEN. STAT. § 31-222(a)(1)(B)(ii). The "B" element is disjunctive; that is, the work can be performed outside the usual course of business *or* outside the places of business of the company. *Daw's Critical Care Registry, Inc.*, 622 A.2d at 635-36. In *Standard Oil*, the Connecticut Supreme Court held "that two principles should govern our construction of part B of the ABC test." 134 A.3d at 606. The first principle is that courts "should consider the extent to which the employer *exercised control over the location* where the independent contractor worked when construing part B of the ABC test." *Standard Oil*, 134 A.3d at 606 (emphasis added). The second principle "relates to the conjunctive nature of the test, which suggests that no one part of the test should be construed so broadly—and, therefore, made so difficult or impossible to meet—that the other two parts of the test are rendered superfluous." *Standard Oil*, 134 A.3d at 607 (noting that the meaning of "places of business" should not extend to all locations where installers/technicians performed services because doing so would render part B of the test too difficult to satisfy when a company hires independent contractors to work at locations apart from their offices or physical plans) (citations omitted).

[11] CONN. GEN. STAT. § 31-222(a)(1)(B)(ii). In 2017, the Connecticut Supreme Court clarified a contentious issue in Connecticut: whether part C of the ABC test adopted in the unemployment statute "requires proof that the putative employee perform services for third parties other than the putative employer, in order to be deemed an independent contractor." *Southwest Appraisal Grp., L.L.C. v. Administrator, Unemployment Comp. Act*, 155 A.3d 738, 740 (Conn. 2017). The court answered in the negative, concluding that "evidence of the performance of services for third parties is not required to prove part C of the ABC test but, rather, is a single factor that may be considered under the totality of the circumstances analysis governing that inquiry." *Southwest Appraisal Grp., L.L.C.*, 155 A.3d 741. Moreover, the court held that in evaluating the totality of the circumstances under part C, the following are factors that may be considered:

> (1) the existence of state licensure or specialized skills; (2) whether the putative employee holds themself out as an independent business through the existence of business cards, printed invoices, or advertising; (3) the existence of a place of business separate from that of the putative employer; (4) the putative employee's capital investment in the independent business, such as vehicles and equipment; (5) whether the putative employee manages risk by handling their own liability insurance; (6) whether services are

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**Purpose of Determining Employee Status**	**Purpose of Determining Employee Status**
Workers' Compensation	Connecticut Workers' Compensation Commission	Common-law "right to control" test. The primary consideration under this test is whether the alleged employer has retained "the general authority to direct what shall be done and when and how it shall be done."[12]
Workplace Safety	CTDOL, Division of Occupational Safety & Health	While Connecticut has an approved state plan under the federal Occupational Safety and Health Act for public employees, there are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee

performed under the individual's own name as opposed to the putative employer; (7) whether the putative employee employs or subcontracts others; (8) whether the putative employee has a saleable business or going concern with the existence of an established clientele; (9) whether the individual performs services for more than one entity; and (10) whether the performance of services affects the goodwill of the putative employee rather than the employer.

Southwest Appraisal Grp., L.L.C., 155 A.3d 749 (citations omitted). Further, the Connecticut Supreme Court emphasized that "particular caution is necessary in considering the relative size or success of the putative employee's otherwise independent business in connection with the totality of the circumstances analysis under part C." *Southwest Appraisal Grp., L.L.C.*, 155 A.3d 751.

[12] *Kaliszewski v. Weathermaster Alsco Corp*., 173 A.2d 497, 499-500 (Conn. 1961); *see also Hanson v. Transportation Gen., Inc*., 716 A.2d 857 (Conn. 1998); *Rodriguez v. E.D. Constr., Inc.*, 12 A.3d 603, 610 (Conn. App. Ct. 2011); *Denomme v. Masis Staffing Solutions*, *L.L.C.*, 2017 WL 715419, at *2 (Conn. Super. Ct. Jan 18, 2017) (holding that an employment relationship was properly pleaded in a case brought under the Workers' Compensation Act where the plaintiff worked for years at the defendant, the defendant's supervisor placed her at different jobs within the facility, the plaintiff's supervisor at the defendant filed an accident report, and her job was terminated by one of the defendant's administrators). In Connecticut, the burden is on the employee, not the employer, to demonstrate that the employer had the right to control or direct their work. *Castro v. Viera*, 541 A.2d 1216, 1219 (Conn. 1988) (citations omitted).

cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[13]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[14] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[15]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

Connecticut does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Connecticut should follow federal law requirements regarding employment eligibility and verification.

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement

[13] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[14] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[15] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[16] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Connecticut has a "ban-the-box" law that prohibits employers from inquiring about a prospective employee's prior arrests, criminal charges, or convictions *on an initial employment application*, unless:

- the employer is required by an applicable state or federal law to ask about such criminal history for the position in question; or
- a security, fidelity, or equivalent bond is required for the position for which the prospective employee is seeking employment.[17]

Employment Applications. If one of the above exceptions applies and an employer is permitted to inquire about criminal history, the employer must include certain notices on its employment application along with the criminal history inquiries. The notices must be clear and conspicuous on the application and include the following information:

1. "the applicant is not required to disclose the existence of any erased criminal history record information";
2. criminal records subject to erasure include records pertaining to delinquency or "family with service needs" findings, a youthful offender adjudication, a dismissed or dropped criminal

[16] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[17] CONN. GEN. STAT. § 31-51i(b).

charge, a criminal charge for which the person was found not guilty, or a conviction for which the person received an absolute pardon or criminal records that are erased pursuant to statute or by operation of law; and

3. a person whose criminal records have been erased shall be deemed to have never been arrested and may so swear under oath.[18]

Moreover, the portion of an employment application that contains criminal history information of an applicant or employee may be available only to members of the employer's personnel department, or if there is no personnel department, to the person in charge of employment and any employee involved in interviewing the applicant, unless exceptions apply.[19]

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Connecticut's "ban-the-box" law prohibits employers from inquiring about a prospective employee's conviction records. For information on this law, see **1.3(a)(ii)**. Notably, Connecticut law also encourages all employers to give favorable consideration to qualified individuals, including those with criminal conviction records.[20]

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

A Connecticut employer may not require an employee or prospective employee to disclose the existence of any arrest, criminal charge, or conviction, the records of which have been erased pursuant to statute, in any application, interview, or any other way.[21] In addition, an employment application that contains any questions regarding an applicant's or employee's criminal history must conform to the requirements set forth in **1.3(a)(ii)**.

A Connecticut employer may not advertise employment opportunities in such a manner that would restrict such employment so as to discriminate against persons on the basis of their erased criminal history record information.[22] A Connecticut employer may not deny employment to an applicant, discharge, or in any manner discriminate solely because an applicant or employee has a prior arrest, criminal charge, or conviction that has been erased or for which the applicant or employee has received a provisional pardon or certification of rehabilitation pursuant to sections 54-130a or 54-108f.[23]

1.3(a)(v) *State Enforcement, Remedies & Penalties*

An aggrieved applicant or employee may file a complaint with the state labor commissioner under Connecticut's "ban-the-box" law. However, the law does not create a private right of action against an employer.[24]

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[18] CONN. GEN. STAT. § 31-51i(d).

[19] CONN. GEN. STAT. § 31-51i(g), (h) (listing the exceptions).

[20] CONN. GEN. STAT. § 46a-79.

[21] CONN. GEN. STAT. § 31-51i(c).

[22] CONN. GEN. STAT. § 46a-80d.

[23] CONN. GEN. STAT. §§ 31-51i(d)-(f), 46a-80d, 54-108f , 54-130a.

[24] CONN. GEN. STAT. § 31-51i(j).

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[25] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[26] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[27]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

An employer cannot require an employee or prospective employee to consent to a credit report request that contains information about the individual's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers unless:

- the employer is a financial institution;
- the report is required by law;

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[25] 15 U.S.C. §§ 1681 *et seq*.

[26] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[27] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

- the employer reasonably believes the employee has engaged in specific activity constituting a violation of law related to the employee's employment; or
- the report is substantially related to the employee's current or potential job, or the employer has a *bona fide* purpose for requesting or using information in the credit report that is substantially job-related and is disclosed, in writing, to the applicant or employee.[28]

A *financial institution* means any entity or affiliate of a state bank and trust company, national banking association, state or federally chartered savings bank, state or federally chartered savings and loan association, state or federally chartered credit union, insurance company, investment advisor, broker-dealer, an entity registered with the securities and exchange commission, or any mortgage broker or lender.[29]

Substantially related to the employee's current or potential job means the information contained in the credit report is related to the position for which the prospective or current employee who is the subject of the report is being evaluated because the position:

- is a managerial position that involves setting the direction or control of a business, division, unit, or an agency of a business;
- involves access to customers', employees' or the employer's personal or financial information (other than information customarily provided in a retail transaction);
- involves a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, collect debts, transfer money, or enter into contracts;
- provides an expense account or corporate debit or credit card;
- provides access to confidential or proprietary business information, or information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that:
  - derives independent economic value, actual or potential, from not being generally known or readily ascertainable to other people who can obtain economic value from the disclosure or use of the information; and
  - is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or
- involves access to the employer's nonfinancial assets valued at $2,500 or more, including, but not limited to, museum and library collections and to prescription drugs and other pharmaceuticals.[30]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

An aggrieved employee or prospective employee can file a complaint with the state labor commissioner. Employers that violate the credit check provisions can be fined.[31]

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[28] CONN. GEN. STAT. § 31-51tt(b).

[29] CONN. GEN. STAT. § 31-51tt(a)(3).

[30] CONN. GEN. STAT. § 31-51tt(a)(4).

[31] CONN. GEN. STAT. § 31-51tt(c)-(d).

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Connecticut law prohibits an employer from taking any of the following actions:

- requesting or requiring that an applicant or employee provide the employer with a username and password, password, or any other authentication means for accessing a personal online account;
- requesting or requiring that an applicant or employee authenticate or access a personal online account in the employer's presence; and
- requiring that an applicant or employee invite the employer, or accept an invitation from the employer, to join a group affiliated with any personal online account of the employee or applicant.[32]

Personal online account is defined as any online account used by an employee or applicant exclusively for personal purposes that are unrelated to any business purpose of the employer, including, but not limited to, email, social media, and retail-based internet websites. The term does not include any account created, maintained, used, or accessed by an employee or applicant for a business purpose of their actual or prospective employer.[33]

Adverse Action. An employer is prohibited from failing to hire an applicant because the applicant refuses any of the prohibited requests set forth above.[34] Additionally, an employer is prohibited from discharging, disciplining, discriminating against, or otherwise penalizing an employee because the employee refuses

[32] CONN. GEN. STAT. § 31-40x(b)(1)-(3).

[33] CONN. GEN. STAT. § 31-40x(a)(5).

[34] CONN. GEN. STAT. § 31-40x.

any of the prohibited requests, or files or causes to be filed any complaint, verbal or written, with a court concerning the employer's violation of the social media prohibitions.[35]

Exceptions. The law does not preclude an employer from complying with the requirements of state or federal statutes, rules, or regulations, and case law, or the rules of self-regulatory organizations.[36]

Moreover, the law does not affect an employer's rights or obligations to conduct an investigation to ensure compliance with applicable state or federal laws, regulatory requirements, or prohibitions against work-related employee misconduct, based on receiving specific information about activity on an employee's or applicant's personal online account.[37] Moreover, an employer may conduct an investigation accessing social media information based on specific information received about an employee's or applicant's unauthorized transfer of the employer's proprietary information, confidential information, or financial data to or from a personal online account operated by the individual or another source.[38] While an employer conducting an investigation can require an employee or applicant to allow it to access the individual's personal online account for the purpose of conducting the investigation, the employer is prohibited from requiring that the individual disclose the username and password, password, or other authentication means for accessing the individual's personal online account.[39]

Notably, an employer can discharge, discipline, or otherwise penalize an employee or applicant that has transferred, without the employer's permission, the employer's proprietary information, confidential information, or financial data to or from the employee or applicant's personal online account.[40]

Rules for Employer-Provided Devices & Online Accounts. An employer can request or require that an employee or applicant provide it with a username and password, password, or any other authentication means for accessing: (1) any account or service provided by the employer or by virtue of the employee's employment relationship with the employer or that the employee uses for the employer's business purposes; or (2) any electronic communications device supplied or paid for (in whole or in part) by the employer.[41]

Additionally, an employer can, subject to state and federal law, monitor, review, access, or block electronic data stored on an electronic communications device paid for by an employer, or traveling through or stored on an employer's network.[42]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

An employee or applicant can file a complaint with the state labor commissioner. If the individual prevails at a hearing on the complaint, the individual will be awarded reasonable attorneys' fees and costs.

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[35] CONN. GEN. STAT. § 31-40x(b)(4)-(5).

[36] CONN. GEN. STAT. § 31-40x(e).

[37] CONN. GEN. STAT. § 31-40x(d).

[38] CONN. GEN. STAT. § 31-40x(d).

[39] CONN. GEN. STAT. § 31-40x(d).

[40] CONN. GEN. STAT. § 31-40x(c)(2).

[41] CONN. GEN. STAT. § 31-40x(c)(1).

[42] CONN. GEN. STAT. § 31-40x(d).

If the commissioner finds an *applicant* has been aggrieved by an employer's actions, the commissioner may fine the employer. If the commissioner finds an *employee* has been aggrieved by an employer's violation, the commissioner can fine the employer and award the employee all appropriate relief, including rehiring or reinstatement to the individual's previous job, payment of back wages, reestablishment of employee benefits, or any other remedies.[43]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[44] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Employers may not request or require an employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining or continuing employment. Employers are prohibited from dismissing or in any manner disciplining an employee for failing, refusing, or declining to admit to take a polygraph examination. Employment agencies and agents of an employer are also prohibited from requiring any person to submit to a polygraph examination for any purpose.[45]

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[43] CONN. GEN. STAT. § 31-40x(f)-(h).

[44] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[45] CONN. GEN. STAT. § 31-51g.

Polygraph means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness.[46]

There are no exceptions covering private employers.[47]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

Any individual or entity violating any provision of the polygraph law can be fined for each violation.[48]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[49] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[50] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Connecticut law provides that an employer cannot require a "prospective employee"[51] to submit to a urinalysis drug test as part of the application process unless:

1. the prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test;
2. the test is conducted in accordance with state law; and
3. the prospective employee is given a copy of any positive urinalysis drug test result.[52]

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[46] CONN. GEN. STAT. § 31-51g(a).

[47] *See* CONN. GEN. STAT. § 31-51g(d).

[48] CONN. GEN. STAT. § 31-51g(c).

[49] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[50] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[51] A *prospective employee* is one who is "applying for employment . . . other than an individual who terminated his [or her] employment with such employer within twelve months prior to the application." CONN. GEN. STAT. § 31-51t(3).

[52] CONN. GEN. STAT. § 31-51v.

The results of any drug testing must be kept confidential and cannot be disclosed by the employer or its employees to any person other than an employee to whom such disclosure is necessary.[53]

For more information on drug and alcohol testing of current employees, see **3.2(b)**.

1.3(e)(iii) *State Enforcement, Remedies & Penalties*

Employers that violate the drug-testing law may be sued civilly, subject to injunctions, and ordered to pay damages.[54]

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *Salary History Inquiry Restrictions*

Connecticut law prohibits employers of one or more employees from inquiring or directing a third party to inquire about a prospective employee's wage and salary history unless a prospective employee has voluntarily disclosed such information.[55] The term *wages* refers to compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation.[56]

The law builds in two exceptions to the restriction on salary history inquiries. The restriction does not apply to any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal or state law that specifically authorizes the disclosure or verification of salary history for employment purposes. In addition, the statute does not prohibit an employer from inquiring about other elements of a prospective employee's compensation structure, as long as the employer does not inquire about the value of the elements of the compensation structure.[57]

An employee or prospective employee alleging a violation of the statute may file a civil action within two years of the alleged violation.[58]

1.3(f)(ii) *Age Inquiry Restrictions*

Connecticut employers are prohibited from inquiring into the ages of prospective employees on an initial employment application.[59] Specifically, employers may not request or require that applicants provide: (1) their ages; (2) dates of birth; or (3) dates of attendance at or graduation from an educational institution. Employers may, however, request or require information related to an applicant's age if that information is based on a *bona fide* occupational qualification or need, or if the employer needs the information to comply with applicable state or federal laws.

Since the law is limited to information that is requested or required on an initial employment application, in certain circumstances age-identifying inquiries may be permissible for legitimate business reasons at a later stage in the hiring process. Employers should exercise caution, however, in eliciting information

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[53] CONN. GEN. STAT. § 31-51v.

[54] CONN. GEN. STAT. § 31-51z.

[55] CONN. GEN. STAT. § 31-40z(b)(5).

[56] CONN. GEN. STAT. § 31-40z(a).

[57] CONN. GEN. STAT. § 31-40z(b)(5).

[58] CONN. GEN. STAT. § 31-40z(d), (e).

[59] CONN. GEN. STAT. § 46a-60.

about age or any other protected characteristic and should do so only if the information is needed for legitimate nondiscriminatory reasons and is not used as an impermissible factor in the hiring decision.

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[60] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[61] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[62] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[63]
Benefits & Leave Documents: Consolidated Omnibus	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under

[60] 26 U.S.C. § 36B.

[61] 42 U.S.C. § 18071.

[62] 29 U.S.C. § 218b.

[63] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Budget Reconciliation Act (COBRA)	group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[64] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[65]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[66] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[67] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[68]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically

[64] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[65] 29 C.F.R. § 2590.606-1.

[66] 29 C.F.R. § 825.300(a).

[67] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[68] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[69] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[70]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[71]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[72]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

[69] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[70] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[71] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[72] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Service Workers Paid Sick Leave	Generally speaking, employers with 50 or more employees must provide notice summarizing the paid sick leave law applicable to employees in the state. Notice must address workers' entitlement to paid sick leave, the amount of paid sick leave provided to employees, the terms under which paid sick leave may be used, the prohibition against retaliation for workers who take or request leave, and how to file a complaint for any alleged violations. In lieu of notice upon hire, employers may comply with this requirement by posting notice with this information at the workplace in English and Spanish and providing written notice to each employee not later than January 1, 2025, or at the time of hire, whichever is later.[73]
Benefits & Leave Documents: Connecticut Retirement Security Program	The state of Connecticut will begin requiring private-sector employers without their own workplace-based retirement plans to enroll employees in Individual Retirement Arrangements (IRAs) sponsored by the state. Under the Connecticut statute, eligible employees who do not receive pensions or have 401(k) plans from their employers will be automatically enrolled in the state IRA plan. The program applies to employers that, on October first of the preceding calendar year, employed five or more individuals in the state and paid each such individual at least $5,000 in taxable wages in the preceding calendar year. **Notice Requirement.** Within 30 days of hiring an eligible employee, an employer must provide the employee with informational materials regarding the state-run IRA program. A covered employer must also provide this information annually thereafter. Employers that maintain workplace-based retirement plans permitted under the Internal Revenue Code are exempt from Connecticut's mandatory IRA program. Exempt employers have no obligation to provide their employees with informational materials regarding the state-run IRA program or enroll employees in the program.[74]
Drug Testing Documents	No employer may require a prospective employee to undergo a urinalysis drug test as part of the application process unless the employer notifies the candidate in writing, at the time of application, of

[73] CONN. GEN. STAT. § 31-57w.. Additional guidance for employers is available at https://www.ctdol.state.ct.us/wgwkstnd/sickleave.htm.

[74] CONN. GEN. STAT. § 31-422; More information is available from the Connecticut Department of Labor, Connecticut Retirement Security Authority, at https://osc.ct.gov/crsa/.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	the employer's intent. See **1.3(e)(ii)** for additional details and testing requirements.[75]
Electronic Monitoring Documents	Employers that engage in any type of electronic monitoring (that is, collection of information about employee activities or communications by computer, telephone, etc.) must give prior written notice to all employees who may be affected, informing them of the types of monitoring which may occur. In lieu of notice upon hire, employers may comply with this requirement by posting this information at the workplace.[76]
Fair Employment Practices Documents: Pregnancy	Employers must provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to a reasonable accommodation to the known limitations related to pregnancy to: • new employees at the commencement of employment; and, • any employee who notifies the employer of her pregnancy within 10 days of such notification. An employer may comply with these requirements by displaying a poster in a conspicuous place, accessible to employees, at the employer's place of business that contains the requisite information in both English and Spanish. As well, the Labor Commissioner may adopt regulations to establish additional requirements concerning the means by which employers must provide such notice.[77]
Fair Employment Practices Documents: Paid Family and Medical Leave	Employers must notify their employees, in writing, at the time of hiring and annually thereafter: 1. of their entitlement to family and medical leave and family violence leave, and the terms under which such leave may used; 2. of their right to file a benefits claim under the family leave program; 3. that retaliation against an employee for requesting or using family medical leave for which the employee is eligible is prohibited; and, 4. of their right to file a complaint with the Labor Commissioner to seek redress for any violation.[78]

[75] CONN. GEN. STAT. § 31-51v. Employers must create their own form to satisfy this notice requirement.

[76] CONN. GEN. STAT. § 31-48d. This notice is available at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/electronicmonitoring.pdf.

[77] CONN. GEN. STAT. § 46a-60(d)(1). This poster/notice is available at https://www.ctdol.state.ct.us/gendocs/Pregnancy%20Disability%20Poster.pdf.

[78] CONN. GEN. STAT. §§ 31-51kk to 31-51qq. The Connecticut Department of Labor provides the "Prototype of Employer's Written Notice to Employees of Rights under CTFMLA and CTPL" online which satisfies the notice requirement at https://portal.ct.gov/DOLUI/newfmlaguidance.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Fair Employment Practices Documents: Sexual Harassment	Employers with three or more employees are required to provide, within three months after the employee's start date with the employer, a copy of the information about the illegality of sexual harassment and remedies available to victims of sexual harassment to each employee by electronic mail, with a subject line that includes the words "Sexual Harassment Policy" or similar if: (1) the employer has provided the employee with an electronic mail account; or, (2) the employee has provided the employer with an electronic mail account. If an employer has not provided an electronic mail account to an employee, the employer must post this information on the employer's internet website, if the employer maintains such a site. **Alternative Compliance.** An employer may also comply with this requirement by providing an employee with the link to the Connecticut Commission on Human Rights and Opportunities (CHRO)'s website concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment. The link may be provided by email, text message, or in writing.[79]
Tax Documents	On or before starting employment, every employee must complete a sign a state withholding exemption certificate (Form CT-W4).[80]
Unemployment Insurance Documents	An employer that is not subject to unemployment insurance laws and has not accepted voluntary liability must notify prospective and current employees, in writing, that it is not subject to the unemployment insurance laws.[81]
Wage & Hour Documents	At the time of hiring, all employers must notify employees, in writing, of: • their rate(s) of pay; • their hours of employment; and • the wage payment schedule.[82]
Workplace Safety: Notice of Reproductive & Carcinogenic Hazards	Upon offering employment to a prospective employee, employers must inform the candidate of particular workplace hazards. First, employers must notify the potential new hire of any chemicals, toxic substances, radioactive materials, or other substances that the employer uses or produces in the manufacture of any item, or uses or produces for

[79] CONN. GEN. STAT. § 46a-54 (15)(B). The Connecticut Commission on Human Rights and Opportunities (CHRO)'s website link is https://www.ct.gov/chro/site/default.asp.

[80] CONN. AGENCIES REGS. § 12-705(a)-4. Current Connecticut tax forms are available at https://portal.ct.gov/DRS/DRS-Forms/Forms/DRS-Forms.

[81] CONN. GEN. STAT. § 31-223a. Employers must create their own form to satisfy this notice requirement.

[82] CONN. GEN. STAT. § 31-71f. Employers must create their own form to satisfy this notice requirement.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	purposes of research or treatment, if the employer should reasonably believe these substances will cause birth defects or pose reproductive hazards when an employee is exposed to these substances during the course of employment.[83] Further information must be provided to new hires within the first month of employment.[84] This information must also be made available to current employees who are similarly exposed. See **3.10(a)(ii)** for additional details. Second, employers must disclose to all prospective employees a list of all carcinogenic substances that the employer uses or produces in the manufacture of any item, or uses or produces for purposes of research or treatment. The list must also identify the dangers inherent in exposure to such substances. It must be shared annually with current employees and updated as changes occur. See **3.10(a)(ii)** for additional details, including information about new hire education and training about carcinogenic substances in the workplace.[85]

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[86] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and

[83] CONN. GEN. STAT. § 31-40g.

[84] CONN. GEN. STAT. § 31-40*l*.

[85] CONN. GEN. STAT. § 31-40c(b)-(c); *see also* CONN. GEN. STAT. § 31-40c(d).

[86] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[87]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

[87] 42 U.S.C. § 653a.

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[88] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Connecticut's new hire reporting law.[89]

Who Must Be Reported. Employees newly hired or rehired must be reported. Independent contractors whose services are valued at $5,000 or more, and who are not themselves registered for unemployment insurance tax purposes or are not employees of a registered employer, must be reported by the company contracting their services.

Report Timeframe. Connecticut employers must submit new hire information for employees no later than 20 days after their hiring date. Employers submitting magnetically or electronically, must report new employees, if any, at least twice per month by transmissions not less than 12 days and no more than 16 days apart.

