

## CONNECTICUT

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### I. AT-WILL EMPLOYMENT

#### A. Statute

There is no specific at-will employment statute in Connecticut.

#### B. Case Law

"In Connecticut, an employer and employee have an at-will employment relationship in the absence of a contract to the contrary. Employment at will grants both parties the right to terminate the relationship for any reason, or no reason, at any time without fear of legal liability. Beginning in the late 1950s, however, courts began to carve out certain exceptions to the at-will employment doctrine, thereby giving rise to tort claims for wrongful discharge. Certain employer practices provoked public disfavor, and unlimited employer discretion to fire employees eventually yielded to a more limited rule." *Thibodeau v. Design Grp. One Architects, LLC*, 260 Conn. 691, 697-98, 802 A.2d 731, 735 (2002) (internal citations omitted).

In the absence of consideration in addition to the rendering of services incident to employment, an agreement for permanent employment is no more than an indefinite general hiring, terminable at the will of either party without liability to the other. *Fisher v. Jackson*, 118 A.2d 316, 317, 142 Conn. 734 (1955); see also *Ward v. Distinctive Directories, LLC*, 104 Conn. App. 258 (2007) (an employment contract for an indefinite term, is terminable at the will of the employer without having to "justify its termination of their relationship.") Pursuant to traditional contract principles...the default rule of employment at will can be modified by the agreement of the parties." *Brule v. Nerac Corp.*, 2008 Conn. Super. LEXIS 3310 (Conn. Super. Ct. Dec. 23, 2008) (citing *Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 234 Conn. 1, 15, 662 A.2d 89 (1995)). Where parties to a contract include reference to a period of time in the agreement, they should make it clear that the employment is at will if it is not their intent to contract for a specific duration of employment. See *Cruz v. Visual Perceptions, LLC*, 311 Conn. 93 (2014).

### II. EXCEPTIONS TO AT-WILL EMPLOYMENT

#### A. Implied Contracts

##### 1. Employee Handbooks/Personnel Manuals

The issue presented in one case was whether oral assurances and an employee manual created an implied contract of employment between an at-will

employee and the employer. *Torosvan v. Boehringer Ingelheim Pharm., Inc.*, 662 A.2d 89, 234 Conn. 1 (1995). During pre-employment interviews and meetings, the plaintiff informed the defendant that he was interested solely in "long-term" employment. The defendant told the plaintiff that if he did a good job, the defendant would take care of him. Also, the defendant told the plaintiff that he hoped he would "stay forever," and that the plaintiff would have the opportunity to examine the company's manual to determine whether it provided the guarantees he sought.

On his first day of work, the plaintiff received the employee manual, which stated that the employer had a right to "discharge for cause." The manual also stated that the company "supports an open door method of handling ideas, areas of discontent, or job related problems," adding that if an employee cannot work out a problem with his/her supervisor, the policy permits the employee access through the organization up to and including the president and chief executive officer. Two years later, the defendant revised its manual, by removing the "for cause" limitation on the defendant's right to discharge employees, and providing that any employee who falsified company records would be subject to discipline, up to and including termination. Subsequently, the plaintiff was accused of falsifying an expense report, and immediately fired. His request to meet with the company vice-president regarding the accusation was refused including those at-will, involve some type of implied contract. Such a contract includes terms specifying wages, hours, and responsibilities, but does not limit the terminability of an employee's employment. The court found that the defendant's pre-interview statements to the plaintiff and the provisions of the employee manual relating to the "for cause" limitation on the defendant's right to terminate and the defendant's open door policy created such an implied employment contract between the plaintiff and the defendant. *Torosyan*, 662 A.2d at 94. Although the court held that a continuation of employment after a revision of a company handbook that provides additional rights to employees is enforceable, the court held that where such revisions take away existing rights of an employee, the employee must expressly consent to these modifications for them to be enforceable. *Id.* at 99.

In another case, *Finley*, who had been employed by Aetna for twenty-four years, brought claims for wrongful discharge based in part on the involuntary termination provisions of Aetna's personnel policies and procedures manual. *Finley v. Aetna Life & Cas. Co.*, 499 A.2d 64, 5 Conn. App. 394 (1985). The manual stated:

It is Company policy to terminate any employee who cannot perform satisfactorily, whose attendance is poor, or who is otherwise unsuited to his job. It is the responsibility of the manager to identify such employees and to warn them that discharge will result if definite improvement is not made after a probationary period has been completed. It is recommended that a written notice be given to the employee immediately following the first discussion to avoid any possibility of misunderstanding. If the employee does not improve and a transfer to another job is not feasible, termination will then result.

*Finley*, 499 A.2d at 70, 5 Conn. App. at 401.

At trial, Aetna's vice president in charge of personnel testified that the manual was accessible to all Aetna employees and that Aetna intended its employees to rely on the provisions of that manual. He also testified that it was Aetna's policy to terminate employees only for "cause," which was defined as the three reasons described in the first sentence of the above-quoted portion of the manual. *Finley*, 499 A.2d at 70, 5 Conn. at 400.

The Appellate Court of Connecticut ordered a new trial as to certain claims of Finley based on what it ruled were erroneous jury instructions given by the trial court. One such instruction was to the effect that the jury could not rely "solely" upon the manual as the basis for a contract of employment between Finley and Aetna. The appellate court found such an instruction to be overly restrictive. It held:

[I]n appropriate circumstances the law of our state permits a fact finder to find from all the evidence, including an employer's personnel policies and procedures manual, that a contract of employment existed which limited the employer's right to discharge an otherwise at-will employee.

*Finley*, 499 A.2d at 72, 5 Conn. App. at 406.

A promise of employment for an indefinite term but containing particular terms may create a binding unilateral contract if the promise is in the form of an offer that is accepted by the employee. *Finley*, 499 A.2d at 74, 5 Conn. App. at 409.

If the employer's manual contained an offer which was communicated by dissemination to the employee, the employee's retention of employment may be acceptance of the unilateral contract; by remaining on the job, although free to leave, he may have supplied the necessary consideration. *Finley*, 499 A.2d at 74-75, 5 Conn. App. at 409-10.

The appellate court stated that these issues present questions of fact for resolution by the jury and remanded the case for a new trial.

## 2. Provisions Regarding Fair Treatment

Connecticut is governed by the Fair Employment Practices Act codified in C.G.S. § 46a-60. "Our Supreme Court has determined that Connecticut antidiscrimination statutes should be interpreted in accordance with federal antidiscrimination laws. While certain elements of the Fair Employment Practices Act and the ADA differ, [c]laims for violations of the [Fair Employment Practices Act] are analyzed under the same standards as claims for violations of the ADA." *Langello v. W. Haven Bd. of Educ.*, 142 Conn. App. 248, 259, 65 A.3d 1, 8 (2013).

## 3. Disclaimers

"By eschewing language that could reasonably be construed as a basis for a contractual promise, or by including appropriate [prominent] disclaimers of the intention to contract, employers can protect themselves against employee contract claims based on statements made in personnel manuals." *Finley v. Aetna Life & Cas. Co.*, 520 A.2d 208, 202 Conn. 190 (1987).

## 4. Implied Covenant of Good Faith and Fair Dealing

In *Magnan v. Anaconda Indus., Inc.*, 479 A.2d 781, 193 Conn. 558 (1984), Magnan was an employee of Anaconda for approximately thirteen years. In the summer of 1979, Anaconda was informed that certain of its managerial employees were engaging in illegal activities. On July 20, another employee approached Magnan regarding a refrigerator theft. On July 23, Magnan was asked to admit his own complicity in the theft. He refused and was discharged on August 16.

Magnan filed suit alleging, *inter alia*, that he was discharged in violation of an implied covenant of good faith and fair dealing. The Connecticut Supreme Court recognized the application of this doctrine to employment relations, but carved out a very narrow reading:

While we see no reason to exempt employment contracts from the implication of a covenant of good faith and fair dealing in the contractual relationship, we do not believe that this principle should be applied to transform a contract of employment terminable at the will of either party into one terminable only at the will of the employee or for just cause.

Although we endorse the applicability of the good faith and fair dealing principle to employment contracts, its essence is the fulfillment of the reasonable expectations of the parties. Where employment is clearly terminable at will, a party cannot ordinarily be deemed to lack good faith in exercising this contractual right.

Magnan, 479 A.2d at 788-789, 193 Conn. at 573.

The court endorsed the good faith concept but extended it only as far as the parties' actual agreement.

In the absence of a public policy violation there is no breach of the implied covenant of good faith and fair dealing in the employment relationship. *Doherty v. Sullivan*, 618 A. 2d 56, 29 Conn. App. 736,743 (Conn. 1992).

B. Public Policy Exceptions

1. General

An at-will employee may have a cause of action where he alleges "a demonstrably improper reason for dismissal, a reason whose impropriety is derived from some important violation of public policy." *Sheets v. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 475 (1980); *Gagnon v. Housatonic Valley Tourism Dist. Comm'n*, 92 Conn. App. 835, 844 (2006).

2. Exercising a Legal Right

In *Parsons v. United Technologies Com.*, 243 Conn. 66 (1997), Parsons was an instructor in aircraft maintenance employed as a member of the project team that built a non-military helicopter for the Crown Prince of Bahrain. The plaintiff was assigned to instruct members of the Bahranian helicopter crew regarding the proper maintenance and repair of the helicopter, and he was told that he would be required to travel to a military base located in Bahrain to instruct the flight crew. At about this time, the United States and certain allied nations were involved in Operation Desert Shield. The plaintiff informed his employer that he refused to travel to Bahrain due to the increased terrorist activities in the area and a travel warning issued by the State Department. As a result, the employer immediately terminated the plaintiff's employment.

The plaintiff asserted a claim for wrongful termination in violation of public policy, alleging that his discharge for refusal to travel to Bahrain violated Connecticut public policy requiring an employer to provide its employees with a reasonably safe place to work, as demonstrated by several state statutes regulating workplace safety. *Id.* at 70.

The trial court granted the employer's motion to strike the cause of action for wrongful termination in violation of public policy indicating that, as an at-will employee, the plaintiff was entitled to refuse his employer's order to travel to Bahrain during the military buildup in the Persian Gulf. But, because the plaintiff was an at-will employee, the defendants were entitled to terminate his employment for that very reason.

The Connecticut Supreme Court reversed the trial court, holding that there is "a cause of action for wrongful discharge against an employer transacting business in Connecticut if the employee is discharged for refusing to work under conditions that pose a substantial risk of death, disease or physical harm and that are not contemplated within the scope of the employee's duties." *Id.* at 81. The Supreme Court emphasized that:

We are not holding that an at-will employee can contest his or her discharge based on a subjective belief that an employer's directive would pose a threat to the employee's health and safety. It remains the burden of the employee who contests his or her discharge as a violation of the safe workplace public policy to prove that the condition or situation in which the employee was directed to work posed an objectively substantial risk of death, disease or serious physical harm. Similarly, although we conclude that the plaintiff has carried his burden of pleading that he was discharged in violation of the safe workplace public policy, we do not hold that the plaintiff has carried his burden of proving either that his discharge was based on the defendant's violation of the safe workplace public policy, or that his proposed relocation was not contemplated within the scope of the duties as an employee of the defendant.

*Id.* at 86.

The Connecticut Supreme Court reasoned that the idea that the safe workplace public policy should be construed to include only a workplace located in Connecticut and controlled, maintained, or owned by the employer, clearly ignores both the underlying purposes of the statutes upon which the public policy of workplace safety is predicated as well as the modern day realities of our global economy and increasingly mobile society.

A demand for the restitution of funds or be terminated, made to an employee who is subsequently convicted of larceny, does not constitute a violation of any important public policy because demanding the return of something that lawfully belonged to the employer cannot constitute extortion. *Carnemolla v. Walsh*, 815 A.2d 1251, 75 Conn. App. 319, 329 (2003).

### 3. Refusing to Violate the Law

An employee, who is terminated for allegedly refusing to take part in his employer's scheme to

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defraud the government adequately sets forth a cause of action for wrongful discharge notwithstanding his at-will employment status. *Faulkner v. United Techs. Corp.*, 693 A.2d 293 (Conn. 1997).

#### 4. Exposing Illegal Activity (Whistleblowers)

In *Sheets v. Teddy's Frosted Foods, Inc.*, 427 A.2d 385 (1979), Sheets worked for Teddy's for four years as quality control director and, subsequently, operations manager. He discovered deviations from the specifications contained in Teddy's standards and labels, which constituted violations of the Connecticut Uniform Food, Drug and Cosmetic Act. Sheets reported the false or misleading labels to the management, but his recommendations for improvements were ignored, and Sheets was terminated.

Sheets contended that he was fired for reporting the company's violations. On appeal, the Connecticut Supreme Court recognized for the first time a public policy exception to the traditional at-will doctrine:

It would be difficult to maintain that the right to discharge an employee hired at will is so fundamentally different from other contract rights that its exercise is never subject to judicial scrutiny regardless of how outrageous, how violative of public policy, the employer's conduct may be.

*Id.* at 387. The court expressed its opinion that the judiciary should not lightly intervene in the employment relationship so as to foment unwarranted litigation. However, the court also recognized that employees with unequal bargaining power are entitled to some judicial protection.

For today, it is enough to decide that an employee should not be put to an election whether to risk criminal sanction or to jeopardize his continued employment. *Id.* at 389. The case was remanded for further proceedings.

A subsequent decision by the Connecticut Supreme Court specifically characterized the holding in *Sheets* as "narrow." *Kilbride v. Dushkin Pubro Group, Inc.*, 443 A.2d 922, 186 Conn. 718 (1982). Connecticut courts have insisted that the employee otherwise be without a remedy before enforcing the exception. *Atkins v. Bridgeport Hydraulic Co.*, 501 A.2d 1223, 5 Conn. App. 643 (1985). The Connecticut Appellate Court has further limited the exception to cases where the plaintiff is able to show an actual "improper reason" for the discharge. *Girgenti v. Cali-Con, Inc.*, 544 A.2d 655, 15 Conn. App. 130 (1988).

