

Labor and Employment Law Bulletin

Connecticut Adds to Employer Responsibilities

Connecticut Prohibits Discrimination Based on Gender Identity

Effective October 1, 2011, Connecticut employers with three or more employees will be prohibited from discriminating against an employee or applicant based on gender identity or expression. Connecticut lawmakers defined “Gender identity or expression” as “a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.” Evidence that may establish gender-related identity includes assertion of the gender-related identity by the individual, care or treatment of the gender-related identity, evidence that the gender-related identity is not being asserted for an improper purpose, medical history, or other evidence that the gender-related identity is a sincerely held element of a person’s core identity. *It is clear that the law protects transgendered people who are not undergoing gender reassignment surgery, and who do not intend to do so, as well as those who have completed such surgery or who are in the process of doing so.*

The new law adds gender identity or expression—a status also commonly referred to as “transgendered”—as a protected class, affording that class similar rights and remedies as other classes such as race and gender protected under Connecticut law. *By doing so, Connecticut joins New Jersey and New York City, both of which prohibit gender identity discrimination.*

The one notable exception to the new law’s prohibition of discrimination based on gender identity or expression is the exemption of religious corporations or entities “with respect to the employment of individuals to perform work connected with the carrying on by such corporation . . . of its activities, or with respect to matters of discipline, faith,

internal organization or ecclesiastical rule, custom or law” established by the religious entity.

Connecticut-based employers are advised to *add gender identity to their EEO policies and literature* and to be sure to *include gender identity issues in their EEO training*, especially training for managers and supervisors. Other employers who have employees in Connecticut (or New Jersey or New York City) should consider revising their policies companywide to include nondiscrimination based on gender identity and to include the new law’s requirements in their training.

Connecticut Limits When Employers May Require an Employee’s Credit Report

Connecticut recently enacted a law that will limit an employer’s ability to request that an employee or prospective employee provide consent to request a credit report. The following are the *only* instances in which it is permissible for an employer to request an employee’s credit report:

- the employer is a financial institution (as defined by the statute);
- the employee’s credit report is required by law;
- the employer believes the employee has engaged in specific activity that constitutes a violation of the law related to the employee’s employment; and
- a credit report is substantially related to the employee’s current or potential job or the employer has a bona fide purpose for requesting a credit report that is substantially job-related and is disclosed in writing to the employee or applicant.

The new law defines the term “substantially related to the employee’s current or potential job” as meaning that the information contained in the credit report is related to the current or potential position because the position (a) is managerial and involves setting the direction or control of a business unit, (b) involves access to customers’, employees’ or employers’ personal or financial information, (c) involves a fiduciary responsibility to the employer such as authority to issue payments or collect debts, (d) provides an expense account or corporate debit/credit card, (e) provides access to confidential or proprietary business information or information including a formula, pattern, compilation, program, device, method, technique, process or trade secret, or (f) involves access to the employer’s nonfinancial assets valued at \$2,500 or more.

Employers should review the numerous exceptions to the rule to determine whether the limitation applies to them *and should revise their policies and practices accordingly*. The law applies to all employers, and will become effective on October 1, 2011.

Please contact **Alan M. Koral** (212-407-7750), **Laura Sack** (212-407-6960) or **Michelle D. Velásquez** (212-407-7792) if you would like to discuss the implications of these new laws in greater detail or to discuss implementing training regarding their requirements.

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