

The Do's and Don'ts of Employment Law

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Legal Services

- Advising and Representing Employers
 - Discrimination Litigation
 - Sexual Harassment Investigations and Litigation
 - Employee Benefit Litigation
 - Unemployment Compensation Appeals
- Legal Document Development
 - Separation Agreements
 - Employee Benefits
 - Employee Handbooks
- Training Services
 - FMLA for Supervisors and Managers
 - Sexual Harassment Prevention
 - Employment Law for Supervisors
 - HIPAA

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Part 1: Connecticut Sick Day Law

What's Changing

- The number of employers covered by the law will expand.
- The number of employees covered by the law will expand.
- The reasons for which leave can be taken will expand.
- The rate at which leave accrues will accelerate.
- The waiting period to use leave will decrease.
- There will be new notice requirements.
- There will be new record keeping requirements.

Employers Covered

- As of **Jan. 1, 2025** – Employers employing **25 or more** individuals in the state.
- As of **Jan. 1, 2026** – Employers employing **11 or more** individuals in the state.
- As of **Jan. 1, 2027** – Employers employing **one or more** individuals in the state.
- Applicable to private and public sector employers.
- Certain union construction firms excluded.

Counting Employees to Determine Your Size

- Number of employees based on employer's payroll for the week containing January 1st annually.

Workers Covered

- Employees in all positions (not just service workers).
- Now includes exempt employees.
- Law makes no distinction between full time, part time, and per diem employees.

Workers Excluded

- Seasonal employees. Defined as working 120 days or less per year.
 - Count actual days worked, not calendar days.
 - Question is: Did the person work at least 121 days in a calendar year?
- Certain union construction employees.

Accrual

- Accrual begins on January 1, 2025. For new hires hired after January 1, 2025, begins on first day of employment.
- Employees accrue at a rate of 1 hour of sick leave for every 30 hours worked up to 40 hours per year.
 - Exempts: law presumes exempts work 40 hours per week for accrual purposes.
- (Policy Changes)

Eligibility to Use Leave

- Eligibility to use leave begins 120 calendar days after date of hire.
- One time requirement.
- Employees who have already been employed 120 calendar days by the date the law takes effect for your employer size, do not need to work an additional 120 calendar days.
- They won't begin accruing leave until the date the law takes effect for your size.

Reasons Leave May be Used

- An employee's or employee's family member's illness, injury, or health condition; (*NEW*)
 - Spouse, sibling, children, grandparents, grandchildren, parents, those like family.
- The medical diagnosis, care, or treatment of the employee or employee's family member;
- Preventive medical care for the employee's or employee's family member's mental or physical health;
- The employee's own mental health wellness day;

Reasons Leave May be Used

- Closure by order of a public official, due to a public health emergency, of either an employer's place of business or a family member's school or place of care; *(NEW)*
- Employee or employee's family member poses a health risk due to communicable disease, whether or not the employee or family member contracted the communicable illness; *(NEW)* and

Reasons Leave May Be Used

- Family violence or sexual assault: Medical care or psychological or other counseling for physical or psychological injury or disability;
 - Obtaining services from a victim services organization;
 - Relocating due to such family violence or sexual assault; or
 - Participating in any civil or criminal proceeding related to or resulting from such family violence or sexual assault.

Increments of Leave

- Employers must allow sick leave to be used in as little as 1-hour increments, regardless of employer's time keeping system.
 - E.g., Employer PTO policy that says employees must take PTO in two-hour increments. For paid sick leave, must allow 1-hour increments.
 - (Policy change required)
- Employees are not entitled to use time in less than 1-hour increments, unless the employer allows it.

Employee Notice for Leave/Requiring Documentation

- Existing law allows employers to require employee give up to 7 days notice of need for leave if leave is foreseeable.
- Not permitted under new law.

Requiring Documentation from Employee

- Current law permits employers to request reasonable documentation if paid sick time is being used for 3 or more consecutive workday absences.
- New law prohibits requiring documentation.

Carryover of Sick Leave

- Requires unused leave to be carried over to the following year up to 40 hours, BUT
- In lieu of tracking carryover, employers may provide a bank of leave at beginning of each year.
 - Bank of sick leave must meet requirements of the law and be immediately available for use.
- Policy decision.

