



MILITARY COMPONENT ADDED TO FAMILY LEAVE LAW

New state legislation also focuses on gender discrimination

By JENNIFER L. MARQUIS

Several noteworthy pieces of legislation that will have a far-reaching impact on Connecticut employers have been passed this year. These include revisions to the Connecticut Family Medical Leave Act, new gender compensation discrimination legislation, and new penalties for violations of the Personnel File Act. These developments require employers to update existing policies.

The most noteworthy are the revisions to the Connecticut Family Medical Leave Act (CFMLA), which went into effect on May 21. The revisions, while very similar to those of its federal counterpart, are not identical and must be distinguished to ensure employer compliance. By way of example, like the recently enacted regulations to the federal Family Medical Leave Act (FMLA), the CFMLA added what has become known under the federal legislation as “military caregiver leave.”

Military caregiver leave arose in response to the National Defense Authorization Act of 2008, signed into law by then-President George W. Bush, in an effort to afford greater entitlements to military families. The state legislation provides one-time leave for an eligible employee to care for an immediate family member or next-of-kin. Next-of-kin is specially defined to include siblings, grandparents, aunts, uncles, cousins or family members who have been granted legal custody of a

service member.

The leave must be taken exclusively to care for a member of the armed services who sustained an injury in the line of duty. The amount of leave to which an employee is entitled is 26 weeks within a one-year period for those employed in the private sector. Conversely, those employed by the state are entitled to 26 weeks within a two-year period. Unlike its federal counterpart, the CFMLA does not provide for “qualifying exigency” leave in the event that the employee’s spouse, son, daughter, or parent is on active duty or has been notified of an impending call to duty. Thus, the federal act provides greater protections and entitlements to military families.

Other revisions include allowing an employer to request a medical certification from an employee when he or she seeks leave under CFMLA for a serious health condition, allowing employees to take intermittent leave to the extent necessary for treatment purposes, and entitling a husband and wife employed by the same employer no more than an aggregate of 26 weeks of leave. Additionally, in keeping with Connecticut’s landmark recognition of same-sex marriages, they are now covered under the act.

‘Continuing Violation’

Equally noteworthy, new gender compensation discrimination rules went into effect on Oct. 1, strengthening the rights of employees who feel they have been discriminated against on the basis of their gender. The new legislation creates a right in the individual employee to file a civil action without the need to go through

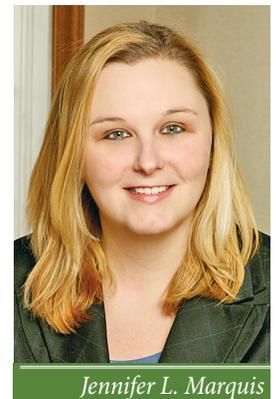
the labor commissioner. Additionally, it extends the period of time to raise a claim from one to two years, and to three years in the event of an intentional or reckless violation. It expands whistleblower

protections under the act to cover those who testify or assist in a gender-based wage discrimination proceeding and permits compensatory and punitive damage awards for violation of the whistleblower protections.

Perhaps most significantly, the new version of the law adopts the “continuing violation” approach, thereby giving rise to a new cause of action each time a wage, benefit or other compensation is paid. To offset these employee-friendly changes, the new legislation expands employer defenses to include the existence of a seniority system, merit-based system, or the existence of a bona fide factor other than gender.

Finally, among the myriad of recent legislation passed effecting Connecticut employers, new revisions to the Personnel File Act are particularly noteworthy. The revisions, which went into effect on Oct. 1, subject violators to a \$300 penalty for each offense.

The fine will be imposed by the Connecticut Department of Labor and enforced by the Attorney General’s Office, which is authorized to institute a civil action to recover



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unpaid penalties. Accordingly, employers should take affirmative steps to familiarize their human resource and managerial professionals with the salient points of the act, so as to avoid a violation.

Under the act, employees are entitled to request access to their personnel file, so long as they do so in writing. Once a request has been made, the employer must provide the employee access to the file within a "rea-

sonable time," during business hours, at a location at or near the employee's place of employment.

Employees may inspect their files up to twice a year, and are entitled to a copy if requested. Moreover, an employee can request the correction or removal of anything contained in his or her file with which he disagrees. The employer may refuse to remove or correct the item, but must allow the

employee to place a written note in the file indicating disagreement. Additionally, employers should be sure to keep files for one calendar year after terminating an employee or upon an employee's resignation, and all files should be kept in a safe, confidential location.

Employers are advised to revisit existing policies in light of these recent developments. ■