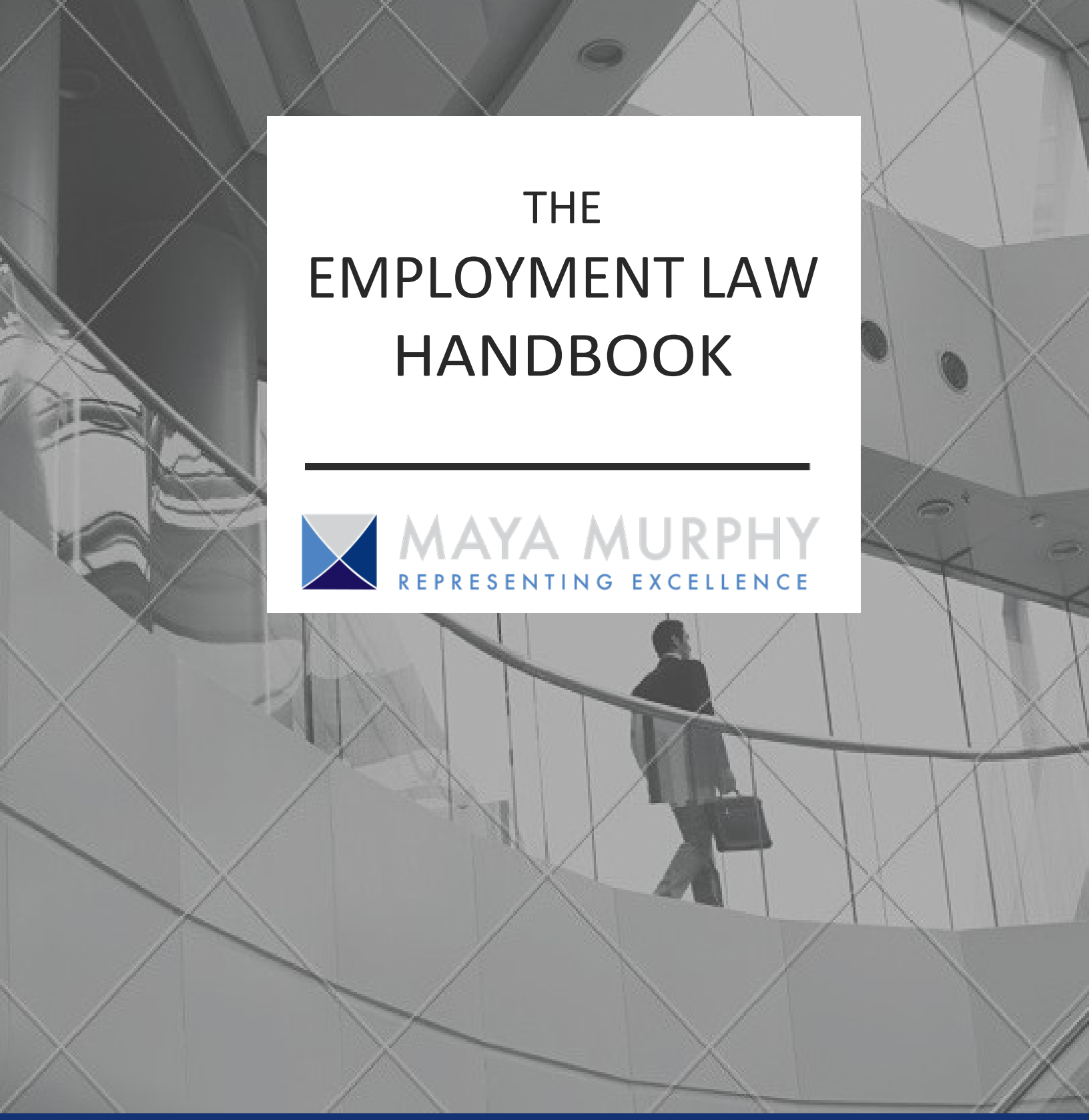

THE EMPLOYMENT LAW HANDBOOK

MAYA MURPHY
REPRESENTING EXCELLENCE

A Practical Guide to Employment Law in Connecticut and New York

As part of a firm-wide project, this handbook was created by Attorney Joseph Maya, Attorney Lauren MacDonald, and Attorney EvaMarie Fox in order to assist employees and employers with understanding their rights in the employment context in Connecticut and New York. If you have any employment law questions, please contact our Managing Partner, Joseph Maya, at 203-221-3100 or by email at JMaya@mayalaw.com. Our website can be viewed at www.Mayalaw.com.

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Introduction:

Employment is the lifeblood of personal and professional self-esteem, and the lifeline by which to support oneself and one's family. As our country's views on appropriate behavior in the workplace continue to evolve, employment mobility is more important than ever. The ability to obtain, retain, and change employment contributes to economic stability and peace of mind. Significantly, employment is not an inherent right, and so it requires continual safeguarding and attention.

Employment is conceptually simple: a business entity requires certain services and hires employees to meet its needs. The employer-employee relationship is paramount to a successful business and workplace. Generally, assuming the relationship is a positive and productive one, the arrangement yields mutually beneficial rewards for bosses and workers alike.

However, there are situations where the employer-employee relationship is unsustainable. Whether you are an employee trying to determine your rights, or an employer who must defend or remedy an employment law claim, it is our hope that this publication will serve as a helpful resource. Throughout this publication, we will address many different areas of employment law, including the different types of employment, employment discrimination, sexual harassment, non-compete agreements, and employment terminations. We will also discuss the process of filing an employment discrimination claim in either Connecticut or New York, and guide you to the appropriate individuals or agencies to contact for legal assistance in your area.

I. Types of Employment:

At-Will Employment

Both Connecticut and New York adhere to the "At-Will Employment Doctrine." At-will employment is a type of employment relationship adopted by both employers and employees, which controls the confines of the relationship, unless a contractual agreement states otherwise. If you are an at-will employee that means, at any time, and for almost any reason (but not an illegal one), either you or your employer can terminate your employment. In theory, such a relationship is meant to benefit both parties. At-will employment gives an employee the freedom to pursue a more lucrative employment option should the opportunity present itself, while allowing an employer to determine which employees may be beneficial to retain for their enterprise – and which employment relationships should be brought to a conclusion.