Transfers and Retention of Sick Leave

- Law requires sick leave be retained by employees who are transferred to another division, entity, or worksite within same employer.
- Sick leave retained by employee where another employer succeeds an existing employer.

Employer Notice Requirements

- Current law requires posting in a conspicuous place a notice of employees' rights under sick day law.
- New law requires:
 1. Poster of employee rights in conspicuous place in English and Spanish; and
 2. Providing individual notice to employees of their rights at the time of hire or Jan. 1, 2025, whichever is later.
- Connecticut Department of Labor has acceptable posters and notices available on its website.

NOTICE

Connecticut General Statutes §§ 31-57r - 31-57w – Paid Sick Leave

Each employer with 50 or more employees based on the number of employees on its payroll for the week containing October 1, shall provide paid sick leave annually to each of its service workers in the state. The paid sick leave shall accrue beginning January 1, 2012, for current employees, or for a service worker hired after January 1, 2012, beginning on the service worker's date of employment.

Accrual

The accrual is at a rate of one hour of paid sick leave for each 40 hours worked by a service worker up to a maximum of 40 hours per year (the employer shall choose any 365-day period used to calculate employee benefits in order to administer paid sick leave).

- No service worker shall be entitled to use more than the maximum number of accrued hours.

Carry Over

Each service worker shall be entitled to carry over up to 40 unused accrued hours of paid sick leave from the current year period to the following year period

Use of Paid Sick Leave

A service worker shall be entitled to the use of accrued paid sick leave upon the completion of the service worker's 680th hour of employment

- from January 1, 2012, for current service workers, or
- if hired after January 1, 2012, upon the completion of the service worker's 680th hour of employment from the date of hire, unless the employer agrees to an earlier date.

A service worker shall not be entitled to the use of accrued paid sick leave if such service worker did not work an average of 10 or more hours a week for the employer in the most recent complete calendar quarter.

Pay

Each employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either

- the normal hourly wage for that service worker, or
- the minimum fair wage rate under section 31-58 of the general statutes in effect for the pay period during which the employee used paid sick leave.

Reasons for Use of Leave

A service worker may use paid sick leave for his or her own:

- illness, injury or health condition;
- the medical diagnosis, care or treatment of his or her mental illness or physical illness, injury or health condition;
- preventative medical care; or
- mental health wellness day

A service worker may use paid sick leave for a child's or spouse's:

- illness, injury or health condition; the medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or
- preventative medical care

A service worker may use paid sick leave if the service worker or the service worker's child or ward is a victim of family violence or sexual assault:

- for medical care or psychological or other counseling for physical or psychological injury or disability;

- to obtain services from a victim services organization;
- to relocate due to such family violence or sexual assault;
- to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

Notice

If leave is foreseeable, the employer may require advance notice.

If leave is unforeseeable, the employer may require notice as soon as practicable.

Reasonable Documentation

Documentation for paid sick leave of 3 or more consecutive work days may be required

- documentation signed by a health care provider who is treating the service worker or the service worker's child or spouse indicating the need for the number of days of such leave shall be considered reasonable documentation.
- a court record or documentation signed by a service worker or volunteer working for a victim services organization, an attorney, a police officer or other counselor involved with the service worker or service worker's child or ward shall be considered reasonable documentation for a victim of family violence or sexual assault.

Prohibition of Retaliation or Discrimination

No employer shall take retaliatory personnel action or discriminate against an employee because the employee:

- requests or uses paid sick leave either in accordance with the act; or
- in accordance with the employer's own paid sick leave policy, as the case may be; or
- files a complaint with the Labor Commissioner alleging the employer's violation of the act

Collective Bargaining

Nothing in the act shall diminish any rights provided to any employee or service worker under a collective bargaining agreement, or preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2012.

Complaint Process

Any employee aggrieved by a violation of the provisions of the law may file a complaint with the Labor Commissioner. Upon receipt of any such complaint, said Commissioner may hold a hearing. After a hearing, the Commissioner may assess a civil penalty or award other relief.

This is not the complete Paid Sick Leave law. Please contact your Human Resources office for additional information.

Effective 10/1/23

AVISO

Leyes Generales del Estado de Connecticut §§ 31-57r - 31-57w - Licencia por enfermedad con goce de sueldo

Los empleadores con 50 ó más empleados, con base en el número de empleados que existan en la nómina de la semana que tenga el 1 de octubre, proporcionarán licencia por enfermedad con goce de sueldo anualmente a cada uno de sus trabajadores de servicios en el estado.

