

June 17, 2014

## Connecticut Amends Paid Sick Leave Statute to Provide Some Employer-Friendly Changes

By George O'Brien and Jason Stanevich

Connecticut recently made several important revisions to its paid sick leave law in response to requests by businesses for clarification of the law's requirements. On June 6, 2014, Governor Dannel P. Malloy signed into law an amendment to Connecticut's Paid Sick Leave Act (Act) that: 1) changes the method for determining if an employer is exempt from providing paid sick leave; 2) changes the time-frame for accruing paid sick leave and 3) adds radiologic technicians to the employees covered by the Act. The amendment, Public Act 14-128, will take effect on January 1, 2015.

### Recap of the Connecticut Paid Sick Leave Act

The Act, codified at Connecticut General Statutes § 31-57r, requires certain employers with 50 or more employees in Connecticut to provide 40 hours of paid sick leave per year to service workers. The statute defines service worker as an hourly, nonexempt employee engaged in an occupation with one of the "broad or detailed occupation code numbers and titles" listed in Connecticut General Statutes § 31-57r.<sup>1</sup>

<sup>1</sup> Connecticut General Statutes § 31-57r defines "service worker" to include the following positions: (A) 11-9050 Food Service Managers; (B) 11-9110 Medical and Health Services Managers; (C) 21-1020 Social Workers; (D) 21-1093 Social and Human Service Assistants; (E) 21-1094 Community Health Workers; (F) 21-1099 Community and Social Service Specialists, All Other; (G) 25-4020 Librarians; (H) 29-1050 Pharmacists; (I) 29-1070 Physician Assistants; (J) 29-1120 Therapists; (K) 29-1140 Registered Nurses; (L) 29-1150 Nurse Anesthetists; (M) 29-1160 Nurse Midwives; (N) 29-1170 Nurse Practitioners; (O) 29-2020 Dental Hygienists; (P) 29-2040 Emergency Medical Technicians and Paramedics; (Q) 29-2050 Health Practitioner Support Technologists and Technicians; (R) 29-2060 Licensed Practical and Licensed Vocational Nurses; (S) 31-1011 Home Health Aides; (T) 31-1012 Nursing Aides, Orderlies and Attendants; (U) 31-1013 Psychiatric Aides; (V) 31-9091 Dental Assistants; (W) 31-9092 Medical Assistants; (X) 33-9032 Security Guards; (Y) 33-9091 Crossing Guards; (Z) 35-1010 Supervisors of Food Preparation and Serving Workers; (AA) 35-2010 Cooks; (BB) 35-2020 Food Preparation Workers; (CC) 35-3010 Bartenders; (DD) 35-3020 Fast Food and Counter Workers; (EE) 35-3030 Waiters and Waitresses; (FF) 35-3040 Food Servers, Nonrestaurant; (GG) 35-9010 Dining Room and Cafeteria Attendants and Bartender Helpers; (HH) 35-9020 Dishwashers; (II) 35-9030 Hosts and Hostesses, Restaurant, Lounge and Coffee Shop; (JJ) 35-9090 Miscellaneous Food Preparation and Serving Related Workers; (KK) 37-2011 Janitors and Cleaners, Except Maids and Housekeeping Cleaners; (LL) 37-2019 Building Cleaning Workers, All Other; (MM) 39-3030 Ushers, Lobby Attendants and Ticket Takers; (NN) 39-5010 Barbers, Hairdressers, Hairstylists and Cosmetologists; (OO) 39-6010 Baggage Porters, Bellhops and Concierges; (PP) 39-9010 Child Care Workers; (QQ) 39-9021 Personal Care Aides; (RR) 41-1010 First-Line Supervisors of Sales Workers; (SS) 41-2011 Cashiers; (TT) 41-2021 Counter and Rental Clerks; (UU) 41-2030 Retail Salespersons; (VV) 43-3070 Tellers; (WW) 43-4080 Hotel, Motel and Resort Desk Clerks; (XX) 43-4170 Receptionists and Information Clerks; (YY) 43-5020 Couriers and Messengers; (ZZ) 43-6010 Secretaries and Administrative Assistants; (AAA) 43-9010 Computer Operators; (BBB) 43-9020 Data Entry and Information Processing Workers; (CCC) 43-9030 Desktop Publishers; (DDD) 43-9040 Insurance Claims and Policy Processing Clerks; (EEE) 43-9050 Mail Clerks and Mail Machine Operators, Except Postal Service; (FFF) 43-9060 Office Clerks, General; (GGG) 43-9070 Office Machine Operators, Except Computer; (HHH) 43-9080 Proofreaders and Copy Markers; (III) 43-9110

Each covered service worker accrues one hour of paid sick leave for each 40 hours worked. Employees may accrue up to a maximum of 40 hours of such leave per calendar year. Employees can also carry over up to 40 unused accrued hours of paid sick leave from one year to the next, but they can use only 40 hours of such paid sick leave in any one year. Sick leave can be used in one-hour increments and can be used in some situations that do not involve the employee's own health condition (such as for addressing domestic violence matters).