Additionally, pursuant to CONN. GEN. STAT. § 31-51m, no employer shall discharge, discipline or otherwise penalize any employee because the employee, or a person acting on behalf of the employee, reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation or any municipal ordinance or regulation to a public body, or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action.

Similarly, no employer may discipline in any manner an employee who reports or assists in the investigation of a violation of the state occupational health and safety act. CONN. GEN. STAT. § 31-40d.

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### III. CONSTRUCTIVE DISCHARGE

Under normal circumstances, an employee who resigns does not have a cause of action for wrongful discharge against his or her employer. However, under the doctrine of constructive discharge, the law realizes that this "voluntary resignation may be, in reality, a dismissal by an employer." *Brittell v. Dep't of Corr.*, 717 A.2d 1254, 1270, 247 Conn. 148, 178 (1998), quoting *Seery v. Yale-New Haven Hosp.*, 554 A.2d 757, 761, 17 Conn. App. 532, 540 (1989).

To prove a constructive discharge, a plaintiff must show that rather than being directly discharged, the employer intentionally created an intolerable workplace that ultimately forced the plaintiff to resign involuntarily. *Brittell*, 717 A.2d at 1270-1271, 247 Conn. at 148. "Working conditions are intolerable if they are so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." *Id.*, quoting *Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 89 (2d Cir. 1996). See also *Penn. State Police v. Suders*, 124 S. Ct. 2342, 2354 (2004) which opined that "The offending behavior 'must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" In *Karagozian v. USV Optical, Inc.*, 355 Conn. 426 (2020), the Connecticut Supreme Court made clear that a plaintiff claiming constructive discharge is not required to allege or prove that the employer intended to force the employee to quit but must prove the employer intended to create the conditions the employee claims compelled her to quit.

An example of such severe or pervasive conduct occurred in *O'Brien v. StoltNielsen Transp. Group Ltd.*, 838 A.2d 1076, 48 Conn. Supp. 200 (2003), where an in-house attorney who felt compelled to resign his position after his employer failed to cease and rectify on-going criminal conduct had a valid claim for constructive discharge.

In doing so, we recognized a public policy limitation on the traditional employment at-will doctrine in an effort to balance the competing interests of employers and employees. *Antinerella v. Rioux*, 229 Conn. 479, 492, 642 A.2d 699 (1994). In *Morris v. Hartford Courant Co.*, supra, at 680, we recognized the inherent vagueness of the concept of public policy and the difficulty encountered when attempting to precisely define the contours of the public policy exception. In evaluating claims, we look to see whether the plaintiff has...alleged that his discharge violated any explicit statutory or constitutional provision...or whether he alleged that his dismissal contravened any judicially conceived notion of public policy....*Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580-81, 693 A.2d 293 (1997). (Internal quotation marks omitted.) *Daley v. Aetna Life & Casualty Co.*, 249 Conn. 766, 798, 734 A.2d 112 (1999); *Accord Parsons v. United Technologies Corp.*, 243 Conn. 66, 76-77, 700 A.2d 655 (1997)." *Thibodeau v. Design Group One Architects, LLC*, 260 Conn. 691, 698-699 (Conn. 2002).

The Connecticut Supreme Court has refused to expand the protections provided in *Parsons* to an employee seeking a more family friendly schedule intended to accommodate working from home in order to spend more time with a child claiming that such a schedule would further "a broad legislative concern for the physical welfare and safety of Connecticut employees..." *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 770, 734 A.2d (Conn. 1999). In doing so, the Court noted that Daley had failed to show any evidence that the conditions under which she labored at Aetna were physically hazardous and that her claim bordered on frivolous. *Id.*

In *Powell v. Feroletto Steel Co.*, the Plaintiff brought an action for wrongful discharge, but "has an explicit state statutory remedy for the defendant's alleged misconduct under the comprehensive



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procedural provisions of the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. §§ 46a-51 et seq. Under these circumstances, the plaintiff may not circumvent the CFEPA by the assertion of private cause of action. See *Powell v. Feroletto Steel Co.*, 659 F. Supp. 303 (D. Conn. 1986) (TFGD), slip op. at 4-7.

As stated in *Murray v. Bridgeport Hospital*, 40 Conn. Supp. 56, 480 A.2d 610 (1984), when an allegation is made with respect to a protected category under the Fair Employment Practices Act, the exclusive remedy is in the procedures established by the act, and there is no cause of action for a private lawsuit. *Napoleon v. Xerox Corp.*, 656 F. Supp. 1120, 1125 (D. Conn. 1987).

Where "an employee is discharged not for reporting violations to a public body but instead for internally complaining about matters that implicate the state's public policy, this Court would be inclined to conclude that the common law wrongful discharge claim remains available to the employee." *Rogus v. Bayer Corp.*, 2004 U.S. Dist. LEXIS 17026 (D. Conn. Aug. 25, 2001).

### IV. WRITTEN AGREEMENTS

#### A. Standard "For Cause" Termination

The terms of what constitutes "for cause" termination should be clearly spelled out. See *Ramirez v. Health Net of Ne., Inc.*, 2005 Conn. Super LEXIS 3007 WL 3112871 (Conn. Nov. 3, 2005). An ambiguity in what is meant by "for cause" will be construed against the party that drafted the employment contract. *Grachen v. Metro Marketing Resources, Inc.*, 2004 WL 2595903 (Conn. Oct. 20, 2004).

#### B. Status of Arbitration Clauses

In *Gibbs v. Conn. Gen. Life Ins. Co.* 1998 Conn. Super LEXIS 599 (Conn. Super. Ct. March 3, 1998), Gibbs, began working for the defendant in 1969. In 1991, Gibbs began experiencing migraine headaches, which became so severe, that in 1993, hospitalization was required. Throughout 1994 and 1995, the defendant, Thompson, made disparaging comments to Gibbs regarding his age, disability, and ability to perform. After making several complaints to management about Thompson, Thompson retaliated against Gibbs by issuing him a written "Performance Letter." This reprimand caused Gibbs further physical and emotional harm, such as severe migraines and depression. As a result of these events, Gibbs was disabled from work since approximately October 18, 1995.

During the week of August 1, 1995, the division in which Gibbs worked distributed a new arbitration policy which provided in part: "In the interest of fairly and quickly resolving employment related disagreements and problems, [this] Division's policy is that mediation/arbitration by a neutral third-party is the required and final means for the resolution of any serious disagreements and problems not resolved by the internal dispute resolution process . . . Any agreed upon resolution or arbitrator's decision will be enforceable in court, but the mediation/arbitration must be used before going to court." *Gibbs*, 1998 LEXIS 599 at \*3.

The issue before the court was the defendant's motion to compel arbitration and to stay judicial proceedings. Gibbs opposed said motion on the grounds that no agreement to arbitrate exists, and thus, the defendant's motion to compel must be denied.



The court opined that "[w]hen deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally . . . should apply ordinary state law principals that govern the formulation of contracts." *Gibbs*, 1998 LEXIS 599 at \*4, quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)." In the present case, Connecticut was the situs of the relevant events in this dispute, and as such, the court looked to the contract law of Connecticut to determine whether an arbitration agreement existed.

Under Connecticut law, "for an enforceable contract to exist, the court must find that the parties' minds had truly met." *Fortier v. Newington Group, Inc.*, 620 A.2d 1321, 1323, 30 Conn., App. 505, 510 (1993). In addition, for a promise to be enforceable against the promisor, the promisee must have given some consideration for the promise. *Gianetti v. Norwalk Hosp.*, 557 A.2d 1249, 211 Conn. 51, 61 (1989).

In the *Gibbs* case, when the interoffice memorandum regarding the new arbitration policy was distributed, Gibbs had already been working for the defendant for twenty-five years. Gibbs was never asked to acknowledge receipt of the policy or to sign anything indicating his assent to the terms thereof. Moreover, Gibbs alleged that he did not even read the memorandum until after he went on disability leave. Thus, the court opined that there was no meeting of the minds regarding the arbitration policy. 1998 LEXIS 599 at \*9.

Further, the court indicated that the agreement to arbitrate was not supported by consideration. "Consideration is defined as a benefit to the party promising or a loss or a detriment to the party to whom the promise is made." *Id.* at \*10. In the present matter, the arbitration policy "did not arise out of any type of negotiations between [the defendant] and Gibbs. Rather, it was thrust upon Gibbs without his knowledge or consent . . . [Moreover], there was no benefit to Gibbs that was bargained for in exchange for his alleged promise to arbitrate all disputes." *Id.* at \*11. The court concluded that "[b]ecause there was no meeting of the minds, and the agreement was not supported by consideration, no agreement to arbitrate was formed under Connecticut law." *Id.* Accordingly, the defendants' motion to compel arbitration and to stay judicial proceedings was denied.

In *Depucchio v. Cigna Corp.*, 2003 WL 1787949 (Conn. Super. Mar. 20, 2003), the plaintiff brought an employment discrimination action against his employer, Cigna, alleging that Cigna violated the Connecticut Fair Employment Practices Act (CFEPA), Conn. Gen. Stat. § 46a-51, *et seq.*, by, *inter alia*, terminating his employment. Cigna moved to stay the judicial proceedings and compel arbitration based upon its arbitration policy, which was announced in 1995, and which was in place at the time of the plaintiff's firing in 2000. *Id.* at \*1.

Cigna contended that the plaintiff was aware of the arbitration policy, which also appeared in the Employee Handbook, and that the policy was a condition of employment which the plaintiff accepted by continuing to work for Cigna thereafter. *Depucchio*, 2003 WL 1787949 at \*2. The plaintiff countered that he did not agree to the arbitration policy and that he refused to sign a form specifically requiring him to submit his employment disputes to arbitration. *Id.*

The court decided this issue with the Connecticut Supreme Court's holding in *Torosvan v. Boehringer Ingelheim Pharm., Inc.*, 234 Conn. 1 (1995), in mind. There, the court held that proposed modifications to an implied contract between an employer and employee by means of circulation of an employee handbook must be accepted by the employee, stating:

When an employer issues an employment manual that substantially

interferes with an employee's legitimate expectations about the terms of employment, however, the employee's continued work after notice of those terms cannot be taken as conclusive evidence of the employee's consent to those terms.

*Torosyori*, 234 Conn. at 18.

After examining several Connecticut state and federal cases dealing with the same Cigna arbitration policy, the *DePucchio* court held that "the touchstone issue is whether by actions or conduct [the plaintiff] and Cigna can be found to have agreed to arbitrate this dispute." *DePucchio*, 2003 WL 1787949 at \*5. The court held that the fact that the plaintiff was aware of the arbitration policy and continued to work for Cigna did not constitute acceptance of the policy, finding that the imposition of an arbitration requirement interfered with the employee's legitimate employment expectations. *Id.*

In reaching this finding, the court disagreed with the district court decision in *Fahim v. Cigna Investments, Inc.*, 1998 WL 1967944 (D. Conn. Sep. 10, 1998), which found that the plaintiff employee did not have a legitimate expectation to be free of the same Cigna arbitration policy, holding that the type of legitimate expectations described in *Torosyan* were limited to employment conditions one is entitled to as a matter of contract right. *Id.* at \*3.

In contrast, the *DePucchio* court defined a legitimate expectation under *Torosyan* as "something less than a contractual right and more than a mere hope. It is an assumption or trust that something will occur based on experience and sound analysis." *DePucchio*, 2003 WL 1787949 at \*5. Based on this analysis, the court found that the plaintiff had a legitimate expectation that disputes with his employer would be tried in a court of law and denied the defendants' motion to stay proceedings and compel arbitration. *Id.* at \*\*5-6.

It is true that, under the FAA, arbitration agreements must be in writing, but need not be signed. *Sherry*, 1999 U.S. Dist. LEXIS 6623, 1999 WL 287738, at \*4 (citing *Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776-77 (2d Cir. 1995))." *Whitaker v. Clear Channel Broad., Inc.*, 2005 U.S. Dist. LEXIS 38474, 12-13 (D. Conn. Dec. 16, 2005).

In *Whitaker*, the absence of the plaintiff's signature on the arbitration agreement, or on an acknowledgment of receipt of the Employee Guide, was not fatal to the defendant's argument that an agreement to arbitrate claims was formed between the parties. However, a meeting of minds between the parties as to the formation of the arbitration agreement is required, and Whitaker's signature on the offer letter is not sufficient evidence of an intent on her part to be bound by the arbitration agreement because it neither makes mention of the arbitration agreement, nor informs her of the Employee Guide which contained the arbitration agreement. *Id.* "Furthermore, the "double presumption" theory put forward by the defendants, i.e., by the terms of the offer letter, Whitaker should be presumed to have signed the acknowledgment form, and therefore, be presumed to have agreed to the arbitration agreement, is not sufficient evidence of Whitaker's actual intent to be bound by the terms of the arbitration agreement. Accordingly, the court finds that Whitaker was not bound by the arbitration agreement in the Employee Guide by virtue of signing the offer letter." *Id.*

It may be true that, upon commencing employment, Whitaker was given the Employee Guide, and that the Guide was easily available to her at all times. However, given the presence of the offer

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letter, and the specific language of the offer letter indicating that it stated the complete contract between the Whitaker and her employer, the court cannot find that the issuance of the Employee Guide was itself part of the offer of employment, as contemplated in *Torosyan*. In commencing work, Whitaker was bound by the terms described in the signed offer letter, and, as discussed above, those terms did not sufficiently incorporate the arbitration agreement included in the Employee Guide so as to make it binding. Because no agreement to arbitrate claims was formed between the parties, the defendants' motion to compel arbitration is DENIED." *Id.* at 14.

### V. ORAL AGREEMENTS

Oral Agreements and statements are enforceable in Connecticut. There is a three-year Statute of Limitations for oral contracts while there is a six year Statute of Limitations for written contracts.