Information Required. The information required to be reported includes the employee's name, address, and Social Security number. The report must also include the employer's name, address, and state and federal tax registration or identification numbers.

Form & Submission of Report. The information should be submitted via a Connecticut income tax withholding or exemption certificate (CT-W4 form) completed by the employer or any other means authorized by the state labor commissioner. Reports may be submitted by fax, mail, over the internet, electronically or magnetically.

Location to Send Information.

Department of Labor

[88] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[89] CONN. GEN. STAT. § 31-254(b); *see also* http://www1.ctdol.state.ct.us/newhires/index.asp.

Office of Research
200 Folly Brook Blvd.
Wethersfield, CT 06109-1114
(860) 263-6310
(800) 816-1108 (fax)
www1.ctdol.state.ct.us

Multistate Employers. An employer that has employees employed in one or more other states and that transmits reports magnetically or electronically is not required to report to Connecticut if it has designated another state in which it has employees to which it will transmit reports, provided that the employer has notified the state labor commissioner, in writing, as to which other state it has designated for the purpose of sending such reports.[90]

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after their employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[91] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

[90] CONN. GEN. STAT. § 31-254(c)(2).

[91] 18 U.S.C. §§ 1832 *et seq.*

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

There is no Connecticut statute of general applicability with regard to noncompete agreements. Generally, noncompetes will be enforceable if they are reasonable, entered knowingly, and with consideration. "Reasonableness" requires an analysis of the terms of duration, territory, the fairness of protection given to the employer, the extent of restraint, and the extent of interference with the public interest. If any of these factors is considered unreasonable, the noncompete is unenforceable.[92]

Connecticut court decisions reflect wide variances in the types of noncompetition agreements that courts are willing to enforce. For example, in *New Haven Tobacco Co. v. Perrelli*, the court enforced a two-year covenant not to compete, with no geographic limitation, that barred a salesman from selling to the former employer's customers with which he had dealt or whose identity he had discovered while employed by his former employer.[93] Courts will look to the balance of the benefits and burdens resulting from the covenant presented in the specific case, and what may be reasonable in time or scope in one case may be unreasonable in others due to the effect of other factors on the balance (*e.g.*, nature of the industry, profession of the employee, population of the area, etc.). The case law illustrates the importance of the individualized evidence from the employer supporting its need for the protection provided by the noncompetition clause.

Enforceability Following Employee Discharge. Connecticut courts have found covenants enforceable following an employee's discharge from employment.[94]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Connecticut, an offer of employment constitutes consideration adequate to support an otherwise enforceable covenant not to compete, as Connecticut courts have upheld noncompetition agreements entered into at the beginning of the employment relationship.[95]

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[92] *Weiss & Assocs. v. Wiederlight*, 546 A.2d 216 (Conn. 1988); *Scott v. General Iron & Welding, Co.*, 368 A.2d 111 (Conn. 1976).

[93] 559 A.2d 715 (Conn. App. Ct. 1989); *see also Webster Fin. Corp. v. Levine*, 2009 WL 1056564, at *2 (Conn. Super. Ct. Mar. 24, 2009) (holding reasonable a two-year restrictive covenant that prohibited an insurance broker from soliciting or accepting any business from anyone who had been a client of his employer during the last year of his employment); *Cuna Mut. Life Ins. Co. v. Butler*, 2007 WL 2038626 (Conn. Super. Ct. June 21, 2007) (enforcing a two-year covenant with no geographic limitation, which prevented a life insurance salesperson from soliciting certain credit unions as customers).

[94] *Weiss & Assocs.*, 546 A.2d at 221; *Gartner Group, Inc. v. Mewes*, 1992 WL 4766 (Conn. Super. Ct. Jan. 3, 1992).

[95] *See Hart*, *Nininger & Campbell Assocs*., *Inc. v. Rogers*, 548 A.2d 758, 767 (Conn. App. Ct. 1988); *Braman Chemical Enter., Inc. v. Barnes*, 2006 WL 3859222 (Conn. Super. Ct. Dec. 12, 2006) (finding adequate consideration for a

State and federal courts, however, are split on whether continued employment is sufficient consideration, even when employment is at-will. Recently Connecticut courts have acknowledged a developing line of cases finding that continued employment is sufficient consideration in Connecticut.[96] Therefore, Connecticut employers should consider providing employees who are asked to sign noncompete agreements after the commencement of their employment additional consideration, such as bonus compensation, or some other benefit.[97]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Connecticut courts are reluctant to rewrite or reform the parties' agreement to make it reasonable and enforceable.[98] However, the courts recognize the blue pencil rule, with the Connecticut Supreme Court describing its limits:

> A restrictive covenant which contains or may be read as containing distinct undertakings bounded by different limits of space or time, or different in subject-matter, may be good as to part and bad as to part. But this does not mean that a single covenant may be artificially split up in order to pick out some part of it that can be upheld. Severance is

noncompete that the employee executed shortly before the start of her employment); *see also H&R Block E. Tax Servs. v. Elia*, 2002 WL 31898147 , at *4 (Conn. Super. Ct. Dec. 12, 2002).

[96] *See, e.g.*, *DelVecchio Reporting Servs., L.L.C. v. Edwards*, 2017 WL 3623432 (Conn. Super. Ct. July 13, 2017); *MacDermid, Inc. v. Selle*, 535 F. Supp. 2d 308, 316 (D. Conn. 2008) (continued employment sufficient); and, *Sartor v. Town of Manchester*, 312 F. Supp. 2d 238, 244-45 (D. Conn. 2004) (acknowledging "Connecticut recognizes that continued employment is adequate consideration to support non-compete covenants with at-will employees."). *But see Addison v. Torres*, 2008 WL 1971028, at *2 (Conn. Super. Ct. Apr. 18, 2008) (continued employment insufficient, citing *Dick v. Dick*, 355 A.2d 110 (Conn. 1974)). However, in *RKR Dance Studios, Inc. v. Makowski*, the court notes that while *Dick v. Dick* is often cited for the proposition that continued employment is not adequate consideration for a contract, the case: 1) applied New York law; 2) did not concern an employment contract; and, 3) merely stated in *dicta* that "past consideration" does not support a promise. 2008 WL 4379579 (Conn. Super. Ct. Sept. 12, 2008).

[97] *Sylvan R. Shemitz Designs, Inc. v. Brown,* 2013 WL 6038263, at *6 (Conn. Super. Ct. Oct. 23, 2013) (mid-stream noncompete supported by adequate consideration because employer gave up its right to enforce prior noncompete agreements with lengthier restrictions); *see also DiscoveryTel SPC, Inc. v. Pinho*, 2010 WL 4515414 (Conn. Super. Ct. Oct. 14, 2010) (change in status from at-will to term employment served as adequate consideration for noncompete).

[98] *See, e.g.*, *Timenterial, Inc. v. Dagata*, 277 A.2d 512, 514-15 (Conn. Super. Ct. 1971) (declining to revise restrictive covenant where the terms of the covenant were not readily separable).

> permissible only in the case of a covenant which is in effect a combination of several distinct covenants.[99]

This articulation of the blue pencil rule reflects long-standing practices of Connecticut courts, which traditionally have severed unreasonable provisions rather than rewriting them, and only then when the agreement is written such that unreasonable portions may be severed leaving the reasonable portions grammatically intact.[100]

Therefore, courts interpreting Connecticut contracts can blue pencil: (1) overbroad geographic restrictions if the parties have specifically provided for such discretion in the restrictive covenant; and (2) if there is evidence of intent to have several different covenants that are severable because of different time and/or territorial restrictions.[101] For example, in one case, the court changed the time period of the parties' restriction from two years to one year where the agreement expressly authorized the court to reduce an unreasonable time period to "such lesser period of time as shall be deemed reasonable and not excessive by the court."[102] However, courts may decline to reform an agreement that contains no express provision authorizing it to do so. And, even if a restrictive covenant authorizes "the court to reform any component of the agreement found unreasonable," a court may still decline to blue pencil the restrictive covenant if "the unreasonable provisions form the heart of the agreement."[103]

2.3(b)(iv) *State Trade Secret Law*

Definition of a Trade Secret. Like many other states, Connecticut has adopted a version of the Uniform Trade Secrets Act of 1983. The Connecticut Uniform Trade Secrets Act (CUTSA) defines a *trade secret* as information that: (1) "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;" and (2) "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."[104]

Where an employer brings an action to seek relief for the unauthorized use or taking of its business information, Connecticut courts consider a variety of factors to assess whether information constitutes a protectable trade secret, including:

- the extent to which the information is known outside the employer's business;
- the extent to which the information is known by employees or others in the business;

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[99] *Deming v. Nationwide Mut. Ins. Co.*, 905 A.2d 623, 638 n.21 (Conn. 2006) (quoting *Beit v. Beit*, 63 A.2d 161, 165-66 (Conn. 1948)) (internal quotation marks omitted).

[100] *See Beit*, 63 A.2d at 166.

[101] *Beit*, 63 A.2d at 165-66; *Century 21 Access Am. v. Lisboa*, 2003 WL 21805547, at *4 (Conn. Super. Ct. July 22, 2003); *Daniel V. Keane Agency, Inc. v. Butterworth*, 1995 WL 93387, at **5-6 (Conn. Super. Ct. Feb. 23, 1995); *Gartner Group, Inc. v. Mewes*, 1992 WL 4766, at *1 (Conn. Super. Ct. Jan. 3, 1992).

[102] *Lisboa*, 2003 WL 21805547, at *11.

[103] *Sylvan R. Shemitz Designs, Inc.*, 2013 WL 6038263, at *9 (citing *Creative Dimension, Inc. v. Laberge*, 2012 WL 2548717 (Conn. Super. Ct. May 31, 2012)).

[104] CONN. GEN. STAT. § 35-51(d); *Lydall, Inc. v. Ruschmeyer*, 919 A.2d 421, 430-31 (Conn. 2007); *Smith v. Snyder*, 839 A.2d 589, 595 (Conn. 2004).

- the extent of measures taken by the "owner" of the alleged trade secret to safeguard the secrecy of the information;
- the value of the information to its purported owner and to its competitors;
- the amount of effort or money expended by the owner in developing the information; and
- the ease or difficulty with which the information could be properly acquired or duplicated by others.[105]

There is no exact weight ascribed to any one of these factors, and the courts engage in a balancing test when applying them.

Misappropriation of a Trade Secret. To establish an actionable misappropriation of a trade secret claim under the CUTSA, a plaintiff must prove both the existence of a trade secret and actual or threatened misappropriation. The CUTSA defines *misappropriation* as:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that their knowledge of the trade secret was:
        i. derived from or through a person who had utilized improper means to acquire it;
        ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
        iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
    c. before material change of their position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[106]

The CUTSA makes injunctive relief available where a trade secret has been misappropriated.[107] This relief may include an order to return the trade secret, to stop making use of the trade secret, to advise customers of the wrongdoing, and/or other similar forms of noneconomic relief.[108] Under the CUTSA, a prevailing employer may recover damages for its actual losses caused by the misappropriation, as well as the value of the defendant's unjust enrichment, to the extent this is not already covered by a damage award for actual losses.[109] The court may also award punitive damages and reasonable attorneys' fees.[110]

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[105] *Link Group Int'l v. Toymax Inc.*, 2000 U.S. Dist. LEXIS 4567, at *54 (D. Conn. Mar. 17, 2000).

[106] CONN. GEN. STAT. § 35-51(b).

[107] CONN. GEN. STAT. § 35-52.

[108] *See, e.g.*, *Genworth Fin. Wealth Mgmt., Inc. v. McMullan*, 721 F. Supp. 2d 122, 131-32 (D. Conn. 2010).

[109] CONN. GEN. STAT. § 35-52.

[110] CONN. GEN. STAT. §§ 35-53(b), 35-54.

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Connecticut does not have statutory guidelines addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 51 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[111]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[112]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[113]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[114]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. §

[111] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[112] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[113] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[114] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[115]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[116]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[117]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[118]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[119] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[120]

[115] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[116] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[117] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[118] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[119] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[120] 41 C.F.R. §§ 60-300.44, 60-741.44.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[121]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[122]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[123]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[124]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[125]

[121] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[122] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[123] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[124] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[125] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[126]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[127] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[128]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[129]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where

[126] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[127] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[128] 29 C.F.R. § 13.5.

[129] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
(contracts entered into on or after January 30, 2022)	accessible to employees, summarizing the applicable minimum wage rate and other required information.[130]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Benefits & Leave: Employer Policies	Employers must inform employees—either in writing or through a posted notice accessible to workers—of practices and policies concerning vacation pay, sick leave, health and welfare benefits, and comparable topics. Changes to these policies or practices must also be disclosed in writing or by poster.[131]
Benefits & Leave: Healthcare Advocate Services	Employers that provide health insurance or health care benefits must post conspicuous notice informing employees about the office of Healthcare Advocate, which can help them understand their rights.[132]
Benefits & Leave: Paid Sick Leave	Generally speaking, employers with 50 or more employees must provide notice summarizing the paid sick leave law applicable to service workers in the state.[133] Notice must address workers' entitlement to sick leave, terms of accrual and use, the prohibition against retaliation for workers who take or request leave, and how to file a complaint for any alleged violations. Employers may comply with this requirement by written notice upon hire or by posting notice with this information at the

[130] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[131] CONN. GEN. STAT. § 31-71f. Employers must create their own forms to satisfy this posting requirement.

[132] CONN. GEN. STAT. § 38a-1046. Various approved posters, along with brochures and other information, are available at https://portal.ct.gov/OHA/ODCO/Resources/Publications.

[133] *Service workers* refers to employees who are primarily engaged in any of the occupations or codes listed in the statute, which includes, for example, food service managers, medical and health service managers, social workers, pharmacists, various medical professionals, bartenders, fast food workers, building cleaning workers, bellhops, hairdressers, receptionists, retail salespeople, data entry workers, administrative support staff, and food processors. CONN. GEN. STAT. § 31-57r(7). *Employer* is also defined and includes a few exceptions, such as manufacturers. CONN. GEN. STAT. § 31-57r(3).

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	workplace in English and Spanish.[134] **Effective January 1, 2025**, however, the law will apply in the following years to employers that employ the following number of employees in Connecticut: 2025 (25 or more); 2026 (11 or more); 2027 (one or more). Additionally, **effective January 1**, 2025, the law will apply to all workers, not just service workers.
Child Labor: Mercantile & Retail Employers	Mercantile and retail employers that employ minors must post conspicuous notice, in rooms where minors are employed, summarizing the restrictions on child labor.[135]
Child Labor: Restaurant & Other Employers	Restaurant and other certain employers (hairdressers, bowling alleys, etc.) that employ minors must post conspicuous notice, in rooms where minors are employed, summarizing the restrictions on child labor.[136]
Fair Employment Practices: Discrimination	Employers with three or more employees must post notice, in a prominent and accessible location, informing employees of the prohibition against discrimination in employment, housing, and other transactions.[137]
Fair Employment Practices Documents: Paid Family and Medical Leave	Employers must notify their employees, in writing, at the time of hiring and annually thereafter: 1. of their entitlement to family and medical leave and family violence leave, and the terms under which such leave may used; 2. of their right to file a benefits claim under the family leave program; 3. that retaliation against an employee for requesting or using family medical leave for which the employee is eligible is prohibited; and 4. of their right to file a complaint with the Labor Commissioner to seek redress for any violation.[138]

[134] CONN. GEN. STAT. § 31-57w. This notice is available in English at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/noticesickleaveposter2023.pdf and in Spanish at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/spanishnoticesickleaveposter2023.pdf. Additional guidance for employers is available at https://www.ctdol.state.ct.us/wgwkstnd/sickleave.htm.

[135] CONN. GEN. STAT. § 31-13(d). This poster is available at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/poster-minorsretail.pdf.

[136] CONN. GEN. STAT. § 31-18. This poster is available at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/poster-minorsrestaurant.pdf.

[137] CONN. GEN. STAT. § 46a-54. This poster is available in English at https://portal.ct.gov/-/media/CHRO/DiscriminationFlyerpdf.pdf and in Spanish at https://portal.ct.gov/-/media/CHRO/DiscriminationisIllegalSpanish201609pdf.pdf.

[138] CONN. GEN. STAT. §§ 31-51kk to 31-51qq. The Connecticut Department of Labor provides the "Prototype of Employer's Written Notice to Employees of Rights under CTFMLA and CTPL" online which satisfies the notice requirement at https://portal.ct.gov/DOLUI/newfmlaguidance.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Employment Practices: Pregnancy Discrimination and Accommodation	Employers must provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to a reasonable accommodation to the known limitations related to pregnancy. Employers may comply with this provision by displaying a poster in a conspicuous place, accessible to employees, in their place of business that contains the required information in both English and Spanish.[139]
Fair Employment Practices: Sexual Harassment	Employers with three or more employees must post notice, in a prominent and accessible location, informing employees of the prohibition against sexual harassment and remedies available.[140]
Food Allergy Awareness in Restaurants	Each class 2, 3, and 4 food establishment must display the poster developed or approved by the Department of Public Health, in a clear and conspicuous manner in its kitchen or designated staff area.[141]
Electronic Monitoring	Employers that engage in any type of electronic monitoring (that is, collection of information about employee activities or communications by computer, telephone, etc.) must give prior written notice to all employees who may be affected, informing them of the types of monitoring which may occur. Employers may comply with this requirement by written notice upon hire or by posting conspicuous notice where it is readily available for viewing by all workers.[142]
Human Trafficking Resource Center	Certain employers are obligated to post conspicuous notice concerning the human trafficking resource center and hotline. Notice is required for: (1) massage services; (2) highway service plazas; (3) hotels, motels, inns, or similar lodging; (4) public airports; (5) acute care hospital emergency rooms; (6) urgent care facilities; (7) passenger rail and bus stations; (8) businesses that sell materials or promote performances intended for an adults-only audience; (9) employment agencies that offer personnel services to any operator mentioned herein; (10) establishments that provide services performed by a nail technician; (11) persons who hold an on-premises consumption permit for the retail

[139] CONN. GEN. STAT. § 46a-60. This poster is available in English at http://www.ctdol.state.ct.us/gendocs/SS46a%20Pregnancy%20Disability%20Poster.pdf and in Spanish at http://www.ctdol.state.ct.us/gendocs/SS46a%20Pregnancy%20Disability%20Poster%20spanish.pdf.

[140] CONN. GEN. STAT. § 46a-54. This poster is available in English at http://www.ct.gov/chro/lib/chro/Sexual_Harassment_is_Illegal_2016-09.pdf and in Spanish at http://www.ct.gov/chro/lib/chro/Sexual_Harassment_is_Illegal_Spanish_2016-09.pdf.

[141] H.B. 5902 (Conn. 2024).

[142] CONN. GEN. STAT. § 31-48d. This notice is available at https://portal.ct.gov/dol/-/media/dol/2022-new-design-system/divisions/wage-and-workplace-standards/electronicmonitoring.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	sale of alcohol (with some exceptions); and (12)establishments that provide services performed by an esthetician.[143]
Unemployment Compensation	All employers must post a sufficient number of notices concerning unemployment coverage, in convenient locations where they can be read by all employees. Notice is provided by the state upon the employer's registration. While it is not mandatory, employers may post "Information for Filing Your Initial Unemployment Claim" because Connecticut employees must now apply for benefits over the telephone or internet.[144]
Victims of Domestic Violence	All employers having three or more employees must post information concerning domestic violence and the resources available to victims of domestic violence in Connecticut. The notice must be posted in a prominent and accessible location.[145]
Wages, Hours & Payroll: Employer Policies	Employers must inform employees—either in writing or through a posted notice accessible to workers—of practices and policies concerning vacation pay, wages, and comparable topics. Changes to these policies or practices must also be disclosed in writing or by poster.[146]
Wages, Hours & Payroll: Wage Orders	Certain employers may be required to post industry-specific wage orders (*i.e.*, mercantile and retail employers, restaurant and food service employers, and others).[147]
Workers' Compensation	All covered employers must post conspicuous notice informing employees of the availability of workers' compensation, identifying the carrier or administrator, and noting the local state workers' compensation office.[148]
Workplace Safety: Toxic & Carcinogenic Hazards	All employers must post conspicuous notice, where readily available for viewing, informing employees of their right to information concerning

[143] CONN. GEN. STAT. § 54-234a. This poster is available at https://www.jud.ct.gov/Publications/Human_trafficking_poster.pdf.

[144] CONN. AGENCIES REGS. § 31-222-10. Optional poster is available at http://www.ctdol.state.ct.us/HP/UIServices.htm (UC-62T only).

[145] CONN. GEN. STAT. § 46a-60.

[146] CONN. GEN. STAT. § 31-71f. Employers must create their own forms to satisfy this posting requirement.

[147] CONN. GEN. STAT. § 31-66. Posters about the various wage orders are available at http://www.ctdol.state.ct.us/gendocs/labor_posters.htm.

[148] CONN. GEN. STAT. §§ 31-279, 31-284. This notice is available at http://wcc.state.ct.us/download/acrobat/notice.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	the toxic substances used or produced in the manufacture of any item at the workplace, or in research, experimentation, or treatment.[149] Additionally, employers must post, where readily available for viewing by all employees, a list of any carcinogenic substances used or produced in the manufacture of any item at the workplace, or used or produced for purposes of research, experimentation or treatment. The list must be shared annually with current employees on January 1 and must updated within 90 days of any changes. See **3.10(a)(ii)** for additional details on these requirements.[150]
Workplace Safety: Smoking Area and No Smoking Signs	Generally speaking, smoking is prohibited in places of employment with five or more employees. Indoor smoking rooms may be established. Workplaces that provide smoking areas must designate the existence and boundaries of all nonsmoking areas by posting "No Smoking" signs.[151]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[152]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA):	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:*	At least 1 year from the date of the personnel action to which

[149] CONN. GEN. STAT. § 31-40k(a).

[150] CONN. GEN. STAT. § 31-40c(b)-(c).

[151] CONN. GEN. STAT. § 31-40q. Various posters are available at https://portal.ct.gov/DPH/Health-Education-Management--Surveillance/Tobacco/Smoke-free-signs.

[152] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Personnel Records	• job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[153]	any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[154]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[155]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA):	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including	Until final disposition of the charge or action (*i.e.*, until the statutory

[153] 29 C.F.R. § 1627.3(b).

[154] 29 C.F.R. § 1627.3(b).

[155] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Complaints of Discrimination	personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[156]	period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[157]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[158]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the	At least 6 years after documents

[156] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[157] 29 C.F.R. § 1602.7.

[158] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Security Act (ERISA)	information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[159]	are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[160]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[161]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek;	3 years from the last day of entry.

[159] 29 U.S.C. § 1027.

[160] 29 C.F.R. § 1620.32(a).

[161] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[162] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and	

[162] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[163]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[164]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[165]	At least 3 years from the last effective date.
Fair Labor Standards Act	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets;	At least 2 years from the date of last entry.

[163] 29 C.F.R. § 516.28.

[164] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[165] 29 C.F.R. § 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Other Records	• wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[166]	
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and	At least 3 years.

[166] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[167]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax;	At least 4 years after the date the tax is due or

[167] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[168]	paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[169]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:*	Required to be maintained for "so long as the contents [of the

[168] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[169] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[170]	records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[171]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[172]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation;	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

[170] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[171] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[172] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[173]	
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance,	At least 30 years.

[173] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[174]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[175]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[176]	At least 30 years.

[174] 29 C.F.R. § 1910.1020(d).

[175] 29 C.F.R. § 1910.1020(d).

[176] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[177]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[178]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes;	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from

[177] 29 C.F.R. §§ 1904.33, 1904.44.

[178] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[179]	the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[180]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid;	3 years.

[179] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[180] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	• number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[181]	
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;	During the course of the covered contract as well as after the end of the contract.

[181] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[182]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[183]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation;	At least 3 years from the completion of the work records containing the information.

[182] 29 C.F.R. § 13.25.

[183] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[184]	
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[185]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Benefits & Leave: Medical Records	Employers must maintain all documents relating to medical certifications, re-certifications or medical histories of employees, or employees' family members, created for purposes of taking leave under the FMLA or for reasons related to the ADA. Medical records must be maintained separately from any personnel file. If the ADA applies, records must be kept in compliance with that statute as well.[186]	3 years following separation from employment.

[184] 29 C.F.R. § 4.6.

[185] 41 C.F.R. § 50-201.501.

[186] CONN. GEN. STAT. § 31-128c; CONN. AGENCIES REGS. § 31-51qq-38.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Drug Testing Records	For employers that require drug testing, urinalysis testing results must be maintained with other employee medical records.[187]	3 years following separation from employment.
Fair Employment Practices: Antiharassment Training	*Employers required to conduct training are encouraged to maintain the following records:* • content of training given, such as a curriculum; • names, addresses, and qualifications of personnel conducting the training; and • names and titles of personnel trained, as well as dates that each individual received training.[188] See **3.11(b)(ii)** for further details on training.	At least 1 year; or, if a complaint has been filed, until such time as the complaint is resolved.
Income Tax	*All employer must retain, for tax purposes:* • all records pertinent to withholding of Connecticut income tax; and • Connecticut informational returns. *Connecticut informational returns must include:* • amounts and dates of all wage payments subject to income tax; • names, addresses, and occupations of employees receiving taxable wage payments; • periods of their employment; • periods for which they are paid while absent due to sickness or personal injuries and the amount and weekly rate of such payments; • employees' Social Security numbers; • income tax withholding exemption certificates; • employer's identification number; • employer withholding returns and reports filed; and • dates and amount of state income tax withholding payments made. For nonresident employees performing services partly within and partly outside of the state, the employer must	4 years after due date; or, for taxes paid, 4 years after the day of payment, whichever is later.