La licencia por enfermedad con goce de sueldo se acumulará a partir del 1° de enero de 2012 para empleados actuales, o para un trabajador de servicios contratado después del 1° de enero de 2012, comenzando en la fecha de contratación del empleado.

Acumulación

La acumulación es a razón de una hora de licencia por enfermedad con goce de sueldo por cada cuarenta horas trabajadas por un trabajador de servicios hasta un máximo de cuarenta horas por año del calendario (el empleador deberá elegir el periodo de 365 días a usarse para calcular los beneficios del trabajador a pagarse por la licencia por enfermedad).

- Ningún trabajador de servicios tendrá derecho a usar más del número máximo de horas acumuladas.

Remanente

Cada trabajador de servicios tendrá derecho a transferir hasta cuarenta horas no usadas de licencia por enfermedad con goce de sueldo del periodo del año del calendario actual al siguiente periodo del año del calendario.

Uso de licencia por enfermedad con goce de sueldo

Un trabajador de servicios tendrá derecho al uso de la licencia por enfermedad acumulada al cumplir el trabajador de servicios seiscientos ochenta horas de empleo.

- a partir del 1° de enero de 2012, para trabajadores de servicios actuales, o
- si es contratado después del 1° de enero de 2012, al cumplimiento de seiscientos ochenta horas de empleo por el trabajador de servicios desde la fecha de contratación, a menos que el empleador conceda una fecha más temprana.

Un trabajador de servicios no tendrá derecho al uso de licencia por enfermedad con goce de sueldo si dicho trabajador no hubiese trabajado un promedio de diez o más horas por semana para el empleador durante el más reciente trimestre completo del calendario.

Remuneración

Cada empleador pagará a cada trabajador de servicios la licencia por enfermedad a una tasa salarial igual al mayor de, ya sea:

- el salario normal por hora de dicho trabajador de servicios, o
- la tasa del salario mínimo justo bajo la sección 31-58 de las leyes generales vigentes para el periodo de pago durante el cual el empleado utilizó la licencia por enfermedad con goce de sueldo.

Razones para el uso de licencia

Un trabajador de servicios puede usar licencia por enfermedad con goce de sueldo para las siguientes circunstancias personales:

- enfermedad, lesión o condición de salud,
- el diagnóstico, atención o tratamiento de su enfermedad mental o física, lesión o condición de salud.
- atención médica preventiva; o
- día de la concientización de las enfermedades mentales

Un trabajador de servicios puede usar licencia por enfermedad con goce de sueldo para las siguientes circunstancias de un hijo o cónyuge:

- enfermedad, lesión o condición de salud,
- el diagnóstico, atención o tratamiento de una enfermedad mental o física, lesión o condición de salud; o
- atención médica preventiva

Un trabajador de servicios puede usar licencia por enfermedad con goce de sueldo si el trabajador de servicios o si el hijo o pupilo es víctima de violencia familiar o agresión sexual:

- para atención médica o consejería psicológica o de otro tipo por heridas físicas o psicológicas o discapacidad.

- para obtener servicios de una organización de servicios a víctimas,
- para mudarse debido a tal violencia familiar o agresión sexual,
- para participar en cualesquier procedimientos civiles o criminales relacionados con, o resultantes de tal violencia familiar o agresión sexual.

Notificación

Si la licencia es previsible, el empleador puede exigir notificación previa.

Si la licencia es imprevisible, el empleador puede exigir notificación lo más pronto practicable.

Documentación razonable

Documentación para licencia por enfermedad con goce de sueldo de tres o más días laborales consecutivos puede ser requerida.

- Documentación firmada por un proveedor de servicios de salud que esté tratando al trabajador de servicios o al hijo o cónyuge del trabajador de servicios indicando la necesidad para el número de días de dicha licencia se considerará documentación razonable.
- Un acta de tribunal o documentación firmada por un trabajador de servicios o voluntario trabajando para una organización de servicios a víctimas, un abogado, un agente de policía u otro consejero que esté interviniendo con el trabajador de servicios o el hijo o pupilo se considerará documentación razonable para una víctima de violencia familiar o agresión sexual.

