

HR Client Advisory

October 2008

Connecticut Supreme Court Legalizes Same-Sex Marriage

Local and national media have spread the news like wildfire in the past week: on October 10th, in a 4-3 controversial decision, the Connecticut Supreme Court overturned the state's ban on same-sex marriages. The landmark decision, *Kerrigan et al. v. Commissioner of Public Health et al.*, makes Connecticut the third state, after California and Massachusetts, to legalize same-sex marriage.

What does this mean for employers? Such a groundbreaking decision may actually not have much of an effect on employers in Connecticut. Connecticut's civil union law provided individuals who entered into a civil union with the same rights as married individuals within the state.

Connecticut discrimination law prohibits discrimination on the basis of sexual orientation and on the basis of marital status, including civil unions and now same-sex marriage. The law also prohibits discrimination on the basis of race, color, religious creed, age, sex, national origin ancestry, genetic information, present or past history of mental disorder, mental retardation or physical disability, including, but not limited to, blindness. Under the federal law, things will remain the same. The federal Defense of Marriage Act (DOMA) defines marriage as a legal union between one man and one woman for purposes of all federal laws, and provides that states need not recognize a marriage from another state if it is between persons of the same sex.

In compliance with anti-discrimination law, employers already treat civil union couples the same as married couples, offering the same employment benefits to an employee's marital or civil union partner. The decision requires additional action by the state Superior Court before same-sex marriages can be implemented, however employers should anticipate seeing employees opt for same-sex marriage status rather than civil union partnership in the future.

Union Sponsored "Employee Free Choice Act" Causing More of a Stir

Contentious debate on this bill has been growing between business groups and labor organization leaders, especially with the presidential election nearing. The Employee Free Choice Act would amend the National Labor Relations Act to require the National Labor Relations Board to certify a bargaining representative, without directing a secret-ballot election, if a majority of the bargaining unit employees have authorized the designation of the representative and there is no other individual or labor organization currently certified. This process is referred to as a "card-check" certification.

The Act would revise enforcement requirements with respect to unfair labor practices during union organizing drives and place high priority on preliminary investigation of any charge that an employer discharged, discriminated against, threatened to discriminate, or significantly interfering in an employee's exercise of self-organization or collective bargaining right or to encourage or discourage the employee's membership in a union. Employers who engage in labor practices violating the NLRA would face penalties including back pay, liquidated damages and civil penalties up to \$20,000 per infraction.

In the past, similar bills have been raised for discussion without much likelihood of passage. However, perspectives on American workers and workers' benefits are playing an integral part in national debates on the economy and employee benefits like retirement and health care. The Employee Free Choice Act is strongly endorsed by labor unions across the country and by Democratic presidential candidate Sen. Barack Obama; and is opposed by Republican candidate Sen. John McCain. In 2007, the U.S. House of Representatives did pass a version of the Act which was substantially the same as the current proposal.

Robert Noonan & Associates LLC.

Phone: 860-349-7010 fax: 860-349-7011 e-mail: robertnoonan@robertnoonan.com

ADA Amendments Act Signed Into Law by President Bush

The ADA Amendments Act (ADAAA) became law on September 25, 2008; its provisions are effective January 1, 2009. The definition of employer under the new law does not change: the ADA and ADAAA apply to employers with 15 or more employees.

The purpose of the law is to overturn several Supreme Court and lower appeal court decisions which have limited the ADA's coverage and protections. Therefore, the ADAAA looks to broaden the definition of disability. The ADAAA defines a disability as: a physical or mental impairment that substantially limits one or more major life activities; there is a record of such an impairment; or the individual is regarded as having such an impairment. The ADAAA expressly excludes transitory impairments or those with an actual or expected duration of six months or less.

The ADAAA provides a new, non-exhaustive list of major life activities that include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Under the new law, major life activities will also include the operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The new law also defines rules of construction, stating that the definition of disability under the Act shall be construed in favor of broad coverage of individuals; an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability; and, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Under the changes of the ADAAA, the determination of whether an impairment substantially limits a major life activity is to be made without considering the ameliorative effects of mitigating measure, such as medication or prosthetics though excluding ordinary eyeglasses and contact lenses.