[187] CONN. GEN. STAT. §§ 31-51w, 31-128c.

[188] CONN. AGENCIES REGS. § 46a-54-207.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	keep all records pertinent to the allocation used for income tax withholding purposes.[189]	
Paid Sick Leave	• number of hours, if any, of paid sick leave accrued by or provided to the employee; and • number of hours, if any, of paid sick leave used by the employee during the calendar year.[190]	3 years.
Unemployment Insurance	*All employers must keep records, for each employee, including:* • dates of commencement and termination of employment; • payroll periods and wages paid/payable; • wages earned by calendar weeks; • time lost through lack of work; • number of hours worked each week; and • normal full-time hours.[191]	None specified.
Wages, Hours & Payroll: General Records	*All employers must keep and maintain true and accurate records for each employee, including:* • name and home address; • occupation; • total daily and weekly hours worked, showing the beginning and ending time of each work period computed to the nearest fifteen minutes; • total hourly, daily, and weekly basic wage; • overtime wages; • additions and deductions from wages each period; • total wages paid each period; • any incentive compensation wages; and • amount of any gratuities counted toward minimum wage.[192] *With respect to each individual employed in a bona fide executive, administrative, or professional capacity, an employer must maintain:* • name and home address; • occupation;	3 years.

[189] CONN. AGENCIES REGS. § 12-740(c)-2(c).

[190] CONN. GEN. STAT. §31-13A.

[191] CONN. AGENCIES REGS. § 31-222-8.

[192] CONN. GEN. STAT. § 31-66; CONN. AGENCIES REGS. § 31-60-12.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total wages paid each work period; and • date of payment and the pay period covered by the payment.[193]	
Wages, Hours & Payroll: Additional Records for Minors, Trainees & Others	*Additional records must be kept for certain types of employees, such as minors or trainees receiving a sub-minimum wage rate. Such records include:* • working certificates for 16-18-year-old employees; • for minors employed at a modification of the minimum wage, a statement of the minor's employment prior to the minor's date of accession with the present employer; • for modifications of the minimum wage, a record of the applicable minimum wage and conditions controlling continuation of the approval of the wage; • for trainees working for less than minimum wage, approval of that wage in writing; and • for learners and apprentices, designation as such on payroll records and personnel records and listed separately on all such records. Employers must keep cumulative records of hours worked by learners and apprentices.[194]	For minor employee requirements: none specified. For learner and apprenticeship requirements, retain for the duration of the program.
Workers' Compensation	All employers must keep records of injuries sustained by workers in the course of employment that result in incapacity for one day or more.[195]	None specified.
Workplace Safety: Committee Records	Each employer with 25 or more employees in the state (and each employer whose rate of work-related injuries exceeds the average incident rate) must administer a safety and health committee. Records must be kept and maintained including the names and departments of committee members, as well as the attendance and minutes from all meetings.[196]	3 years.
Workplace Safety: Illnesses & Injuries	Connecticut has adopted the federal reporting and recording requirements for workplace illnesses and injuries.[197]	See federal requirements.

[193] CONN. AGENCIES REGS. § 31-60-12.

[194] CONN. AGENCIES REGS. §§ 31-60-12, 31-60-6, 31-60-7, and 31-60-8.

[195] CONN. GEN. STAT. § 31-316.

[196] CONN. GEN. STAT. § 31-40v; CONN. AGENCIES REGS. § 31-40v-6.

[197] CONN. GEN. STAT. § 31-374-3; *see* 29 C.F.R. § 1904.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Connecticut law defines a *personnel file* as documents pertaining to a particular employee that are used by an employer to determine that employee's eligibility for employment, promotion, additional compensation, transfer, termination, discipline, or other adverse personnel action, including employee evaluations or reports relating to that employee's character, credit, and work habits. A personnel file includes emails and faxes pertaining to a particular employee that have been used by an employer in making any personnel decisions.[198] An employer must retain the file for one year following the employee's termination.[199]

Requests for Access to Personnel Files. An employee or former employee may make a written request to inspect their personnel file. An employer must allow a current employee to view or copy their personnel file, if such a file exists, within seven business days following a written request.[200] Employers have 10 business days to satisfy a request from a former employee, but only if the request is received no later than one year following termination.[201] An employer is not required to permit the inspection of an employee's personnel file on more than two occasions in any calendar year.[202]

For current employees, the inspection must take place during regular business hours and at, or reasonably near, the employee's place of employment.[203] Former employees and the employer must agree upon a location to view the file. If they cannot agree, the employer may satisfy the requirement by mailing a copy of the file to the former employee.[204]

Upon written request by a current employee, an employer must provide copies of all or part of a personal file or medical records, if the employee reasonably identifies the materials to be copied. The employer may charge a fee for such copies that is reasonably related to the cost of supplying the documents.[205]

Disputes Over Personnel Files. If an employee disagrees with any of the information in the employee's personnel file, the employee and employer may agree to remove or correct the information. If the employee and employer cannot reach an agreement, the employee may submit a written statement explaining the employee's position. Employers are also required to include in every documented disciplinary action, notice of termination, and performance evaluation a statement in "clear and conspicuous language" that, if the employee disagrees with any of the information in the document, the employee may submit a written statement explaining the employee's position. That statement must be

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198 CONN. GEN. STAT. § 31-128a(5).

199 CONN. GEN. STAT. § 31-128b.

200 CONN. GEN. STAT. § 31-128b(a).

201 CONN. GEN. STAT. § 31-128b(b).

202 CONN. GEN. STAT. § 31-128h.

203 CONN. GEN. STAT. § 31-128b(a), (b).

204 CONN. GEN. STAT. § 31-128b(b).

205 CONN. GEN. STAT. § 31-128g.

maintained as part of the employee's personnel file and must accompany any transmittal or disclosure of the employee's file or records to a third party.[206]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

An employer is prohibited from requiring current employees to submit to a urinalysis drug test unless the employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol that adversely affects or could adversely affect the employee's job performance.[207] Courts have found that a suspicion is reasonable if it is based on specific and articulable evidence of drug use, or impairment due to use of drugs, while the employee is on the job.[208] Employers must have a reasonable suspicion that the employee is under the influence of drugs at the time that the test is ordered.[209]

Further, an employer may not determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary, or other adverse personnel action solely on the basis of a positive urinalysis drug-test result unless: (1) the employer has given the employee a urinalysis drug test utilizing a reliable methodology that produced a positive result; and (2) the positive test result was confirmed by *a second* urinalysis drug test, which was separate and independent from the initial test, utilizing a gas-chromatography and mass-spectrometry methodology or a methodology that has been determined by the Commissioner of Public Health to be as reliable as, or more reliable than, the gas-chromatography and mass-spectrometry methodology.[210]

For more information on drug and alcohol testing, see **1.3(e)(ii)**.

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[206] CONN. GEN. STAT. § 31-128e.

[207] CONN. GEN. STAT. § 31-51x(a).

[208] *See Imme v. Federal Express Corp.*, 193F. Supp. 2d 519, 524-26 (D. Conn. 2002); *Doyon v. Home Depot U.S.A., Inc.*, 850 F. Supp. 125, 130(D. Conn. 1994).

[209] *Poulos v. Pfizer, Inc.*, 711 A.2d 688 (Conn. 1998); *see also Doyon*, 850 F. Supp. at 129 (policy that requires post-accident testing of all employees violates Connecticut drug-testing statutes, as policy does not require individualized determination of reasonable suspicion of drug use at time test is administered).

[210] CONN. GEN. STAT. § 31-51u.

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[211]

3.2(c)(ii) *State Guidelines on Marijuana*

Connecticut has enacted both medical and recreational marijuana laws.

Medical Marijuana. In 2012, Connecticut legalized medical marijuana for qualifying patients. Unless required by federal law or required to obtain federal funding, an employer cannot refuse to hire a person or discharge, penalize or threaten an employee solely on the basis of the individual's status as a qualifying patient or primary caregiver. However, employers can prohibit marijuana use during work hours and discipline an employee for being under the influence during work hours.[212] Moreover, the law does not permit ingesting marijuana in the workplace or in public places, or using marijuana when it endangers the health or wellbeing of others.[213]

In *Noffsinger v. SSC Niantic Operating Co., LLC*,[214] summary judgment was partially granted to a job applicant. The putative employer violated the law by rescinding a job offer because of a positive drug test result due to medical marijuana use. Per the court, the law prohibits discrimination based on medical marijuana use, not just qualifying patient status. It protects qualifying patients' medical marijuana use outside working hours and protects qualifying patients that are not under the influence of medical marijuana during working hours.

The court rejected the employer's argument that not hiring the individual was "required by federal law or required to obtain federal funding" under either the federal Drug Free Workplace Act (DFWA) or False Claims Act (FCA). The DFWA did not require drug testing or prohibit federal contractors from employing someone who uses illegal drugs (or medical marijuana permitted under state law) outside the workplace. The employer's zero tolerance drug testing policy to maintain a drug free work environment was not "required by federal law or required to obtain federal funding." Also, the FCA did not bar hiring based on medical marijuana use outside work hours because hiring would not constitute fraud on the federal government.

However, summary judgment was also partially granted to the putative employer because attorney's fees and punitive damages were not recoverable for a violation.

Earlier, ruling on a motion to dismiss, the same judge held: (1) the federal Controlled Substances Act (CSA) and Americans with Disabilities Act did not preempt the state medical marijuana law's antidiscrimination provision; (2) Hiring a medical marijuana user was not a violation of the CSA or any other federal, state, or local law; and (3) the anti-discrimination provision provided an implied private right of action.[215]

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[211] 21 U.S.C. §§ 811-12, 841 *et seq*.

[212] CONN. GEN. STAT. § 21a-408p(b)(3).

[213] CONN. GEN. STAT. § 21a.408a.

[214] 338 F. Supp. 3d 78 (D. Conn.2018).

[215] 273 F. Supp. 3d 326 (D. Conn. 2017).

After *Noffsinger*, at least two state court judges held an implied private right of actions exists under the medical marijuana law.[216] Moreover, in one of these decisions, the judge also found that neither the federal Controlled Substances Act nor the Americans with Disabilities Act preempted the state medical marijuana law, and the plaintiff could also proceed with his wrongful discharge in violation of public policy cause of action based on a medical marijuana law violation.[217]

Recreational Cannabis. Connecticut's Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA) legalized the recreational use of cannabis in the state.[218]

Employers cannot discharge or take any adverse action against any employee with respect to compensation, terms, conditions, or other privileges of employment because the employee does or does not smoke, vape, aerosolize, or otherwise use cannabis products outside the workplace, unless the employment action is made per a policy prohibiting marijuana possession, use, or other consumption by an employee except:

- as provided in section 21a-408p; and
- possession of medical marijuana by a qualifying patient if such policy is: (1) in writing in physical or electronic form; and (2) made available to each employee before enactment of the policy. The employer must make any such policy available to each applicant at the time it makes an offer or conditional offer of employment.[219]

Unless failing to do so would put the employer in violation of a federal contract or cause it to lose federal funding, an employer cannot discharge or take any adverse action against any employee or applicant with respect to compensation, terms, conditions, refusal to hire, or other privileges of employment because the employee or applicant had or had not smoked, vaped, aerosolized, or otherwise used cannabis products outside the workplace before the individual was employed by the employer.[220]

Notwithstanding the provisions of sections 98 to 100, RERACA does not apply to drug testing, conditions of continued employment, or conditions for hiring employees required pursuant to:

- any regulation of the federal Department of Transportation, if such regulation requires testing of an applicant in accordance with 49 C.F.R. 40or any regulations of state agencies that adopt a federal regulation to enforce the requirements of such regulation with respect to intrastate commerce;
- any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of applicants as a condition of receiving the contract or grant;
- any federal or state law, regulation or order that requires drug testing of applicants for safety or security purposes; or

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[216] *Smith v. Jensen Fabricating Eng'r, Inc.*, 2019 WL 1569048 (Mar. 4, 2019) (denying defendant's motion to strike) and *Bulerin v. City of Bridgeport*, 2019 WL 1766067 (Mar. 8, 2019) (denying defendant's motion to dismiss).

[217] *Smith v. Jensen Fabricating Eng'r, Inc.*, 2019 WL 1569048 (Mar. 4, 2019).

[218] CONN. GEN. STAT. §§ 21a-420 *et seq.*

[219] CONN. GEN. STAT. § 21a-422p.

[220] CONN. GEN. STAT. § 21a-422p.

- any applicant whose prospective employer is a party to a valid CBA specifically addresses drug testing, conditions of hiring, or conditions of continued employment of such applicant.[221]

Note that sections 98 to 100 do not apply to the privileges, qualifications, credentialing, review, or discipline of nonemployee, licensed healthcare professionals on the medical staff of a hospital, or other medical organization.[222]

A drug test that yields a positive result solely for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol cannot be construed, without other evidence, as proof that the individual is under the influence of or impaired by marijuana.[223]

Note that the law does not:

- require an employer to amend or repeal, or affect, restrict or preempt an employer's rights and obligations to maintain a drug and alcohol-free workplace; or
- limit an employer from taking appropriate adverse or other employment action upon: (A) reasonable suspicion of an employee's marijuana use while performing work responsibilities at the workplace or on call; or (B) determining that an employee manifests specific, articulable symptoms of drug impairment while working at the workplace or on call that decrease or lessen the employee's performance of the position's duties or tasks, including, but not limited to, (1) symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment of machinery; (2) disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; (3) disruption of a production or manufacturing process; or (4) carelessness that results in any injury to the employee or others.[224]

An employer can subject an employee or applicant to drug testing or a fitness for duty evaluation, or take adverse action, including, but not limited to, disciplining an employee, terminating the employment of an employee or rescinding a conditional job offer to an applicant pursuant to a policy established under sec. 98(b)(1).[225]

A drug test of an applicant or employee, other than a prospective or existing exempted employee, that yields a positive result solely for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol cannot form the sole basis for refusal to employ or to continue to employ or otherwise penalize the applicant or employee unless:

- failing to do so would put the employer in violation of a federal contract or cause it to lose federal funding;
- the employer reasonably suspects an employee's marijuana use while performing work responsibilities;

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[221] CONN. GEN. STAT. § 21a-422s.

[222] CONN. GEN. STAT. § 21a-422s.

[223] CONN. GEN. STAT. § 21a-422.

[224] CONN. GEN. STAT. § 21a-422p.

[225] CONN. GEN. STAT. § 21a-422p.

- the employee manifests specific, articulable symptoms of drug impairment while working that decrease or lessen the employee's performance of the position's duties or tasks, including, but not limited to: (1) symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior or negligence or carelessness in operating equipment of machinery; (2) disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; (3) disruption of a production or manufacturing process; or (4) carelessness that results in any injury to the employee; or
- except as provided in section 21a-408p, such drug test was pursuant to a random drug testing policy per section 98(b)(1) or was of an applicant with a conditional job offer, and the employer has established in the policy that a positive drug test for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol may result in an adverse employment action.[226]

If an employer violates section 98 or 99, an aggrieved individual can file a civil action within 90 days of the alleged violation. Any individual who prevails may be awarded reinstatement of employment or job offer, back wages and reasonable attorney's fees and costs, to be taxed by the court. However, the law does not create or imply a cause of action for any person against an employer:

- for actions taken based on the employer's good faith belief that an employee used or possessed marijuana, except possession of medical marijuana by a qualifying patient, in the employer's workplace, while performing job duties, during work hours, or while on call in violation of the employer's employment policies;
- for actions taken, including discipline or termination of employment, based on the employer's good faith belief that an employee was unfit for duty or impaired as a result of marijuana use, or under the influence of marijuana, while at the employer's workplace, while performing job duties, during work hours or while on call in violation of the employer's workplace drug policy;
- for injury, loss or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired by marijuana;
- for subjecting an employee to drug testing or a fitness for duty evaluation, per a policy established under section 98(b)(1);
- for subjecting an applicant to drug testing or taking adverse action against an applicant, including, but not limited to, rescinding a conditional job offer, based on the results of a drug test, if an employer does not take adverse action against an applicant in regard to a drug test that is solely positive for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol unless it is an exempted employer, the applicant is applying for an exempted position, or the employer has established in an employment policy per section 98(b)(1) that a positive drug test for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol may result in adverse employment action; or
- if the employer is an exempted employer or the claims concern an exempted position.[227]

Note, however, that an employer, officer, agent or other person who violates any provision of sections 98 to 101 is not liable to the Labor Department for a civil penalty, nor can the Labor Department undertake

[226] CONN. GEN. STAT. § 21a-422q.

[227] CONN. GEN. STAT. § 21a-422r.

an investigation of an employer, officer, agent or other person based solely on an allegation that the employer, officer, agent or other person violated the provisions of this section.[228]

An employer is not required to accommodate an employee or to allow an employee to:

- perform duties while under the influence of marijuana; or
- possess, use or otherwise consume marijuana while performing duties or on the employer's premises except possession of medical marijuana by a qualifying patient.[229]

An employer can implement a policy prohibiting marijuana possession, use or other consumption by an employee except:

- as provided in section 21a-408p; and
- possession of medical marijuana by a qualifying patient if such policy is: (1) in writing in either physical or electronic form; and (2) made available to each employee before enactment of the policy. The employer must make any such policy available to each applicant at the time it makes an offer or conditional offer of employment.[230]

Note that this provision does not apply to:[231]

- an exempted employer (an employer whose primary activity is mining, utilities, construction, manufacturing, transportation or delivery, educational services, health care or social services, justice, public order, and safety activities, national security and international affairs[232]);
- an exempted employee (an employee holding an exempted position or working for an exempted employer[233]); or
- any employee who holds or is applying for an exempted position (*e.g.*, firefighter, emergency medical technician, police or peace officer or certain law enforcement or investigative function positions, certain positions involving operating a motor vehicle where laws requiring screening tests, positions requiring federal OSHA course certification in construction safety and health, position requiring federal Departments of Defense or Energy national security clearance, position requiring supervision or care of children, medical patients or vulnerable persons, position has the potential to adversely impact the health or safety of employees or the public, position funded wholly or partly by a federal grant, position at an entity whose primary purpose is to discourage drug use, a position at an exempt employer; if the provisions of sections 98 to 101 are inconsistent or otherwise in conflict with the provisions of an employment contract or CBA or federal law.)[234]

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[228] CONN. GEN. STAT. § 21a-422r.

[229] CONN. GEN. STAT. § 21a-422p.

[230] CONN. GEN. STAT. § 21a-422p.

[231] CONN. GEN. STAT. § 21a-422p.

[232] CONN. GEN. STAT. § 21a-422p.*Employer* includes any subdivision of a business entity that is a standalone business unit, including, but not limited to, having its own executive leadership, having some or significant autonomy, and having its own financial statements and results.

[233] CONN. GEN. STAT. § 21a-422p.

[234] CONN. GEN. STAT. § 21a-422p.

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[235]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[236]

3.2(d)(ii) *State Data Security Breach Guidelines*

Connecticut employers that own, license, or maintain computerized data concerning their employees are required to notify state-resident employees whenever electronically stored personal information concerning such employees has been accessed by someone, or reasonably believed to have been accessed by someone, who was not validly authorized to acquire such information.[237] *Personal information* means an individual's first name or first initial, and last name in combination with any one or more of the following: (1) Social Security number; (2) driver's license number or state identification card number; (3) financial account number, credit or debit card number in combination with any required security code, access code, or password that would permit access to the individual's financial account; (4) taxpayer identification number; (5) identity protection person identification number issued by the IRS; (6) passport number, military identification number, or any other number issued by the government that is commonly used to verify identity; (7) medical information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; (8) health insurance policy number or subscriber number, or any unique identifier used by a health insurer to identify the individual; (9) biometric information consisting of data generated by electronic measurements of an individual's unique physical characteristics used to authenticate or ascertain the individual's identity, such

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[235] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[236] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[237] CONN. GEN STAT. § 36a-701b(a).

as a fingerprint, voice print, retina or iris image; or, precise geolocation data as defined in the Connecticut Consumer Data Privacy and Online Monitoring Act. Personal information also includes a username or email address, in combination with a password or security question and answer that would permit access to an online account.[238]

Covered Entities & Information. Any person who conducts business in Connecticut, and who, in the ordinary course of business, owns, licenses, or maintains computerized data that includes personal information. Thus, coverage extends to any person that maintains computerized data that includes personal information that the person does not own. The law allows exceptions for a covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information and any person that complies with the notification requirements or security breach procedures of their primary or functional federal regulator.[239]

Content & Form of Notice. Notice may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 500,000; or
  - the covered entity does not have sufficient contact information.[240]

Substitute notice must consist of all of the following:

- email notice when the covered entity has an email address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media, including newspapers, radio, and television.[241]

In order to use substitute notice, a person must demonstrate the above criteria in the notice provided to the Attorney General.[242]

Residents whose login credentials were part of a breach may be notified electronically or in any other form that directs the person to promptly change any password or security question and answer, as applicable, or to take other appropriate steps to protect the affected online account and all other online accounts where they use the same username or email address and password or security question and answer.

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[238] CONN. GEN STAT. § 36a-701b(a). Exceptions include: (1) data that is encrypted or secured by any other method which renders the data unreadable or unusable; and (2) information lawfully available publicly through federal, local, or state government records or widely distributed media.

[239] CONN. GEN STAT. § 36a-701b.

[240] CONN. GEN STAT. § 36a-701b(e).

[241] CONN. GEN STAT. § 36a-701b(e).

[242] CONN. GEN STAT. § 36a-701b(e).

Timing of Notice. Notice must be given without unreasonable delay, but not later than 60 days after the discovery of the breach, unless federal law mandates a shorter notification period. If the entity identifies additional individuals affected by the breach following the 60 days, the entity must notify them as expediently as possible.

Notification may be delayed if:

- A law enforcement agency indicates that notification will impede a criminal investigation.
- A covered entity needs time to determine the nature and scope of the breach.
- A covered entity needs time to identify the individuals affected.
- A covered entity needs time to restore the reasonable integrity of the data system.[243]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[244] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[245]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[246]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[247]

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[243] CONN. GEN STAT. § 36a-701b(b)(1).

[244] 29 U.S.C. § 218(a).

[245] 29 U.S.C. § 206.

[246] 29 U.S.C. §§ 203,206.

[247] 29 U.S.C. § 3(m)(2)(B).

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[248] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

The minimum wage in Connecticut is currently $15.69 per hour for most nonexempt employees, see Table 9 in 3.3(b)(ii) Tipped Employees. Under Connecticut's Minimum Wage Act, if the federal minimum wage (currently $7.25 per hour) becomes equal or higher than the state minimum wage, the state minimum wage will become one-half of 1% rounded to the nearest whole cent more than the highest federal minimum wage.[249] Beginning on January 1, 2024, and each subsequent January 1st, the minimum wage will be annually adjusted based on changes in the employment cost index, rounded to the nearest whole cent, *e.g.*, on January 1, 2025, it will increase to $16.35. However, the state labor department can recommend to the governor that an increase be suspended if there are two consecutive quarters of negative growth in Connecticut's real gross domestic product, and then the governor may send a recommendation to the state legislature.

Additional minimum wage (and overtime obligations) derive from wage orders issued by the state labor commissioner. These wage orders address payment of minimum wages and overtime, allowances for gratuities, record keeping and other obligations, which are specific to particular industries. Wage orders have been issued for the restaurant/hotel restaurant[250] and retail/mercantile industries.[251]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. The law establishes a minimum cash wage for covered tipped employees – excluding bartenders – in the hotel and restaurant industries, and a separate minimum cash wage for bartenders. Table 9 details the minimum wage – along with the minimum cash wage and maximum tip credit for covered tipped employees and bartenders – that applies on and after June 1, 2023. If a tipped employee does not make in tips the equivalent of the tip credit per hour, an employer must make up the difference between the wage actually made and the minimum wage. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.

Employers that want to take the tip credit must meet the following requirements:

- the job must be one in which tips have customarily constituted part of the employee's remuneration and the employee must be made aware of this when hired;
- the amount of gratuities the employer claims as a "tip credit" toward the state minimum wage must be recorded on a daily, weekly, or bi-weekly basis in a wage record; and

[248] 29 U.S.C. § 207.

[249] CONN. GEN. STAT. § 31-58(j).