Prohibición de represalia o discriminación

Ningún empleador tomará acción de personal en represalia ni discriminará contra un empleado debido a que el empleado:

- hubiese solicitado o usado licencia por enfermedad con goce de sueldo en conformidad con la ley, o
- en conformidad con las propias normas del empleador sobre licencia por enfermedad con goce de sueldo, según sea el caso, o
- hubiese registrado una queja con el Comisionado de Trabajo alegando una violación de la ley de parte del empleador.

Negociación colectiva

Nada en la Ley disminuirá ningún derecho concedido a cualquier empleado o trabajador de servicios bajo un acuerdo de negociación colectiva, ni reemplazará ni invalidará los términos de cualquier acuerdo de negociación colectiva vigente antes del 1° de enero de 2012.

Proceso de queja

Cualquier empleado con motivo de queja por una violación de las provisiones de la ley puede registrar una queja con el Comisionado de Trabajo. Al recibir tal queja, dicho comisionado podrá programar una audiencia. Después de una audiencia, el Comisionado podrá imponer una multa civil o conceder otro alivio.

Esta no es la Ley de Licencia por Enfermedad con Gocce de Sueldo completa. Por favor comuníquese con Recursos Humanos para información adicional.

Fecha de vigencia: 10/1/2023

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SAMPLE NOTICE OF PAID SICK LEAVE

[EMPLOYER NAME] complies with the requirements of the Connecticut Paid Sick Leave law by providing up to 40 hours of paid sick leave per benefit year to qualifying employees. This policy sets forth the parameters regarding the accrual and use of paid sick leave.

Covered employees

All employees are covered by the paid sick leave law, including full-time, part-time, per diem, temporary, hourly and salaried exempt employees, except:

- Seasonal employees – those employees who work only 120 days or less per year.
- Employees who are members of construction-related tradesperson employee organizations that are part of a multiemployer health plan maintained pursuant to one or more collective bargaining agreements between a construction-related tradesperson employee organization(s) and employer.

Basics

- Current employees - paid sick leave begins accruing on January 1, 2025
[EMPLOYERS THAT PHASE IN EITHER IN 2026 OR 2027 WILL NEED TO CHANGE THIS DATE]
- Employees hired after January 1, 2025 – accrual begins on first day of work
[EMPLOYERS THAT PHASE IN EITHER IN 2026 OR 2027 WILL NEED TO CHANGE THIS DATE]
- The accrual is at a rate of 1 hour of paid sick leave for every 30 hours worked, up to a maximum of 40 hours per benefit year
- The “benefit year” is the period from *[EMPLOYER TO FILL IN WITH DATES OF YEAR PERIOD IT USES]*
- An employee shall be entitled to the use of accrued paid sick leave 120 calendar days after their date of hire.
- Employees may use accrued paid sick leave in 1-hour increments.

Carry over

- If an employee has not used all of their accrued paid sick leave in the current benefit year, they may carry over up to 40 unused accrued hours from the current benefit year to the following benefit year; OR
- Each employee will be provided the forthcoming year’s entitlement at the beginning of the benefit year.

[EMPLOYER MUST CHOOSE ONE OF THESE]

Use of Leave

(1) An employee may use paid sick leave for his or her own:

- illness, injury or health condition;



- the medical diagnosis, care or treatment of his or her mental or physical illness, injury or health condition;
 - preventative medical care; or
 - mental health wellness day
- (2) An employee may use paid sick leave for a family member's:
- illness, injury or health condition;
 - the medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or
 - preventative medical care
- (3) An employee may use paid sick leave when either the employer's place of business or a family member's school or place of care closes by order of a public official or due to a public health emergency.
- (4) An employee may use paid sick leave when a health authority, the employer of the employee or the employee's family member, or a health care provider determines that the employee or the employee's family member poses a risk to the health of others because of exposure to a communicable disease.
- (5) An employee may use paid sick leave if the employee or the employee's family member is a victim of family violence or sexual assault:
- for medical care or psychological or other counseling for physical or psychological injury or disability;
 - to obtain services from a victim services organization;
 - to relocate due to such family violence or sexual assault;
 - to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

"Family member" - means a spouse, sibling, child, grandparent, grandchild, or parent of an employee, or an individual who is related to the employee by blood or by an affinity whose close association the employee can show to be equivalent to those family relationships.

