

July 2014

Labor and Employment Legislative and Regulatory Update

CONNECTICUT GENERAL ASSEMBLY'S 2014 LEGISLATIVE SESSION

The Connecticut General Assembly wrapped up its 2014 legislative session on May 7, 2014, having passed only a few pieces of legislation affecting Connecticut employers. Despite the small number of bills passed, the new legislation creates some noteworthy changes to laws governing employers in Connecticut.

Connecticut Minimum Wage

The law with the greatest effect is the increase to Connecticut's minimum wage. Within the next three years, the minimum wage will increase to over \$10.00 per hour. Previously, the state's minimum hourly wage was scheduled to increase from \$8.70 to \$9.00 in January 2015. This act instead increases the minimum wage to (1) \$9.15 per hour on January 1, 2015; (2) \$9.60 per hour on January 1, 2016; and (3) \$10.10 per hour on January 1, 2017.

This law will not affect the scheduled increases to the tip credit.

Paid Sick Leave

On a positive note, the legislature revised the paid sick leave law, giving employers the flexibility to track the accumulation of the paid sick leave benefit on any 365-day cycle (current law restricts it to a calendar year). The bill also changes the reporting requirement that employers report their number of employees from quarterly to only once a year. In addition, the act includes language prohibiting employers from terminating employees in order to come under the 50-employee threshold and to circumvent the law.

The law adds radiologic technologists to the list of 68 other service workers entitled to accrue paid sick leave under the [statute](#). Learn more about the requirements of the act, including covered employers and employees in our previous update: [Connecticut Employers Prepare Now to Comply With Nation's First Paid Sick Leave Law](#).

ON THE HORIZON – 2014 FEDERAL AGENCY AGENDAS

Also of note, federal agencies, including the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC), recently released their regulatory agendas for 2014, including a number of anticipated rules and regulations in the pre, proposed, and final rule stages. Some of the highlights include the following:

DOL – Wage and Hour

The DOL's Wage and Hour Division released a proposed rule revising the definition of "spouse" under the Family and Medical Leave Act (FMLA) to include legal same-sex marriages. Under the proposed rule, issued on June 20, 2014, the revised definition applies to same-sex and common law marriages legally entered into, and considered valid, in the state in which they were celebrated, regardless of the law in the couple's state of residence. The proposed change also encompasses same-sex marriages entered into abroad that could have been entered into in at least one state in the United States. The DOL previously issued guidance relating to the impact of *Windsor* on the Employee Retirement Income Security Act (ERISA) and the FMLA in September 2013. The Internal Revenue Service (IRS) previously issued guidance as to how this decision would affect numerous special protections and opportunities available to a spouse under sections of the Internal Revenue Code governing employer retirement and welfare benefit programs. See [IRS Issues Post-Windsor Guidance Recognizing Same-Sex Marriages](#).

In response to a memorandum from President Obama this March, the DOL has outlined its intention to update and streamline the regulations governing the overtime exemption in the Fair Labor Standards Act that exclude certain managerial and professional employees from overtime pay. A proposed rule is projected to be released in November of this year.

Regulations implementing **Executive Order 13658, which raised the minimum wage** to \$10.10 per hour for workers under new and renegotiated federal contracts, are expected to be released in June 2014.

DOL – OSHA

OSHA has proposed rules for handling and investigating retaliation and whistleblower complaints under the Federal Railroad Safety Act, the National Transit Systems Security Act, the Surface Transportation Assistance Act, the Corporate and Criminal Fraud Accountability Act, the Consumer Financial Protection Act, the Seaman's Protection Act, the FDA Food Safety Modernization Act, the Patient Protection and Affordable Care Act (PPACA), and the Employee Protection Provision of the Moving Ahead for Progress in the 21st Century Act. Final action on each of these rules is anticipated in February 2015.

In addition, OSHA intends to issue a proposed rule "to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation" of the employer.

DOL – OFCCP

In response to another presidential memorandum, the Office of Federal Contract Compliance Programs (OFCCP) will issue regulations by August of this year requiring federal contractors and subcontractors to submit summary data on the compensation paid to their employees, including data by sex and race.

By September, the OFCCP will also issue a proposed rule implementing Executive Order 11246, making it unlawful for contractors to retaliate against employees who disclose their pay information.

EEOC

While most of the EEOC's proposed rules relate to regulations concerning federal employers, the agency intends to issue this June a proposed rule that amends 29 CFR section 1630.14(d) to address whether Title I of the Americans with Disabilities Act (ADA) "allows employers to offer financial inducements and/or impose financial penalties as part of wellness programs offered through their health plans, and to address other aspects of wellness programs that may be subject to the ADA's nondiscrimination provisions." The Department of Health and Human Services (HHS), the DOL, and the Department of the Treasury have previously issued [joint final regulations](#) implementing PPACA rules regarding group health plan-related employee wellness programs.

It is also anticipated that the EEOC will put out guidance this year on pregnancy discrimination, including the overlap of the FMLA and ADA concerning coverage eligibility, coverage thresholds, length of leave, medical certification, and fitness for duty certification.

JOINT FEDERAL AGENCIES

In addition to [guidance](#) issued over the last year, it is expected that the federal agencies will continue to issue a number of regulations and other guidance on the current provisions of the PPACA, as well as any future provisions that may arise, including the following:

- Automatic enrollment
- Nondiscrimination rules
- The Cadillac tax

Please feel free to contact one of the lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#) with questions regarding the issues raised in this alert:

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