[250] CONN. AGENCIES REGS. §§ 31-62-E1 *et seq.*

[251] CONN. AGENCIES REGS. §§ 31-62-D1 *et seq.*

- the employer must provide substantial evidence that not less than the tip credit amount was received by the employee, *e.g.*, a written or electronic attestation or statement that wages directly received from the employer, plus tips and/or other allowances, equal at least the state minimum wage for each hour worked during the pay period.
    - Additionally, if the restaurant and hospitality wage order applies, the attestation or statement must contain the week ending date of the payroll week for which an employer claims the tip credit, and may include documentation via an electronic point of service system or any other method that verifies the amount the employee received in tips for the applicable pay period.[252]

Table 9. Minimum Wage for Tipped Employees

Date	Minimum Wage	Minimum Cash Wage (Tipped Employees)	Maximum Tip Credit (Tipped Employees)	Minimum Cash Wage (Bartenders)	Maximum Tip Credit (Bartenders)
June 1, 2023	$15.00	$6.38	$8.62	$8.23	$6.77
January 1, 2024	$15.69	$6.38	$9.31	$8.23	$7.46
January 1, 2025	$16.35	$6.38	$9.97	$8.23	$8.12
January 1, 2026	TBD	$6.38	TBD	$8.23	TBD

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

For purposes of Connecticut's minimum wage and overtime provisions, the following types of workers are not considered employees:

- any individual employed in camps or resorts which are open no more than six months of the year;
- individuals employed in domestic service in a private home, except any individual in domestic service employment as defined in the FLSA regulations;
- an individual employed in a *bona fide* executive, administrative, or professional capacity as defined in the state regulations;
- federal government employees;
- individuals engaged in the activities of an educational, charitable, religious, scientific, historical, literary, or nonprofit organization where the employer-employee relationship does not exist or where the services rendered to such organizations are on a voluntary basis;
- any individual employed as a head resident or resident assistant by a college or university;

[252] CONN. AGENCIES REGS. §§ 31-60-2, 31-62-E3. *See also, e.g.*, *Nettleton v. C & L Diners, LLC*, 2023 WL 3805822 (Conn. App. Ct. June 6, 2023) (no private cause of action under Conn. Gen. Stat. § 31-68(a) for a recordkeeping violation under Conn. Agencies Regs. § 31-62-E3; Noncompliance with § 31-62-E3(b)-(c) – recording tips claimed as credit and attestation or statement concerning tips received – does not invalidate the tip credit).

- babysitters;
- an outside salesperson as defined in the FLSA regulations;
- any individual employed by a nonprofit theater, provided such theater does not operate for more than seven months in any calendar year; or
- a member of the armed forces of the state performing military duty.[253]

Further, certain workers may be paid a sub-minimum wage. The minimum wage rate for learners, beginners, and persons under the age of 18 years of age may not be less than 85% of the minimum fair wage for the first 200 hours of such employment and equal to the minimum fair wage thereafter, except for institutional training programs specifically exempted by the state labor commissioner.[254] The commissioner is also authorized to issue a special license authorizing employers to pay less than the minimum wage to persons whose earning capacity is impaired by age or disability.[255]

3.3(c) *State Guidelines on Overtime Obligations*

Similar to the federal overtime requirements, Connecticut employers must pay nonexempt employees one-and-one-half times their regular rate for all hours worked over 40 in a week.[256]

3.3(d) *State Guidelines on Overtime Exemptions*

The Connecticut Minimum Wage Act includes exemptions from the overtime requirements for the following types of employees:

- persons employed in a *bona fide* executive, administrative or professional capacity, as set forth in 3.3(d)(i) to **(vi)**;
- agricultural employees;[257]
- seamen;[258]
- announcers, news editors, and chief engineers of a radio or television station;[259]
- employees covered by an individual employment contract or a collective bargaining agreement, if the contract or agreement meets certain requirements;[260] and
- certain employees in the following categories: hospital employees, salespersons, drivers, helpers, police officers, firefighters, motor vehicle mechanics, farm-implement mechanics, and mortgage loan originators.[261]

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[253] CONN. GEN. STAT. § 31-58(e).

[254] CONN. GEN. STAT. § 31-58(i).

[255] CONN. GEN. STAT. § 31-67. However, employers are cautioned that this provision may run afoul of state and federal discrimination laws.

[256] CONN. GEN. STAT. §§ 31-76b, 31-76c.

[257] CONN. GEN. STAT. § 31-76i(k).

[258] CONN. GEN. STAT. § 31-76i(b).

[259] CONN. GEN. STAT. § 31-76i(c).

[260] CONN. GEN. STAT. § 31-76e.

[261] CONN. GEN. STAT. §§ 31-76h, 31-76i.

Before turning to some of the overtime exemptions under Connecticut law, it is important to reiterate that federal wage and hour laws do not preempt state laws[262] and that the law most beneficial to the employee will apply. Therefore, even if an employee meets one of the exemptions discussed below under state law, if the employee does not meet the requirements of the federal exemption, including the salary thresholds, then the employee will not qualify as exempt.

3.3(d)(i) *Executive Exemption*

Under Connecticut law, an employee is covered by the executive exemption if the employee meets either of the following two tests.

Executive Test I ("Long Test"). The employment must meet the following conditions:

- the employee is paid on a salary basis at least $400 per week, exclusive of board, lodging, or other facilities;
- the employee's primary duty consists of the management of the employing enterprise, or of a customarily recognized department or subdivision;
- the employee customarily and regularly directs the work of two or more other employees;
- the employee has the authority to hire or fire other employees, or their suggestions and recommendations as to hiring, firing, or any other change of status of other employees will be given particular weight;
- the employee customarily and regularly exercises discretionary powers; and
- the employee does not devote more than 20% (40% in retail or service establishment) of the workweek to nonexempt duties.[263]

Executive Test II ("Short Test"). The employment must meet the following conditions:

- the employee is paid on a salary basis of at least $475 per week, exclusive of board, lodging, or other facilities;
- the employee's primary duty consists of managing the employing enterprise, or a customarily recognized department or subdivision thereof; and
- the employee customarily and regularly directs the work of two or more employees.[264]

Employers covered under the FLSA should consult the federal provisions, as the federal minimum salary requirement currently exceeds the state requirement under Executive Test I. Further, the executive exemption tests under Connecticut law do not apply to:

- an employee who owns at least a 20% interest in the employing enterprise; or
- an employee in training for a *bona fide* executive position if all the following requirements are met:
  - the training period does not exceed six months;

[262] 29 U.S.C. § 218(a).

[263] CONN. AGENCIES REGS. § 31-60-14.

[264] CONN. AGENCIES REGS. § 31-60-14.

- the employee is paid on a salary basis at least $375 per week, exclusive of board, lodging, or other facilities during the training period;
- a tentative outline of the training program has been approved by the Connecticut Department of Labor; and
- the employer pays tuition costs and fees, if any, for such instruction and reimburses the employee for travel expenses to and from each destination (other than local destinations), where such instruction or training is provided.[265]

3.3(d)(ii) *Administrative Exemption*

Under Connecticut law, an employee is covered by the administrative exemption if the employee meets either of the following two tests.

Administrative Test I ("Long Test"). The employment must meet the following conditions:

- the employee is paid on a salary or fee basis at least $400 per week, exclusive of board, lodging, or other facilities, or in the case of academic administrative personnel, paid on a salary basis which is at least equal to the entrance salary for teachers in the school system or educational establishment where employed;
- the employee's primary duty consists of either:
  - the performance of office or nonmanual work directly related to management policies or general business operations of the employer or its customers; or
  - the performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision, in work directly related to the academic instruction or training;
- the employee customarily and regularly exercises discretion and independent judgment; and
  - regularly and directly assists a proprietor, or an employee employed in a *bona fide* executive or administrative capacity;
  - performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
  - executes under only general supervision special assignments and tasks; and
- the employee does not devote more than 20% (40% in retail or service establishment) of the workweek to nonexempt duties.[266]

Administrative Test II ("Short Test"). The employment must meet the following conditions:

- the employee is paid on a salary or fee basis at least $475 per week, exclusive of board, lodging, or other facilities; and

[265] CONN. AGENCIES REGS. § 31-60-14.

[266] CONN. AGENCIES REGS. § 31-60-15.

- the employee's primary duty consists of either:
  - the performance of office or nonmanual work directly related to management policies or general business operations of the employer or its customers; or
  - the performance of functions in the administration of a school system or educational establishment, or of a department or subdivision, in work directly related to the academic instruction or training.[267]

Employers covered under the FLSA should consult the federal provisions, as the federal minimum salary requirement currently exceeds the state requirement under Administrative Test I.

3.3(d)(iii) *Professional Exemption*

Under Connecticut law, an employee is covered by the professional exemption if the employee meets either of the following two tests.

Professional Test I ("Long Test"). The employment must meet the following conditions:

- the employee is paid on a salary or fee basis at least $400 per week, exclusive of board, lodging, or other facilities;
- the employee's primary duty consists of performing either:
  - work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes);
  - work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or
  - teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge while employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment;
- the work requires the consistent exercise of discretion and judgment in its performance;
- the work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and
- the employee does not devote more than 20% of the workweek to nonexempt duties.[268]

Professional Test II ("Short Test"). The employment must meet the following conditions:

- the employee is paid on a salary or fee basis at least $475 per week, exclusive of board, lodging, or other facilities;

[267] CONN. AGENCIES REGS. § 31-60-15.

[268] CONN. AGENCIES REGS. § 31-60-16.

- the employee's primary duty consists of either:
  - work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes); or
  - teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge while employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment; and
- the work requires either:
  - consistent exercise of discretion and judgment in its performance; or
  - invention, imagination, or talent in a recognized field of artistic endeavor.[269]

Employers covered under the FLSA should consult the federal provisions, as the federal minimum salary requirement currently exceeds the state requirement under Professional Test I. Further, neither of the above tests apply to: (1) individuals with a valid law or medical license or certificate who actually engage in such practice; (2) medical degree holders engaged in an internship or resident program; or (3) in the case of an employee employed and engaged as a teacher in a school system or educational establishment.[270]

Computer Employees. Although a computer employee may qualify as a *bona fide* professional employee if paid on a salary or fee basis, Connecticut does not provide an overtime exemption for hourly-paid computer employees.

3.3(d)(iv) *Commissioned Sales Exemption*

Connecticut's overtime provisions do not apply to any inside salesperson whose sole duty is to sell a product or service and:

- whose regular rate of pay is in excess of two times the state minimum wage;
- more than half of the individual's compensation for a representative period of not less than one month represents commissions on goods or services; and
- does not work more than 54 hours during a work week of seven consecutive calendar days.[271]

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a *bona fide* commission rate are deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.[272]

3.3(d)(v) *Outside Sales Exemption*

Connecticut's overtime provisions do not apply to an *outside salesman* as defined under the FLSA.[273]

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[269] CONN. AGENCIES REGS. § 31-60-16.

[270] CONN. AGENCIES REGS. § 31-60-16.

[271] CONN. GEN. STAT. § 31-76i.

[272] CONN. GEN. STAT. § 31-76i.

[273] CONN. GEN. STAT. §§ 31-58, 31-76i.

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[274] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[275]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[276] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[277] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[278] Exemptions apply for smaller employers and air carriers.[279]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related

[274] 29 C.F.R. § 785.19.

[275] 29 C.F.R. § 785.18.

[276] 29 U.S.C. § 218d.

[277] 29 U.S.C. § 218d(b)(2).

[278] 29 U.S.C. § 218d(a).

[279] 29 U.S.C. § 218d(c), (d).

medical conditions.[280] Lactation is considered a related medical condition.[281] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[282] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. Connecticut employees required to work for seven and one-half or more consecutive hours are entitled to a meal period of at least 30 consecutive minutes at some time after the first two hours of work and before the last two hours of work. This meal period may be unpaid.[283] However, employees who are required to remain on the premises during meal periods must be paid for their meal period if they are required or permitted to work.[284]

The meal period provisions do not apply to an employer that provides 30 or more total minutes of paid rest or meal periods to employees within each 7.5 hour work period.[285] The meal period requirements also do not apply to a professional employee certified by the state education board and employed by a local or regional education board to work directly with children.[286] In addition, the state labor commissioner will exempt the employer from the meal period requirements if one of the following conditions is present:

- complying with this requirement would endanger public safety;
- the duties of the position can only be performed by one employee;
- the employer employs fewer than five employees in a given shift at one business location (the exemption would only apply to that particular shift); or
- the employer's operations require that employees be available to respond to urgent conditions, and the employees are compensated for the meal period.[287]

Rest Periods. There are no generally applicable rest period requirements for adults in Connecticut.

Exempt Employees. The meal period statute most likely applies to exempt employees. The statute does not define "employee," and there is no general definition statute that applies to the meal period provisions. Accordingly, in the absence of an express definition, coupled with the fact the legislature specifically exempted other types of workers from the meal period statute's requirements, the law should be interpreted as applying to exempt employees.

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[280] 42 U.S.C. § 2000gg–1.

[281] 29 C.F.R. § 1636.3.

[282] 29 C.F.R. § 1636.3.

[283] CONN. GEN. STAT. § 31-51ii.

[284] CONN. AGENCIES REGS. § 31-60-11.

[285] CONN. GEN. STAT. § 31-51ii.

[286] CONN. GEN. STAT. § 31-51ii.

[287] CONN. GEN. STAT. § 31-51ii.

Meal Period Waiver. The statute does not permit an employee to waive a meal period altogether; however, an employer and employee may agree to a different schedule of meal periods.[288]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no independent general meal or rest period requirements for minors in Connecticut. The adult standards apply, although there are special rules for minors working in agriculture.[289]

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

An employer that violates the Connecticut meal period provisions is liable to the Connecticut Department of Labor for a civil penalty of $300 for each violation.[290]

3.4(b)(iv) *Lactation Accommodation Under State Law*

In Connecticut, an employer must make reasonable efforts to provide a nursing employee with a private place near her work area to express milk, as long as doing so does not impose an undue hardship on the employer's operation. The provided space cannot be a toilet stall, and must: (1) be free from intrusion and shielded from the public while the employee expresses milk; (2) include or be situated near a refrigerator or other employee-provided portable cold storage device in which the employee can store milk; and (3) include access to an electrical outlet.[291]

Any employee may, at her discretion, express breast milk or breastfeed on site at her workplace during her meal or break period. Break time includes time the employee spends getting to and from the appropriate facility and time spent setting up necessary equipment.[292] Moreover, an employer cannot discriminate against, discipline, or take any adverse employment action against an employee because she elects to breast feed or express breast milk during meal or rest periods.[293]

Provided that there is no undue hardship to the employer, the room where an employee may express her milk must be free from intrusion and shielded from the public while she is doing so, include or be near a refrigerator or employee-provided portable cold storage for breast milk, and include access to an electrical outlet.[294]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[295] Therefore, courts

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[288] CONN. GEN. STAT. § 31-51ii.

[289] CONN. GEN. STAT. § 22-13.

[290] CONN. GEN. STAT. §§ 31-51ii, 31-69a.

[291] CONN. GEN. STAT. § 31-40w.

[292] Connecticut Commission on Human Rights & Opportunities, *Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work* (April 2019), *available at* https://portal.ct.gov/-/media/CHRO/20190412RevisedProposedPregnancyGuidancepdf.pdf.

[293] CONN. GEN. STAT. § 31-40w.

[294] CONN. GEN. STAT. § 31-40w..

[295] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29U.S.C. § 203(g).

and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[296]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

In Connecticut, *hours worked* include:

- all time during which an employee is required by the employer to be on the employer's premises, on duty, or at the prescribed workplace; and
- all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals is excluded (unless the employee is required or permitted to work during the mealtime).[297]

Working time in every instance must be computed to the nearest unit of 15 minutes.[298]

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Connecticut law addresses the compensability of all three.

Reporting Time. Working time includes, but is not limited to, the time when an employee is required to wait on the premises while no work is provided by the employer.[299]

A retail or mercantile employee who, by request or permission of the employer, reports for work, regardless of whether the employee is assigned any actual work, must be paid for a minimum of four hours at their regular rate. If the employee is regularly scheduled for less than four hours, as mutually agreed upon in writing between the employer and employee, and approved by the state labor department, this provision may be waived, provided that the minimum daily pay in every instance must be at least twice the applicable minimum hourly rate.[300]

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[296] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135S. Ct. 513, 519(2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[297] CONN. AGENCIES REGS. § 31-60-11(a).

[298] CONN. AGENCIES REGS. § 31-60-11(a).

[299] CONN. AGENCIES REGS. § 31-60-11(a).

[300] CONN. AGENCIES REGS. § 31-62-D2.

A restaurant or hotel employee who regularly reports to work (unless given notice otherwise the day before), or an employee called for work on any day, must be paid for at least two hours at not less than the minimum rate, provided the employee is able and willing to work for that length of time. If the employee is unwilling or unable to work the number of hours necessary to insure the two-hour guarantee, the employee must sign a statement to that effect that must be kept on file as part of the employer's records.[301]

On-Call Time. Working time begins when an employee is notified of their assignment and ends when the employee has completed the assignment when:

- an employee is subject to a call for emergency service and is not required to be at a location designated by the employer, but is required to keep the employer informed as to the location at which the employee may be contacted; or
- an employee is not specifically required the employer to be a subject to a call, but the employee is contacted by the employer and assigned to duty.[302]

Further, all time during which an employee is required to be on call for emergency service at a location designated by the employer is considered to be working time and must be paid for as such, regardless of whether the employee is actually called upon to work.[303]

Travel Time. Employees need not be compensated for normal commuting time spent traveling from home to an employee's usual place of employment or returning home.[304] However, commuting that is an integral and indispensable part of the principal activity of the employee may be compensable.[305] Employees must be compensated for travel time incidental to the performance of an employee's job. Travel that is for the benefit of the employer is considered work time. In addition, any expenses directly incidental to or resulting from such travel must be reimbursed by the employer, if payment of such expenses by the employee would bring the employee's earnings below the minimum wage.[306]

If an employer requires an employee to report to a place other than the usual place of employment at the beginning of the workday, any travel time spent in excess of the employee's usual commute is compensable. Similarly, if a work assignment at the end of an employee's workday requires excess travel, travel time in excess of the employee's usual commute is compensable.[307]

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[301] CONN. AGENCIES REGS. § 31-62-E1.

[302] CONN. GEN. STAT. § 31-76b; CONN. AGENCIES REGS. § 31-60-11(c); *see also Cashman v. Town of Tolland*, 883 A.2d 24 (Conn. Super Ct. 2004) (working time began when employee punched in at employer's premises and not when he was first contacted by telephone by his supervisor to come to work), *aff'd*, 882 A.2d 1236 (Conn. 2005).

[303] CONN. AGENCIES REGS. § 31-60-11(b).

[304] CONN. AGENCIES REGS. § 31-60-10.

[305] *See Lassen v. Hoyt Livery, Inc*., 120F. Supp. 3d 165, 173-74 (D. Conn. 2015) (limousine drivers who drive from home to pick up their first passenger of the day are performing an activity that is integral and indispensable to their principal activity, because the principal activity of a driver is to pick up and transport a passenger to a requested destination).

[306] CONN. AGENCIES REGS. § 31-60-10.

[307] CONN. AGENCIES REGS. § 31-60-10.

Restaurant and hotel employees required or permitted to travel from one establishment to another after the beginning or before the close of the workday must be paid for travel time at their regular rate, and must also be reimbursed for transportation costs.[308]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[309] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[310] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

Connecticut's statutes regulating minors in the workplace are very similar to the provisions of the FLSA. The restrictions on employment of minors are roughly broken down by age and type of work.

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Connecticut restricts the employment of persons under the age of 18 by age and by the type of job (see Table 10).

Table 10. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 18	Minors under age 18 cannot work in occupations the state labor department or public health department labels hazardous to their health.[311] *Additionally, minors under age 18 cannot work in certain occupations unless an inspection discloses that the conditions under which work is performed are not unduly hazardous and the employer has received written approval of these conditions from the state labor department, for example:* • bakery machine operation; • vehicle driver or helper (for a 3/4-ton truck or larger); • forklift or tiering truck operator; or

[308] CONN. AGENCIES REGS. § 31-62-E10.

[309] 29 C.F.R. §§ 570.36, 570.50.

[310] 29 C.F.R. § 570.6.

[311] CONN. GEN. STAT. § 31-23(c).

Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• climbing or working on ladders.[312]
Under Age 16	*Minors under age 16 cannot be employed or permitted to work:* • in hazardous occupations; • in any manufacturing, mechanical, mercantile, or theatrical industry; • in a restaurant or public dining room; • in any bowling alley, shoe-shining establishment, or barber shop; • in the operation of an elevator; or • in any occupation in which minors are required to stand continuously.[313] However, the state labor department may authorize minors between the ages of14 and 16 to engage in the above occupations if they are enrolled in a work-study program or a summer work-recreation program.[314] In addition, minors aged 15 or older may work in a mercantile establishment as a bagger, cashier, or stock clerk during school vacations lasting at least five days, subject to state time and hour restrictions.[315]

Restrictions on Selling or Serving Alcohol. In Connecticut, individuals under age 21 cannot work on any premises operating under a tavern permit. Moreover, individuals under age 21 cannot handle "any alcoholic liquor upon, in delivering any alcoholic liquor to, or in carrying or conveying any alcoholic liquor" from a premise that has a state-issued permit issued.[316] However, an individual over age 18 may be present in an establishment with a state liquor permit issued under the Liquor Control Act. Moreover, an individual aged 15 or older may be employed by an establishment with a grocery store beer permit.[317]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Restaurants & Similar Establishments. The following rules apply to public restaurants, cafes, dining rooms, barbershops, hairdressing, or manicuring establishments, amusement or recreational establishments, bowling alleys, shoe-shining establishments, billiards, or pool rooms and photograph galleries.

In Connecticut, the time and hour restrictions for minors under 18 depend on whether the minor is enrolled in school. Minors under age 18 who are enrolled in but have not graduated from a secondary educational institution cannot be employed:

- more than six hours in any regularly scheduled school day unless it precedes a nonschool day;

[312] CONN. AGENCIES REGS. § 31-23-1.

[313] CONN. GEN. STAT. §§ 31-23(a), 31-24, and 31-25.

[314] CONN. GEN. STAT. § 31-23(a).

[315] CONN. GEN. STAT. § 31-23(b).

[316] CONN. GEN. STAT. § 30-81.

[317] CONN. GEN. STAT. § 30-90a.

- more than eight hours in any other day;
- more than 32 hours in any calendar week during which the school where the minor is enrolled is in session;
- more than 48 hours in any other calendar week during which the school where the minor is enrolled is not in session; or
- between 10:00 P.M. and 6:00 A.M., except
  - no later than midnight (12:00 A.M.) for minors ages 16 and 17 who are not regularly attending school;
  - no later than 11:00 P.M. for minors ages 16 and 17 who are regularly attending school on days that precede a school day; and
  - no later than midnight (12:00 A.M.) for minors ages 16 and 17 who regularly attend school on days that do not precede a school day.[318]

However, a minor may work one day in a week for not more than 10 hours in that day, if the minor does not work more than six days or 48 hours in that week.[319] These time and hour restrictions also apply to minors employed in a mercantile establishment.[320]

Hours worked as part of an approved educational plan, cooperative program, or school-to-work program do not count towards daily and weekly limits.[321]

Minors under age 18 who are not enrolled in and have not graduated from a secondary education institution cannot be employed in public restaurants and similar establishments:

- more than nine hours a day;
- more than six days in a calendar week; and
- more than 48 hours in a calendar week.[322]

The same restrictions apply to a minor employed in a mercantile establishment.[323]

Minors at least 15 years old are permitted to work in a mercantile establishment as a bagger, cashier, or stock clerk, provided the employment is limited to school vacation periods when school is not in session for at least five consecutive days.[324]

3.6(b)(iii) *State Child Labor Exceptions*

The hazardous occupation prohibition for minors aged 18 and under does not apply to:

[318] CONN. GEN. STAT. §§ 31-14, 31-18.

[319] CONN. GEN. STAT. § 31-18.

[320] CONN. GEN. STAT. § 31-13.

[321] CONN. GEN. STAT. § 31-18.

[322] CONN. GEN. STAT. § 31-18.

[323] CONN. GEN. STAT. § 31-13.

[324] CONN. GEN. STAT. § 31-23.

- minors age 16 and older as apprentices in *bona fide* apprenticeship courses in manufacturing or mechanical establishments, vocational schools, or public schools;
- minors who have graduated from a secondary or vocational school in any manufacturing or mechanical establishment; or
- minors enrolled in a cooperative work-study program approved by the state labor and education commissioners.[325]

The prohibited occupations provisions for minors under the age of 16 do not apply to:

- agricultural employment;
- domestic service;
- street trades or the distribution of newspapers; or
- court-ordered vocational probation or vocational parole.[326]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

Before employing any minor under the age of 18, employers must obtain a certificate from the superintendent of schools or from an agent designated by the superintendent showing that the minor is of a minimum age.[327] To employ a minor as a caddie or in a pro shop at a municipal or private golf course, employers must obtain a certificate showing that the minor is 14 years of age or older. To employ a minor in a mercantile establishment, employers must obtain a certificate showing that the minor is 15 years of age or older. To employ a minor in any manufacturing, mechanical, or theatrical industry, restaurant or public dining room, bowling alley, shoe-shining establishment or barber shop, employers must obtain a certificate showing that the minor is 16 years of age or older.[328]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Wages and Workplace Standards Division of the Connecticut Department of Labor enforces the state's child labor laws. An employer that violates the child labor provisions is guilty of a class D felony for each offense and may be fined not less than $2,000 or more than $5,000 for each offense.[329]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

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[325] CONN. GEN. STAT. § 31-23(c).

[326] CONN. GEN. STAT. § 31-23(a).

[327] CONN. GEN. STAT. § 31-23(d).

[328] CONN. GEN. STAT. §§ 10-193, 10-194, and 31-23(b)(2).