Broadly stated, at-will employees cannot be disciplined or discharged for an illegal reason. There are several Federal, State, and local laws that protect your rights as an employee, which will be discussed in more detail in subsequent sections. In order to assert your rights under these statutes, you must be able to demonstrate that your employer violated the law in some way.

Under Connecticut law, there are two major exceptions to the "At-Will Employment Doctrine." Connecticut courts have permitted a cause of action for wrongful termination of an at-will employee where the discharge "contravenes a clear mandate of public policy."[1] Public policy may be found in constitutional or statutory provisions or in judicially conceived notions. The statutory provisions include prohibitions against discharging an employee for filing a claim

for unemployment or workers' compensation, filing a wage enforcement claim, or exercising federal or state constitutional rights of religious freedom, free speech, or assembly. The public policy exception is quite limited and has been recognized only in situations where the employer's action violates a clearly existing law. Connecticut also permits a cause of action for wrongful termination based on an implied employment contract. In order to prevail on such a claim, an employee must prove that the employer agreed, either by words, action, or conduct, not to terminate the employee without just cause.[2]

In New York, "absent a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer's right at any time to terminate an employment at will remains unimpaired."[3] However, New York courts and state legislatures have carved out three major exceptions to this rule: the "handbook exception," the "professional exception," and the "whistleblower exception." Under the "handbook exception," an employee may sue for being discharged arbitrarily if the employee can establish that the employer had a written policy limiting its right of discharge, which the employee was both aware of and relied detrimentally on in the course of employment.[4] Under the narrowly-tailored professional exception, for example, attorneys cannot be terminated for reporting professional misconduct.[5] The third major exception is the "whistleblower exception." This exception states:

> An employer shall not take any retaliatory personnel action against an employee because such an employee does any of the following: a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and

presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

New York courts have held that this rule applies only to employees who report violations that endanger public health or safety.[6]

Contractual Employment

Employees are not at-will if a valid, enforceable employment contract was signed by both parties prior to the commencement of the employment. Employment contracts frequently include an identification of the parties, the specific employment position, location, term (if any), duties, compensation, and restrictive covenants (i.e. non-compete agreements). In accordance with contract law, an enforceable employment contract requires that the parties experience a respective benefit or detriment that they would not otherwise receive or suffer in association with the terms and conditions they agree to, a legal concept referred to as "consideration." This essential element of a contract is defined as "any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor…"[7] In the case of an employment contract, the employee generally gives the employer his time, energy, knowledge, skills and resources in exchange for a variety of benefits, such as salary, healthcare, 401(k), severance package, and bonuses. Generally,

the terms of the contract must be in writing in order to be enforceable. However, courts have been open to accepting evidence of an oral agreement to establish the requisite consideration. For instance, affidavits have been used to prove an oral agreement whereby an employee consented to signing a non-compete agreement in exchange for a promotion or other form of benefit associated with his or her employment.[8]

Generally, an employee with an individual contract of employment or a union contract has more protections than an at-will employee because an employment contract often contains restrictions on the employer's ability to impose discipline or discharge and may also define what constitutes termination. In order to enforce the express terms of an employment contract, a terminated employee may need to resort to litigation in a court of competent jurisdiction. Nevertheless, individual contracts and union contracts usually contain provisions designating the mechanisms for alternative dispute resolution such as arbitration. These contracts provide that disputes will not be resolved in court, but instead submitted to a panel of arbitrators, who are neutral and independent individuals selected by the parties to resolve the dispute. If you have an individual contract of employment and a dispute arises that cannot be resolved, you should review your contract to determine whether you are required to arbitrate your claims. An arbitration decision is final and binding, and they are virtually impossible to successfully appeal except in extremely limited circumstances.

If you are an employee under union contract, also known as a collective bargaining agreement, and you feel that your rights have been violated, your claim will most likely be subject to the grievance and arbitration provisions of the collective bargaining agreement. These provisions, which often contain very rigid time limits, give unions the power to

determine how to prosecute an employee's grievance. While unions are obligated to represent employees fairly, they are not obligated to arbitrate every grievance. In some instances, rather, the union may decide that the facts and circumstances of a particular grievance are such that the latter should be settled rather than arbitrated. Again, an arbitration decision in this setting is also always final and binding, with limited ways to challenge the decision. However, in the case of a statutorily defined discrimination, an aggrieved former employee may pursue both a grievance under an applicable union contract and a discrimination claim.

II. Types of Employment Discrimination

Discrimination on the basis of race, sex, age, religion, or disability is prohibited by federal, state, and local laws. It is important to pay attention to the differences among the various anti-discrimination laws, as some only cover certain types of discrimination or certain groups of people. The distinctions among these laws are important because they may affect the forum in which a discrimination claim should be filed.

Race Discrimination

Your employer is prohibited from discriminating against you based on your actual or perceived race. If you believe that an employer chose not to hire you, promote you, or retain you on the basis of your race, you may be a victim of race discrimination. Moreover, the law dictates that an employer cannot make decisions about your hours or wages based on your race, nor can an employer harass you based on the color of your skin, or circulate messages or advertisements that discriminate on the basis of race.

National Origin Discrimination

An employer cannot discriminate against you on the basis of your birthplace, ancestry, national culture, or accent. An employer also cannot require you to speak English at work, unless the requirement is necessary for conducting business. In the latter case, the employer must inform you when English is required and explain the consequences for not adhering to the requirement.

Sex Discrimination

Sex discrimination includes gender discrimination, sexual orientation discrimination, and sexual harassment. An employer cannot consider your gender when hiring, firing, transferring, or promoting you, or setting your wages or hours. Your employer is also prohibited from discriminating against you on the basis of your sexual orientation, which includes homosexuality, bisexuality, or asexuality, whether actual or perceived. This is a constantly changing area of employment law. Indeed, The Supreme Court of the United States is currently considering whether to include "gender identity" in the definition of "sex" for purposes of discrimination under Title VII of the Civil Rights Act.