Pay

Employees will be paid for the use of sick leave at a pay rate equal to the greater of either:

- the normal hourly wage for that employee, or
- the minimum fair wage rate under Connecticut General Statutes sec. 31-58 in effect for the pay period during which the employee used paid sick leave.

Notice and Documentation

Employees are not required to provide advance notice before using paid sick leave. The employer is prohibited from requiring an employee to provide any documentation that paid sick leave is being taken for a reason covered by the paid sick leave law.



There are times when notice and documentation will be required if the employee's absence(s) are due to a qualifying reason under an applicable state or federal law, including the CT Family and Medical Leave Act (CTFMLA). Paid sick leave and CTFMLA may run concurrently, and if so, the requirements of the CTFMLA must be adhered to by both the employee and employer.

Separation

If an employee has unused accrued paid sick leave at the time of separation, the employer will follow its regular policy regarding pay out of paid time off.

Recordkeeping

Employers must track and keep records of hours worked and paid sick leave accrued and used for every employee as part of its normal record-keeping obligations.

Prohibition of Retaliation or Discrimination

Retaliatory personnel actions or discrimination are prohibited because the employee:

- requests or uses paid sick leave either in accordance with the law; or
- in accordance with the employer's own paid sick leave policy, as the case may be; or
- files a complaint with the CT Department of Labor alleging the employer has violation of the law.

Complaint

Any employee aggrieved by a violation of the provisions of the law may file a complaint with the CT Department of Labor. Employees may file a complaint on the CT Department of Labor website: https://portal.ct.gov/dol/divisions/wage-and-workplace-standards/wage-complaint?language=en_US

Employer Documentation Requirements

- Employers must also provide employees with a written record of the number of accrued and used leave hours.
 - E.g. Paystub or electronic system that employees can access and print.
- Records must be retained for three years.
- Contact your payroll service.

Breaks in Service

- Any termination is considered a break in service, whether voluntary or involuntary.
- If worker is rehired by the employer, the employee:
 - Loses all paid sick leave accrued prior to the break.
 - Retains the calendar days worked toward the 120 calendar days requirement, and
 - Begins to accrue sick leave upon rehire.

Retaliation

- Employer cannot take any retaliatory personnel action or discriminate against employee because:
 - The employee requests or uses sick leave in accordance with employer's sick leave policy.
 - The employee files a complaint CT DOL alleging violation of Sick Day Law.

	Current Law	P.A. 24-8
Employers Covered	<ul style="list-style-type: none"> • 50 or more employees • Excludes: <ul style="list-style-type: none"> • Manufacturing • YMCAs 	<ul style="list-style-type: none"> • <u>25 or more</u> employees on January 1, 2025. • <u>11 or more</u> employees January 1, 2026. • <u>1 or more</u> employee on January 1, 2027. • <u>Excludes:</u> <ul style="list-style-type: none"> • Construction firms subject to CBA w/ health plan
Employees Covered	“Service workers”	<ul style="list-style-type: none"> • All positions including exempts. • Excludes seasonal workers. • Excludes certain union construction workers.
Accrual	1/40 hrs.	1/30 hrs.
Maximum Benefit	40 hrs. / year	40 hrs. / year
Waiting Period	680 hrs. (17, 40-hour weeks)	After 120 th Calendar Day
For Whom Can be Used	Employee, spouse, child.	Employee, spouse, sibling, child, parent, grandparent, grandchild, anyone like family.

	Current Law	P.A. 24-8
Advanced Notice and Documentation	<ul style="list-style-type: none"> • Allows employers to require employee give advanced notice of up to 7 days for foreseeable leave. • Employers may require reasonable documentation if leave of more than 3 workdays. 	<ul style="list-style-type: none"> • Prohibits requiring employees to give advanced notice. • Prohibits requiring documentation.
Employer Notice to Employees	<ul style="list-style-type: none"> • Must provide notice to workers of rights. Satisfied by placing poster in conspicuous place at worksite in English and Spanish. 	<ul style="list-style-type: none"> • Must display a poster in a conspicuous place accessible to employees; and • Must provide written notice to employees by January 1, 2025, or at the time or hire, whichever is later.
Record Retention	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Must include in pay stub to employee accrued sick time and used sick time. Must retain records for 3 years.