[329] CONN. GEN. STAT. §§ 31-15a, 31-69.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[330]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[331]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[332]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[333] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[334]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement

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[330] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[331] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[332] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[333] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[334] 12 C.F.R. § 1005.2(b)(3)(i)(A).

that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[335] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[336]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[337]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[338]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

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[335] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[336] 12 C.F.R. § 1005.18.

[337] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[338] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[339] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[340] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[341] tools and equipment,[342] and business transportation and travel.[343] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[344]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[345]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[346]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[347]

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[339] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[340] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[341] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[342] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[343] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[344] 29 C.F.R. § 778.217.

[345] 29 C.F.R. § 531.38.

[346] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[347] 29 C.F.R. § 531.40.

- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[348]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[349] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[350]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[351]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[352] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is

[348] 29 C.F.R. § 531.40.

[349] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[350] 29 C.F.R. § 825.213.

[351] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[352] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[353]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[354]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[355]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[356]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. In Connecticut, wages may be paid by cash, negotiable checks or, with an employee's written or electronic authorization, by direct deposit or payroll card.[357]

Direct Deposit. *Direct deposit* is defined as the electronic payment of an employee's wages, salary, or other compensation that is deposited into an employee's account in any bank, Connecticut credit union, or federal credit union that has agreed with the employer to accept such wages, salary, or other compensation.[358] Mandatory direct deposit is not permitted in Connecticut. However, upon an employee's written or electronic request, wages may be credited to the employee's account in any bank that agrees to accept such deposits.[359]

Payroll Debit Card. Connecticut permits the use of payroll cards for wage payment. A *payroll card* is "a stored value card or other device used by an employee to access wages from a payroll card account and

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[353] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[354] 29 C.F.R. § 531.36.

[355] 29 C.F.R. § 531.37.

[356] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[357] CONN. GEN. STAT. § 31-71b(a).

[358] CONN. GEN. STAT. § 31-71k(a)(1).

[359] CONN. GEN. STAT. § 31-71b(a).

that is redeemable at the employee's election at multiple unaffiliated merchants or service providers, bank branches or automated teller machines."[360] In order to use a payroll card as a method of wage payment, an employer must:

- provide employees with clear and conspicuous written notice of the employer's payroll card program before starting the use of payroll cards. The notice must state:
  - that payment of wages, salary, or other compensation by means of a payroll card account is voluntary and the employee may instead choose to receive wages, salary, or other compensation by either direct deposit or by negotiable check;
  - the terms and conditions relating to the use of the payroll card, including an itemized list of fees that may be assessed by the card issuer and their amounts;
  - the methods available to employees both for accessing their full wages, salary, or other compensation without incurring a transaction fee, and for avoiding or minimizing fees for use of the payroll card;
  - the methods available to employees for checking their balances in the payroll card account without cost; and
  - that third parties may assess additional fees.
- provide each employee with the option of receiving wages, salary, or other compensation by direct deposit and by negotiable check; and
- secure each employee's voluntary, express authorization, in writing or electronically, to receive payment by means of a payroll card account without any intimidation, coercion, or fear of discharge or reprisal from the employer for the employee's refusal to accept such payment of wages, salary, or other compensation by means of a payroll card account.[361]

Employees may withdraw their authorization to receive payment via payroll card by providing timely notice to the employer that the employee wishes to receive payment by direct deposit or negotiable check. The employer must begin payment by direct deposit: (1) as soon as practicable but no later than the first payday after 14 days from receiving both the employee's request and the account information necessary to make the deposit; or (2) by check as soon as practicable but no later than the first payday after 14 days from receiving the employee's request.[362]

Employers that use payroll cards cannot pass on any associated costs to their employees. The payroll card account cannot allow for overdrafts, to the extent possible, and no fees or interest may be imposed for any overdrafts or for the first two declined transactions of each month. While a payroll card may include an expiration date for the card itself, funds in a payroll card account do not expire. Prior to the card's expiration date, the employer must issue the employee a replacement card, without charge, during the period when wages, salary, or other compensation are applied to the payroll card account by the employer and for 60 days after the last transfer of wages, salary, or other compensation is applied to the payroll card account by the employer.[363]

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[360] CONN. GEN. STAT. § 31-71k.

[361] CONN. GEN. STAT. § 31-71k.

[362] CONN. GEN. STAT. § 31-71k.

[363] CONN. GEN. STAT. § 31-71k.

Each pay period, but not more frequently than each week, an employee who receives wage payment via payroll card must be allowed to make at least three withdrawals from the payroll card account at no cost. One withdrawal may be for the full amount of the employee's net wages, salary, or other compensation for the pay period at a depository financial institution or other convenient location.[364]

Employers are prohibited from requiring wage payment via payroll card account as a condition of employment or a condition for the receipt of any benefit or other form of remuneration for any employee.[365]

3.7(b)(ii) *Frequency of Payment Under State Law*

Although an employer may choose any dates or day of the week on which to pay its employees, Connecticut law requires employers to pay each employee weekly or once every two weeks on a regular payday designated in advance. Employees must be paid within eight days of the end of the pay period. If the regular payday falls on a nonworkday, payment must be made on the preceding workday.[366]

An employer may apply to the Connecticut Department of Labor (CTDOL) for a waiver of these requirements in order to establish paydays less frequently than once every two weeks, as long as each employee affected will be paid in full at least once in each calendar month on a regularly established schedule.[367] For employees that are paid by commission, all commissions must be settled in full at least once per month.[368]

3.7(b)(iii) *Final Payment Under State Law*

Under Connecticut law, an employee who is discharged must be paid the employee's final wages no later than the next business day. An employee who is laid off or is suspended as a result of a labor dispute must be paid no later than the next regular payday.[369]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

With each wage payment, Connecticut employers must provide a written statement to nonexempt employees that includes:

- a record of hours worked;
- gross earnings showing straight time and overtime as separate entries;
- itemized deductions; and
- net earnings.[370]

Effective January 1, 2025:

- the number of hours if any, of paid sick leave accrued by or provided to the employee; and

[364] CONN. GEN. STAT. § 31-71k.

[365] CONN. GEN. STAT. § 31-71k.

[366] CONN. GEN. STAT. § 31-71b.

[367] CONN. GEN. STAT. § 31-71i.

[368] CONN. AGENCIES REGS. § 31-60-1.

[369] CONN. GEN. STAT. § 31-71c.

[370] CONN. GEN. STAT. § 31-13a.

- the number of hours if any, used by the employee during the year.[371]

The employer must furnish wage statements in writing, or with the employee's explicit consent, electronically. If the wage statement is provided electronically, the employer must provide a means for each employee to securely, privately, and conveniently access and print the wage statement. The employer must incorporate reasonable safeguards regarding any information contained in the electronically-furnished statement to protect the confidentiality of the employee's personal information. An itemized statement of deductions, gross and net earnings only must be given to employees that are exempt from state and federal timekeeping and overtime requirements..[372]

3.7(b)(v) *Wage Transparency*

Connecticut's equal pay statute provides that an employer cannot:

- prohibit an employee from disclosing or discussing the amount of the employee's wages or the wages of another employee;
- prohibit an employee from inquiring about the wages of another employee;
- require an employee to sign a waiver or other document that denies the employee the right to disclose or discuss the amount of the employee's wages or the wages of another employee;
- require an employee to sign a waiver or other document that denies the employee the right to inquire about the wages of another employee; or
- discharge, retaliate against, or otherwise penalize any employee who discloses or discusses the amount of the employee's wages or the wages of another employee or inquires about the wages of another employee.[373]

An employee alleging a violation of the wage disclosure statute may file a civil action within two years of the alleged violation.[374]

An employer is prohibited from failing or refusing to:

- provide a job applicant with the wage range for a position for which the applicant is applying, upon the earliest of: (1) the applicant's request; or (2) prior to or at the time the applicant is made an offer of compensation; or
- provide an employee the wage range for the employee's position upon: (1) the hiring of the employee; (2) a change in the employee's position with the employer; or (3) the employee's first request for a wage range.[375]

Wage range means the range of wages an employer anticipates relying on when setting wages for a position, and may include reference to any applicable pay scale, previously determined range of wages

[371] CONN. GEN. STAT. § 31-57w (c) .

[372] CONN. GEN. STAT. § 31-13a.

[373] CONN. GEN. STAT. § 31-40z.

[374] CONN. GEN. STAT. § 31-40z.

[375] CONN. GEN. STAT. § 31-40z.

for the position, actual range of wages for those employees currently holding comparable positions, or the employer's budgeted amount for the position.[376]

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

There are no general notice requirements in Connecticut. However, the CTDOL can approve an employer's petition to pay wages less frequently than required as discussed in **3.7(b)(ii)**, but the employer should provide sufficient advanced notice to employees affected by the change.[377] With respect to a change in rate of pay, in the event of a pay decrease, affected employees must be notified in advance of the pay period and in writing.[378]

3.7(b)(vii) *Paying for Expenses Under State Law*

In Connecticut, there is no general obligation to indemnify an employee for business expenses. However, state law does include business expense provisions specific to travel, uniforms, and equipment.

Travel. The employer must pay for expenses directly incidental to and resulting from an employee's compensable travel time if payment made by the employee would bring the employee's earnings below the minimum wage.[379] Further, hotel employees who are required or permitted to travel from one establishment to another after the beginning or before the close of the workday must be reimbursed for the cost of transportation.[380] If an employee receives reimbursement for travel expenses, such amounts are not included in the calculation of the employee's regular rate for overtime purposes.[381]

Uniforms. Connecticut employers may require employees to pay for uniform costs, but only if the cost would not decrease employees' wages below minimum wage. An employer cannot deduct more than $1.50 per week or the actual cost, whichever is lower, towards satisfying its minimum wage obligations, for maintaining apparel or for laundering and cleaning of apparel. *Apparel* is defined as "uniforms or other clothing supplied by the employer for use in the course of employment but does not include articles of clothing purchased by the employee or clothing usually required for health, comfort or convenience of the employee."[382]

In the mercantile trade, the cost of uniforms required as a condition of employment and the reasonable cost of uniform maintenance may not be charged to the employee if this would result in the employee being paid less than the state minimum wage.[383] Restaurant and hotel employers cannot require employees to pay a deposit for work uniforms except with express permission from the CTDOL.[384]

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[376] CONN. GEN. STAT. § 31-40z.

[377] Connecticut Dep't of Labor, *Frequently Asked Questions for Employers*, *available at* https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/pay002.htm.

[378] CONN. GEN. STAT. § 31-71f; Connecticut Dep't of Labor, *Frequently Asked Questions for Employers*.

[379] CONN. AGENCIES REGS. § 31-60-10.

[380] CONN. AGENCIES REGS. § 31-62-E10.

[381] CONN. GEN. STAT. § 31-76b.

[382] CONN. AGENCIES REGS. § 31-60-9.

[383] CONN. AGENCIES REGS. § 31-62-D11.

[384] CONN. AGENCIES REGS. § 31-62-E8.

Tools & Equipment. When personal protective equipment (*e.g.*, gloves, boots, aprons) is necessary to safeguard or prevent injury to an employee or is required in the interest of sanitation, the employer must provide, pay for, and maintain these items. An employee cannot be charged.[385]

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. Connecticut law permits an employer to deduct from employee wages if:

- required or empowered to do so by state or federal law;
- the employee provides written authorization for the deduction on a form approved by the state labor commissioner;
- the employee provides written authorization for deductions for medical, surgical or hospital care or service, the deduction does not financially benefit the employer, and it is recorded in the employer's wage record book;
- the deductions are for contributions attributable to automatic enrollment in a qualifying retirement plan established by the employer; or
- the employer is required under the law of another state to withhold income tax of such other state because the employee performs services for the employer in the other state or resides in the other state.[386]

Prohibited Deductions. An employer may not request or require reimbursement from an employee for any loss or shortage that the employer incurred during the course of business as a result of any wrongdoing on the part of a customer.[387] In addition, specific to restaurant and hotel employees, Connecticut expressly prohibits employers from withholding any part of an employee's wages because of an agreement requiring the employee to give notice before leaving employment.[388]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Debt Collection. An employer must comply with a court-issued wage execution order that requires garnishment of the employee's wages in order to recover a debt.[389] The maximum part of the employee's aggregate weekly earnings that may be subject to withholding is the lesser of:

- 25% of the employee's disposable earnings for that week; or
- the amount by which the employee's disposable earnings for that week exceed forty times the greater of the federal minimum wage or the state minimum wage in effect at the time the earnings are payable.[390]

Connecticut law forbids employers from disciplining, suspending, or discharging an employee because of a wage execution against the employee unless the employer is served with more than seven wage executions against that employee in a calendar year. Employers that violate this law may be liable to the

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385 CONN. AGENCIES REGS. § 31-60-9.

386 CONN. GEN. STAT. § 31-71e.

387 CONN. GEN. STAT. § 31-51hh.

388 CONN. GEN. STAT. § 31-70.

389 CONN. GEN. STAT. § 52-361a.

390 CONN. GEN. STAT. § 52-361a(f).

employee for all earnings and benefits lost from the time of the employer's action until the employee's reinstatement.[391]

Orders of Support. Likewise, an employer must comply with a court-ordered income withholding order for child or spousal support.[392] An employee's garnishable income is the amount that exceeds the greater of:

- 85% of the first $145 per week of disposable income; or
- the amount exempt under section 1673 of Title 15 of the U.S. Code.[393]

Income withholding must begin within 14 days following the date of service of an order for withholding and within seven business days of the date the employee is paid thereafter.[394]

An employer is prohibited from discharging, refusing to employ, taking disciplinary action against, or discriminating against an employee subject to an order for withholding because of the existence of such order for withholding and the obligations or additional obligations which it imposes upon the employer.[395]

Where an employee is subject to an order of withholding for child support, Connecticut law requires an employer to notify the employee's dependent or Support Enforcement Services when the employee makes a claim for workers' compensation benefits or unemployment compensation benefits. The employer must also provide the employee's last known address and the name and address of the obligor's new employer, if known.

Additionally, when an employee-obligor makes a claim for workers' compensation benefits, the employer must provide a copy of the order(s) for withholding along with the employer's first report of occupational illness or injury to the employer's workers' compensation benefits carrier, and the benefits carrier must withhold funds pursuant to the withholding order and pay any sums withheld.[396]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Where there is a dispute over the amount of wages due, the employer is required to pay, without condition and within the time periods prescribed by law, all wages or portions thereof that are not in dispute. An employee's acceptance of partial payment does not constitute a release as to the balance of the employee's claim, and any release required by the employer as a condition of payment of amounts not in dispute is void and will not be enforced.[397] Connecticut law also prohibits any agreement between an employer and an employee that purports to defer payment of past-due wages until the employer has sufficient revenue to pay.[398]

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[391] CONN. GEN. STAT. § 52-361a(j).

[392] CONN. GEN. STAT. § 52-362.

[393] CONN. GEN. STAT. § 52-362(e).

[394] CONN. GEN. STAT. § 52-362(f).

[395] CONN. GEN. STAT. § 52-362(j).

[396] CONN. GEN. STAT. § 52-362.

[397] CONN. GEN. STAT. § 31-71d.

[398] *State v. Lynch*, 948 A.2d 1026 (Conn. 2008) (upholding criminal conviction against employer and holding that such agreements are void as against public policy).

An employer or other person responsible for paying wages may be subject to criminal and civil liability for failure to pay wages. An employee, or the labor commissioner on the employee's behalf, may bring a civil action to recover twice the full amount of wages owed, plus costs and attorneys' fees.[399] Depending upon the amount of wages owed, criminal fines range between $200 and $5,000, and prison terms from three months to five years, per offense.[400]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[401] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[402] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[403]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Connecticut law does not require employers to provide vacation pay or other personal time off, although it does require paid sick leave. Once an employer establishes a policy and promises vacation pay and other types of additional compensation, however, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively, and the employer must apply the vacation policy in a nondiscriminatory manner. Therefore, employers should draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In Connecticut, whether an employer may require forfeiture of unused vacation upon termination depends on the policy or agreement governing the accrual and use of vacation. If an employer's internal policy or a collective bargaining agreement provides for the payment of accrued fringe benefits (including, but not limited to, paid vacations, holidays, and earned leave) upon termination, and an employee is terminated without having received such accrued fringe benefits, the employee must be compensated for accrued benefits–exclusive of normal pension benefits in the form of wages–in accordance with the agreement or policy, but in no case less than the earned average rate for the accrual period.[404] Thus, if

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[399] CONN. GEN. STAT. § 31-72.

[400] CONN. GEN. STAT. § 31-71g.

[401] 29 U.S.C. § 1002.

[402] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[403] 490 U.S. 107, 119(1989).

[404] CONN. GEN. STAT. § 31-76k.

the policy or agreement is silent concerning whether accrued vacation must be paid out at the end of employment, forfeiture will result.[405] An employer may also include a "use-it-or-lose-it" provision, which prohibits carryover of accrued vacation time from one year to the next, in a vacation policy.[406]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

In Connecticut, employers may not compel any employee engaged in a commercial occupation or in the work of any industrial process to work more than six days in any calendar week, nor may an employer discharge an employee for refusing to do so.[407] Although the phrase *commercial occupation*, as used in this statute, has not been formally construed, it likely encompasses a range of occupations broader than mercantile occupations and applies to any occupation related to commerce—a class that includes virtually all employees.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[408] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[409] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[410] Here again, states may choose to

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[405] *See, e.g.*, *DeSorbo v. Town of East Haven*, 1997 WL 639447 (Conn. Super. Ct. July 8, 1997).

[406] *See, e.g.*, *Wright v. Rugged Bear, Inc.*, 2002 WL 31943947 (Conn. Super. Ct. Dec. 23, 2002); *Santangelo v. Elite Bev., Inc.*, 783 A.2d 500 (Conn. App. Ct. 2001).

[407] CONN. GEN. STAT. § 53-303e(a).

[408] 29 U.S.C. § 1144.

[409] 29 U.S.C. § 1161.

[410] 29 U.S.C. § 1167(3).

extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Prior to 2010, Connecticut solemnized civil unions, but all such unions were converted into legal marriages. Unmarried couples may register as domestic partners in the City of Hartford. However, state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee benefit plans.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[411]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[412]
- to take medical leave when the employee is unable to work because of a serious health condition;[413]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[414] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[415] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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411 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

412 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

413 29 C.F.R. §§ 825.112, 825.113.

414 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

415 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Connecticut's Family and Medical Leave Act (CFMLA) differs in some respects from the federal FMLA (*e.g.*, the hour requirements for eligibility are more lenient under the CFMLA, the CFMLA provides for leave under certain circumstances that the FMLA does not, and vice versa). Covered employers also must be aware of the CFMLA's requirements because employees may be protected under both the CFMLA and the FMLA. The state Paid Family and Medical Leave Insurance Program (PFML) amends the CFMLA and provides for paid family and medical leave insurance benefits for use during leave. The CFMLA provides job-protected leave, while the PFML provides only income replacement during leave.

Coverage & Eligibility

Covered Employers. The CFMLA generally applies to all employers in the state.[416] Certain governmental entities, local and regional boards of education, and private and parochial elementary or secondary schools are not covered by the CFMLA.[417]

Covered Employees. To be eligible for CFMLA leave, an employee must have worked for the employer for the previous three consecutive months immediately prior to the first day of the requested leave.[418] In order to receive paid leave benefits under the PFML, employees must have earned at least $2,325 within a base period. A base period is defined as the first four of the five most recently completed quarters. Employees fund the PFML program via a mandatory payroll tax.[419] Previously, the law required the employee to have worked for the employer for at least 12 months and have worked at least 1,000 hours during the 12-month period immediately prior to the first day of the requested leave.[420] In contrast to the federal FMLA, the CFMLA does not contain an exemption for highly compensated employees.

Permissible Reasons for Leave. An employee may take leave under the CFMLA and receive benefits under the PFML for one or more of the following reasons:

- birth, adoption or foster care placement of a child;
- to care for a spouse, child, parent, or parent of the employee's spouse who has a serious health condition;
- the employee's own serious health condition;
- to serve as an organ or bone marrow donor;[421]
- because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces;
- to care for a spouse, child, parent or next of kin who is a member of the armed forces and is undergoing medical treatment, recuperation or therapy, is otherwise in an outpatient status

[416] CONN. GEN. STAT. § 31-51kk,.

[417] Different statutory provisions regarding family and medical leave, including military caregiver leave, apply to state employees. *See* CONN. GEN. STAT. § 5-248a.

[418] CONN. GEN. STAT. § 31-51kk.

[419] CONN. GEN. STAT. § 31-49e.

[420] CONN. GEN. STAT. § 31-51kk(1); CONN. AGENCIES REGS. § 31-51qq-1(f), 31-51qq-6.

[421] CONN. GEN. STAT. §§ 31-51*ll*(a)(2); 31-49e; CONN. AGENCIES REGS. § 31-51qq-7.

or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty;

- to seek medical care or psychological or other counseling for physical or psychological injury or disability for a victim of family violence (**effective October 1, 2024**, includes a victim of sexual assault);
- to obtain services from a victim services organization on behalf of a victim of family violence (**effective October 1, 2024**, includes a victim of sexual assault);
- to relocate due to family violence (**effective October 1, 2024**, includes sexual assault); or
- to participate in any civil or criminal proceeding related to or resulting from family violence (**effective October 1, 2024**, includes sexual assault).[422]

Length of Leave. an employee is entitled to a total of 12 workweeks of leave during a 12-month period, and an employee may take up to two additional weeks of leave during such 12-month period for a serious health condition resulting in incapacitation that occurs during a pregnancy. Spouses employed by the same employer may take an aggregate of up to 12 weeks of leave in a 12-month period if leave is taken for the birth or placement of a child, or to care for a sick parent, or up to an aggregate of 26 weeks of leave in a 12-month period for a qualifying military exigency.[423]

Under the previous version of the law, with the exception of military caregiver leave, eligible employees were entitled to 16 weeks of leave during any 24-month period.[424] The maximum amount of CFMLA leave for an employee taking military caregiver leave was 26 workweeks in a single 12-month period for each armed forces member per serious injury or illness incurred in the line of duty. Spouses employed by the same employer could take an aggregate of up to 16 weeks of leave in a 24-month period if leave was taken for the birth or placement of a child, or to care for a sick parent.[425] If both spouses were entitled to military caregiver leave, the aggregate number of workweeks of leave to which both could be entitled may be limited to 26 workweeks during any 12-month period.[426]

Intermittent Leave & Reduced Schedule. Employees may take military caregiver or exigency leave, when serving as an organ or bone marrow donor, or leave for their own or a family member's serious health condition on an intermittent or reduced-schedule basis when medically necessary. Intermittent or reduced-schedule leave is available to care for a newborn or newly-placed child only with the agreement of the employer.[427] Intermittent or reduced leave may be used to care for a family member not only when the family member's condition is intermittent but also where the need for care is intermittent.[428]

When the request for intermittent or reduced-schedule leave is based upon foreseeable, planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave.[429] Such

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[422] CONN. GEN. STAT. § 31-51ss, as amended by S.B. 222 (Conn. 2024).

[423] CONN. GEN. STAT. § 31-51*l*(a)(1); (g).

[424] CONN. GEN. STAT. § 31-51*l*(a)(1); CONN. AGENCIES REGS. § 31-51qq-11.

[425] CONN. GEN. STAT. § 31-51*l*(g); CONN. AGENCIES REGS. § 31-51qq-13.

[426] CONN. GEN. STAT. § 31-51*l*(g).

[427] CONN. GEN. STAT. § 31-51*l*(c)(1).

[428] CONN. AGENCIES REGS. § 31-51qq-9.

[429] CONN. GEN. STAT. § 31-51*l*(c)(2); CONN. AGENCIES REGS. §§ 31-51qq-10, 31-51qq-14, and 31-51qq-15.

an arrangement, however, may not interfere with the rights assigned under any collective bargaining agreements.[430]

An employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less.[431]

Employer Obligations

Reinstatement. In language more restrictive to employers than the FMLA, employees who take leave under the CFMLA must be returned to their original position or, if not available, an equivalent position with equivalent benefits, pay and other terms and conditions of employment.[432] If an employee returning from a medical leave is not medically able to perform the original job, the employee must be transferred to a position suitable to the employee's physical condition, if available.[433] An employer may delay reinstatement to an employee who fails to provide a fitness for duty certificate to return to work as required by the employer.[434]

An employee has no greater right to reinstatement than if the employee had been continuously employed during the leave period. For example, if an employee is laid off during a leave and employment is terminated, the employer's obligation to restore the employee stops at the time the employee is laid off, provided the employer has no other continuing obligations.[435]

Benefits. Leave under both the federal FMLA and the CFMLA may be unpaid. However, under the CFMLA, an employer is required to allow employees to use up to two weeks of accumulated sick time during FMLA leave for the birth or placement of a child or to care for themself or for a family member.[436] An employee can choose to substitute any paid leave it has accrued under an employer's policy for the unpaid leave. An employer may require employees to do so, however the employee can retain up to two weeks of accrued paid leave.[437] Under the CFMLA, accrual of seniority and other employment benefits freezes until the employee's return from leave.[438] However, the CFMLA prohibits an employer from depriving an employee of any benefit that the employee may have accrued prior to the date the employee begins leave.[439] This is in contrast to the federal FMLA, which allows employers to deny employees' bonuses that are based on achievement of a specified goal, such as attendance, if they have not met the goal due to FMLA leave. For example, if an employee would have been eligible for a perfect attendance bonus but for the CFMLA leave, the employee must still be considered entitled to the bonus upon return from leave. Employees that take leave, however, are not entitled to accrual of seniority during leave, or to any right, benefit, or position of employment other than any right, benefit, or position the employee would have

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[430] CONN. GEN. STAT. § 31-51*ll*(c)(2).