If your employer has made unwanted, unprovoked sexual advances towards you, you may be the victim of sexual harassment. Your employer is also prohibited from requiring you to engage in sexual conduct as a condition to keeping your job or as a basis for employment decisions. Moreover, if your employer's sexual conduct interferes with your ability to perform your job or creates a work environment that is intimidating, hostile, or offensive, you may have grounds for a sex discrimination claim. Even if the sexual harassment is not directed towards you, you may still have a claim if you are negatively impacted by your employer's unlawful sexual behavior. More information about sexual harassment can be found in Section V, below.

Discrimination against Individuals with Disabilities

An employer or labor organization is prohibited from discriminating against employees on the basis of a physical or mental disability or medical condition. Federal, state, and local laws all address this form of discrimination, but the protections afforded by each law varies.

One protection that is afforded by federal, state, and local laws uniformly is the requirement that, if an employee has a protected disability, the employer must take reasonable steps to reasonably accommodate those needs and allow the employee to adequately perform the requirements of the job.

Age Discrimination

Your employer is prohibited from discrimination based upon age when making employment decisions, including hiring, firing, promoting, laying off, compensating, providing benefits, designating job assignments, and training. It is also illegal for an employer to include age limitations, preferences or specifications in job notices or advertisements. In limited circumstances, age or gender may be a "bona fide occupational qualification" ("BFOQ). Age requirements are only BFOQs if they are reasonably necessary to the operation of the employer's business. It should be noted that, in a job application process, an employer is allowed to request an applicant's age or date of birth.

Retaliation

Federal, state, and local laws prohibit employers or labor organizations from retaliating against employees in any manner for reporting an employment discrimination incident or for filing a discrimination claim. Additionally, an employer cannot retaliate against an employee for testifying or assisting in a legal proceeding related to employment discrimination. Finally, employers cannot retaliate against workers for participating in a union or labor organization, or for reporting an unfair labor practice.

III. State Laws Governing Discrimination

Connecticut Anti-Discrimination Laws

The Connecticut Human Rights and Opportunities Act and the Connecticut Fair Employment Practices Act make it illegal in Connecticut for an employer to discriminate on the basis of age, ancestry, present or past history of mental disability, color, learning disability, marital status (including civil unions), mental retardation, physical disability, national origin, religious creed, sex, race, and sexual orientation.[9] In Connecticut, state discrimination laws are enforced by the Connecticut Commission on Human Rights and Opportunities (CHRO). Connecticut anti-discrimination statutes are broader than federal statutes in that they: a) protect workers under 40 from age discrimination; b) provide broader protection for disabled employees by not requiring that the employee have a substantial limitation of a major life activity but, rather, a chronic impairment, and; c) provide that employers with just three (3) or more employees are subject to state anti-discrimination laws. The state discrimination statutes in Connecticut are:

- The Connecticut Fair Employment Practices Act (FEPA), which prohibits discrimination based on the above categories[10];
- The Connecticut Family and Medical Leave Act of 1990 (CT FMLA), which provides certain individuals with the right to take up to sixteen (16) weeks off from work per twenty-four (24) month period and retain their health benefits during their time off to care for themselves, a child, a parent (including in-laws), or a spouse (including civil unions) with a serious health condition[11]; and
- An Act Concerning Fair Chance Employment.[12]

Connecticut Fair Employment Practices Act

Under the Connecticut FEPA, an employer cannot hire or terminate an employee due to the individual's "race, color, religious creed, age, sex, marital status, national origin, ancestry, present or past history of mental disability, mental retardation, learning disability or physical disability, including, but not limited to blindness."[13] This prohibition applies to all employers, employment agencies, and labor unions. It further prohibits employers and other employees from aiding or coercing discrimination. FEPA also prohibits discrimination against women based on pregnancy, childbirth, or related condition. Of note, men taking a leave of absence for familial obligations are not protected under the Connecticut FEPA, but may be afforded protections if eligible for such leave under FMLA, CTFMLA, and Connecticut's The Paid Family Medical Leave ("PFML") program. FEPA does prohibit requests for information regarding an employee's home life, family, and medical choices, as well as other relationships, so long as they are not proven to interfere with a bona fide occupational qualification or need of the employer. Should any of these conditions be proven, an employer will be liable for wrongful termination regardless of an original at-will employment agreement.

While FEPA is extensive in its protection of employees from discrimination, there are some applicable, significant exceptions of relevance to employees. According to annotations to former Section 31-126, "[the] purpose of [the] statute is to eliminate discrimination in employment for specified reasons, and it is only within these prescribed reasons that the statute operates."[14] The statute is not intended to protect individuals from mandated retirement, and specifically excludes individuals over the age of sixty-five (65) from its intended scope. In addition, FEPA is not applicable to a business that employs fewer than three (3) employees "[b]ecause [the] Fair Employment Practices Act clearly expresses a

public policy determination by legislature that employers with fewer than three employees shall be exempt from liability for discrimination on the basis of sex, including pregnancy-related discrimination, a common-law claim for wrongful discharge on the basis of pregnancy will not lie against such employers."

Under Conn. Gen. Stat. § 46a-60, an employer cannot retaliate against an employee for reporting employment discrimination or for opposing such discrimination. For example, if an employee observes discrimination within his or her work environment and reports it or speaks out against it to his or her employer, an employer cannot take negative or adverse action against the employee.

Connecticut Family and Medical Leave Act

Currently, Connecticut's FMLA ("CTFMLA") provides eligible employees (working for employers with at least seventy-five (75) employees) with up to sixteen (16) weeks of unpaid leave from work for certain family and health related reasons, such as the birth of a child or to tend to a close relative's serious health condition in any two (2) year period.[15] Among other things, the law specifies: (1) what work requirements employees must meet to qualify for leave, (2) employee notice requirements, and (3) the circumstances under which an employer can require an employee to provide certification from a health care provider. It also prohibits employers from taking certain retaliatory actions against employees who take the leave or cooperate with investigations of an employer's FMLA violations. Employees aggrieved by an employer's FMLA violation may petition to the Connecticut Department of Labor.

Beginning on January 1, 2022, workers in Connecticut may receive up to twelve (12) paid weeks off upon the birth, adoption or fostering of a new child, to care for a family member

or loved one with a serious health condition, to deal with their own illness, to serve as an organ or bone marrow donor or as the result of an emergency related to active military duty or a call to active military duty of a spouse, child or parent of the employee. The Paid Family Medical Leave ("PFML") program also provides an additional two (2) weeks for those incapacitated as a result of a complicated pregnancy. Unionized state employees and all municipal employees would be exempt from participation in the PFML program, while non-union state employees will have to participate.