## A New Way of Counting Employees

The amendment changes the method for determining whether an employer is exempt from providing paid sick leave. Under the current law, a covered employer must provide paid sick leave if it employs 50 or more people in Connecticut during any quarter in the previous year. Employers determine if they exceed this threshold by January 1 each year based on the quarterly unemployment reports that were submitted to the Connecticut Department of Labor (CT DOL) the previous year. If a company employed 50 or more total employees during any of the previous year's quarters, it must provide paid sick leave benefits in the subsequent year. Under P.A. 14-128, however, an employer will determine if it meets the annual 50-employee threshold based solely on the number of employees on its payroll for the week containing October 1. For example, if an employer has 50 employees on its payroll on Monday, September 28, 2015, it must provide paid sick leave in 2016.

The amendment provides relief to employers that experience seasonal or transitional fluctuations in their workforce, but also makes it unlawful for an employer to fire, dismiss, or transfer an employee in order to avoid meeting the 50-employee threshold. The legislature added this penalty provision after receiving testimony from groups, including the Connecticut Working Families Organization, that expressed concerns that employers would reduce headcount to become "small employer[s] for a week" to avoid providing paid sick leave. Workers allegedly affected by such a practice may file a complaint with the CT DOL. Neither the Act nor the amendment provides a private right to sue.

## A Modified Timeframe for Accruing Leave

The amendment also changes the timeframe for accruing paid sick leave. Under current law, employees accrue one hour of sick leave for every 40 hours worked per calendar year. Under the amendment, employees will accrue one hour of sick leave for every 40 hours worked during whatever 365-day year the employer uses to calculate employee benefits. This allows employers to start the benefit year on any date, rather than only on January 1. The modification is notable because many employers felt they were forced by the Paid Sick Leave Act to change their leave policies to align with the calendar year. Employers who had provided lump-sum leave allotments or started accruals on an employee anniversary or at the beginning of a fiscal year felt obliged to change those policies and timekeeping systems to be consistent with the Act even if they offered leave exceeding the statutory requirement.

## A New Category of Employees Covered

The amendment additionally extends paid sick leave benefits to radiologic technologists by adding them to the list of "service workers." The position was added to the legislation seemingly without testimony from any individual or group.

## No Additional Relief for Manufacturers

The original proposed version of Public Act 14-128 sought to clarify the extent to which the Act applies to manufacturers, but the legislature amended the bill prior to passage to remove this provision. The earlier version of the bill was supported by the Connecticut Business & Industry Association (CBIA) and sought to extend the statute's manufacturing exemption to all facilities a manufacturer operates. The current law exempts a manufacturer based on how the North American Industrial Classification System (NAICS) applies to the particular activities conducted at each of its facilities. Under the Act, a manufacturer with separate facilities may have to provide paid sick leave at its administrative location but not at its manufacturing plants.

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Statistical Assistants; (JJJ) 43-9190 Miscellaneous Office and Administrative Support Workers; (KKK) 51-3010 Bakers; (LLL) 51-3020 Butchers and Other Meat, Poultry and Fish Processing Workers; (MMM) 51-3090 Miscellaneous Food Processing Workers; (NNN) 53-3010 Ambulance Drivers and Attendants, Except Emergency Medical Technicians; (OOO) 53-3020 Bus Drivers; or (PPP) 53-3040 Taxi Drivers and Chauffeurs, and is (i) paid on an hourly basis, or (ii) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act.

The version supported by CBIA would have exempted such a company from the paid sick leave requirement if its business primarily fell under NAICS manufacturing categories regardless of the activities conducted at its different facilities within Connecticut. According to CBIA testimony, "manufacturers were never supposed to be subject to the paid sick leave law." House Amendment "A," however, eliminated this proposed provision.

## What this Means for Employers

The amendment provides clarification to employers regarding how to determine if they meet the 50-employee threshold and it allows employers to use any 365-day benefit year in providing paid sick leave to covered employees. Manufacturers will still need to analyze whether service workers located outside a factory are entitled to paid sick leave notwithstanding the law's manufacturing exemption. Looking ahead, the legislature's decision to add radiologic technologists to the statutory definition of service worker without explanation may foreshadow further expansion of the paid sick leave benefit to other positions in future legislative sessions.

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