#### A. Promissory Estoppel

*D'Ulisse-Cupo v. Bd. of Directors*, 520 A.2d 217, 202 Conn. 206 (1987), involved a school board's failure to rehire a non-tenured teacher. The plaintiff argued that, before her contract was to expire, she was told that "there would be no problem with her teaching certain courses and levels the following year, that everything looked fine for rehire the next year, and that she should continue her planning for the exchange program." *D'Ulisse-Cupo*, 520 A.2d at 218. A written notification placed on the bulletin board stated "All present faculty members will be offered contracts for the next year." *Id.* Because of these statements, the plaintiff did not pursue alternative job opportunities. She filed suit against the school for breach of contract upon learning that her contract would not be renewed. The trial court struck the breach of contract and negligent misrepresentation claims. The plaintiff appealed based, in part, on the doctrine of promissory estoppel.

The Supreme Court recognized that an action for promissory estoppel may exist under proper circumstances.

A fundamental element of promissory estoppel is the existence of a clear and definite promise, which a promisor could reasonably have expected to induce reliance. Thus, a promisor is not liable to a promisee who has relied on a promise if, judged by an objective standard, he had no reason to expect any reliance at all.

*D'Ulisse-Cupo*, 520 A.2d at 221 (citation omitted).

The court did not view the written and oral statements to be sufficiently promissory or sufficiently definite and therefore upheld the verdict of the trial court with respect to the plaintiff's contract claims.

In *Stewart*, 267 Conn. 96 (1996), a former employee brought a wrongful termination action against her former employer, claiming that she was terminated after her husband, who also was formerly employed by the defendant but had been terminated, accepted a position with one of the defendant's competitors. *Id.* at 98-99. The plaintiff alleged that, after her husband was terminated by the defendant, she spoke with her supervisor about her belief that her husband might accept employment with a competitor. *Id.* at 99. Her supervisor stated to her that her husband's reemployment within the industry would have no bearing on her employment with the defendant. *Id.*

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at 99-100. Shortly after learning that the plaintiff's husband accepted employment within the industry, the defendant reduced the plaintiff's duties, limited her interactions with clients, and requested that she agree to provisions of a document that delineated her obligations to the defendant in relation to her husband's work. *Id.* at 100. The plaintiff alleged that she was terminated when she declined to agree to the provisions of that document. *Id.*

One count of the plaintiff's complaint was predicated on a theory of promissory estoppel. *Id.* Specifically, the plaintiff alleged that she relied to her detriment on her supervisor's promise that her employment with the defendant would not be affected adversely by her husband's future reemployment with a competitor, in that she remained with the company and did not pursue other employment opportunities. *Id.*

The court stated the general principles applicable to a promissory estoppel claim, which appeared in the Restatement (Second) of Contracts § 90, and have been adopted in Connecticut:

Under the law of contract, a promise is generally not enforceable unless it is supported by consideration. . . . This court has recognized, however, the development of liability in contract for action induced by reliance upon a promise, despite the absence of common-law consideration normally required to bind a promisor. . . . [U]nder the doctrine of promissory estoppel [a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. . . . A fundamental element of promissory estoppel, therefore, is the existence of a clear and definite promise which a promisor could reasonably have expected to induce reliance. Thus, a promisor is not liable to the promisee who has relied on a promise if, judged by an objective standard, he had no reason to expect any reliance at all.

*Stewart*, 267 Conn. at 104-105, quoting *D'Ulisse-Cupo v. Bd. of Directors*, 520 A.2d 217, 202 Conn. 206, 213 (1987).

At trial, the jury returned a verdict in favor of the plaintiff with respect to her promissory estoppel claim, finding that the supervisor's representations to the plaintiff were sufficiently clear and definite to constitute a promise. *Stewart*, 267 Conn. at 101. The defendant moved to set aside the verdict and for judgment notwithstanding the verdict, contending that the evidence was insufficient to support the jury's verdict. *Id.* The trial court denied the defendant's post-verdict motions and rendered judgment in accordance with the jury's verdict. *Id.* On appeal, the defendant contended that, under the law of promissory estoppel, as articulated in *D'Ulisse-Cupo*, all promises in the employer-employee context, to be actionable, must contain all the elements of an offer to enter into a contract. *Id.* at 106-107.

The Connecticut Supreme Court rejected the defendant's argument, holding that its decision in *D'Ulisse-Cupo* was not so broad. *Stewart*, 267 Conn. at 107. Specifically, although the doctrine of promissory estoppel requires a promise to be clear and definite, the court held that the promise does not need to be the equivalent of an offer to contract because the prerequisite for application of promissory estoppel is a promise, and not a bargain or an offer. *Id.* at 105-07. Based on these findings,

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the court held that the jury reasonably could have concluded that the supervisor's representations constituted a promise upon which the plaintiff reasonably could and did rely and affirmed the trial court's judgment. *Id.* at 106.

In discussing *D'Ulisse-Cupo*, the US District Court for the State of Connecticut has held that "[w]here an identifiable offer has been made, it is a factual question for the jury to determine whether or not the offer was sufficiently promissory to induce reliance. Where no identifiable offer has been made, the court should grant Summary Judgment." *Suntoke v. PSEG Power Connecticut, LLC*, 2009 U.S. Dist. LEXIS 11434, 33-34 (D. Conn. Feb. 13, 2009) (internal cites omitted).

### B. Fraud

Connecticut recognizes a cause of action based on fraud. The elements of a fraud action are: (1) a false representation was made as a statement of fact; (2) the statement was untrue and known to be so by its maker; (3) the statement was made with the intent of inducing reliance thereon; and (4) the other party relied on the statement to his detriment.

For example, in *Meyers. v. Cornwall Quality Tools, Inc.*, 674 A.2d 444, 41 Conn. App. 19 (1996), Phelan, an agent of the defendant, Cornwall Quality Tools, made representations to the plaintiffs about the plaintiffs becoming a dealer for the defendant. The plaintiffs claimed that the representations made to them by Phelan were fraudulent. Phelan told the plaintiffs that they "had sufficient investment capital to operate a Cornwall dealership," that the plaintiffs could expect \$165,000 in annual income from \$200,000 in total sales," that the defendants would "provide adequate training to the plaintiffs," and that Cornwall would "repurchase the tools if [the] dealership was terminated." *Id.* at 450. The jury returned a verdict for the plaintiffs based on these representations that it found to be fraudulent. On appeal, the defendants argued that Phelan's statements did not amount to "statements of fact" and were true because the defendants had afforded training to the plaintiffs and repurchased the tools. The appellate court upheld the jury's decision "because the jury could reasonably and logically have reached its conclusions." *Meyers*, 674 A.2d at 449.

### C. Statutes of Fraud

"No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or the agent of the party to be charged: . . . (5) upon any agreement that is not to be performed within one year from the making thereof." Conn. Gen. Stat. § 52-550(a)(5).

An employment contract which calls for services for more than one-year falls within the requirements of the Statute of Frauds. *Urda v. Sahl*, 2003 WL 21007160 (Conn. April 17, 2003).

A decision by an employee to "continue employment" or "remaining a dedicated employee" does not constitute part performance to overcome the requirements of the statute of frauds. *Bombard v. Indus. Riggers, Inc.*, 1998 WL 13935 (Conn. Jan. 5, 1998).

## VI. DEFAMATION

### A. General Rule

The tort of defamation includes four elements: (1) a defamatory statement made by the defendant (2) identifying the plaintiff to a reasonable third person, (3) published to a third person, (4) which causes injury to the plaintiff's reputation. Defamation consists of the two torts: libel and slander. Libel is written defamation, while slander is oral. *Lizotte v. Welker*, 45 Conn. Supp. 217, 220 (Super. Ct. 1996), aff'd, 244 Conn. 156 (1998).

A plaintiff alleging defamation must demonstrate that the defendant published or uttered false statements that harmed the plaintiff, and that the defendant was not privileged to do so. *Crosslan v. Hous. Auth.*, 974 F. Supp. 161 (1997); see also *Kelley v. Bonney*, 606 A.2d 693, 221 Conn. 549 (1992).

Communication of a defamatory statement within a disciplinary report to employees of the corporation is enough to satisfy the intracorporate publication doctrine. In *Gambardella v. Apple Health Care, Inc.*, 863 A.2d 735, 86 Conn. App. 842 (2005), a prima facie case was made for defamation concerning a disciplinary report stating that an employee of a skilled nursing home facility was terminated for theft of facility property. Because the accusation that employee was guilty of theft fit the definition of a defamatory statement, and statements concerning the disciplinary report were communicated to three employees within the corporation, injury to the employee's reputation was presumed and the intracorporate publication doctrine was met.

#### 1. Libel

"In Connecticut, '[i]t is clear that before a party will be held liable for libel, there must be an unprivileged publication of a false and defamatory statement.... A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'" *Lizotte v. Welker*, 45 Conn. Supp. 217, 221 (Super. Ct. 1996), aff'd, 244 Conn. 156 (1998).

#### 2. Slander

Slander is oral defamation. *Gagnon v. Housatonic Valley Tourism Dist. Comm'n.*, 92 Conn. App. 835, 848 (2006).

#### B. References

References are often provided through oral or written communication. When an employer communicates information to another person, the information is published. Therefore, the communication to another employer can form the basis of a claim of defamation. See *Giannecchini v. Hosp. of St. Raphael*, 47 Conn. Supp. 148 (Super. Ct. 2000). The best way to defend a claim based on a reference is through the truth. Hence, the evolution of the so-called neutral reference so popular among employers, under which the employer will provide only neutral, factual information in a reference, such as dates of employment, positions held, and rate of pay. Although no Connecticut cases directly address the subject, circumstances may exist where one may argue that references are either invited by the plaintiff or subject to qualified immunity. One Connecticut court has suggested that one who invites comment is in no position to complain about the resulting comment. See *Griffin v. Clemow*, 28 Conn. Supp. 109, 112 (Super. Ct. 1968).

#### C. Privileges



Statements that are otherwise defamatory will not impose liability on an employer if they are privileged. Two factors must exist for privilege to exist: "the occasion must be one of privilege, and the privilege must not be abused." *Charles Parker Co. v. Silver City Crystal Co.*, 142 Conn. 605, 615 (Conn. 1955).

In the employment context, "communications between managers regarding the review of an employee's job performance and the preparation of documents regarding an employee's termination are protected by a qualified privilege," except where the defamatory remarks involve malice, improper motive, or lack of good faith in making the statement. *Torosvan v. Boehringer Ingelheim Pharm., Inc.*, 662 A.2d 89, 234 Conn. 1 (1995). Similarly, performance appraisals are conditionally privileged. *Terry v. Hubbell*, 167 A.2d 919, 22 Conn. Super. 248 (1960). Comments on unemployment notices filed with the State Unemployment Compensation Commission are absolutely privileged. *Petyan v. Ellis*, 510 A.2d 1337, 200 Conn. 243 (1986).

Several Connecticut cases state the general requirements for privilege defense. For instance, in *Miles v. Perry*, 529 A.2d 199, 11 Conn. App. 584 (1987), the defendants asserted two privileges in defense of defamation allegations: "(1) a conditional or qualified privilege applicable to false expression encompassing a matter of public concern; and (2) a conditional or qualified privilege conditioned upon statements made in the course of official duties." *Id.* at 594. The court held that to establish either privilege, the defendants must prove five elements: (1) an interest to be upheld, (2) a statement limited in scope to this purpose, (3) good faith, (4) a proper occasion, and (5) a publication in a proper manner to proper parties only. *Id.*

In *Bleich v. Ortiz*, 493 A.2d 236, 196 Conn. 498 (1985), a dispute arose between a consignor of an antique cabinet and the purported owners of that cabinet which resulted in a defamation claim. The Supreme Court of Connecticut held that, in the situation of a dispute as to ownership of the antique cabinet, a letter sent by the purported owners to the auctioneer of the cabinet was conditionally privileged. The court stated that:

for the defense of conditional privilege to attach, a defendant must assert an objective interest sufficiently compelling to warrant protection of an otherwise defamatory communication. The privilege is defeated despite assertion of such an interest, however, if the defendant acts with an improper motive or if the scope or manner of publication exceeds what is reasonably necessary to further the interest.

*Id.* at 238., citing *Charles Parker Co. v. Silver City Crystal Co.*, 116 A.2d 440 (Conn. 1955). The court held that the conditional privilege is lost "if the defendant acts with malice in making the defamatory communication . . . [M]alice is not restricted to hatred, spite or ill will against a plaintiff, but includes any improper or unjustifiable motive." *Id.* at 240; see *Proto v. Bridgeport Herald Corp.*, 72 A.2d 820, 136 Conn. 557 (1950) (in libel action defining malice as not necessarily meaning hatred, spite or ill will against the plaintiff, but that there must have been some improper or unjustifiable motive in publishing). See also *Miron v. Univ. of New Haven Police Dep't*, 284 Conn. 35 (2007).

The privilege for employers providing employee references is recognized in *Miron v. University of New Haven Police Dept.*, 284 Conn. 35, 931 A.2d 847 (2007). In *Miron*, the Supreme Court recognized the existence of "a qualified privilege for the employment references of current or former employers that were solicited with the employee's consent." *Id.* at 45.



In recognizing the qualified privilege in this context, the Supreme Court articulated its policy reasons as follows: the defense was consistent with precedent, the defense would support the integrity of employment references, and the defense would diminish concerns about chilling communications between former and future employers. *Id.* at 45-46. To the latter point, the *Miron* court noted: "We were concerned the employers would choose a culture of silence . . . rather than rely on truth as a defense to a defamation claim. . . . It also would encourage a 'culture of silence' not to afford a qualified privilege to employment references that are made in good faith and without improper motive." *Id.*, 45-46.

D. Other Defenses

1. Truth

Truth is an absolute defense to allegations of defamation. *Strada v. Conn. Newspapers, Inc.*, 477 A.2d 1005, 193 Conn. 313 (1984). "As a general rule, the defense of truth applies to statements of fact, while privilege of fair comment applies to expressions of opinions." *Goodrich v. Waterbury Republican-Am., Inc.*, 448 A.2d 1317, 1322, n.4 (Conn. 1982) (citation omitted). For example, "in a civil action for libel, where the protected interest is personal reputation, . . . truth of [the] allegedly libelous statement of fact provides an absolute defense, and only substantial [proof] need be shown to constitute the justification." *Goodrich*, 448 A.2d 1317, 188 Conn. 107 (1982). Where a statement challenged as defamatory is "substantially true" it is irrelevant whether the declarant was certain that it was true or not at the time he made the statement. *Gerrish v. Hammick*, 198 Conn. App. 816 (2020).

