



A Robinson+Cole Legal Update

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Tri-State Roundup of 2023 & Q1 2024: Key Labor and Employment Legislative Updates for CT, MA, and RI

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With many legal changes forthcoming on the national horizon, it is critical for employers to ensure that they are familiar with the new laws that were passed in 2023 and the first quarter of 2024. The following list highlights a selection of key labor and employment-related legislation for workplaces with employees in Connecticut, Massachusetts, and Rhode Island.

CONNECTICUT

Public Act No. 23-35: An Act Expanding Workers' Compensation Coverage for Post-Traumatic Stress Injuries for All Employees

Historically, only first responders, such as police officers and firefighters, were eligible for benefits under the Connecticut Workers' Compensation Act for Post-Traumatic Stress Disorder (PTSD) injuries endured within the scope of employment. Effective January 1, 2024, eligibility for benefits under the law expanded to include PTSD-related injuries for all employees who witness a "qualifying event." A "qualifying event" includes an event arising out of and in the course of employment in which the employee: (i) views a deceased minor; (ii) witnesses the death of a person or an incident involving the death of a person; (iii) witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury; (iv) has physical contact with and treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury; (v) carries an injured person who subsequently dies before or upon admission at a hospital as a result of the injury; or (vi) witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim. The typical qualifier - that the event has to arise out of or in the course of employment - which applies to workers' compensation claims generally, does apply under these circumstances as well. The qualifying event must have taken place after January 1, 2024, for the employee to be eligible for benefits.

Public Act No. 23-97: An Act Concerning Health and Wellness for Connecticut Residents

This new law substantively revised Connecticut's physician non-compete statute in three important aspects. Generally, the non-compete statute provides that for physician agreements to be enforceable, they must be necessary to protect a legitimate business interest, reasonably limited in time, scope, and practice restrictions to protect such business interest, and otherwise consistent with the law and public policy. The statute further provides that physician non-compete agreements are *not* enforceable if they restrict the physician's activities for a period of more than one (1) year in a geographic region that is more than fifteen (15) miles from the primary site where the physician practices, or if the employer terminated the physician without cause. This Act: (a) changed the definition of a physician's "primary practice site" to require a mutual written agreement of the parties; (b) further restricts enforcement of a non-compete where the physician does not agree with a proposed material change to the compensation terms of an employment agreement prior to the renewal of that agreement; and (c) extends the restrictions of this statute to non-compete agreements with Advanced Practice Registered Nurses (APRN's) and Physician Assistants (PA's).

Public Act No. 23-101: An Act Concerning the Mental, Physical and Emotional Wellness of Children

This Act, which took effect October 1, 2023, expanded the reasons covered employees can use leave under the

state's paid sick and safe leave law. As most employers know, "service workers" who work for employers with 50 or more employees in the state are entitled to accrue leave under the paid sick and safe leave law. This Act created two new covered uses for service workers to use their leave. First, service workers can now use their "sick" leave for a "mental health wellness day," which the Act defines as "a day during which a service worker attends to such service worker's emotional and psychological well-being in lieu of attending a regularly scheduled shift." Second, service workers can now use "safe" leave if they are a parent or guardian of a child who is a victim of family violence or sexual assault (provided that the employee is not the alleged perpetrator), and they need to obtain the child medical care or psychological care, obtain services from a victim services organization, relocate due to the family violence or sexual assault, or participate in any civil or criminal proceedings related to the violence or assault.

Public Act No. 23-172: An Act Concerning Employees' Loss of Health Care Coverage as a Result of a Labor Dispute

Prior to the passage of this Act, unionized employees who were on strike and unemployed as a result of a labor dispute were ineligible for health benefits. This Act protects unionized employees by creating a special enrollment period during which they can apply for and receive health benefits through Access Health CT, Connecticut's health insurance exchange.

Public Act No. 21-200: An Act Restructuring Unemployment Insurance Benefits and Improving Fund Solvency

We note that while the majority of this Act took effect in 2022, one relevant amendment took effect on January 1, 2024, and impacts an employee's receipt of unemployment compensation benefits when receiving severance pay. Specifically, an employee will not be eligible for unemployment benefits during any week in which the employee receives or is about to receive severance payments or payments by way of compensation for loss of wages. Before this amendment, an employee's receipt of severance pay did not disqualify the employee from receiving unemployment compensation benefits at the same time if the severance pay was provided as part of a separation agreement.