[431] CONN. AGENCIES REGS. § 31-51qq-14.

[432] CONN. AGENCIES REGS. § 31-51qq-21(a).

[433] CONN. GEN. STAT. § 31-51nn(a); CONN. AGENCIES REGS. §§ 31-51qq-21 to 31-51qq-23.

[434] CONN. AGENCIES REGS. § 31-51qq-24.

[435] CONN. AGENCIES REGS. § 31-51qq-24; *see also* CONN. AGENCIES REGS. § 31-51qq-37.

[436] CONN. GEN. STAT. § 31-51pp(c)(1). Employers cannot take, or threaten to take, adverse employment action (*e.g.*, discharge, demotion) against an employee who seeks to use the two weeks of sick leave. CONN. GEN. STAT. § 31-51pp(c)(1).

[437] CONN. AGENCIES REGS. § 31-51qq-18.

[438] CONN. GEN. STAT. § 31-51nn(c).

[439] CONN. GEN. STAT. § 31-51nn(b).

had if leave was not taken.[440] An employee's entitlement to benefits other than group health benefits during a leave is determined by the employer's established policy for providing such benefits when the employee is on other forms of leave.[441] Unlike the federal FMLA, the CFMLA does not require employers to maintain health benefits during leave.

The PFML law provides up to 12 weeks of paid leave for eligible employees. A covered employer must begin to withhold up to .5% of employees' earnings, and far as practicable, must withhold from the employee's wages during each calendar year an amount that is substantially equivalent to the contribution reasonably estimated to be due from the employee with respect to the amount of their wages during the calendar year. The employer must remit the withholdings to the Paid Family and Medical Leave Insurance Authority.[442]

The weekly compensation available to covered employees is equal to 95% of the employee's base weekly earnings up to an amount equal to 40 times the minimum wage, and 60% of the employee's base weekly earnings above an amount equal to 40 times the minimum fair wage. However, the total weekly compensation cannot exceed an amount equal to sixty times the minimum fair wage.

A covered employee may receive family and medical leave insurance benefits concurrently with any employer-provided employment benefits, provided the employee's total compensation during the period of leave does not exceed the employee's regular rate of compensation. However, an employee cannot receive insurance benefits concurrently with unemployment or workers' compensation benefits. **Effective October 1, 2024**, employees may receive PFMLI benefits concurrently with benefits from the state's victim compensation program, as long as the total amount of compensation received does not exceed the employee's regular rate of compensation.[443]

Required Notice. If a covered employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer must provide written guidance to employees concerning all employee rights and obligations under the Connecticut FMLA upon hiring and when the employee gives notice of need for leave. The notice/guidance must detail the specific expectations and obligations of the employee and explain any consequences of a failure to meet these obligations, as well as procedures for filing complaints with the state. The contents of the notice are described more fully in the regulations. The employer must provide the general notice in a language in which the employees are literate. Employers furnishing notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law. Employers must distribute the notice to new employees upon hiring. The notice may be distributed electronically.[444]

After an employee requests leave or when an employer has knowledge of an FMLA-qualifying reason, the employer must notify the employee of their eligibility to take leave within five business days. After eligibility is determined, the employer must inform the employee of the determination. If the employee is not eligible, the notice must give at least one reason why, including the number of months that the employee has been employed by the employer. Conn. Agencies Regs. § 31-51qq-26. There are specific requirements for the designation notice, including whether the employer will require a fitness-for-duty

[440] CONN. GEN. STAT. § 31-51nn(c).

[441] CONN. AGENCIES REGS. § 31-51qq-20.

[442] CONN. GEN. STAT. § 31-49g.

[443] CONN. GEN. STAT. § 31-49g, as amended by S.B. 222 (Conn. 2024).

[444] CONN. AGENCIES REGS. § 31-51qq-26.

certification to return to work and the amount of leave counted against the employee's FMLA leave entitlement. If 10% of the employer's workforce is not literate in English, the employer must provide these notices in the language in which the employees are literate.[445]

Under the PFML law, an employer must, at the time of hiring and annually thereafter, provide written notice to each employee:

- of the entitlement to family and medical leave and the terms under which such leave may be used;
- of the opportunity to file a claim for paid family and medical leave insurance benefits under the law;
- that retaliation by an employer against an employee for requesting, applying for or using family and medical leave for which the employee is eligible is prohibited; and
- that the employee has a right to file a complaint with the Labor Commissioner for any violation of the law.[446]

Effective October 1, 2024, health care providers must display an informational poster about the PFML program, which will be created or approved of by the state.[447]

Employee Rights & Obligations

Required Notice. If need for a leave based on the birth or placement of a child is foreseeable, the employee must provide at least 30 days' notice of the intention to take leave. If the date of birth or placement requires leave to begin in less than 30 days, the employee must provide notice as is practicable.[448]

If the need for a leave is based on the employee or family member's serious health condition, or to donate an organ or bone marrow, the employee should attempt to schedule treatment so it will not disrupt the employer's operations, subject to the approval of the health care provider. The employee must provide the employer with 30 days' notice or as is otherwise practicable.[449]

If an employee fails to give 30 days' notice for foreseeable leave with no reasonable excuse for delay, the employer may delay the taking of leave until at least 30 days after notice was provided. It must be clear, however, that the employee had actual notice of the notice requirements.[450]

Medical Certification. An employer may require that a leave taken due to the serious health condition of an employee or family member or for military caregiver leave be supported by a certification issued by a health care provider stating:

1. the date on which the serious health condition commenced;

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[445] CONN. AGENCIES REGS. § 31-51qq-26.

[446] CONN. GEN. STAT. § 31-49q.

[447] CONN. GEN. STAT. § 31-49n, as amended by S.B. 222 (Conn. 2024).

[448] CONN. GEN. STAT. § 31-51*l*(f)(1).

[449] CONN. GEN. STAT. § 31-51*l*(f)(2); CONN. AGENCIES REGS. §§ 31-51qq-27 to 31-51qq-28.

[450] CONN. AGENCIES REGS. § 31-51qq-29.

2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;[451] and
4. where applicable, a statement that the employee is needed to care for the family member and an estimate of the amount of time needed, or a statement that the employee is unable to perform the functions of the job.[452]

Unlike the FMLA, the CFMLA does not allow for an employer's direct contact with an employee's health care provider to clarify a medical certification. Under the CFMLA, the contact must be between health care providers. Therefore, for leaves covered by the CFMLA, if an employer questions the adequacy of a health care certification, the employer may not itself request additional information from the employee's health care provider. A health care provider representing the employer may contact the health care provider, with the employee's consent, for the purposes of clarification and authenticity of the medical certification.[453]

An employer may require a second and third certification, at its own cost, if it has reason to doubt the first certification, and may require re-certifications on a reasonable basis not more than once every 30 days unless required by the health care provider.[454] The employer must pay for any recertification that is not covered by the employee's health insurance.[455]

An employer may require an employee to provide a fitness for duty certification before returning from a leave due to the employee's own serious health condition. The employee shall pay for any cost of the certification.[456]

Use of Paid Time Off. If leave is for the birth or placement of a child, or due to the serious health condition of a family member, an employee may elect or the employer may require the employee to substitute accrued paid vacation leave, personal leave, or family leave for any part of the unpaid leave.

If leave is for the employee's own serious health condition or to serve as an organ or bone marrow donor, an employee may elect or the employer may require the employee to substitute accrued paid vacation leave, personal leave, or medical or sick leave for any part of the unpaid leave, although an employer is not required to provide paid sick or medical leave in any situation that it would not normally do so. An

[451] Unlike the federal FMLA forms, as reflected in the CFMLA optional form, the CFMLA does not at this point allow an employer to ask for a diagnosis on the medical certification form.

[452] CONN. GEN. STAT. § 31-51mm(b). There are additional timing requirements of when the certification is due based on whether the leave is foreseeable or not. *See* CONN. AGENCIES REGS. § 31-51qq-30.

[453] CONN. AGENCIES REGS. § 31-51qq-32(a).

[454] The second certification may be by a health care provider chosen by the employer (but may not be a provider regularly employed by the employer). The third opinion must come from a health care provider approved by both the employer and the employee. This third opinion is final and binding upon both the employer and employee. CONN. GEN. STAT. § 31-51mm(c), (d).

[455] CONN. GEN. STAT. § 31-51mm(e); CONN. AGENCIES REGS §§ 31-51qq-30 to 31-51qq-33.

[456] CONN. GEN. STAT. § 31-51nn(d); CONN. AGENCIES REGS. § 31-51qq-35.

employee only has a right to substitute paid medical or sick leave to care for a seriously ill family member if the employer's leave plan allows paid leave to be used for that purpose.[457]

Claims for Benefits. An employee seeking to use PFML benefits during a period of family or medical leave must provide notice to the Paid Family and Medical Leave Insurance Authority and the employer of the employee's need for paid family and medical leave insurance benefits.[458]

Antiretaliation Provisions. Employers may not interfere with, restrain, or deny the exercise or attempted exercise of any rights provided under the CFMLA. Nor may an employer discriminate against an individual for exercising rights under the CFMLA or for opposing behavior made unlawful under the statute. Finally, an employer may not discharge or otherwise discriminate against an individual for instituting, giving information in connection with, or testifying during, any proceeding involving rights provided under the CFMLA.[459]

State Enforcement, Remedies & Penalties. Remedies available include restoration of any rights, benefits, entitlements, or protections afforded to the employee by the CFMLA, reinstatement to employment, back pay and any other monetary compensation for any loss that was the direct result of the employer's unlawful actions.[460]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[461] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Connecticut's statewide paid sick leave law took effect in 2012.

Coverage & Eligibility. Currently, the law applies to employers that employ 50 or more employees in Connecticut except certain manufacturing establishments or nationally chartered organizations that are exempt from federal tax laws.[462] Business size is determined based on its payroll for the week containing October 1, annually.[463] **Effective January 1, 2025**, however, employer coverage standards will change. The law will apply in the following years to employers that employ the following number of employees in

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[457] CONN. GEN. STAT. § 31-51*ll*(e)(2); CONN. AGENCIES REGS. § 31-51qq-18.

[458] CONN. GEN. STAT. § 31-49g.

[459] CONN. GEN. STAT. § 31-51pp; CONN. AGENCIES REGS. § 31-51qq-25.

[460] CONN. AGENCIES REGS. § 31-51qq-47.

[461] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[462] CONN. GEN. STAT. § 31-57r(4). The paid sick leave law does not apply to manufacturing establishments classified in sectors 31, 32 or 33 in the North American Industrial Classification System (NAICS).

[463] CONN. GEN. STAT. § 31-57r(4).

Connecticut: 2025 (25 or more); 2026 (11 or more); 2027 (one or more). Business size is determined based on its payroll for the week containing January, annually. However, the law will not apply to self-employed individuals or to employers that participate in a multiemployer health plan in which more than one employer is required to contribute to such plan which is maintained pursuant to one or more collective bargaining agreements between a construction-related tradesperson employee organization or organizations and employers.

Currently, the law covers *service workers* that are primarily engaged in certain various occupations as defined by the federal Bureau of Labor Statistics Standard Occupational Classification System. Note that a specific position may be included even if not specifically identified in the statute's covered occupation classifications.[464] The law does not apply to day or temporary workers that perform work on a per diem basis or an occasional or irregular basis for only the time required to complete the work, whether paid by the person for whom work is performed or by an employment agency or temporary help service.[465] However, **effective January 1, 2025**, generally the law will apply to all employees except seasonal employees who work 120 or fewer days in any year. Additionally, the law will not apply to employees who are members of a construction-related tradesperson employee organization that is a party to a multiemployer health plan in which more than one employer is required to contribute to such plan which is maintained pursuant to one or more collective bargaining agreements between a construction-related tradesperson employee organization or organizations and employers.

The law currently defines family member as a child or spouse. **Effective January 1, 2025**, it will expand to include a child, grandchild, grandparent, parent, sibling, spouse, and an individual related to the employee by blood or affinity whose close association is the equivalent of a family relationship.

Permitted Uses, Notice & Documentation. Currently, employees are entitled to the use of any accrued paid sick leave on and after the 120th calendar day of such employee's employment .[466] Employees must be able to use accrued leave in one-hour increments – regardless of the employer's timekeeping system – and are not entitled to use leave in lesser increments unless the employer allows.[467] Employees are not entitled to use more than 40 leave hours in a year.[468]

Accrued leave can be used for the following sick time purposes:

- illness, injury, or health condition of an employee or family member;
- mental health wellness day (a day during which the individual attends to their emotional and psychological well-being instead of working their regularly scheduled shift) for an employee (as of October 1, 2023);
- medical diagnosis, care, or treatment of a mental illness or physical illness, injury, or health condition of an employee or family member; or

[464] CONN. GEN. STAT. § 31-57r(3), (7).

[465] CONN. GEN. STAT. § 31-57r(2), (7).

[466] CONN. GEN. STAT. § 31-57s(b).

[467] Connecticut Dep't of Labor, *Guidance from the Connecticut Department of Labor Regarding Connecticut General Statutes §§ 31-57r – 31-57w – Paid Sick Leave*, *available at* https://portal.ct.gov/dol/-/media/DOL/2022-New-Design-System/Divisions/wage-and-workplace-standards/SickLeaveGuidance-2023.pdf.

[468] CONN. GEN. STAT. § 31-57s(a).

- preventive medical care for an employee or family member.[469]

Additionally, for an employee – or, as of October 1, 2023, their child, or, as of January 1, 2025, a family member (if the employee is not the perpetrator or alleged perpetrator) – who is a victim of family violence or sexual assault, accrued leave can be used for the following safe time purposes:

- to obtain medical care or psychological or other counseling for physical or psychological injury or disability;
- to obtain services from a victim services organization;
- relocation; and
- participation in any civil or criminal proceedings.[470]

Additionally, **effective January 1, 2025**, employees can use accrued leave for the following purposes:

- closure of an employer's place of business or a family member's school or place of care by order of a public official, due to a public health emergency; and
- a determination by a health authority having jurisdiction, an employer of the employee, an employer of a covered relation or a health care provider, that such employee or covered relation poses a risk to others' health due to the individual's exposure to a communicable illness, whether or not the individual contracted the communicable illness.

For foreseeable absences, employers can require advance notice of an employee's intention to use leave, but in no case more than seven days' notice before the date leave will begin.[471] For unforeseeable absences, employers can require employees to give notice of their intention to use leave as soon as practicable.[472] Note, however, that as of January 1, 2025 the law will no longer contain employee notice requirements.

If leave is taken for three or more consecutive days, employers may require reasonable documentation that leave is being taken for a lawful purpose.[473] Reasonable documentation for sick time purposes includes documentation signed by a health care provider who is treating the employee or family member indicating the need for the number of days of leave.[474] Reasonable documentation for safe time purposes includes a court record or documentation signed by a service worker or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the employee.[475] **Effective January 1, 2025**, however, employers cannot require employees to provide documentation to substantiate that they used leave for a covered purpose.

Accrual, Caps, Carry-Over, Cash Value & Cash-Out. An employer complies with the law if it offers any other paid leave (*e.g.*, vacation, personal days or paid time off or, **effective January 1, 2025**, unlimited paid time off) or a combination of other paid leave that may be used for a qualifying purpose, and **effective**

[469] CONN. GEN. STAT. § 31-57t(a)(1)-(2).

[470] CONN. GEN. STAT. § 31-57t(a)(3).

[471] CONN. GEN. STAT. § 31-57(b).

[472] CONN. GEN. STAT. § 31-57(b).

[473] CONN. GEN. STAT. § 31-57t(b).

[474] CONN. GEN. STAT. § 31-57t(b).

[475] CONN. GEN. STAT. § 31-57t(b).

January 1, 2025 under the same conditions, that accrues at a rate equal to or greater than the rate the law requires.[476] Otherwise, employees begin to accrue leave when employment begins or, **effective January 1, 2025**, when the law applies to the employee, whichever is later.[477] Employees accrue one sick leave hour for every 40 hours worked, which changes to one sick leave hours for every 30 hours worked on January 1, 2025, in one-hour units.[478] Employees can accrue a maximum of 40 leave hours per year.[479] Employees are entitled to carry over 40 accrued but unused leave hours from the current to the following year.[480] Beginning January 1, 2025, the law expressly allows employers to frontload 40 hours of paid sick leave and avoid carryover requirements.

Leave must be paid at the employee's normal hourly wage or the state minimum wage, whichever is greater.[481]

When employment ends, unless an employer policy or collective bargaining agreement provides otherwise, payment of accrued but unused leave is not required.[482]

Prohibitions. Employers cannot terminate, dismiss, or transfer any employee from one worksite to another solely to avoid qualifying as a covered employer.[483] Additionally, employers cannot take retaliatory personnel action or discriminate against an employee because the employee:

- requests or uses leave either in accordance with the law or the employer's policy; or
- files a complaint with the state labor department alleging a violation of the law.[484]

Effective January 1, 2025, the law also prohibits requiring employee to search for or find another employee to serve as their replacement when they use paid sick leave.

Notice. Posting & Record Keeping. At the time of hiring, employers must provide each covered employee notice of the following:

- the entitlement to leave, the amount of leave provided and the terms under which leave may be used;
- that retaliation by the employer against an employee for requesting or using leave for which the employee is eligible is prohibited; and
- that an employee has a right to file a complaint with the Labor Commissioner for any violation of the law.

Employers may – which becomes must also, **effective January 1, 2025** – comply with this notice requirement by conspicuously displaying a poster in a place accessible to employees at the employer's

[476] CONN. GEN. STAT. § 31-57s(c).

[477] CONN. GEN. STAT. § 31-57s(a)(1).

[478] CONN. GEN. STAT. § 31-57s(a)(2).

[479] CONN. GEN. STAT. § 31-57s(a).

[480] CONN. GEN. STAT. § 31-57s(a).

[481] CONN. GEN. STAT. § 31-57s(d).

[482] CONN. GEN. STAT. § 31-57t(d).

[483] CONN. GEN. STAT. § 31-57s(f).

[484] CONN. GEN. STAT. § 31-57v(a).

place of business that contains the required information in English and Spanish. Additionally, **effective January 1, 2025**, the law provides that employers must provide this notice to each employee no later than January 1, 2025 or at the time of hire, whichever is later. For employers that do not maintain a physical workplace or for employees that telework or perform work through a web- or app-based platform, employers must comply by sending such information via electronic communication or by a conspicuous posting of such information on a web- or app-based platform.

Beginning January 1, 2025, employers must include in paystubs the number of hours, if any, of paid sick leave accrued by or provided to the employee, and used by the employee during the year.

Currently, there are no specific recordkeeping provisions under the law. However, beginning January 1, 2025, for three years employers must retain records concerning the number of hours of paid sick leave accrued by or provided to the employee, the number of hours of paid sick leave used by the employee during the year, and hours worked by the employee.

State Enforcement, Remedies & Penalties. A private right of action does not exist. Employees may file complaints alleging a violation of the law with the Connecticut Department of Labor.[485] An employee may be awarded all appropriate relief, including payment for used leave, rehiring or reinstatement, and payment of back wages and reestablishment of employee benefits to which the individual otherwise would have been eligible for had retaliation or discrimination not occurred.[486] Additionally, employers can be assessed a $100 civil penalty for each violation of the law, and a $500 civil penalty for retaliation violations.[487] Beginning January 1, 2025, employers violating the paystub and/or recordkeeping requirements can be subject to a civil penalty of not more than $100.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[488] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an

[485] CONN. GEN. STAT. § 31-57v(c).

[486] CONN. GEN. STAT. § 31-57v(c).

[487] CONN. GEN. STAT. § 31-57v(c).

[488] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

employer may not compel an employee to take leave because she is pregnant, as long as she is able to perform her job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[489] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[490] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

As noted in **3.11(a)**, Connecticut's Human Rights and Opportunities Law makes it an unlawful discriminatory practice for an employer or the employer's agent to discriminate against an individual because of the individual's pregnancy, including refusing to grant a pregnant employee a reasonable leave of absence for disability resulting from her pregnancy.[491] "Disability resulting from pregnancy" includes any pregnancy-related impairment or physical limitations imposed by any pregnancy or delivery. Such limitations typically give rise to a need for leave six weeks following a vaginal delivery or eight weeks following a caesarian section. Although these time frames for leave are typical for pregnancies and deliveries with no complications, an employee has the right to take more or less of a reasonable leave of absence as needed.[492]

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[489] 29 C.F.R. § 825.202.

[490] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[491] CONN. GEN. STAT. § 46a-60.

[492] Connecticut Commission on Human Rights & Opportunities, *Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work* (April 2019), *available at* http://www.ct.gov/chro/lib/chro/2019-04-12_Revised_Proposed_Pregnancy_Guidance.pdf.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the CFMLA.[493] See 3.9(a)(ii) for additional information.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Connecticut law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

An eligible employee may take time off to serve as an organ or bone marrow donor as part of the employee's leave entitlement under the CFMLA.[494] See 3.9(a)(ii) for additional information.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Employers must grant each employee, in the case of a state election, or to each employee who is an elector in the case of any special election for U.S. senator, representative in Congress, state senator, or state representative, two hours of unpaid time off from regularly scheduled work on the day of the election for the purpose of voting, during the hours of voting. The employee must request the time off no less than two working days prior to the election. Employers must also grant an elector employee time off for a special election held for a judge of probate. These provisions apply until June 30, 2024.[495]

It is unlawful, under Connecticut law, for an employer to attempt to influence any election, municipal meeting, or school district election or meeting, within 60 days of the election or meeting. Prohibited acts

[493] CONN. GEN. STAT. §§ 31-51kk *et seq.*

[494] CONN. GEN. STAT. §§ 31-51kk *et seq.*

[495] CONN. GEN. STAT. § 31-57y.

include threatening or promising employment, or discharging an employee on account of that individual's vote. Employers that violate this law are guilty of a Class D felony.[496]

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Leave to Accept Elective Municipal or State Office. Private employers with more than 25 employees are required to grant a personal leave of absence for not more than two consecutive terms of office to employees who accept a full-time elective municipal or state office. Employees are required to give their employer notice in writing that they are a candidate for a full-time municipal or state office within 30 days after nomination for that office. When the employee reapplies for their original position after the term of office, employers are required to reinstate the employee to the original position or to a similar position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.[497]

Leave to Perform Duties as a Candidate, Member-Elect, or Member of the General Assembly. An employer with 25 or more employees may not terminate or otherwise discriminate against an employee who is absent from work to perform duties as a candidate, member-elect, or member of the General Assembly. Leave may be unpaid, but the employee may not lose any seniority due to the leave and must be provided a choice of shifts to accommodate the leave.[498]

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[499] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of

[496] CONN. GEN. STAT. § 9-365.

[497] CONN. GEN. STAT. § 31-51l.

[498] CONN. GEN. STAT. § 2-3a.

[499] 28 U.S.C. § 1875.

additional federal statutes.[500] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. Employers may not discharge, threaten, or coerce an employee because the employee receives a summons for jury service, responds to the summons, or serves as a juror.[501]

Employers are required to pay full-time employees their regular wages for the first five days of juror service. However, employers are not required to pay an employee for any day of juror service when the employee would not have accrued regular wages on that day or would not have worked more than one-half of a shift that extends into another day.[502] *Full-time employee* means an employee holding a position that is neither temporary nor casual, when the position normally requires 30 hours or more of work in each week, including employees working through a temporary help service whose position normally requires 30 hours or more of service in each week and who have been working in that position for more than 90 days.[503]

Under certain circumstances where an employer writes to the court and can demonstrate extreme financial hardship, the court may excuse the employer from compensating an employee serving as a juror.[504] Employers must file applications for compensation waivers not later than 15 days after receipt of the juror service certification and waiver application.

An employee who has served eight hours of jury duty in any one day is deemed to have worked a legal day's work, and an employer may not require the employee to work in excess of those eight hours.[505]

Leave to Comply with a Subpoena or Attend Judicial Proceedings. Employers must permit employees to take time off from work, without pay, to:

- comply with a legal subpoena to appear before any Connecticut court as a witness in a criminal proceeding;
- attend a court proceeding or participate in a police investigation related to a criminal case in which the employee is a *crime victim* (*i.e.*, has: (1) suffered direct or threatened physical, emotional, or financial harm as a result of the crime; or (2) is an immediate family member or guardian of a homicide victim or a person who suffers harm as a result of a crime and is a minor, physically disabled, or incompetent); or
- to attend a court proceeding related to a civil case in which the employee is a victim of family violence.

Employers are also prohibited from discharging, penalizing, threatening, or otherwise coercing an employee for taking such time off or because a restraining order or protective order has been issued on

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[500] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[501] CONN. GEN. STAT. § 51-247a(a).

[502] CONN. GEN. STAT. § 51-247.

[503] CONN. GEN. STAT. § 51-247.

[504] CONN. GEN. STAT. § 51-247c.

[505] CONN. GEN. STAT. § 51-247a.

the employee's behalf or because the employee is a victim of family violence.[506] See 3.9(j)(ii) for additional information.