2. No Publication

Connecticut law no longer requires publication outside of a corporate entity as an element of the tort of defamation in an employment case. *Torosyan v. Boehringer Ingelheim Pharm., Inc.*, 662 A.2d 89, 234 Conn. 1 (1995) (statement communicated to plaintiff's supervisors and included in personnel file satisfies publication requirement).

Questions regarding whether a publication occurred may defeat summary judgment. *Edwards v. Community Enterprises, Inc.*, 251 F.Supp. 2d 1089 (D.Conn.2003).

Finally, publication does not exist when the communication is made directly to the plaintiff and no one else. *Raye v. Wesleyan University*, 2003 WL 1962881, at \*2 (Conn. Super. 2003).

3. Self-Publication

The Supreme Court of Connecticut has rejected the doctrine of self-defamation, which is also known as self-publication. The doctrine of self-defamation creates a cause of action for a plaintiff who is compelled to publish a slanderous statement to a third party while it is reasonably foreseeable to the defendant that the plaintiff would be so compelled. See *Gaudio v. Griffin Health Services*, 1991 Conn. Super. LEXIS 3098 (Conn. Super. Ct. July 20, 1991). In the employment context, this type of claim would arise when an employer made false and defamatory statements to the plaintiff in setting forth the reasons for his termination, and that the plaintiff "subsequently applied for similar employment with others and has been 'strongly compelled to disclose' the stated reasons for his termination." *Gaudio*, at \*7-8.

Although the doctrine was considered to be "emerging," it has been rejected by the Supreme Court of Connecticut. *Cweklinsky v. Mobil Chem. Co.*, 267 Conn. 210 (2004). Public policy concerns and the fact that this doctrine would run contrary to several principles of law swayed the court's decision in this case. First, the court found that this "doctrine would have a chilling effect on communication in the workplace, thereby contradicting society's fundamental interest in encouraging the free flow of information." *Id.* at 219. Implementing the doctrine would encourage employers to restrict their communications with employees for fear of liability and this "culture of silence' may actually harm employees by depriving them of the benefit of constructive criticism." *Id.* at 220. It also found that in jurisdictions that have accepted the self-defamation doctrine, employers have resorted to providing little or no information to employees in the termination process. *Id.* at 222.

Another public policy concern that the court addressed was that an overarching policy of "silence could frustrate an employee's right to redress a wrongful termination." *Id.* at 221. If the self-defamation doctrine were accepted, a fact-finder would be less suspicious of an employer who refuses to explain the reasons behind an employee's termination. *Id.* If there is potential liability for compelled self-defamation, "an employer's silence could justifiably be viewed as savvy rather than suspicious," thereby providing an extra obstacle that a plaintiff claiming discriminatory discharge must overcome." *Id.*, quoting *Sullivan v. Baptist Merril. Hosp.*, 995 S.W.2d 569, 674 (Tenn. 1999).

The court also discussed the fact that this doctrine would run contrary to the principle of the duty to mitigate damages and the statute of limitations. *Cweklinsky*, 267 Conn. at 223-24. By accepting this doctrine, a plaintiff would be encouraged to repeat the defamatory statement and increase the defendant's liability. Also, since the statute of limitations begins on the date of publication, an employee could perpetually have a cause of action against an employer by merely applying for a new job. The court found that this doctrine would unfairly give the plaintiff the ability to create liability and to essentially avoid that statute of limitations. *Id.*

#### 4. Invited Libel

There is no case law in Connecticut specifically addressing this topic. Although no Connecticut cases directly address the subject, circumstances may exist where one may argue that references are either invited by the plaintiff or subject to qualified immunity. One Connecticut court has suggested that one who invites comment is in no position to complain about the resulting comment. *See Griffin v. Clemow*, 28 Conn. Supp. 109, 113 (Super. Ct. 1968).

#### 5. Opinion

Under Connecticut law, to constitute a cause of action for defamation the objectionable statement "must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 795 (1999). The privilege of fair comment applies to expressions of opinion. *Goodrich v. Waterbury Republican-Am., Inc.*, 448 A.2d 1317, 188 Conn. 107 (1982).

#### 6. Actual Harm to Reputation Recognized

Under Connecticut law, a plaintiff does not have to prove actual harm to reputation to recover damages where the alleged defamatory statement concerns improper conduct or lack of skill or integrity in one's profession or business and is of such a nature that it is calculated to cause injury to

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one in his profession or business. *Miles v. Perry*, 11 Conn. App. 584 (1987).

### E. Job References and Blacklisting Statutes

Connecticut does not have a statute or regulation governing job references. However, the so-called practice of "blacklisting" is prohibited by Connecticut General Statutes, § 31-51 which states in pertinent part:

Any person, or any officer or agent of any corporation, company, firm or the state or any political subdivision thereof, who blacklists any employee, mechanic or laborer, or publishes or causes to be published the name of any such employee, mechanic or laborer, with the intent and for the purpose of preventing such employee, mechanic or laborer from engaging in or securing employment from any other person, corporation, company, firm or the state or any political subdivision thereof, or, in any manner, conspires or contrives, by correspondence or otherwise, to prevent such employee, mechanic or laborer from procuring employment shall be fined . . . but the provisions of this section shall not be construed so as to prohibit any person or any officer or agent of any corporation, company, firm or the state or any political subdivision thereof, from giving a truthful statement of any facts concerning a present or former employee . . . to any officer or agent of any corporation, company, firm or the state or any political subdivision thereof, who may be considering the employment of such employee.

### F. Non-Disparagement Clauses

Non-disparagement clauses in contracts are enforceable in Connecticut.

## VII. EMOTIONAL DISTRESS CLAIMS

The Connecticut Supreme Court has held that emotional distress claims are available in the employment context only when the distress occurs in connection with termination. *Perodeau v. Hartford*, 792 A.2d 752, 259 Conn. 729, 730 (2002).

Connecticut courts have consistently held that "the mere act of firing an employee [or failing to hire an employee] even if wrongfully motivated, does not transgress the bounds of socially tolerable behavior." *Parsons v. United Tech. Corp.*, 700 A.2d 655, 243 Conn. 66, 73-74 (1997), citing *Madani v. Kendal Ford, Inc.*, 312 Ore. 198, 204 (1991).

Privileged statements may not generally create a basis for emotional distress claims. See, e.g., *Petyan v. Ellis*, 510 A.2d 1337, 200 Conn. 243 (1986). In *Petyan*, the plaintiff brought a claim of intentional infliction of emotional distress against the employer for statements the employer made in a "fact finding supplement" filed with the employment security division of the state labor board following the plaintiff's termination. The Supreme Court found these statements were absolutely privileged, as they were part of a quasi-judicial proceeding. The privilege exists no matter how extreme or outrageous the conduct.

If the alleged tortious conduct falls within the ambit of a collective bargaining agreement (CBA) (e.g. whether any alleged infliction of emotional distress resulted in a constructive discharge) the claimant must exhaust his or her administrative remedies by way of the grievance procedure set forth in the CBA before any legal proceedings can be instituted. *Sobczak v. Bd. of Educ. of City of Meriden*, 868 A.2d 112, 88 Conn. App. 99, cert. denied 875 A.2d 43, 273 Conn. 941 (2005).

A. Intentional Infliction of Emotional Distress

For the plaintiff to prevail on a claim of intentional infliction of emotional distress, four elements must be established. It must be shown: (1) that the defendant intended to inflict emotional distress or that he knew or should have known that emotional distress was a likely result of his conduct; (2) that the conduct of the defendant was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe. *DeLaurentis v. City of New Haven*, 597 A.2d 807, 803, 200 Conn. 225, 226 (1991).

Liability for intentional infliction of emotional distress requires conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause, mental distress of a very serious kind. See *DeLaurentis v. City of New Haven*, 597 A.2d 807, 220 Conn. 225 (1991); *Petvan v. Ellis*, 510 A.2d 1337, 200 Conn. 243 (1986); *Reed v. Signoid Corp.*, 652 F. Supp. 129 (D. Conn. 1986); *Collins v. Gulf Oil Co.*, 605 F. Supp. 1519 (D. Conn. 1985).

Termination of employment does not in and of itself give rise to a claim for intentional infliction of emotional distress. See *Muniz v. Kravis*, 59 Conn. App. 704, 710 (2000) (employer's actions in evicting plaintiff from her apartment on only 24 hours notice and using an armed security guard to notify the plaintiff that her employment had been terminated did not give rise to a claim for intentional infliction of emotional distress); *Parsons v. United Tech. Corp.*, 700 A.2d 655, 243 Conn. 66 (1997) (employer's actions in escorting a fired employee off the premises after termination did not give rise to a claim for negligent infliction of emotional distress).

Discharge of an employee for making an improper statement to a customer is an insufficient basis for a claim of intentional infliction of emotional distress. *Barry v. PosiSeal Intl, Inc.*, 647 A.2d 1031, 36 Conn. App. 1 (1994). Moreover, evidence that the discharge was embarrassing and humiliating is not sufficient to indicate severe emotional distress. *Barry*, 642 A.2d 1031, 36 Conn. App. 1 (1994).

B. Negligent Infliction of Emotional Distress

Connecticut courts first recognized a cause of action for negligent infliction of emotional distress in *Montinieri v. S. New England Tel. Co.*, 398 A.2d 1180, 175 Conn. 337, 345 (1979). In that case, it was determined that to state a claim for negligent infliction of emotional distress, the plaintiff has the burden of pleading that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that distress, if it were caused, might result in illness or bodily harm. *Id.*; see also *Morris v. Hartford Courant Co.*, 513 A.2d 66, 200 Conn. 676, 683-84 (1986).

There are essentially two defenses that may be raised to a claim for negligent infliction of emotional distress in the employment context. First, a defendant may claim the statute of limitations as a defense, which is three years pursuant to C.G.S.A. § 52-577. Second, and most commonly, defendants have claimed that plaintiff's claims are barred by the exclusivity provision of the Worker's

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Compensation Act, although this defense has been severely limited by the courts, most recently in *Perodeau v. City of Hartford*, 259 Conn. 729 (2002).

### VIII. PRIVACY RIGHTS

#### A. Generally

Connecticut law adopts the four forms of invasion of privacy set forth in the Restatement (Second) of Torts § 652A. *In re State Police Lit.*, 888 F. Supp. 1235 (1995). "[A] cause of action for invasion of privacy covers four categories: [1] unreasonable intrusion upon the seclusion of another; [2] appropriation of the other's name or likeness; [3] unreasonable publicity given to the others' private life; or [4] publicity that unreasonably places the other in a false light before the public." *Goodrich v. Waterbury Republican-Am. Inc.*, 448 A.2d 1317, 188 Conn. 107 (1982).

#### B. New Hire Processing

There are no state-specific laws or regulations in Connecticut governing the processing of new hires by employers. However, all new hires must be reported online to the Connecticut Department of Labor within 20 days of hiring. Further, the following information must be maintained in writing for all newly hired employees: a) employee's name; b) home address; c) occupation; d) total daily and weekly hours worked showing the beginning and ending time of each work period completed to the nearest unit of 15 minutes; e) total hourly, daily, or weekly basic wage; f) overtime wage as a separate item; g) additions and deductions from wages each pay period; h) total wages paid each period; and i) working certificates for 16 to 18 year-old employees. See CONN. GEN. STAT. §§ 31-58, 31-58a, 31-66, 31-76b, 31-76c, 31-76i, and 31-254(b).

##### 1. Eligibility Verification & Reporting Procedures

Connecticut does not have state specific laws or regulations governing eligibility verification and reporting procedures, except as noted above, all new hires must be reported online to the Connecticut Department of Labor within 20 days of hiring. See CONN. GEN. STAT. § 31-254(b).

##### 2. Background Checks

Connecticut does not regulate or prohibit the use of background checks and defers to federal law on this issue.

However, "[n]o employer shall inquire about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application, unless (1) the employer is required to do so by an applicable state or federal law, or (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment." Conn. Gen. Stat. § 31-51i(b). Employer inquiries about a prospective employee's erased criminal record is prohibited. See Conn. Gen. Stat. § 31-51i(c). Further, discrimination based on an erased criminal record, provisional pardon or certificate of rehabilitation is prohibited. See Conn. Gen. Stat. § 31-51i(e)-(f).

Additionally, generally no employer may require an employee or prospective employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking

account numbers as a condition of employment unless such employer is a financial institution, such report is required by law, the employer reasonably believes that the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment or such report is substantially related to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job related and is disclosed in writing to the employee or applicant. *See* CONN. GEN. STAT. § 31-51tt(b). The term "substantially related to the employee's current or potential job" is defined as meaning the information contained in the credit report is related to the position for which the employer or prospective employee is being evaluated because it is a managerial position, involves access to customer employees or the employer's personal or financial information other than information customarily provided in a retail transaction; or involves a fiduciary responsibility to the employer including, but not limited to issuing payments, collecting debts, transferring money or entering into contracts, or provides an expense account or corporate debit or credit card or provides access to confidential or proprietary business information or trade secrets or involves access to the employers non-financial assets valued at \$2,500 or more including prescription drugs or pharmaceuticals. *See* CONN. GEN. STAT. § 31-51tt(a)(4). The statute provides a mechanism by which an employer or prospective employee can file a complaint with the Department of Labor for a violation of this provision including statutory penalties. *See* CONN. GEN. STAT. §31-51tt(c).

C. Specific Issues

1. Workplace Searches

Connecticut courts have held that to successfully assert a cause of action for unreasonable intrusion, the plaintiff is required to demonstrate an invasion by an employer upon a privacy interest that would be highly offensive to a reasonable person. *Tapia v. Sikorsky Aircraft Div. of United Techs. Corp.*, No. CV 95 32 77 61 S, 1998 WL 310872 (Conn. Super. Ct. June 3, 1998) (striking claim where plaintiff alleged a cause of action for invasion of privacy based on actions by the defendant involving an inventory of the contents of plaintiff's locker after the plaintiff had been suspended from employment because he was fighting the workplace).