To Do: Policies and Payroll for Jan. 1

- Employers with 50 or more employees:
 - Update handbook policies to conform to changes in law.
 - Change your accrual rate
 - Expand Reasons for Leave
 - Add Exempts
 - Consider providing a bank of leave vs. tracking accrual.
 - Contact your payroll service on paystubs.
- Employers with 25-49 employees:
 - Need to include sick day leave policy in handbook.
 - Will need to begin tracking leave.

Part 2: Why or When Employers Get Sued

Firing the Pregnant Employee

- Pregnancy has become a very complicated matter due to recent changes in state and federal law.
- Jurors are sympathetic to the soon-to-be-mother or the new mother (or father).

Delay or Denial of Denial of Reasonable Accommodation Requests

- If an employee has a disability and requires special accommodations to do his/her job, the Americans with Disabilities Act (ADA) requires that the employer:
 - Engage in an “informal interactive discussion of reasonable accommodation” with the employee, and
 - Make the accommodation or be prepared to show it would be an “undue hardship.”

Claims of Discrimination

- Employees sue when they feel their employer has treated them wrongly due to characteristics defined by law as “protected characteristics.”
- Those include race, nationality, religion, gender, pregnancy, disability, veteran status, citizenship, pay disparity, and age.
- Discrimination law is a matter of comparison.
 - E.g., “I am the only person working here who is from Albania; I was fired for making mistakes, but other employees who were White, or from Mexico and Puerto Rico made mistakes and they didn’t get fired.”

Retaliation

- Discrimination law, workers' compensation law, unionization law, and family and medical leave laws, specifically prohibit retaliation because an employee had filed a claim.
- The EEOC reports that 40% to 50% of EEOC claims filed also include retaliation.

Not Following Your Own Policies

- In most organizations, managers and supervisors are unfamiliar with their own handbooks and/or policies.
- Knowing and following your policies is particularly important in discrimination cases and in ERISA benefits administration.
- Plaintiff's attorneys will see the failure to follow the company policy as a "breach of an implied contract," or worse, a "breach of fiduciary duties."

No Documentation or Poor Documentation

- In law, the written word carries far more weight than the spoken word. No documentation, or poor documentation, particularly performance appraisals, can make or break your case.

The Surprise Termination

- The employee states: “I always got raises and bonuses. I had no notice that I was not doing a good job.”
- It can also take place if an employee is fired for “poor performance” after a “good performance” review.

Harassment

- This can be physical, sexual, or verbal harassment and can be in the form of unwanted physical advances or contact, requests for sexual favors, slurs, name-calling, offensive comments, jokes, and innuendos.
- Your policy on harassment will be critical, as will the actions you take in response.

Wage Violations

- The employee says:
 - “They fired me and didn’t pay me my unused vacation.”
 - “I worked through lunch, and they didn’t pay me.”
 - “I would always check my e-mails when I was on vacation or during weekends and they didn’t pay me.”

Part 3: Do's and Don'ts of Human Resources Management and Employment Law

1. Do Not Go Without Written Policies, Use a Paint-by-Numbers Handbook, or a Borrowed Handbook

- A policy is a decision made in advance. Without a written policy, all HR decisions are *ad hoc*.
- A handbook is a collection of policies for your organization.
- Avoid using handbooks off the internet, from a payroll service, your insurance broker, or from a friend in another company UNLESS

1. Do Have Your Policy Reviewed by Counsel with Knowledge of Connecticut and Federal Employment Law.

- Avoid the review by the “HR Consultant.”
- Your policies and/or handbook will be put under a microscope in a court case or discrimination complaint.
- Nuances and the fine print are important.

#2. Do Not Offer Employment Casually

- Most employers will offer jobs over the phone and with few details other than the job title, hours of work, and starting pay rate.
- “We want to offer you a position on the reception desk. It’s Monday through Friday, 8:30 to 4:30 with a half an hour off for lunch. It pays \$18.00 per hour. Are you interested? When would you be able to start?”

Connecticut Law CGS 31-71f

- Each employer shall:
 1. Advise his employees in writing, at the time of hiring, of the rate of remuneration, hours of employment and wage payment schedules, and
 2. Make available to his employees, either in writing or through a posted notice maintained in a place accessible to his employees, any employment practices and policies or change therein with regard to wages, vacation pay, sick leave, health and welfare benefits and comparable matters.