Additionally, although not a statute requiring leave *per se*, employers are prohibited from discharging, retaliating, or discriminating against an employee who makes a good faith report of suspected child abuse as required by state law or who testifies or is about to testify in any proceeding involving child abuse or neglect. Employers are further prohibited from hindering, preventing, or attempting to hinder or prevent, any employee from making a report of suspected child abuse as required by state law.[507]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Employers with three or more employees must provide 12 days of leave per calendar year for an employee who is a victim of family violence (Effective October 1, 2024 or sexual assault).[508] *Family violence* occurs when there is an incident between family or household members that results in threatened or actual physical harm, bodily injury, or assault.[509] The leave is for the purpose of:

- seeking medical attention or psychological or other counseling for physical or psychological injury or disability for injuries caused by family violence (Effective October 1, 2024 or sexual assault);
- obtaining services from a victim services organization;
- relocating due to family violence (Effective October 1, 2024 or sexual assault); or
- participating in any civil or criminal proceeding related to or resulting from family violence (Effective October 1, 2024 or sexual assault).[510]

The employee must give the employer reasonable advance notice of the employee's intention to take time off—but employers cannot require notice that exceeds seven days. Advanced notice is not required where it is not feasible; however; an employer may require employees to provide notice as soon as practicable.[511] Employers may require the employee to provide a signed written statement certifying that

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[506] CONN. GEN. STAT. § 54-85b.

[507] CONN. GEN. STAT. § 17a-101e(a).

[508] CONN. GEN. STAT. § 31-51ss.

[509] CONN. GEN. STAT. § 46b-38a(1). *Family or household member* is defined broadly to include: (1) current and former spouses; (2) parents and children; (3) individuals who are at least 18 years old and related by blood or marriage; (4) individuals who currently reside or formerly resided together and are at least 16 years old; (5) individuals who have a child in common; and (6) individuals who are in, or have recently been in, a dating relationship. CONN. GEN. STAT. § 46b-38a(2).

[510] CONN. GEN. STAT. § 31-51ss(b).

[511] CONN. GEN. STAT. § 31-51ss(c).

the leave is due to family violence (**Effective October 1, 2024** or sexual assault). Employers may also request that the employee provide documentation such as:

- a police report or court record indicating that the employee was a victim of family violence (Effective October 1, 2024 or sexual assault); or
- a signed written statement from a victims services organization, an attorney, an employee of the Judicial Branch's Office of Victim Services or the Office of the Victim Advocate, or a licensed medical or other licensed professional that the employee has sought assistance regarding the family violence (Effective October 1, 2024 or sexual assault).[512]

To the extent allowed by law, the employer must maintain the confidentiality of an employee requesting leave and of any supporting documentation received from the employee.[513]

There is no requirement that the employee be compensated for absences taken pursuant to the statute. The employee may elect to use accrued paid leave, or, if there is no paid leave available, unpaid leave not to exceed 12 days per year. Furthermore, the statute states that leave taken under this provision "shall not affect any other leave provided under state or federal law."[514] Although this statutory language is not explained in the legislative history, a reasonable interpretation is that an employee may not be required to take this leave concurrently with other types of state and federally authorized leave.

An employee who is the parent, spouse, child, or sibling of a victim of homicide, or as a person designated by the victim to exercise the victim's rights, is entitled to time off of work to attend court proceedings with respect to the criminal case of the person charged with committing the crime that resulted in the victim's death.[515]

The Human Rights and Opportunities Act includes protections for victims of family violence.

Absent a bona fide occupational qualification or need, an employer cannot refuse to hire, employ, bar or discharge or otherwise discriminate against an individual because of race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, veteran status, or status as a victim of domestic violence.[516]

An employer cannot deny an employee a reasonable leave of absence in order to:

- seek attention for injuries caused by domestic violence, including for a child who is a victim of domestic violence, provided the employee is not the perpetrator of the domestic violence against the child;
- obtain services including safety planning from a domestic violence agency or rape crisis center as a result of domestic violence;

[512] CONN. GEN. STAT. § 31-51ss(d).

[513] CONN. GEN. STAT. § 31-51ss(g).

[514] CONN. GEN. STAT § 31-51ss(b).

[515] CONN. GEN. STAT § 54-85d.

[516] CONN. GEN. STAT § 46a-60(b)(1).

- obtain psychological counseling related to an incident or incidents of domestic violence, including for a child who is a victim of domestic violence, provided the employee is not the perpetrator of the domestic violence against the child;
- take other actions to increase safety from future incidents of domestic violence, including temporary or permanent relocation; or
- obtain legal services, assist in the prosecution of the offense, or otherwise participate in legal proceedings in relation to the incident or incidents of domestic violence.[517]

An employee who is absent from work for the reasons listed above must, within a reasonable time after the absence, provide a certification to the employer if the employer so requests. The following documents are acceptable forms of certification:

- a police report indicating that the employee or the employee's child was a victim of domestic violence;
- a court order protecting or separating the employee or employee's child from the perpetrator of an act of domestic violence;
- other evidence from the court or prosecuting attorney that the employee appeared in court; or
- documentation from a medical professional, domestic violence counselor or other health care provider, that the employee or the employee's child was receiving services, counseling or treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

If the incident of domestic violence resulted in an employee having a physical or mental disability, the employer must treat the employee in the same manner as an employee with any other disability.[518] Additionally, to the extent permitted by law, employers must maintain confidentiality of any information regarding an employee's status as a victim of domestic violence.[519]

Employers with three or more employees must post information concerning domestic violence and the resources available to the victims of domestic violence. The notice must be posted in a prominent and accessible location.[520]

Paid Sick Leave. Note that paid sick and safe leave is available to certain *service workers*. See **3.9(b)(ii)** for more information.

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed

[517] CONN. GEN. STAT § 46a-60(b)(13)(A).

[518] CONN. GEN. STAT § 46a-60(b)(13)(B).

[519] CONN. GEN. STAT § 46a-60(b)(13)(D).

[520] CONN. GEN. STAT § 46a-54(20).

information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[521]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[522] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.[523] Notably, leave is only available for covered relatives of military members called to active *federal* service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service Leave. Connecticut law requires that employees of the state continue to receive their salary or compensation while the employee is on leave for regularly ordered military or naval service as a *bona fide* member of the National Guard, naval militia, reserve corps, or organized militia, provided that

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[521] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[522] 29 C.F.R. § 825.126(a).

[523] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29C.F.R. § 825.126(a)(3).

the period of leave in any calendar year does not exceed 30 days.[524] Private employers are required to provide military service leave, but the leave may be unpaid.

Employers may not discharge an employee because the employee is eligible for induction into the U.S. armed forces, and employers are required to grant a leave of absence without loss of vacation or holiday privileges to any employee required to attend military reserve or National Guard meetings or drills as part of the employee's military service.[525]

In addition, private employees who are members of the armed forces of the state or reserve members of the U.S. armed forces are entitled to take leaves of absence for regularly-ordered military or naval duty without loss of vacation or holiday privileges, or effect on promotion, continued employment, reemployment, or reappointment to office. These protections also apply to members of the National Guard of other states who are employed in Connecticut.[526]

Family Military Leave. Connecticut's Family and Medical Leave Act provides leave because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces. It also provides leave to care for a spouse, child, parent or next of kin who is a member of the armed forces and is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty. See **3.9(a)(ii)** for additional information.

Civil Air Patrol Leave. Connecticut provides job protections for members of the civil air patrol.[527] This law prevents an employer from discriminating against, disciplining, or discharging an employee because the employee is a member of the civil air patrol. *Civil air patrol* means the civilian auxiliary of the U.S. Air Force. In addition to the antidiscrimination protections, the law an employer from discriminating against, disciplining, or discharging an employee because the employee is absent from work for the purpose of:

- responding as a member of the civil air patrol to an emergency declared by the Governor of Connecticut or the President of the United States;
- responding as a member of the civil air patrol to a request for assistance in an emergency, natural disaster or life-threatening event at the request of the U.S. Air Force or Coast Guard, the Department of Emergency Services and Public Protection, the Division of Emergency Management and Homeland Security within the Department of Emergency Services and Public Protection, the state police, or a local police department in Connecticut; or
- participating as a member of the civil air patrol in required emergency services training programs and exercises.[528]

An employee who is a member of the civil air patrol and is trained and qualified to provide emergency services is required to notify their employer: (1) by the employee's date of employment with the employer; or (2) by the date on which the employee joins the civil air patrol, whichever is latest, that the

[524] CONN. GEN. STAT. § 27-33.

[525] CONN. GEN. STAT. §§ 28-17, 27-33a.

[526] CONN. GEN. STAT. § 27-33.

[527] CONN. GEN. STAT. § 28-17a.

[528] CONN. GEN. STAT. § 28-17a.

employee may be called to participate in training or to serve in an emergency, natural disaster or life-threatening event due to the employee's status as a member of the civil air patrol.[529] Employees taking civil air patrol leave must give their employer as much notice as possible of the dates they will be absent and provide the employer with written verification from the civil air patrol of the purpose of the employee's absence. An absence from work for this purpose is not required to be a paid absence.[530]

Other Military-Related Protections: Spousal Unemployment. An employee who separates from work to accompany a spouse who is on active duty with the U.S. armed forces and is required to relocate by the armed forces is eligible for unemployment benefits. An employer's account will not be charged with respect to any voluntary separation that falls within this exception. However, the individual must provide evidence supporting the individual's claim, *e.g.*, documentation verifying the spouse's mandatory military transfer.[531]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Emergency Responder Leave. An employer may not discharge or otherwise discriminate against an employee who is a volunteer firefighter or a member of a volunteer ambulance service or company because the employee is late or absent from work as a result of responding to an emergency.[532]

Employees must:

- provide their employer a statement from the emergency responder chief of the employee's status as a volunteer;
- make every effort to notify their employer of an emergency call;
- if unable to notify their employer, provide a written statement from the emergency responder chief explaining why notice was not provided;
- at the employer's request, provide verification that the employee was responding to an emergency call; and
- notify their employer of any change in status as a volunteer emergency responder.[533]

In addition, an employer may not discharge, discipline or reduce the wages, vacation time, sick leave, or earned overtime accumulation of any employee because that employee is a member in a volunteer fire company or emergency medical service organization, nor can the employer require refusal to respond to an emergency as a condition of continued employment.[534]

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[529] CONN. GEN. STAT. § 28-17a.

[530] CONN. GEN. STAT. § 28-17a.

[531] CONN. GEN. STAT. § 31-236(a)(2)(A); CONN. AGENCIES REGS. § 31-236-23b.

[532] CONN. GEN. STAT. § 7-322c.

[533] CONN. GEN. STAT. § 7-322c.

[534] CONN. GEN. STAT. § 7-322b(b).

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[535] Employers are also required to comply with all applicable occupational safety and health standards.[536] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[537] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Connecticut, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[538] Thus, New Jersey is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. However, Connecticut's Occupational Safety and Health Act protects public employees only.[539] While Connecticut does not have an approved state plan directed to private-sector employees, there are several other state protections in place for private workers. In addition, employers must abide by the Fed-OSH Act.

Protection from Reproductive Hazards in Employment. Upon offering employment to a prospective employee, employers are required to inform the employee of any chemicals, toxic substances, radioactive materials, or other substances that the employer uses or produces in the manufacture of any item, product, or material, or that the employer uses or produces for purposes of research, experimentation, or treatment, when the employer should reasonably believe these substances will cause birth defects or constitute other reproductive hazards when an employee is exposed to these substances during the course of employment. This information must also be made available to current employees who are exposed to these hazards.[540] No particular method of communicating this information is required.

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[535] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[536] 29 U.S.C. § 654(a)(2).

[537] 29 U.S.C. § 667(c)(2).

[538] 29 U.S.C. § 667.

[539] CONN. GEN. STAT. §§ 31-367 *et seq.*

[540] CONN. GEN. STAT. § 31-40g.

Employers that use or produce toxic substances in the manufacture of any item, product, or material, or who use or produce toxic substances for purposes of research, experimentation, or treatment are required to provide new employees within the first month of employment with certain information specified in the statute regarding these substances.[541] When an employee transfers to a new position, which exposes them to additional toxic substances, employers must provide this information to the employee within one month of the employee's transfer.[542] Employees and their representatives have the right to request in writing that the employer provide them with information relating to these toxic substances as required by law. If this information is not given to the employee within five working days from receipt of the request, the employer may not require the employee to work with the substance(s) until the information has been provided.[543] Employers are required to post a sign informing employees of their right to receive information from their employer regarding the employer's use of toxic substances.[544]

Notification, Education & Training Requirements for Employers Using or Producing Carcinogens. Employers are required to post and make readily available for viewing by employees a list of all carcinogenic substances that the employer uses or produces in the manufacture of any item, product, or material, or that the employer uses or produces for purposes of research, experimentation, or treatment.[545] This list must be updated within 90 days of any effective changes to the meaning of "carcinogenic substance" under the statute.[546] Upon offering employment to a prospective employee, and on January 1st of each year, employers must give each employee a list of all of these carcinogenic substances that includes the dangers inherent in exposure to such substances.[547]

Employers are further required to provide an education and training program for new employees during the first month of their employment that adequately describes the presence of carcinogenic substances, the dangers inherent in exposure to such substances, and the proper methods for avoiding the harmful effects of these substances.[548]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

In Connecticut, a driver may not operate a motor vehicle while using a hand-held mobile telephone to engage in a call, or typing, sending, or reading a text message.[549] However, drivers may use a hands-free

[541] CONN. GEN. STAT. § 31-40l(a).

[542] CONN. GEN. STAT. § 31-40l(a).

[543] CONN. GEN. STAT. § 31-40k(c).

[544] CONN. GEN. STAT. § 31-40k(a).

[545] CONN. GEN. STAT. § 31-40c(b).

[546] CONN. GEN. STAT. § 31-40c(b).

[547] CONN. GEN. STAT. § 31-40c(c).

[548] CONN. GEN. STAT. § 31-40c(d).

[549] CONN. GEN. STAT. § 14-296aa.

mobile telephone. A record of any violation of this section will appear on the person's driving history or motor vehicle record.[550]

This prohibition applies to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the state restrictions.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. The issuance of a permit to carry a pistol or revolver does not authorize the possession of such a weapon in any premises where possession is prohibited by the person who owns or exercises control over the property.[551] Therefore, Connecticut employers may institute policies restricting the possession of weapons on their property.

Firearms in Company Parking Lots. Parking lots are not specifically addressed by the statute; however, since an employer may prohibit pistols or revolvers on the premises, parking lots may be included in this ban.[552]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in places of employment. Every employer must prohibit smoking, including electronic nicotine and cannabis delivery systems, in all areas of a business facility under their control. [553]

Posting Requirements. Workplaces that provide smoking areas must designate the existence and boundaries of all nonsmoking areas by posting "No Smoking" signs. Pursuant to the Connecticut Department of Public Health, employers with workplaces in which electronic nicotine delivery systems are prohibited may modify their No Smoking signs to prohibit such use.

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Connecticut law does not address suitable seating requirements for employees.

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[550] CONN. GEN. STAT. § 14-296aa(k).

[551] CONN. GEN. STAT. § 29-28(e).

[552] CONN. GEN. STAT. § 29-28(e).

[553] CONN. GEN. STAT. § 31-40q.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Connecticut law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[554] (2) the Americans with Disabilities Act (ADA);[555] (3) the Age Discrimination in Employment Act (ADEA);[556] (4) the Equal Pay Act;[557] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[558] (6) the Civil Rights Acts of 1866 and 1871;[559] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[560]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or

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[554] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[555] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[556] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[557] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[558] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[559] 42 U.S.C. §§ 1981, 1983.

[560] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[561] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[562]

3.11(a)(ii) *State FEP Protections*

The Connecticut Fair Employment Practices Act (CFEPA) prohibits employers from refusing to hire, discharging, or otherwise discriminating against individuals in compensation or in terms, conditions, or privileges of employment because of the individual's:

- race (includes ethnic traits historically associated with race, including but not limited to, hair texture and protective hairstyles including but not limited to: wigs, headwraps, and hairstyles such as individual braids, cornrows, locs, twists, bantu knots, afros, and afro puffs).
- color;
- religious creed (includes but is not limited to all aspects of religious observances and practice as well as belief, accommodation of which is subject to undue hardship to the employer's business);
- age (age discrimination protections include prohibitions against inquiring about an applicant's age, date of birth, dates of attendance or graduation dates from an educational institution on an initial employment application);
- sex (includes discrimination related to pregnancy, lactation,[563] child-bearing capacity, sterilization, fertility, or related medical conditions);
- gender identity or expression;
- marital status;
- national origin;
- ancestry;
- present or past history of mental disability, intellectual disability, learning disability, or physical disability (includes blindness and perceived physical disability);[564]
- status as an unpaid intern (protected from discrimination and sexual harassment in the workplace);[565]

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[561] The EEOC's website is available at http://www.eeoc.gov/.

[562] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[563] *Grewcock v. Yale New Haven Health Services Corp.*, 293F. Supp. 3d 272 (D. Conn. 2017).

[564] *Desrosiers v. Diageo N. Am., Inc.*, 105A.3d 103 (Conn. 2014) (disability includes perceived physical disability).

[565] CONN. GEN. STAT. §§ 46a-51, 46a-58, and 46a-60. *Intern* is defined as an individual who performs work for an employer for the purpose of training, provided: (1) the employer is not committed to hire the individual performing the work at the training period's conclusion; (2) the employer and the individual performing the work agree that the individual is not entitled to wages; and (3) the work performed: (a) supplements training given in an educational environment to enhance the individual's employability; (b) provides experience for the individual's

- status as a veteran;
- status as a victim of family violence;[566] and
- sexual orientation (defined as a person's identity in relation to the gender or genders to which they are romantically, emotionally, or sexually attracted, inclusive of any identity that a person may have previously expressed or is perceived by another person to hold).[567]

The CFEPA applies to employers with one or more employees.[568] The sexual orientation antidiscrimination provisions do not apply to a religious corporation, entity, association, educational institution, or society with respect to the employment of individuals performing work connected with the organization's activities, or with respect to matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are established by the organization.[569]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

Connecticut's CFEPA is enforced by the Connecticut Commission on Human Rights and Opportunities (CHRO).[570] Connecticut law requires employees to exhaust their administrative remedies with the CHRO before pursuing a cause of action under the CFEPA in state or federal court.[571] In accordance with the CFEPA, if an employee has not filed a complaint with the CHRO and received a release of jurisdiction from the Commission, then they cannot pursue state law discrimination claims in court.[572] Complaints must be filed with the CHRO within 300 days after occurrence of the alleged discriminatory act forming the basis of the claim.[573]

Complaint & "Case Assessment Review." Once a complaint is filed with the CHRO, it is served on the respondent, who then must file a verified answer within 30 days of receiving the complaint.[574] Within 60 days of the Commission's receipt of the respondent's answer, the Executive Director of the CHRO must

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benefit; (c) does not displace any employee of the employer; (d) is performed under the employer's supervision; and (e) provides no immediate advantage to the employer and may occasionally impede the employer's operations. CONN. GEN. STAT § 31-40y(a)(3).

[566] CONN. GEN. STAT. § 46a-60.

[567] CONN. GEN. STAT. § 46a-51.

[568] CONN. GEN. STAT. § 46a-51(10).

[569] CONN. GEN. STAT. § 46a-81p.

[570] CONN. GEN. STAT. § 46a-52.

[571] *Sullivan v. Board of Police Comm'rs*, 491A.2d 1096 (Conn. 1985) (when plaintiff has not first complied with administrative scheme before bringing action in court, CFEPA action should be dismissed by the court); *see also Rocha v. Rotha Contr. Co*., 2011 WL 3347957 (Conn. Super. Ct. May 19, 2011) (dismissing CFEPA claim because of plaintiff's failure to file an administrative complaint with the CHRO).

[572] *See Haynes v. Yale-New Haven Hosp.*, 842 A.2d616, n.2 (Conn. App. Ct. 2004) (affirming dismissal of CFEPA claim based on the plaintiff's failure to obtain a release of jurisdiction from the CHRO).

[573] CONN. GEN. STAT. § 46a-82(f). The Connecticut Supreme Court has held that where unlawful termination is alleged, the 180-day filing period commences upon actual cessation of employment, rather than when the employee receives notice of termination. *Vollemans v. Town of Wallingford*, 956 A.2d 579 (Conn. 2008). In so holding, the court explicitly rejected the U.S. Supreme Court's conclusion in *Delaware State College v. Ricks*, 449 U.S. 250(1980), and *Chardon v. Fernandez*, 454 U.S. 6 (1981), that the limitations period for Title VII and ADEA cases begins when the employee is notified of the termination, not when the employee is actually terminated.

[574] A verified answer is a pleading admitting and denying under oath allegations of the complaint. *See* CONN. GEN. STAT. § 46a-83(b).

review the file and conduct a "case assessment review."[575] A complaint will be administratively dismissed if it is determined based on this review that: (1) the employer is statutorily exempt from the CFEPA; (2) the complaint is frivolous on its face or otherwise fails to state the elements of a claim; or (3) there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause to believe that the charge is true.[576]

Mandatory Mediation & Early Legal Intervention. If the complaint is not dismissed, CHRO must hold a mandatory mediation conference with the parties. This conference must be held within 60 days of the issuance of notice concerning the retention of the complaint after case assessment or reinstatement of the complaint after legal review.[577] The complainant, the respondent, or the Commission may also request early legal intervention. Within 90 days of receiving a request for early legal intervention, legal counsel for the CHRO must determine whether to order administrative hearing, issue a release of jurisdiction, or direct that the complaint be subjected to the normal investigation process.[578]

Investigation Procedures. Assuming mandatory mediation is unsuccessful and early legal intervention is not requested, the complaint will be assigned to an investigator within 15 days of the mandatory mediation conference.[579] Ordinarily, investigators will serve the parties with requests for documents and information and conduct a fact-finding conference in which individual witnesses are interviewed under oath. However, investigators are also empowered to subpoena witnesses and documents, serve interrogatories or requests for admissions of fact, conduct site visits, or engage in any other lawful means of finding facts.[580] After the investigation is complete, the investigator will make a preliminary draft of their findings and conclusions. At this stage, the parties have a chance to comment and express their positions concerning the investigator's preliminary findings. The investigator must consider the comments of the parties before making a final determination.[581] The law requires investigators to make a finding of reasonable cause or no reasonable cause in writing not later than 190 days from the date of the case assessment review.[582]

If reasonable cause is found, the investigator is required to prepare a preliminary determination as outlined above. Within 20 days after the CHRO sends notice of the reasonable cause finding, either the complainant or the respondent may file a notice of election requesting that the matter be tried in state superior court.[583] If a notice of election is filed, then the state Attorney General or the CHRO must initiate a civil action within 90 days unless they determine that a material mistake of law or fact was made by the investigator.[584] If neither party files a notice of election, a conciliation conference will be scheduled for the purpose of attempting to resolve the complaint by conciliation and persuasion.[585] An investigator must attempt to eliminate the practice complained of by conference, conciliation, and persuasion within

[575] CONN. GEN. STAT. § 46a-83(c).

[576] CONN. GEN. STAT. § 46a-83(c).

[577] CONN. GEN. STAT. § 46a-83(d).

[578] CONN. GEN. STAT. § 46a-83(e).

[579] CONN. GEN. STAT. § 46a-83(f).

[580] CONN. GEN. STAT. §§ 46a-83(f).

[581] CONN. GEN. STAT. § 46a-83(g)(1).

[582] CONN. GEN. STAT. § 46a-83(g)(1).

[583] CONN. GEN. STAT. § 46a-83(g)(2).

[584] CONN. GEN. STAT. § 46a-83(g)(2).

[585] CONN. GEN. STAT. § 46a-83(g).

50 days of making the finding of reasonable cause.[586] If no settlement is reached within 50 days, the investigator must certify the complaint and the results of the investigation to the Executive Director within another 10 days.[587] Upon certification of the complaint, the CHRO directs the matter to a human rights referee to conduct a hearing no later than 45 days after the certification.[588] The parties also may engage in alternate dispute resolution for up to three months with the consent, but not at the expense, of the CHRO.[589] Once the complaint is certified to the CHRO, an administrative hearing before a human rights referee is mandatory (unless the parties utilize alternative dispute resolution).[590] The administrative trial or hearing is a *de novo* presentation of evidence on the merits of the complaint. It is not merely an appeal of the CHRO's investigative determination of reasonable cause to believe that unlawful discrimination occurred.[591]

If no reasonable cause is found, the investigator is directed to prepare a written determination containing the factual findings upon which the finding of no reasonable cause is based. Copies of these findings are sent to both the complainant and the respondent, with the complainant also simultaneously receiving notification of their right to request reconsideration of the investigator's findings.[592] The complainant may file a written request for reconsideration within 15 days after the date of mailing of the investigator's finding of no reasonable cause.[593] In the written request, the complainant must state specifically the reasons why reconsideration should be granted.[594] The CHRO may order reconsideration of the finding within a 90-day period.[595] A complainant may appeal the finding of no reasonable cause directly to superior court rather than seeking reconsideration by CHRO and is not required to file a request for reconsideration to preserve a right to appeal.[596] If an administrative appeal is filed, the court is limited to determining whether there were errors of law, or whether the decision was arbitrary, or characterized by abuse of discretion based on the record of the investigation.[597] Alternatively, the complainant may request a release of jurisdiction from the CHRO and file a lawsuit in court.