2. Electronic Monitoring

The Connecticut Surveillance Act provides that, "[n]o employer or agent or representative of an employer shall operate any electronic surveillance device or system, including, but not limited to the recording of sound or voice or a closed circuit television system, or any combination thereof, for the purpose of recording or monitoring activities of his employees in areas designated for the health or personal comfort of the employees or for the safeguarding of their possessions, such as rest rooms, locker rooms or lounges." CONN. GEN. STAT. § 31-48b(b). Moreover, "[n]o employer or his agent or representative and no employee or his agent or representative shall intentionally overhear or record a conversation or discussion pertaining to employment contract negotiations between the two parties, by means of any instrument, device or equipment, unless such party has the consent of all parties to such conversation or discussion." CONN. GEN. STAT. § 31-48b(d).

Connecticut's Electronic Monitoring Act requires employers to give prior written notice to every employee who may be affected by electronic monitoring. *See* CONN. GEN. STAT. § 31-48d. The law requires that notice be posted in an area readily available to viewing by all employees, such as a lunchroom or break room, or conspicuously placed on a bulletin board in another common area. Such notice must inform all employees who may be affected of the types of monitoring which may occur. *Id.*



There are, however, two types of electronic monitoring in which an employer need not give any prior written notice to employees. An employer does not have to give any written prior notice to employees where: 1) the information is collected for security purposes in common areas of the employer's premises which are held out for use by the public, such as a waiting room or building entrance; or 2) the employer has reasonable grounds to believe that an employee or employees are engaged in conduct which either: a) violates the law; b) violates the rights of the employer or its employees; or c) creates a hostile work environment; and the electronic monitoring is capable of producing evidence of the misconduct. CONN. GEN. STAT. § 31-48d.

### 3. Social Media

In 2015, Connecticut enacted a statute restricting the ability of employers to require employees and job applicants to provide the employer access to their personal online accounts, including accounts used for social media. *See* Conn. Gen. Stat. § 31-40x.

The statute generally prohibits covered employers from requesting or requiring that a job applicant or employee supply the employer with a username, password, or any other authentication means for accessing a personal online account, requesting or requiring that a job applicant or employee access such an account in the presence of the employer, or requiring a job applicant or employee to invite the employer or to accept an invitation from the employer to join a group affiliated with any personal online account. *See* Conn. Gen. Stat. § 31-40x(b).

The statute also prohibits an employer from discharging or disciplining or otherwise penalizing an employee based on the employee's refusal to engage in an action restricted by the statute and from failing to hire a job applicant for the same refusal. *See* Conn. Gen. Stat. § 31-40x(b)(4).

However, the statute does not prohibit an employer from requesting or requiring that an employee or job applicant provide the employer with the username, password, or other means of authentication for accessing an account or service provided by the employer or by virtue of the employment relationship with the employer, that the employee uses for the employer's business purposes, or for any electronic communications device, including a computer or cellular phone, that is supplied or paid for in whole or in part by the employer. *See* Conn. Gen. Stat. § 31-40x(c).

### 4. Taping of Employees

An employee who secretly tapes co-workers may be liable for invasion of privacy under both Conn. Gen. Stat. § 52-570d and common law. *WVIT Inc. v. Gray*, 1996 WL 649334 (Conn Super. Ct. Oct. 25, 1996). An employer is not prohibited from recording meetings with an employee so long as the employee is notified and consents. Connecticut's Recording Act is a civil statute requiring the consent of all parties to a telephone conversation before the conversation may be legally tape recorded. *See* Conn. Gen. Stat. § 52-570d.

### 5. Release of Personal Information on Employees

Connecticut has a personnel file statute that regulates employee access to their personnel records, as well as limits an employer's ability to disclose information contained in a personnel file. Personal information contained in an employment file cannot be released by an employer without the written authorization of the employee, except under limited circumstances. *See* CONN. GEN. STAT. §31-



128a *et. seq.*

#### 6. Medical Information

"No individually identifiable information contained in the personnel file or medical records of any employee shall be disclosed by an employer to any person or entity not employed by or affiliated with the employer without the written authorization of such employee...." CONN. GEN. STAT. § 31-128f. "Medical records" include all papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work-related or upon which such employer relies to make any employment-related decision, and which the employer must retain separately from a personnel file. CONN. GEN. STAT. §§ 31-128a; 31-128c. Any employer that has medical records shall be required to keep any medical records pertaining to a particular employee for at least three years following termination of employment. CONN. GEN. STAT. § 31-128c.

#### 7. Restrictions on Requesting Salary History

Generally, Connecticut's Personnel File Statute prohibits disclosure of an employee's personnel or medical records by an employer to a person or entity not employed by or affiliated with the employer, unless the employee authorizes the disclosure in writing. However, exceptions to this prohibition permit disclosure when the information merely verifies the employee's dates of employment and gives the title or position and wage or salary. *See* Conn. Gen. Stat. § 31-128f.

### IX. WORKPLACE SAFETY

#### A. Negligent Hiring/Supervision/Retention

Connecticut recognizes a cause of action for negligent hiring in which an employer can be held liable for an injury to a third party due to the employer's negligence in selecting an unfit or incompetent employee to perform the services of employment. *See Shore v. Town of Stonington*, 187 Conn. 147 (1982). In Connecticut, a plaintiff seeking to recover damages on a theory of negligent hiring must plead and prove 1) that he was injured by the employer's negligence in failing to hire a person who was fit and competent to perform the job in question; and 2) that his injuries resulted from the employee's unfitness or incompetence at work. *See Abati v. Circuit-Wise, Inc.*, 130 F.Supp.2d 341, 344 (D. Conn. 2001). Employers in negligent hiring cases have been held liable for tortious acts committed by their employees regardless of whether they meet the standards imposed by the doctrine of *respondeat superior*. *See Cardona v. Valentin*, 160 Conn. 18, 273 A.2d 697 (1970); *Gutierrez v. Thorne*, 13 Conn. App. 493, 537 A.2d 527, 531 (1988). When deciding whether to hire a potential employee, an employer is held to a standard of reasonableness. *See Beach v. Jean*, 46 Conn. Supp. 252, 263 (Super. Ct. 1999).

Connecticut recognizes a cause of action for an employer's negligence in supervising and retaining employees. "To state a claim for negligent supervision, a plaintiff must plead and prove that he suffered an injury due to the defendant's failure to supervise an employee whom the defendant had a duty to supervise. A defendant does not owe a duty of care to protect a plaintiff from another employee's tortious acts unless the defendant knew or reasonably should have known of the employee's propensity to engage in that type of tortious conduct." *Abate v. Circuit-Wise, Inc.*, 130 F. Supp. 2d 341, 344 (D. Conn. 2001). The plaintiff does not have to demonstrate that the employer knew or had reason to know that the specific harm would result, merely "that harm of the general nature of that suffered was likely to result." *Gutierrez v. Thorne*, 13 Conn. App. 493, 500 (1988).

Courts have held that employers may be liable for negligent supervision for the very same events in which they became aware of the employee's propensity for violent conduct. *See Shanks v. Walker*, 116 F.Supp. 2d 311 (D. Conn. 2000). In *Shanks v. Walker*, the plaintiff alleged that a supervisor watched as an employee cursed her, moved towards her, shoved her, struck her, then followed her to her vehicle. The court upheld the negligent supervision claim despite the employer's argument that, prior to the altercation, it was unaware of the employee's propensity for violence and the need to control him. *Id.* at 315. The court reasoned that the witnessing of the events as they occurred by the supervisor gave the employer the requisite knowledge required for the employer to intervene. *Id.* at 315. The reasonableness of an employer's response to employee complaints about the actions of their co-workers may bear on any subsequent negligent supervision claim brought by the complaining employees. *See Farricelli v. Bayer Corp.*, 116 F.Supp. 2d 280, 286 (D. Conn. 1999).

Connecticut also recognizes a cause of action for negligent retention of an employee. *See Doe v. Abrahante*, No. CV 97040311S, 1998 WL 225089 (Conn. Super. Ct. Apr. 28, 1998) (Internal citation omitted). "Negligent retention occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicate his unfitness and the employer fails to take further action." *Doe v. Abrahante*, No. CV 97040311S, 1998 WL 225089, at \*1.

B. Interplay with Worker's Comp. Bar

CONN. GEN. STAT. §31-284(a) provides that any claims for physical injuries brought by an employee against an employer are barred by the exclusivity provisions of the Connecticut Worker's Compensation Act. Personal injury under the Worker's Compensation Act does not include "mental or emotional impairment," unless such impairment arises from a physical injury." CONN. GEN. STAT. § 31-275. Thus, it is a valid defense by an employer to a claim of negligent hiring, supervision, or retention that the claim is barred by the Connecticut Worker's Compensation Act. But a plaintiff suffering an emotional injury that has no compensable aspect under the Worker's Compensation Act will be able to bring a tort action for negligent hiring, supervision, or retention against an employer. *See Perodeau v. City of Hartford*, 259 Conn. 729, 762 (2002); *see also Driscoll v. General Nutrition Corp.*, 252 Conn. 215, 752 A.2d 1069 (2000).

C. Firearms in the Workplace

Connecticut law does not preclude employers from enacting a policy prohibiting employees from carrying or bringing any weapon to the workplace. Even if the employee has a state permit to carry a gun, employers in Connecticut still have the authority to restrict or prohibit employees from carrying firearms on the job or bringing them to the workplace. *See* CONN. GEN. STAT. § 29-28(e). ("The issuance of any permit to carry a pistol or revolver does not thereby authorize the possession or carrying of a pistol or revolver in any premises where the possession or carrying of a pistol or revolver is ... prohibited by the person who owns or exercises control over such premises.").

D. Use of Mobile Devices

Connecticut law does not preclude an employer from prohibiting the use of personal mobile devices by employees during work hours or while on a company vehicle or on work premises. However, CONN. GEN. STAT. § 14-296aa prohibits and/or restricts the use of hand-held mobile telephones and mobile electronic devices by motor vehicle operators and school bus drivers, with limited exceptions. This may impact employers who have employees that use vehicles for business purposes.

## X. TORT LIABILITY

### A. Respondeat Superior Liability

Connecticut recognizes the doctrine of respondeat superior, that an employer may be held liable for the intentional torts of its employee if the employee was acting within the scope of his employment and in furtherance of the employer's business. *A-G Foods, Inc. v. Pepperidge Farm, Inc.*, 216 Conn. 200, 208 (1990). The doctrine of respondeat superior attaches tort liability directly to an employer because it focuses on tortious conduct which is so closely connected with what the employee is employed to do, or so fairly and reasonably incidental to it, that those tortious acts "may be regarded as methods, even though quite improper ones, of carrying out the objectives of the employment." *Haydu v. Meadows*, No. CV 950051983S, 1997 WL 139466, at \*2 (Conn. Super. Ct. Mar. 13, 1997). The employer can be held liable under the doctrine of respondeat superior only if the employee "was actuated at least in part by a purpose to serve a principal. . . ." *See Shippee v. Caswell*, No. 559094, 2002 WL 2005833, at \*3 (Conn. Super. Ct. July 26, 2002).

In addition, Connecticut recognizes that employers also can be held legally responsible for tortious acts committed by employees if those acts are condoned or ratified by the employer. This is not a vicarious liability concept, and therefore such liability arises apart, and is conceptually distinguishable, from the vicarious liability theory of respondeat-superior. *See Haydu v. Meadows*, No. CV 950051983S, 1997 WL 139466, at \*2 (Conn. Super. Ct. Mar. 13, 1997). Under the ratification construct, a company is held directly liable for the tortious acts of the employee because of the agency law concept that a principal is directly liable for the acts of its agents that it authorizes or ratifies. *Id.* "In order to find that a corporation has committed an intentional act, a Court or jury must find that the corporation committed, directed, or ratified the intentional act." *Doe v. Jacome*, No. CV 980331360S, 1999 WL 329799, at \*2 (Conn. Super. Ct. May 13, 1999).

### B. Tortious Interference with Business/Contractual Relations

To prove a claim of tortious interference with a business relation or expectation, the plaintiff must prove: the existence of a contractual or beneficial relationship, the defendant's knowledge of that relationship, the defendant's intent to interfere with the relationship, that the interference with the relationship was tortious, and that plaintiff's loss was caused by the tortious conduct. *Golek v. Saint Mary's Hosp., Inc.*, 133 Conn. App. 182, 195 (2012). "It is an essential element of the tort of unlawful interference with business relations that the plaintiff suffered actual loss." *Am. Diamond Exch., Inc. v. Alpert*, 302 Conn. 494, 510 (2011).

Additionally, the plaintiff must prove that the interference was accomplished by improper motive or improper means, fraud, misrepresentation, intimidation, molestation, or malicious acts. *See Blake v. Levy*, 191 Conn. 257, 261 (1983); *Daley v. Aetna Life & Cas. Co.*, 249 Conn. 766, 805 (1999). This malice is not necessarily ill will but rather an "intentional interference without justification." *Daley* at 806.

It should be noted however that a party to the subject contract or business relationship itself can never tortuously interfere with the contract. *Urashka v. Griffin Hosp.*, 841 F. Supp. 468, 475 (D. Conn. 1994). Neither can an agent of such a party be liable for such interference. *Id.* But an agent or employee who acts outside of the scope of his duty or employment and uses corporate power for personal gain can be held responsible for tortious interference. *Murray v. Bridgeport Hosp.*, 40 Conn. Supp. 56, 61 (Super.

Ct. 1984).

## XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

### A. General Rule

Restrictive covenants are enforceable in Connecticut provided the covenant is reasonable. *Weiss & Assoc., Inc. v. Wiederlight*, 546 A.2d 216, 208 Conn. 525 (1988). Restrictive covenants are deemed to be restraints of trade in the free market. *Deming v. Nationwide Mut. Ins. Co.*, 279 Conn. 745 (2006). The court will consider five factors when determining the reasonableness of a restrictive covenant:

- (1) the length of time the restriction operates;
- (2) the geographical area covered;
- (3) the fairness of the protection accorded to the employer;
- (4) the extent of the restraint on the employee's opportunity to pursue his occupation;
- and (5) the extent of interference with the public's interest.

