

Recent Changes in Connecticut Law Impact Employee Handbooks and Forms

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Outdated employee handbooks can create legal liabilities and provide incorrect information to supervisors who depend on them when making important decisions. Over the past year, legislative measures have changed employer obligations in significant ways. Your handbook and other relevant forms, such as employment applications, I-9s, and leave forms, should be modified to reflect these changes.

Ban the Box

Effective January 1, 2017, Connecticut employers may no longer ask about an applicant's criminal record, including arrests, criminal charges, and convictions, on an initial employment application, except when an employer is otherwise required to do so by law, or a security, fidelity or equivalent bond is required for the position. [P.A. 16-83](#). Employers may inquire about such matters during a subsequent interview or through supplemental questionnaires following the initial screening. The new law does not impact existing protections requiring employers to clearly state that applicants need not divulge prior arrests, charges or convictions that have been erased. [Conn. Gen. Stat. § 31-51i](#).

The new law does not go as far as the laws of some states that prevent criminal inquiries until after a conditional offer of employment has been made. Prospective employees who believe the law has been violated may file a complaint with the Connecticut Department of Labor, but have no private right of action.

Physician Non-Competes

Effective July 1, 2016, employers entering into, or renewing a non-compete with current physician employees, must comply with tighter durational and geographic scope restrictions.

[P.A. 16-95](#). More specifically, aside from the requirement that any such agreement be tailored to protect a legitimate business interest, the non-compete restrictions can no longer exceed one year, or cover a geographic radius of more than 15 miles from the physician's primary work site. The "primary work site" is defined as the location where the employee generates the majority of his/her revenue, or any other location where the doctor practices and the parties have expressly agreed and defined such site in the non-compete agreement.

A distinction in the law provides greater enforceability where the non-compete is part of an ownership agreement. In such cases, the agreement is enforceable regardless whether the termination is voluntary, for cause, without cause, or if the ownership agreement expires without renewal.

In contrast, if the non-compete is outside an ownership agreement, the non-compete is only enforceable if the doctor voluntarily quits, or is termed for cause. It is not enforceable if the doctor is termed without cause, or the employment agreement expires and the employer fails to offer a renewal of the contract on the same or similar terms. If the employer offers to renew the contract on the same or similar terms, but the employee declines the offer, the non-compete is enforceable.

In all instances, the employer has the burden of proof when claiming a violation of a non-compete agreement.

Bi-Weekly Pay

Effective June 6, 2016, employers are no longer required to seek prior approval from the Connecticut Department of Labor to move to a bi-weekly payroll period. In the past, such approval was routinely granted, but required employers to go through the approval process. This change allows employers to process their payroll 26 times each year, instead of 52, and save administrative costs associated with payroll processing. [P.A. 16-169](#).

Payroll Cards

Effective October 1, 2016, employers may pay wages through a “payroll card,” provided the employee has also been given the option of payment by check and direct deposit, and voluntarily accepts payment by payroll card instead. Payment by payroll card cannot be made a condition of employment when hiring new employees, nor can any employer costs associated with the card be passed on to employees. [P.A. 16-125](#).

A “payroll card” is defined as a stored value card used by an employee to access wages from a payroll card account established at a financial institution by an employer, and that is redeemable at multiple merchants, service providers, bank branches, or ATMs.

Before instituting a payroll card system, employers must provide employees with a notice, which can be part of a handbook, stating: use of the card is voluntary and employees may instead be paid by direct deposit or check; any fees; any terms or conditions for use of the card; methods available to access wages and avoid or minimize fees; methods to check balances without incurring fees; and any withdrawal rights.

Some employers may like card payment as it reduces payroll costs. Processing a payroll check can cost from \$2 to \$2.50, while loading a card costs around \$.50. Also, many low wage

employees who may prefer to not have a checking account can now take advantage of the payroll card method of payment.

Employers may continue to pay through direct deposit, instead of by check or payroll card, provided the employee consents to direct deposit. Regardless of the payment method, the employee must be furnished a record of hours worked, gross earnings, deductions, and net earnings. This statement may be provided electronically, provided the employee consents.

CT FMLA

Effective June 7, 2016 the Connecticut Family and Medical Leave Act was amended to closely mirror the federal FMLA's military exigency leave rights. One difference in the two laws centers on the length of leave for such reasons. Under federal law the exigency leave is up to 12 weeks, while the CTFMLA uses the same 16 weeks over a 24-month period applicable for other forms of leave under the state law. [P.A. 16-195](#).

Connecticut had previously provided leave to care for injured servicemembers, with such leave limited to 26 weeks during any 12-month period, which is the same benefit provided by the federal FMLA for similar needs. Any time taken to care for injured service members offsets the time permitted for other forms of FMLA leave.

New I-9

Effective January 22, 2017, employers are required to use an updated I-9 form, which can be found [here](#). The new form applies only to new hires and need not be completed by employees already on the payroll.

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