To fund the statewide benefit, beginning on January 1, 2021, Connecticut workers will pay an additional tax of one-half percent (0.5%) on their wages. Benefits will cover up to ninety-five percent (95%) of wages on a sliding scale, capped at $900 a week. This development makes Connecticut's paid family leave the most generous paid family leave law in the U.S.

Also, Connecticut's definition of who qualifies as a family member or loved one is very broad. The law allows paid time off to care for a family member or person "whose close relationship is the equivalent of a family member." Significantly also, while the current law mandates that all employers with seventy-five (75) or more employees are covered by CFMLA, the new law that will benefit employees starting on January 1, 2022, reduces the employee threshold from seventy-five (75) to one (1), which means that the benefits and obligation will now cover almost all private sector employers in the state.

Under current law, in order to be eligible for CFMLA leave an employee must, at the time the leave begins, have: (1) worked for the employer for a total of twelve (12) or more months; and (2) worked for at least 1,000 hours during the twelve (12) months preceding the leave. The new law, which allows employees to obtain paid benefits starting January 1, 2022, makes

employees eligible if they have worked for their employer for at least three (3) months immediately preceding their request for leave with no minimum requirement for hours worked. See Section X for more information on the laws governing leaves of absence from employment.

An Act Concerning Fair Chance Employment

On January 1, 2017, An Act Concerning Fair Chance Employment took effect, which prohibits employers from asking questions about criminal background on employment applications, with some exceptions.[16] Referred to as the "ban-the-box" legislation, it defines "employer" as "any person engaged in business who has one or more employees, including the state or any political subdivision of the state," and prohibits employers from inquiring about a prospective employee's prior arrests, criminal charges, or convictions on an initial employment application. However, an exception applies when the employer is required by state or federal law to inquire about the above. It is unclear whether this exception applies only when the employer is bound to inquire about criminal background on an initial application or if it applies as long as the employer is required to ask at some point in the process. Another exception applies when a security or fidelity bond (or its equivalent) is required for the position for which the prospective employee is seeking employment. It should be noted that this Act only prohibits employers from asking about criminal history on an initial employment application, but not at other points in the employment relationship. Moreover, it does not require a conditional offer to be made prior to asking. The ban-the-box legislation does not allow an individual to sue an employer, but a complaint may be filed with the State Department of Labor.

Connecticut law also requires that an employment application that does contain a question concerning the criminal history of the applicant also contains the following notice, in clear and conspicuous language: 1) the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to Section 46b-146, 54-76o or 54-142a; 2) criminal records subject to erasure pursuant to Section 46b-146, 54-76o or 54-142a are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolled, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon; and 3) any person whose criminal records have been erased pursuant to Section 46b-146, 54-76o or 54-142a shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath. Moreover, employers cannot reject an applicant or fire an employee based on erased records or a prior conviction for which the individual has received a provisional pardon or certificate of rehabilitation.

New York Anti-Discrimination Laws

The New York State Human Rights Law makes it illegal for an employer to discriminate against an employee or job seeker based upon his or her age, creed, race, color, sex, sexual orientation, national origin, marital status disability, military status, domestic violence victim status, criminal or arrest record, or predisposing genetic characteristics.[17] Under this law, it is illegal to fire or refuse to hire or employ an individual on the basis of any of the above protected categories. It is also unlawful for an employment agency to discriminate against an

individual when referring an applicant to an employer, or when receiving, classifying or disposing of an application for employment referral on the basis of a protected category. Moreover, a labor union cannot exclude, expel, or otherwise discriminate against members based upon the protected categories. Also, under the NYS Human Rights Law, no employer or employment agency may print or circulate job advertisements that express any limitation, specification or discrimination based on the protected categories, unless based upon a bona fide occupational qualification.

In New York City, there is local legislation that prohibits discrimination by employers with four (4) or more employees. Under the New York City Human Rights Law, employees cannot be discriminated against based on age, alienage or citizenship status, color, disability, gender (including sexual harassment), gender identity, marital status and partnership status, national origin, pregnancy, race, religion/creed, or sexual orientation.[18] Although an employer may not discriminate on the basis of gender or sexual orientation, this law does not authorize or require employers to establish affirmative action quotas based on sexual orientation or ask or inquire about the sexual orientation of its employees or applicants. The law also specifically prohibits your employer or union from discriminating against you if you have been a victim of domestic violence, stalking or sex offenses.

Under the New York State Human Rights Law, victims of employment discrimination may be awarded uncapped compensatory damages, but may not be awarded attorney's fees or punitive damages.[19] Meanwhile, the New York City Human Rights Law provides for uncapped compensatory and punitive damages, as well as attorney's fees.[20]

Sexual Orientation

The NYS Human Rights law and NYC Human Rights Law make it unlawful for an employer or labor organization to discriminate against you on the basis of your sexual orientation. Moreover, you may have a claim for gender discrimination or "gender identity discrimination" if you are discriminated against based upon your actual or perceived sex, including your gender identity, self-image, appearance, behavior or expression, whether or not your gender identity, self-image or appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to you at birth.

Physical, Mental, or Medical Impairments & Disabilities

The NYS Human Rights Law prohibits an employer or organization from discriminating against you based upon: a) a physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; b) a record of such an impairment; or c) a condition regarded by others as such an impairment.[21] This legislation specifically protects you from "genetic discrimination" on the basis of predisposing genetic characteristics. Predisposing genetic characteristics are "any inherited gene or chromosome, or alteration [of a gene or chromosome], [that are] determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability."[22] Therefore, it is unlawful for an employer or labor organization to require you to

take a genetic test or solicit information about your genetic characteristics as a condition of your employment. However, there is an exception where such a test is shown to be directly related to the work environment. Also, there is an exception where an employer may administer genetic tests for some purposes to employees who request the latter and provide written, informed consent. These purposes include worker's compensation claims, other civil litigation, or to determine whether the employee is at risk of disease if exposed to certain toxins, as long as the employer does not subsequently fire, transfer or demote the employee.