*Wiederlight*, 546 A.2d at 219 n2.

In the *Wiederlight* case, the employment agreement between the employer and the employee included a covenant not to compete, which prohibited the employee from engaging in the commercial insurance business within a fifteen (15) mile radius of the city where the business was located for two years after his employment terminated. *Wiederlight*, 546 A.2d at 218. The court upheld the trial court's ruling that the covenant was reasonable and therefore enforceable. The court further stated that the "covenant of employment does not turn on whether the employee subject to the covenant left his position voluntarily or was dismissed by the employer." *Id.* at 221. Additionally, the measure of damages for a breach of a covenant not to compete is the nonbreaching party's losses rather than the gains of the breaching party. *Id.* at 226.

A 2004 Superior Court case upheld a restrictive covenant limiting hairstylists from working at another salon within a ten (10) mile radius for one year. *Sabatasso v. Bruno*, No. CV030284486S, 2004 WL 886968 (Conn. Super. Ct. Apr. 8, 2004).

In a 2003 Superior Court decision, a restrictive covenant was held unenforceable because the skilled worker did not have access to trade secrets or other confidential information and the job of installing bathtubs was not unique enough to justify such a restrictive covenant; thus, the restrictive covenant did not protect the former employer's goodwill. *Connecticut Bathworks Corp. v. Palmer*, 2003 WL 22006402 (Conn. Super. Ct. Aug. 1, 2003).

A forfeiture provision in an employment contract, whereby an employee forfeits deferred compensation if he leaves the company and engages in a competing business, must be analyzed under the reasonableness test under which restrictive covenants are scrutinized. *Deming v. Nationwide Mut. Ins. Co.*, 279 Conn. 745, 763 (2006).

In determining whether a restrictive covenant is supported by adequate consideration, courts will assess the nature of the consideration at the time of signing the covenant. Courts generally examine the adequacy of consideration in three contexts: new employment, which is universally recognized to be adequate consideration; changes in the terms or conditions of employment after the employment relationship has begun, which will constitute adequate consideration in most circumstances; or the mere

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continuation of employment, which has been held to be insufficient. *See Van Dyck Printing Co. v. DiNicola*, 43 Conn. Supp. 191, 196 (Super. Ct. 1993), aff'd, 231 Conn. 272 (1994); *Hoffnagle v. Henderson*, 2003 WL 21150549, at \*2, on reconsideration in part, 2003 WL 22206236 (Conn. Super. Ct. Apr. 17, 2003); *but see Roessler v. Burwell*, 119 Conn. 289 (1934) (holding that continued employment is adequate consideration because each party received what was bargained for). Best practices would be to provide some type of consideration in exchange for a restrictive covenant.

### B. Blue Penciling

Connecticut follows the modified "Blue Pencil" rule, which permits a court to enforce those portions of a restrictive covenant that it finds to be enforceable despite the presence of unenforceable provisions elsewhere in the agreement, if the valid provisions are enforceable standing alone and the parties signified their intent that the provisions be severable. *See Beit v. Beit*, 135 Conn. 195, 205 (1948); *Century 21 Access Am. v. Lisboa*, 2003 WL 21805547, at \*11 (Conn. Super. Ct. July 22, 2003) (holding that a two-year restriction was unreasonable and "blue-penciling" it for a period of one year); *Group Concepts, Inc. v. Barberino*, 2004 WL 1050098, at \*7 (Conn. Super. Ct. Apr. 16, 2004) (holding that a geographical restriction encompassing the entire state of Connecticut was overly broad and "blue-penciling" the limitation to Hartford and New Haven County). Connecticut does not however allow the contract to be rewritten.

### C. Confidentiality Agreements

Employers may protect trade secrets and other confidential information by having an employee sign a confidentiality agreement. Such agreements are enforceable, like non-compete agreements, if they are necessary and reasonable. *See Hart, Nininger & Campbell Associates, Inc. v. Rogers*, 16 Conn. App. 619, 636 (1988). An employer should ask a prospective employee in writing about any confidentiality or non-compete agreements they may have executed in the past.

In *Entegeer, Inc. v. Korwek*, No. 3:15-CV-1087 (VLB), 2015 WL 5202902 (D. Conn. Sept. 4, 2015), the court issued a temporary injunction to enforce the non-compete, non-solicitation, and non-disclosure of confidential information provisions in an employment agreement between a recruiter and an employer where the recruiter quit his job after downloading himself proprietary and confidential documents, including client lists, resumes, and client names, and planned to work for a direct competitor. The court held that the employer would suffer irreparable harm from the employee's work for a direct competitor, given that he "surreptitiously took reams of confidential documents" that would be used to compete. *Id.* at \*6.

### D. Trade Secret Statute

The statutory framework governing misappropriation of trade secrets in Connecticut is set forth in the Uniform Trade Secrets Act, CONN. GEN. STAT. § 35-50 et seq. The Act defines a "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." CONN. GEN. STAT. § 35-51(d). It follows that almost any item, knowledge, or information used in the conduct of a business can be protectable as a trade secret if the above criteria are met.

However, not all confidential information meets the definition of trade secret. Connecticut courts have held on many occasions that if the information can be readily duplicated without expending considerable time, effort, or expense, it is not a trade secret. *See NewInno, Inc. v. Peregrim Dev., Inc.*, 2002 WL 31875450, at \*6, decision supplemented, 2003 WL 21493838 (Conn. Super. Ct. Dec. 3, 2002).

Determination of whether information sought to be protected is a trade secret is a one of fact for the trial court. *See Allen Mfg. Co. v. Loika*, 145 Conn. 509, 516 (Conn. 1958). The Connecticut Supreme Court defined a trade secret as “any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound ... or a list of customers.” *Robert S. Weiss & Associates, Inc. v. Wiederlight*, 208 Conn. 525, 538 (1988). In determining whether information is a trade secret, Connecticut courts will consider the following factors: “the extent to which the information is known outside the business and by employees and others involved in the business, the measures taken by the employer to guard the secrecy of the information, the information's value to the employer and to competitors, the resources the employer expends in developing the information, and the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Robert S. Weiss & Associates, Inc. v. Wiederlight*, 208 Conn. 525, 538 (1988) (holding that customer lists and related insurance information did not amount to trade secrets where information was kept in “open and unlocked” files and customer list could be “obtained independently simply by using telephone directories or making personal contact.”). *Id.*

#### E. Fiduciary Duty and Their Considerations

The Connecticut Unfair Trade Practices Act (CUTPA) provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” CONN. GEN. STAT. § 42-110b. The courts consider: “(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers.” *Conaway v. Prestia*, 191 Conn. 484, 492–93 (1983).

Connecticut courts recognize a common law cause of action for breaches of fiduciary duty. The fiduciary duty includes two prongs: a duty of care and a duty of loyalty. *See Saginaw Products Corp. v. Cavallo*, No. CV92 0326329, 1994 WL 443145, at \*4, *aff'd*, 40 Conn. App. 771 (1996); *see also Ostrowski v. Avery*, 243 Conn. 355 (1997) (laying out the basic legal framework for addressing an employee's duty of loyalty).

The duty of loyalty cases falls into several broad theories or categories, including usurping a corporate opportunity, competing with the employer, soliciting employees and customers, misappropriating trade secrets, engaging in self-dealing, and exposing employer misconduct. *See Ostrowski v. Avery*, 243 Conn. 355 (1997); *Town & Country House & Homes Serv., Inc., v. Evans*, 150 Conn. 314 (Conn. 1963); *Advanced Arm Dynamics of New England LLC v. Comprehensive Prosthetic Services LLC*, No. CV 06-5004605S, 2011 WL 677475 (Conn. Super. Ct. Feb. 23, 2011); *Esposito v. Connecticut Coll.*, No. 543055, 1999 WL 81305, at \*1 (Conn. Super. Ct. Feb. 10, 1999).

#### 1. Injunctive Relief



Connecticut law allows temporary injunctions “to preserve the status quo and protect the moving party from immediate and irreparable harm until the merits of the case have been determined after a full trial.” *POP Radio, LP v. News America Marketing In-Store, Inc.*, 49 Conn. Supp. 566, 570 (2005), citing *Olcott v. Pendleton*, 128 Conn. 292, 295 (1941).

The granting or denial of injunctive relief is left to the sound discretion of the trial court. A party seeking injunctive relief has the burden of proving irreparable harm and lack of an adequate remedy at law. *Tomasso Bros., Inc. v. October Twenty-Four, Inc.*, 230 Conn. 641, 648 (1994). In issuing an injunction, the court may consider and balance the injury complained of with that which will result from interference by injunction. *Id.* To be entitled to a temporary injunction, the moving party must show that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97 (2010).

With respect to temporary injunctions, at least some Connecticut Superior Courts have held that a party does not need to prove irreparable harm in noncompetition cases. *See Group Concepts, Inc. v. Barberino*, 2004 WL 1050098, (Conn. Super. Ct. Apr. 16, 2004); *Century 21 Access America v. Lisboa*, 2003 WL 21805547, (Conn. Super. Ct. July 22, 2003); *Musto, M.D. v. Opticare Eye Health Centers, Inc.*, 2000 WL 1337676, (Conn. Super. Ct., Aug. 9, 2000); *Sagarino v. SCI Conn. Funeral Services, Inc.*, 2000 WL 765260, (Conn. Super. Ct. May 22, 2000), compare with *HAIMS, Buzzeo & Co., v. Wikstrom*, 2003 WL 22205922, (Conn. Super. Ct., Sept. 8, 2003); *Wentworth Laboratories, Inc., v. Probe 2000, Inc.*, 2002 WL 31758350, (Conn. Super. Ct. Nov. 19, 2002); *POP Radio, LP v. News America Marketing In-Store, Inc.*, 49 Conn. Supp. 566 (Sept. 15, 2005) (requiring a moderated level of proof to establish the elements of irreparable harm and lack of adequate remedy at law for the issuance of a temporary injunction).

## 2. Forum Selection Clauses

Connecticut courts recognize that “[p]arties to a contract may agree in advance to submit to the jurisdiction of a given court . . . absent a showing of fraud or overreaching, such forum clauses will be enforced by the courts.” *General Elec. Capital Corp. v. Metz Family Enterprises, LLC*, 141 Conn.App. 412, 423 (2013). While the existence of a forum selection clause does not deprive the trial court of personal jurisdiction over the parties, it presents the question of whether it is reasonable for the court to exercise its jurisdiction in the particular circumstances of the case. *Id.*

## 3. Enforcement by Successors and Assigns

A 1940 Connecticut decision is often cited for the proposition that when a proprietor of a business transfers its business to another entity, restrictive covenants which are necessary to protect the transferred business may be deemed to be assigned to the purchaser. *Torrington Creamery v. Davenport*, 126 Conn. 515, (1940). *See also Blum, Shapiro & Co., P.C. v. Searles & Houser, LLC*, 1999 WL 669824, (Conn. Super. Ct., Aug. 11, 1999); *Booth Waltz Enterprises, Inc. v. Pierson*, 2009 WL 566263 (Conn. Super. Ct. Feb. 4, 2009).

## XII. DRUG TESTING LAWS

### A. Public Employer

Public employers must adhere to the federal and state constitutions when adopting drug-testing



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policies to avoid claims of unreasonable search and seizure. The Drug-Free Workplace Act of 1988 was enacted to require most recipients of federal grants and contracts to ensure a drug-free workplace; however, said Act does not require or even provide a method or procedure for testing employees. The court in *Doyon v. Home Depot USA, Inc.*, 850 F. Supp. 125 (D. Conn. 1994), held that under the Fourth Amendment, the government may not require drug testing without "individualized reasonable suspicion" of drug use.

### B. Private Employers

In 1987, the Connecticut legislature passed a comprehensive state statute governing employer-mandated drug testing in the private sector. The drug testing statute, CONN. GEN. STAT. § 31-51t *et seq.*, acknowledges the privacy interests of both prospective and current employees.

The requirements under the statute are:

- (a) No employer may determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action solely on the basis of a positive urinalysis drug test results unless (1) the employer has given the . . . test utilizing a reliable methodology, which produced a positive result and (2) such positive test result was confirmed by a second urinalysis drug test which was separate and independent from the initial test.
- (b) No person performing a urinalysis drug test pursuant to subsection (a) of this section shall report, transmit or disclose any positive test result of any test performed . . . unless such test result has been confirmed in accordance with subsection (2) of said subsection (a).

CONN. GEN. STAT. § 31-51u.

In addition, for prospective employees:

No employer may require a prospective employee to submit to a urinalysis drug test as a part of the application procedure for employment with such employer unless (1) The prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test, (2) such test is conducted in accordance with the [drug testing statute] and (3) the prospective employee is given a copy of any positive urinalysis drug test result. The results of any such test shall be confidential and shall not be disclosed by the employer or its employees to any person other than such employee to whom such disclosure is necessary.

CONN. GEN. STAT. § 31-51v.

Drug testing of employees is permissible in the following circumstances:

- (a) No employer may require an employee to submit to a urinalysis

drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee's job performance.

(b) Notwithstanding the provisions of subsection (a) . . . an employer may require an employee to submit to a urinalysis drug test on a random basis if (1) such test is authorized under federal law, (2) the employee serves in an occupation which has been designated as a high-risk or safety sensitive occupation . . . or (3) the urinalysis is conducted as part of an employer assistance program sponsored or authorized by the employer in which the employee voluntarily participates.

CONN. GEN. STAT. § 31-51x.

Employers should be aware that in the event of a violation of any provision of the drug testing statutes, the employer is subject to civil liability and could be held liable for special and general damages, attorneys' fees, costs, and injunctive relief. CONN. GEN. STAT. § 31-51z; see *Poulos v. Pfizer, Inc.*, 244 Conn. 598, 601 (1998).

