REID AND RIEGE P.C.
COUNSELLORS AT LAW

EMPLOYMENT LAW ALERT

September 2013

NEW LEGAL DEVELOPMENTS AFFECTING CONNECTICUT EMPLOYERS

Employers in Connecticut should be aware of the following significant developments in the landscape of Connecticut and federal laws regulating employment:

(A) New Rules for Employee Access to Personnel Files. Effective October 2013, the Connecticut laws regulating personnel files will include some new ground rules:

- *Timing of Employee Inspection*: A current employee must be permitted to inspect and/or copy his or her personnel file within seven (7) business days after the employer receives a written request. (The statutes currently permit the employer "a reasonable time" after a request to grant access.)

- *Rights of Former Employees*: A former employee who makes a written request within one (1) year after termination of employment may inspect and/or copy his or personnel file at a mutually agreed upon location within ten (10) business days after the request. If the parties cannot agree upon a location, the employer must mail a copy of the personnel file to the former employee within such ten (10) business day period. (The current law does not distinguish between current and former employees.)

- *Disciplinary or Termination Documents*: An employer must provide an employee with any documentation of a disciplinary action imposed on that employee within one (1) business day after imposing the discipline. An employer must provide an employee with any documented notice of the employee's termination immediately. (Note: no documentation of disciplinary action or termination is required, however, documentation is advisable in many circumstances, especially for disciplinary actions.)

- *Notice of Employee Right to Rebuttal*: Every documented disciplinary action, notice of termination or performance evaluation must include a statement in clear and conspicuous language that if the employee disagrees with any information in such document, the employee may submit a written statement explaining his or her position, and this statement must be maintained as part of the employee's personnel file.

Note: The statutes on personnel files provide for penalties of $500 for first violations and up to $1,000 for subsequent violations.

(B) Retaliation Claims Are Now Harder for Employees. In a big win for employers, the U.S. Supreme Court, in *University of Texas Southwestern Medical Center v. Nassar (June 2013)*, held that a plaintiff claiming retaliation under Title VII of the Civil Rights Act must prove that retaliation was ***the*** reason for the adverse employment action, not merely "a motivating factor." Thus, a plaintiff with a retaliation claim must prove that the employer would not have taken the adverse action if the plaintiff had not made a harassment or discrimination complaint. Connecticut courts have already held that this decision applies retroactively and it will have a significant effect on retaliation cases headed to trial.

(C) Same Sex Marriage and DOMA. In *U.S. v. Windsor*, the U.S. Supreme Court struck down the provision of the federal Defense of Marriage Act which defined marriage strictly as a union between a man and a woman. We described the effect of DOMA on employer-sponsored benefit plans in our July 2013 Employee Benefits and Executive Compensation Alert. *(A copy of the alert can be found on our website, www.rrlawpc.com, under "News.")* DOMA will also affect other employer policies. The effect will be more limited in Connecticut because equal treatment of same-sex couples was already required under Connecticut law. However, employer policies and practices that arise under

federal law will be affected, including federal family and medical leave policies. Federal FMLA did not formerly require an employer to provide leave to an employee who wished to care for a same-sex spouse with a serious health condition, and if the employer did provide such leave (perhaps because the employer was subject to Connecticut FMLA, which requires it), any leave provided did not count against the employee's annual 12-week federal FMLA entitlement. Now employers who are subject to federal FMLA must provide FMLA leave to spouses in same-sex marriages just as they do for spouses in traditional marriages. For employers who are subject to both federal and Connecticut FMLA, the change should be primarily beneficial.

(D) Employers Gain a Limited Definition of "Supervisor" for Harassment Cases. A divided U.S. Supreme Court held that an employee will be considered a "supervisor" for purposes of determining employer liability in harassment cases only when the employee is empowered to take tangible employment actions against the alleged victim of harassment. The employee must have the power to hire, fire, demote, promote, transfer or discipline, rather than merely the authority to direct and oversee the alleged victim's daily work. The distinction is important because an employer's liability for workplace harassment may depend upon the status of the harasser; it is generally easier to hold an employer liable for workplace harassment by supervisors.

(E) Additional Unemployment Compensation Electronic Filing Requirements.

- Beginning October 2013, (1) new employers must electronically notify the labor commissioner within 30 days after they become subject to Connecticut's unemployment laws (covered businesses are those who have one or more employees for 13 weeks, or who pay wages of $1,500 or more in any calendar quarter); and (2) any employer who acquires substantially all of the assets of another employer subject to Connecticut's unemployment laws must electronically notify the labor commissioner within 30 days after the acquisition.

- Beginning with the first calendar quarter of 2014, all quarterly unemployment tax returns must be filed electronically.

(F) Bill on Employee Noncompetition Agreements Killed by Veto. In 2013, Governor Malloy vetoed a bill passed by the Connecticut legislature which would have imposed a seven (7) day consideration period before an employee of an acquired or merged business could be required to sign a noncompetition agreement as a condition of continued employment. The bill was a considerably stripped down version of an earlier bill which would have imposed a consideration period of ten (10) business days for almost all employment-related noncompetition agreements. The Governor's veto message pointed to the bill's vague terms and the likelihood that it would lead to litigation, and invited the legislature to improve the bill and pass it again. We expect this issue to return.

This issue of the Employment Law Alert was written by Karen L. Brand and Agnes Romanowska. For information or additional copies of this newsletter, or to be placed on our mailing list, please contact Karen (860-240-1089 or kbrand@rrlawpc.com), Agnes (860-240-1088 or aromanowska@rrlawpc.com), or other members of Reid and Riege, P.C., One Financial Plaza, Hartford, CT 06103. For other information regarding Reid and Riege, P.C., please visit our website at www.rrlawpc.com.