The NYC Human Rights Law prohibits discrimination on the basis of a physical, medical, mental, or psychological impairment, or a history or record of such impairment.[23] Under this NYC Law, disability is defined as 1) an impairment of any system of the body, including the neurological system, the musculoskeletal system, the special sense organs and respiratory organs, the cardiovascular system, the reproductive system, the digestive and genito-urinary systems, the hemic and lymphatic systems, the immunological systems, the skin, and the endocrine system; or 2) a mental or psychological impairment. If you suffer from alcoholism, drug addiction or other substance abuse, New York City law only protects an employee or application who is recovering or has recovered, and is currently free of such abuse. As such, employees will not be protected from adverse employment decisions in response to their present use of alcohol or drugs.

If an employee has a protected disability, federal, state, and local law requires the employer to take reasonable steps to accommodate certain needs and to allow an employee to adequately perform the requirements of the position. New York provides for Reasonable Accommodations for Persons with a Disability, which prohibits an employer, licensing agency, employment agency or labor organization from refusing to provide reasonable

accommodations to the known disabilities of an employee, applicant or member in its policies, procedures or facilities unless an employer can show that such steps would fundamentally alter the nature of the facility or cause an undue burden (i.e. significant difficulty or expense). To trigger protection under this law, you must inform your employer if you have a disability that impairs your ability to perform a current or prospective job. In response, your employer may be obligated to provide you with reasonable accommodations, such as an accessible worksite, different or modified equipment or special services if you are hearing or vision impaired. Additionally, if necessary, an employer may be obligated to restructure the job to accommodate your disability, find you another available position, or modify training materials or examinations. As noted above, an employer is not obligated to make accommodations that are unreasonably costly or those which would cause undue hardship for the employer's business or organization. Moreover, you must have the required education, skills, experience, and ability to the extent that these qualifications are required of non-disabled employees and applications. You must also be able to "reasonably perform" the job, which means that you must reasonably meet the employer's needs to achieve his or her business goals.

Religious Accommodations

Regarding religious accommodations, it is unlawful for an employer to require a person to violate or forego a sincerely held religious practice as a condition to obtain or retain employment or for a promotion unless, after engaging in a bona fide effort, the employer cannot reasonably accommodate the employee's religious practice without undue hardship on the business. This law includes prohibiting your employer from forcing you to abstain from

observance of any holy day, Sabbath day, religious custom or usage. So, an employer may not fire or transfer you or refuse to hire or promote you because you are unable to work on certain religious days. However, your employer is not obligated to pay you for the time you take off for religious observance, and you may be required to make up the time you missed.

Age

Both New York State and New York City law prohibit employers from discriminating against employees based on age, regardless of the employee's age. So, an employee that has been discriminated against based on his or her age will have a valid claim even if he is not yet (forty) 40 years old, as is required under the federal law. New York law also mandates that no employee can be terminated or forcibly retired on the basis of age, unless age is a bona fide occupational qualification reasonably necessary for the normal operation of a particular business, or the retirement falls under a narrow exception in the law. Generally, state and local governments are exempt from this prohibition.

Retaliation

New York law prohibits an employer from taking retaliatory personnel action against an employee because such employee: a) discloses, or threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and present a substantial and specific danger to the public health or safety; b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such

employer; or c) objects to or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.[24]

In order to be protected against retaliation, an employee must first inform a supervisor of the violation, and allow his or her employer an opportunity to remedy the violation. An employer will have an affirmative defense to a violation if it can demonstrate that it took action against an employee for reasons other than a violation of this law.

In order to prosecute a claim under this law, an employee must file an action in New York State Supreme Court within one year of the violation. If the employee is successful, the Court may order: 1) an injunction to restrain the continued violation; 2) the reinstatement of the employee; 3) back pay; and 4) reasonable attorneys' fees and costs. On the other hand, if the Court determines that a claim is without basis in law or fact, it may award attorneys' fees to the employer.

Other Protections

New York law carves out specific protections for certain other employment discrimination categories as well. For instance, it is unlawful to require a pregnant employee to take a leave of absence, unless the pregnancy prevents the employee from performing activities reasonably involved in the job. Pregnancy discrimination under the New York State Human Rights Law is classified as disability discrimination, as opposed to sex discrimination.[25] Regarding arrest and conviction records, an employer cannot deny a person a job based on a criminal record or conviction unless the conviction is directly related to the job duty or poses an unreasonable risk to persons and property. However, employers can

ask about criminal convictions including misdemeanors and felonies, but they cannot ask about arrests that were resolved in favor of the individual (i.e. dismissed, declined to prosecute, voided), cases resolved by a Youthful Offender adjudication, or violations (convictions or pleas) that were sealed.

IV. Federal Anti-Discrimination Laws

Federal law also makes it illegal for an employer to discriminate on the basis of race, color, national origin, religion, sex (including pregnancy and childbirth), disability, age (40 and above), citizenship status and genetic information. This also includes: protection from retaliation for filing a charge of discrimination or participating in a discrimination investigation; employment decisions based on stereotypes or assumptions; and denying employment opportunities because of marriage to, or association with, an individual of a certain race, religion, national origin, or disability. The federal laws which prohibit such discrimination in the workplace include but are not limited to:

I. Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
II. The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
III. The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
IV. Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
V. Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;

VI. Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee;

VII. The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination (Sec. 1977A, 42 U.S.C. 1981a*)*;

VIII. The Family and Medical Leave Act of 1993 (FMLA), which provides certain employees with up to 12 weeks of unpaid, job-protected leave per year and requires that their group benefits be maintained during the leave (leave based on childbirth, adoption, care of an immediate family member with a serious health condition, or a personal serious health condition);

IX. The National Labor Relations Act grants employees the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representation of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and

X. The Sarbanes Oxley Act, the Water Pollution Control Act, the Clean Air Act, and the Toxic Substance Control Act are federal whistleblower statutes. These laws protect employees who disclose information pertaining to hazards or wrongdoing from retaliation by their employers.