Remedies & Penalties. The CFEPA provides the exclusive remedy for employees who claim unlawful discrimination.[598] Unlike the federal antidiscrimination statutes, courts generally have held that the CFEPA does not authorize awards of punitive damages.[599] The unavailability of punitive damages under the CFEPA can create a significant advantage for employers that are only defending against claims brought

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[586] CONN. GEN. STAT. § 46a-83(f).

[587] CONN. GEN. STAT. § 46a-84(a).

[588] CONN. GEN. STAT. § 46a-84(b).

[589] CONN. GEN. STAT. § 46a-84(e).

[590] *Dufraine v. Commission on Human Rights & Opportunities*, 673 A.2d 101, 109(Conn. 1996) (trial court overstepped its authority when it bypassed this process of section 46a-84).

[591] CONN. GEN. STAT. § 46a-84(b).

[592] CONN. AGENCIES REGS. § 46a-54-61a.

[593] CONN. AGENCIES REGS. § 46a-54-62a(b).

[594] CONN. GEN. STAT. § 46a-83(h).

[595] CONN. AGENCIES REGS. § 46a-54-62a(e).

[596] CONN. GEN. STAT. § 4-183(a).

[597] CONN. GEN. STAT. § 4-183(j).

[598] *Thibodeau v. Design Group One Architects*, 802 A.2d 731, 733 (Conn. 2002).

[599] *See McInerney v. Polymer*, 2012 WL 5519626, at **3-4 (Conn. Super. Ct. Oct. 22, 2012) (concluding that punitive damages are not an available remedy under the CFEPA).

under state law. At the same time, employers should be aware that the CFEPA does not contain any statutory caps on the amount of compensatory damages.[600]

The CFEPA provides for extremely limited remedies when a claim is adjudicated administratively before a human rights referee. Upon finding that a discriminatory employment practice has occurred, Connecticut General Statutes section 46a-86(b) only empowers a human rights referee to order "the hiring or reinstatement of employees, with or without back pay."[601] Based on the plain language of the statute, courts have held that the human rights referees are not authorized to award punitive damages, attorneys' fees, or damages for emotional distress for CFEPA violations.[602] Several hearing-officer decisions, however, have allowed for emotional distress and attorneys' fees.[603] Employees pursuing their CFEPA claims in court are afforded a much broader array of potential remedies. Whereas a human rights referee may only order "the hiring or reinstatement of employees, with or without back pay," a court is empowered to award "such legal and equitable relief that it deems appropriate including, but not limited to, temporary or permanent injunctive relief, attorney's fees and court costs." When awarding attorneys' fees, the statute expressly forbids courts from making the size of the award contingent upon the amount of damages that were requested or awarded to the complainant.[604]

The CHRO can award reasonable attorneys' fees to a prevailing complainant. The amount allowed will not be contingent on the amount of damages requested or awarded to the complainant. The CHRO is also authorized to assign Commission Counsel to bring a civil action in Connecticut Superior Court instead of proceeding to an administrative hearing following a reasonable cause finding. Where the Superior Court finds that an employer has committed a discriminatory practice, the court must grant the CHRO a civil penalty, not exceeding $10,000, provided such discriminatory practice has been established by clear and convincing evidence. The amount will be payable to the CHRO and used by the agency to advance the public interest in eliminating discrimination. Additionally, prevailing plaintiffs may now recover punitive damages.[605]

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[600] CONN. GEN. STAT. §§ 46a-86(b), 46a-104.

[601] CONN. GEN. STAT. § 46a-86(b). The statute limits the accrual of back pay to no more than two years before the date that the complaint was filed with the executive director of the CHRO. CONN. GEN. STAT. § 46a-86(b). The statute also requires back-pay awards to be offset by interim earnings, including unemployment compensation and welfare assistance, and any amounts that the employee could have earned "with reasonable diligence." CONN. GEN. STAT. § 46a-86(b).

[602] *See Bridgeport Hosp. v. Commission on Human Rights & Opportunities*, 653A.2d 782 (Conn. 1995); *Fenn Mfg. Co. v. Commission on Human Rights & Opportunities*, 652A.2d 1011 (Conn. 1995). However, the CHRO has taken the position that it is empowered to award front pay, attorneys' fees, and costs for violations of the *federal* antidiscrimination statutes.

[603] *See Commission on Human Rights & Opportunities ex rel. LaToya Bentley-Meunier v. DEKK Grp.*, CHRO No. 1140322 (Apr. 11, 2012) (awarding emotional distress damages), *available at* https://portal.ct.gov/-/media/CHRO/BentlyMeunierfinalpdf.pdf; *Commission on Human Rights & Opportunities ex rel. Jose Crispin v. SY Mgmt.*, CHRO No. 0830024 (Feb. 10, 2011) (awarding emotional distress damages and attorneys' fees), *available at* https://portal.ct.gov/-/media/CHRO/crispindecisionpdf.pdf; *Commission on Human Rights & Opportunities ex rel. Jane Doe v. Claywell Elec.*, CHRO No. 0510199 (Dec. 9, 2008) (awarding emotional distress damages), *available at* https://portal.ct.gov/-/media/CHRO/PDF/0510199Finalpdf.pdf.

[604] CONN. GEN. STAT. § 46a-104.

[605] CONN. GEN. STAT. §§ 46a-55, 46a-86, 46a-104.

3.11(a)(iv) *Additional Discrimination Protections*

Family Responsibility, Reproductive Choices & Hazardous Substances. An employer may not request or require information from an employee or applicant relating to the individual's child-bearing age or plans, pregnancy, function of the individual's reproductive system, use of birth control methods, or the individual's familial responsibilities.[606] Likewise, if an employer informs an employee that she may be exposed to substances which may cause birth defects or constitute a hazard to her reproductive system or a fetus, it must take reasonable measures to protect the employee from exposure and must inform the employee that the measures taken may be the subject of a complaint filed under the fair employment practices provision.[607]

Genetic Information Discrimination. An employer may not request or require genetic information from an employee or applicant, nor discriminate against any person on the basis of genetic information.[608]

Sex / Gender Identity & Harassment. Employers may not harass any employee or applicant on the basis of sex or gender identity or expression.[609]

Tobacco Products. Connecticut employers may not require, as a condition of employment, that any employee or applicant refrain from smoking or using tobacco products outside the course of their employment, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment for smoking or using tobacco products outside the course of their employment. Nonprofit organizations whose primary purpose is to discourage use of tobacco products by the general public are exempt from this prohibition.[610]

Harassment Protections. Connecticut law provides protections to persons subjected to the placing of actual or simulated nooses in the workplace with the intent to harass.[611]

Criminal Records. An employer may not discriminate in employment matters on the basis of erased criminal record information.[612]

Wage Disclosure. An employer may not prohibit an employee from disclosing the amount of their wages or discussing the wages of other employees if the other employee voluntarily disclosed their wages.[613]

Captive Audience. An employer may not coerce any employee into attending or participating in a meeting sponsored by the employer concerning the employer's views on political or religious matters.[614]

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606 CONN. GEN. STAT. § 46a-60(9).

607 CONN. GEN. STAT. § 46a-60(10).

608 CONN. GEN. STAT. § 46a-60(11).

609 CONN. GEN. STAT. § 46a-60(8).

610 CONN. GEN. STAT. § 31-40s.

611 CONN. GEN. STAT. § 46a-58(d).

612 CONN. GEN. STAT. § 31-51i.

613 CONN. PUBLIC ACT NO. 15-196 §1.

614 CONN. GEN. STAT § 31-51q.

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Waterbury are subject to local fair employment practices ordinances. Any private employer with three or more employees must extend antidiscrimination protections on the basis of: race; color; sex; age; religious creed; disability; national origin or ancestry; marital status; family status; prior psychiatric treatment; health care; military status; and source of income. It is also unlawful to deny any person or group access to private services in employment based on limited English language skills.[615] An individual alleging a violation of Waterbury's ordinance may file a complaint with the Human Rights Commission of the City of Waterbury.[616] The ordinance does not indicate a statute of limitations for filing.

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs— "the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[617] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[618]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Connecticut employers may not discriminate in the amount of compensation paid to any employee on the basis of sex for a job that requires equal skill, effort, and responsibility under similar working conditions. An employer may use a pay differential pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential system based on a *bona fide* factor other than sex, such as education, training, or experience. Connecticut employers may not discriminate in the amount of compensation paid to any employee on the basis of sex for a job that requires comparable work on a job when viewed as a composite of skill, effort, and responsibility under similar working conditions. An employer may use a pay differential pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential system

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[615] WATERBURY, CONN., CODE OF ORDINANCES §§ 93.02, 93.03 (exemption for *bona fide* occupational qualification).

[616] WATERBURY, CONN., CODE OF ORDINANCES §§ 31.004(F), 93.03.

[617] 29 U.S.C. § 206(d)(1).

[618] 42 U.S.C. § 2000e-5.

based on a *bona fide* factor other than sex, including, but not limited to, education, training, credential, skill, geographic location, or experience.[619]

In addition, the Connecticut Human Rights Act makes it an unlawful employment practice for a covered employer to discriminate against an individual in compensation or in the terms, conditions, or privileges of employment because of any protected classification. Specific to sex, differences in compensation are not permitted except where due to a *bona fide* occupational qualification.[620]

As noted in **3.7(b)(v)**, a Connecticut employer also cannot restrict employees from disclosing their wages or inquiring about other employees' wages.

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[621]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

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[619] CONN. GEN. STAT. § 31-75.

[620] CONN. GEN. STAT. §§ 46a-51, 46a-60.

[621] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[622]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[623] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[624] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[625]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and

[622] 29 C.F.R. § 1636.3.

[623] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[624] 29 C.F.R. § 1636.3.

[625] 29 C.F.R. § 1636.4.

- the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[626]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[627]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

It is an unlawful discriminatory practice for an employer or the employer's agent to discriminate against an individual because of the individual's pregnancy. Specifically, an employer may not:

1. terminate an individual's 's employment because of the individual's pregnancy;
2. refuse to grant to a pregnant employee a reasonable leave of absence for disability resulting from her pregnancy;
3. deny 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 under plans maintained by the employer;
4. fail or refuse to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority and 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;
5. limit, segregate or classify the employee in a way that would deprive her of employment opportunities due to her pregnancy;
6. discriminate against an employee or person seeking employment on the basis of her pregnancy in the terms or conditions of her employment;

[626] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[627] 29 C.F.R. § 1636.3.

7. fail or refuse to make a *reasonable accommodation* for an employee or person seeking employment due to her pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on the employer;
8. deny employment opportunities to an employee or person seeking employment if this denial is due to the employee's request for a reasonable accommodation due to her pregnancy;
9. force an employee or person seeking employment affected by pregnancy to accept a reasonable accommodation if the employee or person seeking employment (i) does not have a known limitation related to her pregnancy; or (ii) does not require a reasonable accommodation to perform the essential duties related to her employment;
10. require an employee to take a leave of absence if a reasonable accommodation can be provided in lieu of such leave; and
11. retaliate against an employee in the terms, conditions or privileges of her employment based upon the employee's request for a reasonable accommodation.[628]

Reasonable accommodation may include, but is not limited to:

- being permitted to sit or eat while working;
- more frequent or longer breaks (including bathroom and water breaks), or periodic rest;
- modifying policies prohibiting food or drinks while an employee is working;
- being provided assistive equipment, such as a stool, chair, or assistive lifting equipment;
- assistance with manual labor;
- job restructuring;
- light duty assignments;
- modified work schedules, including but not limited to the option to telework;
- modified dress code or uniform requirements;
- moving a workstation to permit the movement or stretching of extremities, or to be closer to a bathroom;
- temporary transfers to less strenuous or hazardous work;
- a reasonable leave of absence due to disability resulting from pregnancy;
- time off to attend pre- or post-natal appointments or to recover from childbirth;
- break time and appropriate facilities for expressing breast milk; or
- for individuals undergoing fertility treatment, unpaid leave to attend appointments or a modified or flexible work schedule.[629]

[628] CONN. GEN. STAT. § 46a-60(a)(7).

[629] CONN. GEN. STAT. § 46a-60; Connecticut Commission on Human Rights & Opportunities, *Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work* (April 2019), *available at* https://portal.ct.gov/-/media/CHRO/20190412RevisedProposedPregnancyGuidancepdf.pdf.

Therefore, in situations involving pregnancy, an employer may be required to provide leave to an employee that is in excess of that provided by the CFMLA or to transfer an employee to a suitable temporary position.

Employers must engage in a good faith interactive process with an employee anytime an employee makes a request for accommodation or leave, either orally or in writing, and anytime an employer knows or has a reasonable basis to believe that the employee may be in need of an accommodation. An employer has engaged in good faith if the employer consulted pre-existing policies regarding accommodations or temporary leave, responded in a timely manner, and explored alternatives if an initial proposal for accommodations or leave was rejected.[630]

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[631] Multiple decisions of the U.S. Supreme Court[632] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[633] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

Sexual harassment in the workplace is prohibited by the CFEPA.[634] *Sexual harassment* is defined as:

> Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or, (c) such conduct has the purpose or effect of substantially interfering with an

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630 Connecticut Commission on Human Rights & Opportunities, *Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work* (April 2019), *available at* https://portal.ct.gov/-/media/CHRO/20190412RevisedProposedPregnancyGuidancepdf.pdf.

631 Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

632 *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526(1999).

633 EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

634 CONN. GEN. STAT. § 46a-60(a)(8).

individual's work performance or creating an intimidating, hostile or offensive working environment.[635]

Connecticut employers must provide at least two hours of sexual harassment prevention training and education to all supervisory employees of employees in the state, and to all new supervisory employees of employees within six months of their assumption of supervisory positions.[636] In general, the training must cover the laws, the definitions, remedies, and provide information about examples and strategies for avoiding harassment.

The training must be conducted in a classroom-like setting using clear and understandable language, and in a format that allows participants to ask questions and receive answers.[637] In an informal opinion letter, the CHRO recognized that online training can satisfy the training requirement so long as learners are given an opportunity "to ask questions and obtain answers in a reasonably prompt manner."[638] Audio, video, and other teaching aides may be utilized to increase comprehension or to otherwise enhance the training process.[639]

The content of the training must include the following:

1. a description of all federal and state statutory provisions prohibiting sexual harassment in the workplace with which each employer is required to comply, including the CFEPA and Title VII;
2. the definition of sexual harassment;
3. a discussion of the types of conduct that may constitute sexual harassment under the law, including the fact that the harasser or the victim of harassment may be either a man or a woman and that harassment can occur involving persons of the same or opposite sex;
4. a description of the remedies available in sexual harassment cases (including, but not limited to: cease and desist orders; hiring, promotion or reinstatement; and compensatory damages and back pay);
5. notice to employees that individuals who commit sexual harassment may be subject to both civil and criminal penalties; and
6. a discussion of strategies to prevent sexual harassment in the workplace.[640]

While not required by the regulations, the CHRO encourages employers having 50 or more employees to provide an update of legal interpretations and related developments concerning sexual harassment to supervisory personnel once every three years.[641]

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635 CONN. GEN. STAT. § 46a-60(a)(8).

636 CONN. GEN. STAT. § 46a-54(15); CONN. AGENCIES REGS. § 46a-54-204(b).

637 CONN. AGENCIES REGS. § 46a-54-204.

638 Commission on Human Rights and Opportunities, *Sexual Harassment Training – E-Learning Information Opinion*, May 19, 2003, *available at* https://portal.ct.gov/-/media/CHRO/elearninginformalopinionpdf.pdf.

639 CONN. AGENCIES REGS. § 46a-54-204.

640 CONN. AGENCIES REGS. § 46a-54-204.

641 CONN. AGENCIES REGS. § 46a-54-204.

Connecticut employers having three or more employees are also required to post notices to employees regarding the illegality of sexual harassment and the remedies available to victims of sexual harassment.[642]

With respect to the required harassment prevention training:

- Employers of three or more employees must provide the required training to all employees not later than October 1, 2020, though an employer that has provided such training and education to employees after October 1, 2018 is not required to provide such training and education a second time.
- Employers of three or more employees must provide new employees hired on or after October 1, 2019 with the required training not later than six months after the date of hire.
- Employers of fewer than three employees must provide the required training to all *supervisory* employees no later than October 1, 2020, and to all new supervisory employees within six months of their assumption of a supervisory position, but an employer that has provided the required training to any supervisory employees after October 1, 2018 is not required to provide such training and education a second time.
- Employers of fewer than three employees must provide new supervisory employees hired on or after October 1, 2019 with the required training not later than six months after the date of hire, provided the CHRO has developed and published model training and education materials.
- Employers must provide periodic supplemental training that updates all supervisory and nonsupervisory employees on the content of such training not less than every 10 years.[643]

The CHRO has published on its website a link concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment. The CHRO also makes available at no cost to employers an online training and education video that fulfills the requirements prescribed for training and education under the statute.[644]

Not later than three months after an employee's start date, an employer must provide the employee with a copy of the CHRO notice via email concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment. The email must have a subject line that includes the words "Sexual Harassment Policy" or words of similar import, if the employer has provided an email account to the employee, or the employee has provided the employer with an email address. If an employer has not provided an email account to the employee, the employer must post the information concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment on the employer's website, if the employer maintains a website. An employer may comply with the written notice requirements by providing an employee with the link to the information on the Commission's website concerning the illegality of sexual harassment and the remedies available to victims of sexual harassment by email, text message, or in writing.[645]

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642 CONN. AGENCIES REGS. § 46a-54-201.

643 CONN. GEN. STAT. § 46a-54(15).

644 CONN. GEN. STAT. § 46a-56.

645 CONN. GEN. STAT. § 46a-54(15).

An employer that fails to post the required notice or provide the required training and education to employees will incur a fine of $1,000. Further, the CHRO may assign a designated representative to enter an employer's place of business during normal business hours for purposes of (1) ensuring compliance with the posting requirements and (2) examining records, policies, procedures, postings and sexual harassment training materials maintained by the employer. The representative will ensure that these activities do not unduly disrupt the employer's business operations.[646]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

According to Connecticut's whistleblower law, an employer may not discharge, discipline, or otherwise penalize any employee, or any person acting on behalf of the employee, who reports a violation or a suspected violation of any federal, state, or local law or regulation to a public body, or because an employee is requested by a public body to participate in an investigation, hearing, inquiry, or court action, or because the employee reports a suspected incident of child abuse or neglect.[647] These protections do not apply to employees who knowingly make a false report. An employee discharged or discriminated against in violation of the state whistleblower law may, after exhausting available administrative remedies, bring a private civil suit for reinstatement to the individual's previous job, back wages, reestablishment of the individual's employee benefits, court costs, and attorneys' fees.[648]

Notably, this statute has been held to preempt common-law claims for wrongful termination when employees claim that they were terminated because they complained to supervisors about alleged wrongdoings or improprieties.[649]

In addition, Connecticut's Public Service Companies Law protects employees of a public service company, individuals involved in the transportation of gas, and employees of a company or contractor providing

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[646] CONN. GEN. STAT. § 46a-97.

[647] CONN. GEN. STAT. § 31-51m.

[648] CONN. GEN. STAT. § 31-51m(c).

[649] *See Burnham v. Karl & Gelb, P.C.*, 745 A.2d 178, 181(Conn. 2000) (employee's common-law wrongful termination claim precluded by Connecticut General Statutes section 31-51m even though the plaintiff did not fall under the protection of the statute). *But see Volles v. Knopp Neurosciences, Inc.*, 2010 WL 8746911, at *1 (D. Conn. Mar. 10, 2010) ("it is not at all clear that § 31-51m was intended by the legislature to preempt all common law claims for wrongful termination based on public policy when an employee does not complain outside of her own employer.").

goods or services to a public service company, from retaliation or threats of retaliation for disclosing information about substantial improper conduct in the management of the entity to the department of public utility control.[650]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[651] and the Railway Labor Act (RLA)[652] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Connecticut has not passed a right-to-work law.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[653] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local

[650] CONN. GEN. STAT. § 16-8a.

[651] 29 U.S.C. §§ 151 to 169.

[652] 45 U.S.C. §§ 151 *et seq*.

[653] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

government where the closing or layoff is to occur.[654] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Connecticut does not have a plant closing law or Mini-WARN law. However, it does have special requirements concerning the sale of a business. At least 30 days prior to the intended date of the sale of a business in the state that employs 25 or more employees and has retirees who are receiving health and/or life insurance benefits from the employer, the chief executive of the business must mail or deliver to each such retiree written notice stating what the status of the retiree's health and life insurance benefits will be after the sale. A copy of the notice must be mailed or delivered at the same time to the Labor Commissioner.[655]

4.1(c) *State Mass Layoff Notification Requirements*

Connecticut does not have a general notification requirement to the state unemployment department in the event of a permanent mass layoff. However, it does have special requirements for the relocation of a call center. Call center employers that intend to relocate a center, or a unit that makes up 30% or more of the center's total call volume, to a foreign country to notify the state Labor Commissioner at least 100 days before the relocation. The law defines a call center as an operation through which employees receive telephone calls or electronic communication in order to provide customer assistance or service. The new law covers employers with 50 or more employees, not including part-time employees, and employers with 50 or more employees that work in the aggregate at least 1,500 hours per week in staffing a call center.[656]

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[657] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or

[654] 20 C.F.R. §§ 639.4, 639.6.

[655] CONN. GEN. STAT § 31-51s.

[656] CONN. GEN. STAT. ANN. § 31-57aa.

[657] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
	• the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[658]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-Cobra, etc.	Employers must furnish each insured employee, upon cancellation or discontinuation of such health insurance, notice of the cancellation or discontinuation. The notice must be mailed or delivered to the insured employee not less than 15 days preceding the effective date of cancellation or discontinuation.[659]
Notice of Termination	In Connecticut, employers must provide employees with copies of any documentation of any disciplinary action imposed, within one business day after taking such action. In the event of a termination, however, an employer must *immediately* provide the employee with a copy of any documented notice of termination. All such notices (including termination, disciplinary, or performance documentation) must include a statement, in clear and conspicuous language, that the employee may, if the employee disagrees with any of the information contained in the item, submit a written statement explaining the employee's position. If the employee submits a statement, it must be kept as part of their personnel file and must accompany any transmittal or disclosure from such file or records to a third party.[660]
Unemployment Notice	**Generally.** All employers must provide separating employees with an employee information packet including an unemployment notice, which instructs the employee how to file for unemployment benefits and seek available reemployment assistance. The notice must be completed by

[658] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[659] CONN. GEN. STAT. § 38a-537.

[660] CONN. GEN. STAT. §§ 31-128b, 31-128e.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
	the employer and issued to the employee, along with the employee separation packet, immediately upon layoff or separation from employment, whatever the cause, including when an employee voluntarily leaves employment.[661] **Multistate Workers.** Connecticut does not require that employees be again notified as to the jurisdiction under whose unemployment compensation law services have been covered. It is recommended, however, that employers consider providing notice of the jurisdiction where services will be covered for unemployment purposes. Employers should also follow that state's general notice requirement, if applicable.[662]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Individually identifiable information contained in an employee's personnel file or medical records cannot be disclosed by an employer to any person or entity not employed by or affiliated with the employer without the employee's written authorization, *except* where the information is limited to the verification of dates of employment, the employee's title or position, and wage or salary, or where the disclosure is made:

- to a third party that maintains or prepares employment records or performs other employment-related services for the employer;
- pursuant to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer;
- pursuant to a request by a law enforcement agency for an employee's home address and dates of his attendance at work;

[661] CONN. AGENCIES REGS. § 31-222-9; *see also* CONN. GEN. STAT. § 31-236f. The unemployment notice ("Filing for Unemployment Benefits Brochure") is available online in English, Spanish, and Polish. The separation packet is available online in Word or as a PDF file, in English and Spanish, and contains the following forms: UC-60 (Authorization of Release of Wage and Pension Information); UC-61 (Unemployment Notice – Fillable online); UC-62T (Information for Filing Your Initial Unemployment Claim); and UC-625 (Voluntary Withholding of Income Tax from Unemployment Benefits). These forms are available at http://www.ctdol.state.ct.us/UI-OnLine/index.htm.

[662] *See* CONN. GEN. STAT. § 31-255 (reciprocal agreements with other states); *see also* CONN. AGENCIES REGS, §§ 31-255-1 to 31-255-9 (Interstate Reciprocal Agreement Relating to Transfer of Contributions Between the States of New York and Connecticut).

- in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware;
- to comply with federal, state, or local laws or regulations; or
- where the information is disseminated pursuant to the terms of a collective bargaining agreement.

If the authorization involves medical records the employer must inform the concerned employee of their physician's right of inspection and correction, the right to withhold authorization, and the effect of any withholding of such authorization upon the employee.[663]

Blacklisting. Connecticut law also prohibits any person, or any officer or agent of any corporation, company, or firm, from blacklisting any employee or publishing or causing to be published the name of any employee for the purpose of preventing that employee from working.[664] This statute further prohibits any person from conspiring with another or otherwise contriving to prevent an employee from procuring employment. These provisions do not, however, prohibit an employer from giving a truthful statement of facts about a current or former employee when requested to do so by the employee or by another employer that is considering hiring the employee.[665]

[663] CONN. GEN. STAT. § 31-128f.

[664] CONN. GEN. STAT. § 31-51.

[665] CONN. GEN. STAT. § 31-51.