#2 Do Use the Offer Letter to Your Benefit

- Comply with the requirements of the statute, and
- Add that the offer letter is not a contract express or implied;
- Add all terms of employment are subject to change; and
- Add that the position is based on employment at will.

#3 Do Not Minimize Employment-at-Will

- It is an important theme and comes in most effectively when you must terminate an employee, particularly a new employee.

Employment At-Will

- In Connecticut: “Any employee who does not have a contract of definite duration, is an employee “at-will.”

At-Will

- Termination without notice
- Termination without cause

#3 Do Make Employment at Will a Theme that Runs Through Your Documents

- Offer Letters
- Warnings
- Handbooks
- Disciplinary Meetings with Employees

Job Offer & At-Will Employment

Petitte v. DSL.NET, Inc., 102 Conn. App. 363 (2007)

- Petitte received an offer of at-will employment from DSL. He accepted the job and gave notice to his former employer.
- When Petitte reported for his first day of work at DSL he was sent home – the company withdrew its offer based on negative references obtained after the offer was made.
- Plaintiff then filed breach of contract, negligent misrepresentation, and emotional distress claims.

Ruling

- Court:
 - Since the offer letter signed by the employee stated that employment was at-will, the new employer had no contractual obligation to allow Petite to start work.
 - Doctrine of at-will employment applies to all aspects of the employment relationship and is not conditioned on the prospective employee actually having begun work.

Exceptions to the At-Will Doctrine

- Discrimination: An employer cannot terminate because of a characteristic the law protects.
- Implied contract claims
- Public policy terminations

#4. Do Not Fail to Maintain “True and Accurate Time Records”

- Connecticut requires employers to maintain “true and accurate records of the work and non-work periods.”
- Common mistake: Not having employees clock out and in for lunch.

#4. Do Record Time Accurately-Particularly with Hourly Employees

- Remember lunch time must be recorded accurately and not automatically.
- Also remember that overtime is calculated per week, not per pay period.

#5. Do Not Put “Lay off for Lack of Work” as the Reason for Termination Unless it’s True.

- Employers often say, “Ok, so we’re going to let Diane go today. We’ll give her the pink slip that says, ‘lay off for lack of work’ so she can collect and not sue us.”

#5. Do Give No Reason Rather than the Wrong Reason

- While you must give every employee the unemployment compensation form immediately upon termination, you do not have to give a reason for the separation.
- It is better to mark (in Box L of the form-“reason for separation”) “Other” and not provide information than to falsely use “layoff for lack of work.”

#6. Do Not Fail to Terminate a New Hire that is Not Working Out

- Length of service creates an expectation of continued employment.
- If you have a new hire whose performance is questionable, particularly attendance performance, it is better to end the relationship sooner than to hope for improvement later.

#7. Do Not Fire the Pregnant Employee Unless You are Rock-Solid on the Reason

- You will find that jurors will be more sympathetic to motherhood than to employers.
- Several laws are providing pregnant employees with new rights in the workplace.
- Do not terminate the pregnant employee without thoroughly reviewing the circumstances and the question of reasonable accommodation.

Connecticut Law: Conn. Gen. Stat. § 46a60(b)(7)(G)

- It is unlawful to fail or refuse to make a reasonable accommodation(s) for an employee, or applicant for employment, due to pregnancy, childbirth, or a related condition (including but not limited to expressing breast milk),
- UNLESS the employer can demonstrate that such accommodation would impose an undue hardship on the employer.

Examples of Reasonable Accommodation

- Being permitted to sit or to eat while working;
- More frequent or longer breaks,
- Modifying policies prohibiting food or drinks while an employee is working;
- Periodic rest;
- Assistance with manual labor;
- Being provided assistive equipment, such as a stool, chair, or assistive lifting equipment;
- Job restructuring;
- Light duty or desk duty assignments;
- Modified work schedules,
- Moving a workstation to permit the movement or stretching of extremities, or to be closer to a bathroom;
- Temporary transfers to less strenuous or hazardous work; ☐ Time-off to attend pre-natal or post-natal appointments.