These federal and state anti-discrimination laws make it illegal for an employer or an employer's agent to discriminate in any aspect of employment, including but not limited to:

- hiring and firing;
- transfer, promotion, layoff, or recall;

- compensation, assignment, or classification of employees;
- recruitment and job advertising;
- job testing and training programs;
- use of company facilities;
- fringe benefits;
- retirement plans and leave; or
- any other terms and conditions of employment.

Title VII of the Civil Rights Act of 1964

Under Title VII of the Civil Rights Act of 1964, it is illegal to discriminate against an employee or job applicant on the basis of his or her race, color, religion, national origin, or sex (including pregnancy).[26] An employer cannot refuse to hire or promote, segregate, classify or deprive an employee of opportunities or training because of a protected category. Moreover, it is unlawful to discriminate in compensation, employment terms, conditions or privileges, or to unfairly discipline an employee based a protected category. In accordance with this federal legislation, job advertisements cannot show preference for or discourage someone from applying for a job based on race, color religion, national origin or sex. An employment agency cannot fail or refuse to refer an individual, or discriminate against that person on the basis of a protected category. Similarly, a labor union may not exclude or expel a member, or otherwise discriminate against an individual based on these protected categories.

As noted above, Title VII specifically prohibits pregnancy discrimination when Title VII was amended to include pregnancy in the definition of “sex” with The Pregnancy Discrimination Act in 1978. Employment policies or practices that adversely affect female

employees due to pregnancy, childbirth, and related medical conditions constitute unlawful sex discrimination. These conditions must be treated in the same manner as other temporary illnesses or conditions.

Title VII also addresses harassment, retaliation, and religious accommodations. Under the law, it is illegal to harass an employee based on a protected category. Harassment may include offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment, including unwelcome sexual advances, requests for sexual favors, and other sexual conduct, is also illegal. However, the harassment must be so frequent or severe that it creates a hostile or offense work environment, or results in an adverse employment decision (i.e. being fired or demoted). The harasser may be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee, such as a client or customer. Regarding retaliation, Title VII makes it unlawful to retaliate against someone because he or she made a complaint, opposed an illegal employment practice, filed a charge of discrimination, or participated in an investigation or lawsuit. Employers must also make reasonable accommodations for a person's religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

For decades, federal courts have regularly rejected LGBTQ discrimination claims under Title VII, on the ground that "sex" in 1964 would have referred only to binary male-female biological identity. During the Obama administration, however, the EEOC expanded the definition of "sex" to include all expressions of gender including sexual orientation.[27] In a recent landmark federal case decided on April 4, 2017, *Hively v. Ivy Tech Community College*, the 7th Circuit Court of Appeals became the first U.S. Court of Appeals to overrule

prior precedent, finding that Title VII does protect employees from discrimination based on sexual orientation.[28] In that case, a female employee claimed that her employer, a community college, fired her for being a lesbian. The Court held that discrimination against a lesbian must also be discrimination against a woman, and that Title VII protects employees from "sex" discrimination for not adhering to societal gender expectations or norms. The Court also noted that sex discrimination includes discrimination on the basis of intimate association with people of the protected classification. It stated, "to the extent that Title VII prohibits discrimination on the basis of the race of someone with whom the plaintiff associates, it also prohibits discrimination on the bases of the national origin or the color, or the religion, or (as relevant here) the sex of the associate." Then, addressing the developing constitutional law of the rights of homosexuals, it noted, "[t]oday's decision must be understood against the backdrop of the Supreme Court's decisions, not only in the field of employment discrimination, but also in the area of broader discrimination on the basis of sexual orientation."[29] Finally, it concludes by stating, "[w]e hold only that a person who alleges that she experienced employment discrimination on the basis of her sexual orientation has put forth a case of sex discrimination for Title VII purposes."[30] So, the decision does not technically apply to discrimination based upon gender identity, but the reasoning may be applied in future cases involving the latter.[31]

Title VII applies to private employers, and state and local government with 15 or more employees (for at least five months this year or last year). The law applies to all federal government employers, regardless of the number of employees. The law also covers employment agencies regardless of how many employees it has as long as it refers

employees to employers. Labor unions are included if they have at least 15 employees or operate a hiring hall.

However, there is a very limited exception under Title VII whereby it is not unlawful for an employer to hire on the basis of a protected category in certain instances where being a part of that category is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of that business. Under the exception, religious schools may hire and employ individuals of a particular religion if the educational institution is owned, controlled or managed by a particular religious association, or if the school curriculum is directed towards the propagation of a particular religion. Alleged customer preference for a certain type of person (i.e. female vs. male), however, is not sufficient to justify a bona fide occupational qualification.

In addition to the BFOQ exception, seniority or merit systems are also allowed under Title VII, as long as the differences in compensation or privileges among employees are not the result of intentional discrimination based on the protected categories. Similarly, professionally developed ability tests are lawful as long as they are not intended or used to discriminate against an individual.

The Equal Pay Act of 1963

The Equal Pay Act (EPA) requires that men and women be given equal pay for equal work in the same establishment.[32] For the EPA to apply, the jobs in question need not be identical, but they must be substantially equal (job content, not job title, that determines whether jobs are substantially equal). Specifically, the EPA provides that employers may not

pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working skills within the same establishment as defined within the statute. If your employer is paying one employee less than another because they are of different sexes, both employees are entitled to the higher of the two's pay. In other words, no employee's pay may be lowered as a result of an EPA claim. There are "affirmative defenses" to EPA violations, which include pay differentials that are based on seniority, merit, quantity or quality of production, or a factor other than sex. It is the employer's burden to prove that an affirmative defense applies.

The Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age.[33] The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his or her age with respect to any term, condition or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments and training. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under the ADEA. The ADEA applies to employers with 20 or more employees, including state and local governments, as well as employment agencies, and labor organizations with 25 or more members. The law also applies to labor organizations that operate a hiring hall or office that recruits potential employees or obtains job opportunities.

ADEA protections are included in a variety of employment areas, such as apprenticeship programs, job notices and advertisements, pre-employment inquiries, and benefits. It is unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exception. Regarding job notices and advertisements, the ADEA makes it unlawful to include age preferences, limitations or specifications in the latter. An exception to this prohibition is where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business. The ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth, but requests for age information are closely scrutinized to make sure that the inquiry was made for a lawful purpose.