Public Act No. 23-204: An Act Concerning the State Budget for the Biennium Ending June 30, 2025, and Making Appropriations Therefor, and Provisions Related to Revenue and Other Items Implementing the State Budget

Public Act No. 23-204 amended several existing laws and included a revision regarding mandatory overtime for registered nurses. Before its enactment, Connecticut limited mandatory overtime for nurses but allowed hospitals to require nurses to work overtime under five specific circumstances, one of which included when nurses were covered by a collective bargaining agreement that permitted mandatory overtime. As of October 1, 2023, this Act revised that exception to apply only to nurses "employed at a behavioral health facility operated by a state agency." As such, private hospitals are no longer permitted to bargain for mandatory overtime for nurses.

This Act also included the following:

- Expanded the definition of overtime to include any situation during which a nurse works more than 12 hours in a 24-hour period or more than 48 hours in a workweek.
- Clarified that none of the enumerated exceptions apply unless patient safety requires overtime, there is no reasonable alternative, and the hospital made a good-faith effort to have the overtime hours covered on a voluntary basis.
- Bars hospitals from mandating overtime to address expected staffing patterns, such as routine levels of absenteeism.
- Added a new prohibition against retaliation.

MASSACHUSETTS

Bill H. 4053: An Act Relative to the Paid Family and Medical Leave Program

Effective November 1, 2023, the Massachusetts Paid Family and Medical Leave Act (PFML) provides employees with the option to supplement, or "top off," their PFML wage replacement benefits with available accrued paid leave, such as paid time off or sick pay, up to the employee's individual average weekly wage. Before this bill was passed, the Department of Family and Medical Leave (DFML) did not allow employees to "top off" their benefits unless their employer provided benefits through an exempt private plan and elected to provide employees with that option. According to DFML guidance, employers are responsible for managing any payments made to employees on top of their benefits, and the DFML will not assist with managing potential overpayments. Applications for PFML that were filed before November 1, 2023, are not eligible for "topping off."

RHODE ISLAND

House Bill H5902: An Act Relating to Labor and Labor Relations – Payment of Wages

Effective January 1, 2024, the Rhode Island Payment of Wages Act provides that any employer that "knowingly and willfully" commits a wage and hour violation related to the failure to pay wages will be guilty of a felony if the actual value of wages due to an employee exceeds \$1,500. Upon a guilty plea or conviction, the employer could face imprisonment of up to three years and/or a fine of \$5,000. Employers may also be penalized for misclassifying workers as independent contractors, and the law explicitly states that it applies to the construction industry. For those employers in the construction industry, if the value of the wages does not exceed \$1,500, the

employer could be: (1) deemed guilty of a misdemeanor and subject to imprisonment for a term of no more than one year, and/or (2) subject to a fine of up to \$1,000. Construction industry employers that violate the law under circumstances where the value of wages exceeds \$1,500 could be: (1) deemed guilty of a felony and sentenced to a term of imprisonment not to exceed 3 years; and/or (2) a fine of up to \$5,000. For employers in other industries, such misclassification could result in a penalty of at least \$1,500 and not more than \$3,500 for each misclassified employee for a first offense and up to \$5,000 for subsequent offenses.

Further, we note two additional laws that took effect earlier in 2023 that likely already have been implemented by Rhode Island employers but are worth calling attention to in light of their significant impact to labor and employment law landscape.

Senate Bill S0270A: An Act Relating to Labor and Labor Relations – Fair Employment Practices

This law, effective January 1, 2023, amends Rhode Island’s pay equity law. The law expands employee protections and remedies available for wage discrimination related to comparable work based on race, color, religion, sex, sexual orientation, gender identity, gender expression, disability, age, and/or country of origin, subject to certain explicit exceptions. The law prohibits employers from relying on the wage history of an applicant when deciding whether to consider the applicant for employment or when determining wages to be paid. An employer may not seek the salary history of the applicant or require that an applicant’s prior wages satisfy the minimum or maximum criteria as a condition of being considered for employment, among other prohibitions, and subject to certain limited exceptions. The law also requires employers to disclose pay ranges to applicants and employees when requested and in certain circumstances without a request. An employer may not prevent an employee from inquiring about, discussing, or disclosing their wages or another employee’s wages or retaliate against an employee for doing so. Employees may file a complaint with the Director of Labor and Training or file a civil action. Employers found to be in violation of this law are subject to certain penalties and damages.

Senate Bill S0342: An Act Relating to Labor Relations – Fair Employment Practices

Effective June 22, 2023, this law restricts employers from requiring employees, as a condition of employment, to sign nondisclosure or non-disparagement provisions relating to violations of civil rights or unlawful conduct or any agreement with a clause that requires alleged violations of civil rights to remain confidential. Any such contract provision is a violation of the law and will be deemed void as a violation of public policy.

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