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Connecticut Increases Minimum Wage and Expands Employees' First Amendment and Cannabis Rights: Compliance Reminder

The following laws take effect in Connecticut on July 1, 2022. They apply to employers of all sizes.

MINIMUM WAGE INCREASES

Connecticut's state minimum wage will increase to \$14.00 per hour.

The minimum base wage for tipped service employees remains \$6.38 per hour and \$8.23 per hour for tipped bartenders.

LIMITS ON EMPLOYER-REQUIRED MEETINGS

Connecticut has expanded its law that generally protects employees from employment discrimination for exercising their First Amendment rights (e.g., freedom of speech) in two ways. First, the law now protects employees from being *threatened* with discipline or discharge for exercising their First Amendment rights even if the employer doesn't follow through on the threat. Second, employers can't require employees to attend meetings, view materials, or listen to speech if the main purpose of the meeting or communication is to express the employer's religious or political opinion.

This law defines matters as "religious" if they relate to religious affiliation, religious practice, or the decision to join or support a religious organization or association. Matters are considered "political" if they relate to any of the following:

- Elections for political office
- Political parties
- Proposals to change legislation or regulations
- The decision to join or support any political party or political, civic, community, fraternal, or labor organization

The law will have the practical effect of prohibiting “captive audience meetings,” which are mandatory meetings where employers present their (usually negative) view on unionization.

Although the law applies to employers of all sizes, the ban on *religious* meetings and communications doesn’t apply to religious organizations. The law also doesn’t apply to meetings or communications that are only for managers and supervisors or to those that are otherwise required by law, such as Connecticut’s mandatory sexual harassment prevention training.

PROTECTION FOR OFF-DUTY CANNABIS USE

Last year when Connecticut legalized recreational cannabis for those 21 or older, the law included employment protections, outlined below, which take effect this July 1. Connecticut already protected employees from being disciplined or discharged for using *medical* cannabis off duty, which remains unchanged.

General Protections

Employers can’t discipline or discharge a current employee for using cannabis **outside of work** unless they have a policy that meets all three of the criteria below. The policy must be:

- In writing (paper or electronic),
- Provided to employees before the policy takes effect, and
- Provided to applicants when the employer offers them a job.

Employers can still prohibit employees from working under the influence of cannabis and can discipline and discharge employees if they have a reasonable suspicion that they used cannabis at or during work (or on call) or if the employee has “specific, articulable symptoms” of impairment while working (or on call) that negatively affect their job performance.

Employers can’t refuse to hire an applicant for using cannabis outside of work before they were hired (typically by testing positive on a pre-employment drug test) unless they would violate a federal contract or lose federal funding by hiring them.

The law carves out specific exemptions from these protections, which are detailed on the laws page.

Employers can’t prohibit employees who are medical cannabis patients from possessing cannabis at work—but can prohibit possession for everyone else as long as they comply with the criteria in the bullet points above.

Testing-Specific Protections

In addition to the above protections, employers can't discipline or discharge employees (or applicants) for testing positive for the main *inactive* metabolite of cannabis, THC-COOH (referred to in the law as 11-nor-9-carboxy-delta-9-tetrahydrocannabinol), unless an exception applies. This is what labs generally test for in a urine sample, and it can remain in the body for weeks or even months after cannabis use. (Saliva testing screens for a different THC compound, though you should confirm with your lab.)

Employers *can* discipline an employee (or applicant) solely based on a positive THC-COOH test result if any of these exceptions apply:

- The employer is exempt from the cannabis law (the full list is available on the laws page).
- The position is exempt from the cannabis law (the full list is available on the laws page).
- The employer would violate a federal contract or lose federal funding if they didn't discipline them.
- The employer reasonably suspects an employee used cannabis while working.
- The employee has "specific, articulable symptoms" of impairment that negatively affect their job performance.
- The pre-employment drug test was conducted after a conditional offer of employment, the employer's policy specifically says that a positive drug test for THC-COOH may result in a refusal to hire the applicant, and the applicant isn't a medical cannabis patient.
- The drug test was random; the employer complies with the three policy criteria listed above; the policy specifically says that a positive drug test for THC-COOH may result in discipline; and the employee isn't a medical cannabis patient.

Action Items

- Given the complexities of this new law, employers who want to test for cannabis should work with an attorney to update their drug policy and testing protocols to ensure compliance.
- Train supervisors on how to recognize and document reasonable suspicion of impairment in the workplace and the steps to take if an employee is under the influence of cannabis at work.