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. However, since the cost of providing certain benefits to older workers is greater than the cost of providing those same benefits to younger workers, and because those greater costs would create a disincentive to hire older workers, the legislation contains an exception. Under the exception, in limited circumstances, an employer may be permitted to reduce benefits based on age, only as long as the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

An employer may ask an employee to waive his/her rights or claims under the ADEA either in the settlement of an ADEA administrative or court claim or in connection with an exit

incentive program or other employment termination program. In cases involving intentional age discrimination, or in cases involving intentional sex-based wage discrimination under the Equal Pay Act, victims cannot recover either compensatory damages or punitive damages, but may be entitled to "liquidated damages." Liquidated damages may be awarded to punish an especially malicious or reckless act of discrimination. The amount that may be awarded is equal to the amount of back pay awarded to the victim.

Titles I and V of the Americans with Disabilities Act of 1990 and Reasonable Accommodation

The Americans with Disabilities Act of 1990 is a federal law that prohibits an employer in the private sector or a state or local government or agency from discriminating against an employee or applicant on the basis of an individual's disability when hiring, firing, promoting, setting wages, training, and when considering other terms and conditions of employment.[34] An individual with a disability under the Americans with Disabilities Act of 1990 (ADA) is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working. The ADA covers employers with 15 or more employees, including State and local governments, and also applies to employment agencies and labor organizations. The legislation is enforced by the EEOC.

Title I of the ADA is designed to help people with disabilities access the same employment opportunities and benefits available to people without disabilities. It prohibits private employers, state and local governments, employment agencies and labor unions from

discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions, and privileges of employment. A qualified individual with a disability is an employee or applicant who satisfies the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Title I of the ADA requires employers to provide reasonable accommodations to qualified applicants or employees. A "reasonable accommodation" is a change that accommodates employees with disabilities without causing the employer "undue hardship" (too much difficulty or expense). Reasonable accommodations may include but are not limited to: making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodations may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. Importantly, however, an employer is not required to lower production standards to make an accommodation, and is not obligated to provide personal use items such as eyeglasses or hearing aids.

Under Title I, if you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. However, an employer can ask if you can perform the duties of the job with or without reasonable accommodation. An

employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job. An employer cannot require you to take a medical examination before you are offered a job. Following a job however, however, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that category have to take the examination. An employer cannot reject you based on information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. The employer cannot refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation. Once you have been hired, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business.

Title V of the ADA contains a variety of provisions, including its relationship to other laws, state immunity, its impact on insurance providers and benefits, prohibition against retaliation and coercion, illegal use of drugs and attorney's fees. It includes a provision prohibiting either: a) coercing or threatening or b) retaliating against individuals with disabilities or those attempting to aid people with disabilities in asserting their rights under the ADA. Title V gives individuals the right to sue state agencies for violation of the ADA, when the agency would otherwise be able to claim state immunity. It also provides a list of certain conditions that are not considered disabilities, including homosexuality, bisexuality, transvestitism, and illegal drug use. Tests for illegal use of drugs are not medical

examinations under the ADA and are therefore not subject to the restrictions of such examinations.

Sections 501 and 505 of the Rehabilitation Act of 1973

Section 501 of the Rehabilitation Act of 1973 prohibits employment discrimination against qualified individuals with disabilities in the federal sector.[35] The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or an employee, unless doing so would impose an undue hardship on the operation of the employer's business.

Section 505 of the Rehabilitation Act provides that the procedures and rights in Section 717 of the Civil Rights Act of 1964 must be made available, with respect to any complaint under Section 501 or 504, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take any action on such complaint.[36] Under Section 717 of the Civil Rights Act, an employee or applicant for employment must be notified of any final action taken on any discrimination complaint filed by him.

In determining an equitable or affirmative action remedy, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives.

Title II of the Genetic Information Nondiscrimination Act of 2008

Under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), it is illegal to discriminate against employees or applicants because of genetic information.[37] The law prohibits the use of genetic information in making employment decisions, restricts employers and other covered entities (i.e. employment agencies, labor organizations, and joint labor-management training and apprenticeship programs) from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology. The EEOC enforces Title II of GINA.

GINA forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, and the determination of pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work. Additionally, it is

illegal under GINA to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant or employee's genetic information, or about the genetic information of a relative of the applicant or employee. Harassment is illegal when it is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision. The harasser can be the victim's supervisor, a supervisor in another area of the workplace, a co-worker, or someone who is not an employee, such as a client or customer. Under GINA, it is illegal to fire, demote, harass, or otherwise "retaliate" against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

There are six narrow exceptions to the prohibition on acquiring genetic information from employees: 1) inadvertent acquisitions; 2) genetic information obtained as part of health or genetic services; 3) family history acquired as part of the certification process for FMLA leave; 4) genetic information acquired through commercially and publicly available documents; 5) genetic information acquired through a program monitoring the biological effects of toxic substances in the workplace, and 6) acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes.

It is also unlawful for a covered entity to disclose genetic information about applicants, employees, or members. Covered entities must keep genetic information confidential and in a separate medical file. There are limited exceptions to this non-disclosure rule, such as exceptions that provide for the disclosure of relevant genetic information to government

officials investigating compliance with Title II of GINA for disclosures made pursuant to a court order.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 was enacted to address several Supreme Court Decisions that changed the landscape of discrimination law and called into doubt existing precedent.[38] The Act amended several of the statutes enforced by the EEOC, both substantively and procedurally. Previously, trials by jury were only available in cases brought under the EPA or the ADEA. Under the provisions of the 1991 Act, parties can now obtain jury trials and recover compensatory and punitive damages in Title VII and ADA lawsuits involving intentional discrimination. Compensatory damages may be awarded for out-of-pocket expenses caused by the discrimination and to compensate for any emotional harm suffered. The goal of compensatory damages is to put you back in the same position (or nearly the same) that you would have been if the discrimination had never occurred—i.e. "to make you whole." The relief awarded depends upon the type and severity of the discrimination, along with the effect of the same. Punitive damages may be awarded to punish an employer who has committed an especially malicious or reckless act of discrimination, are used to deter or prevent the employer from committing future acts of discrimination, and may be awarded, in addition to compensatory damages, at the court or jury's discretion when the defendant's behavior is found to be especially harmful.