The Act does provide that if someone is protected only because he or she is regarded as having a disability, no accommodations need be made. The impairment must substantially limit one or more major life activities. However, the ADAAA provides protections for an individual who is "regarded as" having a disability if the employee establishes that he or she was discriminated against because of an actual or perceived physical or mental impairment.

The Act authorized the EEOC and the Department of Justice to issue federal regulations; we'll keep close watch to see if any regulations are issued that might further interpret the Act or assist in its application.

November 4th is the Big Day: Election Day Reminders for Employers

With the election only a few days away, employers should keep a few things in mind. Connecticut law, C.G.S. s. 9-365, a law rarely raised or enforced, prohibits employers from making threats to employees that link their employment to how they vote; violators may be imprisoned or fined.

Contrary to what some employees may think, Connecticut employers do not need to provide their employees time off to vote. Connecticut polls will be open from 6 AM to 8 PM. Employers can freely encourage employees to exercise their right to vote and can remind employees to vote before or after their scheduled shift.

Frequently Asked Question on new CT definition of “dependent”:

Q: Our Company has a CT issued group health plan that covers all our employees, most of which live and work in CT. We have an employee, Jim, who lives and works in NY, and is a participant in our group health plan. Jim has a 23 year old daughter Mary who is not married, not enrolled in a group health plan through her own employment, and lives in CT. Is Mary eligible to enroll as a dependent on January 1, 2009, under our group health plan?

A: Under a new state law (Public Act No. 08-147) effective January 1, 2009 for group health plans, requires coverage of dependents to extend until the dependent is married; attains age 26; ceases to be a resident of Connecticut unless under 19 or a full-time student; or, becomes enrolled in a group health plan through the dependent’s own employment. Mary will be an eligible dependent of Jim under the CT issued insurance plan because she is not married, she is under age 26, she is not enrolled a group health plan through her own employment, and is a resident of Connecticut. The new law currently does not have a residency requirement for Jim, the employee, in order for his daughter Mary to be an eligible dependent.

New Maximum UC and WC Benefits

The maximum Workers’ Compensation benefit rate for total disability and decedents’ dependents will be \$1,141.00 for injuries occurring on or after October 1, 2008. The maximum compensation rate for partial disability or incapacity will be \$892.00 effective October 1, 2008.

The maximum Unemployment Insurance benefit increases to \$519 per week from the current \$501 effective October 5. The weekly dependency allowance for each dependent remains unchanged at \$15 with a maximum of \$75.

Michelle’s Law Passes-College Kids On Leave-Insurance Continues

President Bush signed “Michelle’s Law” (HR 2851), a new statute that allows dependent college students facing a serious illness to take a leave of absence and still preserve their health coverage. The bill was signed on October 9, 2008 and takes effect one year from enactment in October 2009. It provides that dependent students enrolled at post-secondary educational institutions suffering from a serious illness or injury that requires a leave of absence shall continue to receive health insurance for up to one year.

The law is named after Ms. Michelle Morse, who remained a full-time college student while battling colon cancer in order to remain eligible for health insurance under her parents’ group health care plan. Ms. Morse ultimately lost her battle with colon cancer, prompting her family to advocate for a change in the law. The law applies to health plans governed by the Employee Retirement Income Security Act, the Public Health Service Act, and the Internal Revenue Code.

The Law Firm of Robert D. Noonan, Esq. provides legal services to employers.

The firm:

- Represents primarily employers in employment discrimination cases;
- Writes and reviews employee handbooks;
- Advises employers on day-to-day workplace issues;
- Trains supervisors and managers in sexual harassment, interviewing, leave issues, performance appraisals and the law of the workplace.

Robert Noonan & Associates\EmpACTS of New England LLC: 860-349-7010 or robertnoonan@robertnoonan.com