#8. Do Not Make Special Arrangements for Individuals in Your Employee Benefits Plan

- Example: “We’re letting Bob go on Friday. We’re going to give him 6 months of severance and we’ll continue his group health coverage and then he can go on COBRA.”
- Example: “We’re hiring a new Physician Assistant, Winston. I told Winston he can go right on our 401k Plan.”

8. Do Administer Benefits by the Terms of the Plan Documents

- A plan administrator has a fiduciary duty to administer the plan in accordance with the plan documents and in the best interest of the plan participants.
- Breach of fiduciary duty carries personal liability.

#9. Do Not “Wing it” When Terminating an Employee

- Common problem: Employer talks too much about the reasons for termination and contradicts what the employer has stated on form.
- Example: The employer stated that the employee was being laid off for lack of work. The supervisor said to the employee, “You know, this wouldn’t have happened if you didn’t have so many doctor’s appointments.”
- The organization must speak with a single voice.
- Less is more.

Termination Meeting

- The termination meeting is not a discussion, a question and answer session about the reason for termination, or a debate.
- Have one speaker.
- Do not deviate from the reason for termination.

#9. Do Have a Termination Plan

- Before the meeting begins: “Would you go out and get your (key, badge, cell phone, laptop) and come back.” Then:
- Notice that employment has ended;
- Final Pay (Follow policy on vacation and PTO upon termination);
 - Firing: Pay is due next business day
 - Resignation/Layoff: Pay is due next pay day.
- Unemployment Compensation Form;
- Group health insurance will end (either today or end of month);
- COBRA form will be mailed; and
- Personal belongings (get them now, or by appointment).

#10. Do Not: Let Someone Take Absentee Calls Who Does Not Know the FMLA Basics and the Connecticut Paid Sick Day Law

- Example: “I’m not coming in this morning; my asthma is acting up.”
- Example: “I’m going to be out today-morning sickness.”

#11. Do Not Put People in Supervisory Roles without Basic Training in the Law Pertaining to their Roles

- Vicarious liability: A supervisor's actions can make an employer vicariously liable for damage stemming from those actions.
 - Defamation
 - Discrimination
 - Wage Violations
 - Sexual Harassment
 - FMLA Violations

#12. Do Give Supervisors the Basics of:

- Interviewing;
- Wage law and recording time;
- FMLA, pregnancy leave and accommodation, the ADA, the Connecticut Sick Day Law;
- At-will employment, termination; and exceptions to at-will;
- Documentation and documentation mistakes; and
- Your employee handbook and policies.

13. Do Not Fail to Document; Do Not Create “Document Killers”.

- They are:

Unsigned or Undated Documents

- This is the number one failure in documentation.
- Sign and date everything!
- Have the employee do the same.
- Also, do not refer to employees by first name only, at least initially.

No Last Names and/or Calendar Year

- Do not refer to employees by first name only, or by initials only, at least initially.
- Do Not Forget the Year. E.g. 11/14 instead of 11/14/24.

Illegibility

- Unless you have gone to med school, you should make sure the handwritten document is legible.
- Doctors are expected to scrawl. Everybody else has to write legibly.
- In court, neatness counts!

Inaccuracy

- You may have a document that looks perfect, but the facts are wrong.
- Even one error makes the entire document suspect.

Unsupported Conclusions

- Don't write, "Worker X was drunk" without documenting the reasons you think so, e.g. "liquor on breath, slurred speech." Statements by objective witnesses will buttress your conclusion even more.

Waffling

- If Mike isn't making 200 widgets per hour, don't just write, "Mike's performance must improve."
- The judge will ask, "Improve from what to what?"
- Be specific.

Don't Make Excuses for the Employee

- Statements such as, "You failed-but I know we've all been pushing hard lately," may win you a nice guy award, but it won't win your case.

Don't Lie

- Even to be nice.
- Saying someone was let go due to a layoff rather than for cause, if there was cause, can backfire big time in a wrongful termination suit.

Be Consistent

- If you've written up Sally for an infraction, check to see if you have written up everyone who did it.
- This is critical in discrimination cases.

Conclusion

- Employment law is complicated.
- Oddly, many of the big employment issues could have been prevented by small steps, many of them administrative.
- Put the emphasis on prevention. Having no case is better than having the best case.
- Keeping up with what is new is critical (e.g. the Connecticut Sick Day Law changes set for January 1, 2025).