The Connecticut Supreme Court reviewed the issues of consent to drug tests and reasonable suspicion in *Poulos*. In *Poulos*, the plaintiff was stopped by a security guard at the plant gate and was caught attempting to remove property belonging to the defendant employer. *Poulos v. Pfizer, Inc.*, 244 Conn. 598, 602 (1998). Afraid for his job, the plaintiff lied about the incident. Following this incident, the defendant determined that the plaintiff should undergo a fitness for duty evaluation based upon concerns regarding the incident and other concerns, such as lateness for work and the plaintiff's job performance. *Id.* at 603. The physician who conducted the fitness for duty evaluation determined that a drug test was appropriate since there was no other explanation for the plaintiff's behavior, even though the plaintiff did not exhibit any outward physical signs of alcohol or drug use at the time. *Id.* at 604. After signing a consent form, the plaintiff provided a urine specimen which tested positive for cocaine use. *Id.* The defendant offered the plaintiff the opportunity to enroll in its employee assistance program in which program participants are required to submit to random drug testing, and the plaintiff was informed that refusal to participate would result in his termination. *Id.* Approximately two months after agreeing to participate in the program, the plaintiff was terminated when he tested positive for cocaine use in a random drug test. *Id.*

The plaintiff brought an action in Superior Court alleging that the defendant required him to submit to drug testing in violation of CONN. GEN. STAT. § 31-51 and unlawfully terminated his employment based on the results of those tests. *Id.* at 600. Following a bench trial, the court held that the plaintiff's consent to the drug testing was invalid because such consent was obtained under the threat of termination of his employment. *Id.* at 601. The court also held that the drug testing was unlawful because the defendant lacked reasonable suspicion that the plaintiff was under the influence of drugs which adversely affected or could adversely affect his job performance. *Id.*

The Connecticut Supreme Court held that the trial court improperly excluded testimony that the employer had offered to support its claim that the plaintiff had waived his right under the statute by voluntarily consenting to the drug testing. *Poulos v. Pfizer, Inc.*, 244 Conn. 598, 614 (1998). The Supreme Court held that "testimony that the defendant legitimately and reasonably could have terminated the plaintiff's employment solely on the basis of the surge protector [alleged theft] incident was relevant to

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the defendant's theory of consent, namely, that the plaintiff agreed to the testing because he legitimately feared that he would be disciplined for the surge protector incident." *Id.*

Courts have held that the drug testing statutes apply only to urinalysis testing, and that saliva testing or hair analysis testing is not subject to the procedural safeguards applicable to urinalysis drug testing. *See Schofield v. Loureiro Eng'g Associates, Inc.*, No. CV146024702S, 2015 WL 3687707, at \*2 (Conn. Super. Ct. May 22, 2015); *Atl. Pipe Corp. v. Laborers Int'l Union of N. Am., Local 611*, No. CV074015994S, 2008 WL 1970965, at \*10 (Conn. Super. Ct. Apr. 11, 2008).

### XIII. STATE ANTI-DISCRIMINATION STATUTE

The Connecticut Fair Employment Practices Act ("CFEPA"), CONN. GEN. STAT. §§ 46a-60 *et seq.*, prohibits discrimination on the basis of "race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, or physical disability, including, but not limited to, blindness, or status as a veteran." Conn. Gen. Stat. § 46a-60(b).

#### A. Employers/Employees Covered

Under CFEPA, an employee "means any person employed by an employer but shall not include any individual employed by such individual's parents, spouse or child." CONN. GEN. STAT. § 46a-51(9). The statute has been interpreted to exclude independent contractors from the definition of "employee." *See Merola v. Comm'n on Human Rights & Opportunities*, 1997 WL 781881, at \*3 (Conn. Super. Ct. Dec. 15, 1997). Effective October 1, 2015, CFEPA was extended to prohibit discrimination and harassment of any intern and provide interns the same protections as provided to employees under the Act. *See* CONN. GEN. STAT. § 31-40y.

The CFEPA applies to employers of three or more employees. Conn. Gen. Stat. § 46a-51(10). "Employer includes the state and all political subdivisions thereof and means any person or employer with three or more persons in his employ." CONN. GEN. STAT. § 46a-51(10). There is no cause of action under the CFEPA for claims against individual employees or supervisors. *Perodeau v. City of Hartford*, 259 Conn. 729, 744 (2002).

In 2016, the Connecticut Supreme Court held that the "remuneration test" should be applied to determine whether an unpaid volunteer is an "employee" for purposes of the CFEPA, instead of Connecticut's common law "right to control" test. *Comm'n on Human Rights & Opportunities v. Echo Hose Ambulance*, 322 Conn. 154 (2016). Federal courts have generally excluded volunteers from Title VII protection. *See, e.g., York v. Association of the Bar of City of New York*, 286 F.3d 122, 125-26 (2d Cir.2002), except where the volunteer receives a monetary benefit from the activity. *Pietras v. Board of Fire Com'rs of Farmingville Fire Dist.*, 180 F.3d 468, 473 (2d Cir.1999) (volunteer firefighter treated as a statutory employee because he received a pension in connection with his work).

#### B. Types of Conduct Prohibited

The CFEPA provides that it is a discriminatory practice for an employer to refuse to hire or employ or to bar or to discharge from employment or discriminate against any person because of the individual's "race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical

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disability, including, but not limited to, blindness or status as a veteran” ... “sexual orientation or civil union status.” See CONN. GEN. STAT. §§ 46a-60b, 46a-81c. Further, CFEPa prohibits discrimination in employment on the basis of pregnancy. The CFEPa explicitly requires an employer to provide suitable temporary workplace accommodations for a pregnant employee and to reinstate her to her original position following maternity leave. Conn. Gen. Stat. § 46a-60(b)(7).

The Connecticut Supreme Court has held that the CFEPa also protects individuals who are perceived as physically disabled from employment discrimination. See *Desrosiers v. Diageo N. Am., Inc.*, 314 Conn. 773, 794 (2014). Although the court agreed that the plain language of Connecticut’s discrimination statute does not include a protection for those who are perceived to be disabled, the court concluded that to interpret the statute otherwise “would be inconsistent with the legislature’s efforts to define physically disabled to cover as many people as possible under the definition and to leave it open and broad.” *Id.* at 794. The court also noted that it could lead to absurd results where an employer would be prohibited from discharging an employee who has a chronic disease, but not precluded from discharging an employee who undergoes testing which leads his employer to believe he has a chronic disease, where the employer’s actions were premised on the same discriminatory purpose that the act seeks to prohibit. *Id.* at 786. Thus, the court held that CONN. GEN. STAT. §46a-60(a)(1) prohibits employers from discriminating against individuals whom they regard as physically disabled. *Id.* at 794.

### C. Administrative Requirements

Generally, a complaint must be filed with the Connecticut Commission on Human Rights and Opportunities (“CHRO”) within one hundred and eighty (180) days of the alleged act of discrimination. CONN. GEN. STAT. § 46a-82(e). Complaints filed with the CCHRO are dually filed with the Equal Employment Opportunity Commission (EEOC). Under the EEOC’s regulations, the CCHRO is a certified designated agency, and the EEOC will accept the findings of the CCHRO as final, “except that the Commission shall review charges closed by the [CCHRO] for lack of jurisdiction, as a result of unsuccessful conciliation, or where the charge involves an issue currently designated by the Commission for priority review.” See 29 C.F.R. §§ 1601.80, 1601.77.

Once a complaint has been timely filed with the CCHRO, the CCHRO must serve the complaint upon the respondent within 15 days of the filing. Conn. Gen. Stat. § 46a-83(a). The respondent must either file a written response to the complaint, under oath, within 30 days of receipt (although the CCHRO may grant one extension of time of 15 days), or enter into a “pre-answer conciliation” process by making such a request within 10 days of receiving the complaint. Conn. Gen. Stat. § 46a-83(a)-(b). If a complaint is dismissed by the CCHRO through the Merit Assessment Review Process (within ninety days after receipt of the Respondent’s answer and responses to the Commission’s requests for information) or because the Complainant fails to accept full relief, and the Complainant does not seek reconsideration of the dismissal, the Commission shall issue a release of jurisdiction. If the CCHRO fails to render a decision within 210 days, an employee may request a release of jurisdiction. The complainant may, within ninety days of the receipt of the release from the commission, bring a civil action in court for alleged unlawful discrimination that occurred within 2 years (or 3 years if a willful violation). See CONN. GEN. STAT. §§ 46a-83a, 46a-101.

In *Jacobs v. Gen. Elec. Co.*, 275 Conn 395 (2005), the court set forth the requisite procedure for a discrimination lawsuit.

First, the [complainant] must establish a prima facie case of

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discrimination . . . that: (1) he is in a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) that the adverse action occurred under circumstances giving rise to an inference of discrimination . . . once of the complainant establishes a prima facie case, the employer then must produce legitimate non-discriminatory reasons for its adverse employment action . . . This burden is one of production, not persuasion, it can involve no credibility assessment.

*Id.* at 400.

Once the employer has presented evidence of legitimate non-discriminatory reason for its action, the complainant is then required to establish that (1) a discriminatory reason more likely motivated the employer to take the action it took or (2) showing that the employer's proffered explanation is unworthy of credence. *Id.* at 400.

### D. Remedies Available

Both equitable and legal relief is available from the court, including without limitation, temporary or permanent injunctive relief, attorney's fees, and court costs. *See* CONN. GEN. STAT. § 46a-104. Such relief includes back pay and non-economic damages for emotional distress. *See Thames Talent, Ltd. v. Comm'n on Human Rights & Opportunities*, 265 Conn. 127, 142 (2003); *Patino v. Birken Mfg. Co.*, 304 Conn. 679, 706 (2012). However, the statute does not provide for punitive damages. *See Tomick v. United Parcel Serv., Inc.*, 157 Conn. App. 312 (2015), *aff'd*, 324 Conn. 402 (2016).

## XIV. STATE LEAVE LAWS

### A. Jury/Witness Duty

Employees may not be discharged for missing time from work because of jury duty. The employer is required to pay regular wages for the first five days of jury service if the employee works full time. After five days, the employee is paid by the state on a per diem basis. CONN. GEN. STAT. §§ 51-247; 51-247a(a).

No employee may be discriminated against for responding to a subpoena and appearing as a witness in a criminal case. Nor can crime victims be discriminated against for attending court proceedings and participating in police investigations relating to that crime, or for having a protective order issued on their behalf. CONN. GEN. STAT. § 54-85b.

### B. Voting

There is no requirement that employees be paid for time spent voting in Connecticut.

### C. Family/Medical Leave

Connecticut's Family Medical Leave Act (CFMLA) applies to employers of seventy-five (75) or more people and if the subject employee works for at least twelve (12) months and one thousand (1000) or more hours within the twelve (12) month period preceding the first day of leave. The number of

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employees of an employer is determined annually on October 1<sup>st</sup>. CONN. GEN. STAT. §31-51kk, *et seq.*

Each eligible employee is entitled to sixteen (16) weeks of paid leave within a two (2) year period for a serious health condition of a family member or themselves. CONN. GEN. STAT. § 31-51ll.

An employer may not interfere with an employee's attempt to exercise rights under the CFMLA. Conn. Gen. Stat. § 31-51pp(a)(1). An employer may not discharge or discriminate against an employee for having exercised rights under the CFMLA, or for having opposed a violation of the CFMLA. Conn. Gen. Stat. § 31-51pp(b)-(c).

### D. Pregnancy/Maternity/Paternity Leave

Under Connecticut law, an employer must provide an employee with a reasonable leave of absence for disability relating to pregnancy. Conn. Gen. Stat. § 46a-60(7). Further, under Connecticut's Family Medical Leave Act (CFMLA), the right to take leave for the birth or placement of an adopted child applies equally to men and women. Conn. Gen. Stat. § 31-51ll(a). A woman may take leave prior to the birth of a child if her physician certifies that the pregnancy has caused a "serious health condition" that entitles her to leave. Conn. Gen. Stat. Ann. § 31-51ll(b). The time needed to tend to matters related to the adoption of a child also qualifies for CFMLA leave. Conn. Gen. Stat. § 31-51ll(a)(2). The right to take leave upon the birth or placement of the child expires after 12 months. Conn. Gen. Stat. Ann. § 31-51-qq-12.

### E. Day of Rest Statutes

An employer cannot compel an employee engaged in a commercial occupation or in the work of any industrial process to work more than six days in any calendar week. An employee's refusal to work more than six days in a calendar week shall not constitute grounds for dismissal. CONN. GEN. STAT. §53-303e.

### F. Military Leave

Employees who belong to military reserve units are entitled to leave from full time employment to fulfill mandatory military service and said leave must not affect the employee's status, seniority, pay, vacation, sick leave, bonus, advancement, or any other benefit. CONN. GEN. STAT. §§ 27-33; 27-33a.

### G. Sick Leave

Employers with 50 or more employees within the state must comply with Connecticut's Paid Sick Leave Act. *See* Conn. Gen. Stat. § 31-57r *et seq.* The Paid Sick Leave Act requires covered employers to provide 40 hours of paid sick leave per year. Covered employees will begin accruing paid sick leave at a rate of 1 hour for every forty hours worked. Accrued sick leave can be used only after the 680th hour worked with the company. Employees can only use paid time that has already accrued and can carry over no more than 40 hours of unused time to the next year. The statute does not address the nexus between sick time and other PTO for carry over purposes. CONN. GEN. STAT. §31-57s. Additionally, it is considered a retaliatory discharge if an employee is discharged for taking paid sick leave pursuant to the Paid Sick Leave law or the employer's policy. CONN. GEN. STAT. §31-57v.

### H. Domestic Violence Leave



Any employer with three or more employees shall provide paid or unpaid leave to an employee if he or she is a victim of family violence when such "leave is reasonably necessary (1) to seek medical care or psychological or other counseling for physical or psychological injury or disability for the victim, (2) to obtain services from a victim services organization on behalf of the victim, (3) to relocate due to such family violence, or (4) to participate in any civil or criminal proceeding related to or resulting from such family violence. An employer may limit unpaid leave under this section to twelve days during any calendar year. Leave under this section shall not affect any other leave provided under state or federal law." CONN. GEN. STAT. § 31-51ss(b). An employer may not discharge or take retaliatory action against an employee taking leave as a victim of domestic violence. CONN. GEN. STAT. § 31-51ss(h).

Additionally, Connecticut law protects employees who are witnesses or victims of crime from being discharged, penalized, threatened or coerced because: "(1) the employee obeys a legal subpoena to appear before any court of this state as a witness in any criminal proceeding, (2) the employee attends a court proceeding or participates in a police investigation related to a criminal case in which the employee is a crime victim, (3) a restraining order has been issued on the employee's behalf ..., or (4) a protective order has been issued on the employee's behalf ...." CONN. GEN. STAT. § 54-85b.

#### I. Other Leave Laws

Connecticut also provides certain family and medical leave benefits for employees of political subdivisions. See CONN. GEN. STAT. § 31-51rr.

### XV. STATE WAGE AND HOUR LAWS

#### A. Current Minimum Wage in State

As of September 1, 2020, the state minimum wage is \$12.00. CONN. GEN. STAT. § 31-58(i). On August 1, 2021, the minimum wage will increase to \$13.00.

#### B. Deductions from Pay

Generally, no deductions can be made from a person's pay without written authorization from the employee. CONN. GEN. STAT. § 31-71e. However, an employer may withhold or divert a portion of an employee's wages when the employer is required or empowered to do so by state or federal law. CONN. GEN. STAT. § 31-71e.

#### C. Overtime Rules

Overtime pay in Connecticut is governed by CONN. GEN. STAT. § 31-76b through § 31-76j. Generally, overtime pay for hourly employees is required for over forty (40) hours of service in one week. Exemptions from overtime pay law are contained in CONN. GEN. STAT. § 31-76i.

#### D. Time for Payment Upon Termination

"Each employer, by himself, his agent or representative, shall pay weekly all monies due each employee on a regular pay day, designated in advance by the employer. . . ." CONN. GEN. STAT. § 31-71b(a).

Whenever an employee voluntarily terminates his employment, the employer shall pay the employee's wages in full not later than the next regular pay day. CONN. GEN. STAT. § 31-71c(a). However, whenever an employer discharges an employee, the employer shall pay the employee's wages in full not later than the business day next succeeding the date of such discharge. CONN. GEN. STAT. § 31-71c(b).

Although private employers in Connecticut are not required to give paid holidays, most do. "If an employer policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination, including but not limited to paid vacations, holidays, sick days and earned leave, and an employee is terminated without having received such accrued fringe benefits, such employee shall be compensated for such accrued fringe benefits exclusive of normal pension benefits in the form of wages in accordance with such agreement or policy but in no case less than the earned average rate for the accrual period pursuant to sections 31-71a to 31-71i, inclusive." CONN. GEN. STAT. § 31-76k.

#### E. Breaks and Meal Periods

Generally, employees may not be required to work for 7 ½ consecutive hours or more without a meal break of at least thirty (30) minutes after the first two (2) hours of work or before the last two (2) hours. CONN. GEN. STAT. ANN. § 31-51ii(a). However, certain employers are exempt from the above where compliance would be adverse to public safety, the duties of the position may only be performed by one person, the employer employs less than five employees on a shift at the subject location, or the continuous nature of the business requires constant and immediate attention. CONN. GEN. STAT. § 31-51ii(c).

Further, the statute governing meal periods does not apply to any: (1) employer who provides 30 or more total minutes of paid rest or meal periods to employees within each seven and one-half hour work period, (2) written agreement between an employer and employee providing for a different schedule of meal periods than the one in the statute, or (3) professional employee certified by the state Board of Education and employed by a local or regional board of education to work directly with children. CONN. GEN. STAT. § 31-51ii(d)-(f).

Employers are expressly prohibited from discriminating against mothers who choose to express breast milk or breastfeed in the workplace during breaks. Connecticut law allows an employee to express breast milk or breastfeed her child in the workplace during meal or break periods. Employers of one or more employees, including the state and its political subdivisions, must provide a private location near the work area for mothers to express breast milk and breastfeed. CONN. GEN. STAT. § 31-40w.

#### F. Employee Scheduling Laws

At this time, Connecticut does not have any predictive scheduling laws, which generally require a minimum amount of notice to be provided for an employee's scheduled shift or if changes are made to an employee's scheduled shift. However, at the time of hiring, an employer must advise the employee in writing of the hours of employment and wage payment schedules. CONN. GEN. STAT. § 31-71f. Connecticut law also restricts the scheduling of minors in certain establishments. CONN. GEN. STAT. § 31-18.

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### XVI. MISCELLANEOUS STATE STATUTES REGULATING EMPLOYMENT PRACTICES

#### A. Smoking in Workplace

In 2003, Connecticut significantly changed the statutory requirements regarding smoking in the workplace by redefining “business facility” to include any structurally enclosed locations regardless of the number of employees with certain exceptions. See CONN. GEN. STAT. §31-40q as amended by 2003 Connecticut Acts 45. Employers with less than five employees must establish a work area to accommodate nonsmokers, and employers with five or more employees must prohibit smoking in the business facility all together. Employers can designate a smoking room if it meets ventilation requirements. If an employer chooses to allow smoking rooms, the employer must also designate sufficient nonsmoking break rooms for nonsmoking employees.

Smoking by employees is prohibited in certain locations, including public buildings, healthcare institutions, retail food stores, restaurants, public schools, elevators, emergency medical service vehicles, within 50 feet of any facility used for the mixing of blasting agents, on common carrier buses, railroad cars, and school buses, in bakeries, and in lead abatement areas. CONN. GEN. STAT. §19a-342(b)(1). Connecticut has specific requirements for posting exemptions and enforcement of smoking laws in the workplace. CONN. GEN. STAT. §19a-342(d).

Employers and supervisors may not require their employees to refrain from smoking or using tobacco products outside of the workplace and discrimination of employees who smoke or use tobacco products outside of work is prohibited. CONN. GEN. STAT. §31-40s(a).

#### B. Health Benefit Mandates for Employers

Connecticut requires that certain benefits be provided in group health insurance policies offered by employers. The following benefits are required in any group health insurance policy: infertility diagnosis and treatment (CONN. GEN. STAT. §§ 38a-536 and 38a-509); home health care (CONN. GEN. STAT. §§ 38a-520 and 38a-493); ambulance services (CONN. GEN. STAT. §§ 38a-525 and 38a-498); tumors and leukemia (CONN. GEN. STAT. §§ 38a-542 and 38a-504); maternity minimum stay (CONN. GEN. STAT. §§ 38a-530c and 38a-503c); autism spectrum disorder therapies (CONN. GEN. STAT. §38a-488b); ostomy-related supplies (CONN. GEN. STAT. § 38a-492); hearing aids for children (CONN. GEN. STAT. § 38a-490b); prostate cancer screening (CONN. GEN. STAT. § 38a-492g); colorectal cancer screening (CONN. GEN. STAT. § 38a-492k); Mammography and breast ultrasound (CONN. GEN. STAT. § 38a-503); preventative pediatric care and bloodlet screening (CONN. GEN. STAT. § 38a-535); neurophysical testing for children diagnosed with cancer (CONN. GEN. STAT. § 38a-492l); accidental ingestion of a controlled drug treatment (CONN. GEN. STAT. § 38a-518); bone marrow testing (CONN. GEN. STAT. § 38a-518o); Cranial facial disorders (CONN. GEN. STAT. § 38a-490c); experimental treatments (CONN. GEN. STAT. § 38a-483c); cancer clinical trials (CONN. GEN. STAT. § 38a-504a-g); developmental needs of children and youth with cancer (CONN. GEN. STAT. § 38a-516d); diabetes testing and treatment (CONN. GEN. STAT. § 38a-492d); diabetic self-management training (CONN. GEN. STAT. § 38a-492e); hypodermic needles and syringes (CONN. GEN. STAT. § 38a-492a); lyme disease treatments (CONN. GEN. STAT. § 38a-492h); pain management (CONN. GEN. STAT. § 38a-492i); prescription contraceptives (CONN. GEN. STAT. § 38a-503e); psychotropic drug availability (CONN. GEN. STAT. § 38a-476b); early intervention services birth to three program (CONN. GEN. STAT. § 38a-516a); treatment for inherited metabolic disorder-PKU (CONN. GEN. STAT. § 38a-492c); inpatient/outpatient in one day dental services (CONN. GEN.

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STAT. § 38a-491a); mental or nervous conditions (CONN. GEN. STAT. §§ 38a-488a and 38a-514); prescription drug coverage mail order pharmacies (CONN. GEN. STAT. § 38a-510); off label use of cancer drugs (CONN. GEN. STAT. § 38a-492b); mastectomy or lymph node dissection (CONN. GEN. STAT. § 38a-503d); occupational therapy (CONN. GEN. STAT. § 38a-496); wound care for individuals with epidermolysis bullosa (CONN. GEN. STAT. § 38a-518m); treatment of medical complications of alcoholism (CONN. GEN. STAT. § 38a-533).

C. Immigration Laws

Connecticut does not have any state specific immigration laws.

D. Right to Work Laws

Connecticut does not have a Right to Work law.

E. Lawful Off-Duty Conduct (including lawful marijuana use)

Connecticut does not have many specific laws prohibiting an employer from terminating an employee for lawful off duty conduct other than an employee cannot be terminated for smoking outside of the workplace. CONN. GEN. STAT. §31-40s(a).

Connecticut permits the use of medical marijuana. Under Connecticut's Palliative Use of Marijuana Act (PUMA), an employer cannot refuse to hire a person or discharge, penalize, or threaten an employee solely based on such person's or employee's status as a qualifying patient or primary caregiver under the statute. CONN. GEN. STAT. § 21a-408p. The provisions of the statute, however, do not restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours. CONN. GEN. STAT. § 21a-408p(b)(3).

In *Noffsinger v. SSC Niantic Operating Co. LLC*, a federal district court held that PUMA is not preempted by federal law, and that a job applicant or employee who uses medical marijuana in compliance with PUMA may maintain a private right of action against an employer who refuses to employ them for that reason. 2017 WL 3401260, at \*1 (D. Conn. Aug. 8, 2017).

F. Gender/Transgender Expression

In Connecticut, it is illegal for an employer to discriminate against an employee based on sex, gender identity, or gender expression. CONN. GEN. STAT. §46a-60(b).

G. Other Key State Statutes

1. Lie Detector Tests

No employee may be disciplined or discharged for refusing to take a polygraph examination. CONN. GEN. STAT. § 31-51g.

2. Liability of Employer for Discipline or Discharge of Employee on Account of Employee's Exercise of Certain Constitutional Rights

No employee may be disciplined or discharged for exercising certain rights “guaranteed by the first amendment to the United States Constitution or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee’s bona fide job performance or the working relationship between the employee and the employer....”  
CONN. GEN. STAT. ANN. § 31-51q.

3. Discrimination on Basis of Criminal Record

No employer may fire or refuse to hire employees who have arrests, charges or convictions that have been erased from their records. Applicants cannot be compelled to disclose those arrests, charges and convictions, and applications must have a notice clearly stating as such. CONN. GEN. STAT. § 31-51i.

4. Discharge or Discrimination Prohibited Based on Workers’ Compensation

No employer may discharge, discriminate, or retaliate against an employee for filing a workers’ compensation claim or otherwise exercising rights under Connecticut’s Workers’ Compensation Act.  
CONN. GEN. STAT. § 31-290a.

5. Employee Access to Personnel File

An employer must allow a current employee to inspect or copy his or her employment file within seven (7) days after receipt of a written request. A former employee must be allowed to inspect or copy his or her employment file within ten (10) days after the employer’s receipt of a written request provided the request is received within one year of the date of termination of the employee’s employment. An employer must also provide an employee with a copy of any documentation of any disciplinary action not more than one business day after the date of the action. CONN. GEN. STAT. §31-128b.

6. Posting Requirements

State law requires specific "posting" requirements of all employers with three (3) or more employees. and specific training for supervisory employees of all employers with more than fifty (50) employees, with regard to sexual harassment. CONN. GEN. STAT. § 46a-54(15).

The following posters are required by the state and/or federal government:

1. "Discrimination is Illegal" pursuant to the Connecticut Fair Employment Practices Act
2. EEO poster regarding Equal Employment Opportunity
3. "Sexual Harassment is Illegal" pursuant to Connecticut Fair Employment Practices Act
4. Notice from State of Connecticut, Department of Labor Division of Regulation of Wages regarding state wage and hour requirements
5. Notice regarding the Employee Polygraph Protection Act
6. Notice regarding Federal Minimum Wage — publication 1088
7. Notice concerning Employees working on Government Contracts
8. "Your Rights under the "Family Medical Leave Act of 1993" — WH publication 1420

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9. Notice to Employees regarding "Connecticut's Workers' Compensation Act" — WC 81716
10. Notice of Registration regarding "Connecticut's Unemployment Compensation Act" — Form UC-8
11. Notice concerning "Job Safety and Health Protection" — OSHA 2203
12. Connecticut Occupational Safety and Health Division Poster regarding safety
13. Annual summary of job injuries posted by February 1 of each year as required by 29 C.F.R. § 904.5

### H. Volunteer Activities and Reports

Connecticut prohibits the discharge or discrimination against any employee who is an active volunteer firefighter or member of a volunteer ambulance service or company because that employee is late arriving to work or absent from work because of responding to a fire or ambulance call prior to or during the employee's regular hours of employment. CONN. GEN. STAT. § 7-322c.

### I. Commission Sales Representatives

Commissions are generally considered wages under Connecticut wage and hour laws where they have been earned according to the agreement or past practice with the employer. CONN. GEN. STAT. §§ 31-58 and 42-481.

### J. Commercial Motor Vehicle Operators

Not applicable.

### K. Pennsylvania Labor Relations Act (PLRA)

Not applicable.

### L. Abortion

Not applicable.

### M. Local Ordinances

Not applicable.

### N. New Developments (including COVID permanent changes)

None.