However, the Act placed statutory caps on the amount of damages that may be awarded for future pecuniary losses, pain and suffering, and punitive damages, based on employer size. The limits on the amount of compensatory and punitive damages are: a)

$50,000 for employers with fifteen (15) to one hundred (100) employees; b) $100,000 for employers with 101-200 employees; c) $200,000 for employers with 201-500 employees; and d) $300,000 for employers with more than 500 employees. The most common damages awarded in an employment discrimination case involve back pay, front pay, emotional distress, lost wages, lost income, lost opportunity and benefits, employee reinstatement, injunctions against further discriminatory practices, court costs, interest and attorneys' fees.

The 1991 Act added a new subsection to Title VII, codifying the disparate impact theory of discrimination, and provided that where the plaintiff shows that discrimination was a motivating factor for an employment decision, the employer is liable for injunctive relief, attorney's fees, and costs (but not individual monetary or affirmative relief) even if the employer can prove that it would have made the same decision in the absence of a discriminatory motive. The Act also provided employment discrimination protection to employees of Congress and some high-level political appointees. Lastly, Title VII and ADA coverage was extended to include American and American-controlled employers operating abroad.

The Family and Medical Leave Act of 1993

The Family and Medical Leave Act entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.[39] Employers are covered under the FMLA if they have employed at least 50 employees during 20 or more calendar workweeks in the current or the preceding calendar year. Employees are eligible under the FMLA if they have worked for a covered employer for

at least 12 months that need not be consecutive, have worked at least 1,250 hours during the 12 months preceding the start of leave, and are employed at a worksite where the employer employs at least 50 employees within 75 miles. Eligible employees are entitled to twelve workweeks of leave in a 12-month period for: 1) the birth of a child and to care for the newborn child within one year of birth; 2) the placement of a child with the employee for adoption or foster care and to care for the newly placed child within one year of placement; 3) to care for the employee's spouse, child, or parent who has a serious health condition; 4) a serious health condition that makes the employee unable to perform the essential functions of his or her job; and 5) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty." Eligible employees are entitled to twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

On February 23, 2015, the U.S. Department of Labor's Wage and Hour Division announced what was referred to as a "Final Rule," to revise the definition of spouse under FMLA in light of the United States Supreme Court's decision in *United States v. Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.

The National Labor Relations Act

The National Labor Relations Act ("NLRA") is a federal law that provides, in part, that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representation of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities…"[40] If an employer or union violates the NLRA, a claim may be filed with the National Labor Relations Board. Individual employees covered by the statute, even in the absence of a union organizing campaign, who are disciplined for taking steps on behalf of their fellow employees, may file a claim under NLRA.

A union has a Duty of Fair Representation ("DFR") under NLRA. If a union treats your grievance in an arbitrary and capricious manner or unlawfully discriminates against you and refuses to process your grievance, you may file an unfair labor practice claim against both your union and your employer with the National Labor Relations Board. You may also choose to file a lawsuit for the breach of DFR in either state or federal court. However, you must file your claim with the NLRB or file your lawsuit within six (6) months of the violation.

Federal Whistleblower Statutes

Federal whistleblower statutes protect employees who disclose information pertaining to hazards or wrongdoing from retaliation by their employers. The Sarbanes Oxley Act protects employees of publicly traded companies who disclose information relating to accounting fraud.[41] The Clean Air Act protects employees who disclose information relating to unlawful air pollution.[42] The Toxic Substance Control Act protects employees who disclose

information pertaining to unlawful toxic substance (asbestos) pollution.[43] The Water Pollution Control Act protects employees who disclose information relating to unlawful water pollution.[44]

V. Sexual Harassment

A hostile work environment can be very traumatic. Victims of sexual harassment in the workplace often experience a pattern of mistreatment over an extended period of time, while still working for the employer. This may include physical or verbal abuse, and often includes overtly gender-specific conduct, as well as behavior which on its face appears to be gender neutral (behavior that while abusive, when considered independently, may appear to have nothing to do with one's gender). When considering whether a victim of sexual harassment is entitled to judicial redress, it is important to take both types of conduct into account. In fact, when considering a claim brought under Title VII, a court will consider the totality of the circumstances, including both facially gender-specific behavior, as well as behavior that is facially gender-neutral.

Generally speaking, Title VII prohibits, "discrimination against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's… sex."[45] Title VII is not limited to "'economic" or "tangible" discrimination, however. The phrase "terms, conditions, or privileges of employment" evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in the employment setting, which includes requiring people to work in a discriminatorily hostile or abusive environment.[46] As the Court explained in *Harris*, Title VII is violated, "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," *Id*. Importantly, an employer is presumed to be responsible where the perpetrator of the harassment was the plaintiff's supervisor and when a supervisor has knowledge of the harassment and a duty to report the misconduct.[47] Further, a plaintiff could

pursue common law claims against an employer on the basis of negligent or reckless supervision of an employee if the plaintiff suffered economic damages as a result.[48] An employer may liable for negligent supervision if it failed to supervise an employee whom the employer had a duty to supervise. Reckless supervision is supervision of an employee with reckless indifference or disregard of the rights of others.

In determining whether an environment is “hostile” or “abusive,” the Court in *Harris* stated that one must consider all the circumstances surrounding the alleged discrimination.[49] Factors and circumstances may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating (or a mere offensive utterance); and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is also relevant to determining whether the plaintiff actually found the environment abusive. Notably, while psychological harm, may be taken into account – like any relevant factor -- no single factor is required to be present.[50] Because the analysis of severity and pervasiveness looks to the totality of the circumstances, the crucial inquiry focuses on the nature of the workplace environment as a whole. To that end, a plaintiff who herself experiences discriminatory harassment need not be the target (intended or otherwise) of other instances of hostility in order for those other incidents to support her claim.[51]

It is fairly well settled law that to prevail on a claim of hostile work environment based on gender discrimination, the plaintiff must establish that the abuse was indeed based on his or her gender.[52] However, facially neutral incidents may be included among the "totality of the circumstances" that courts consider.[53] In determining whether facially sex-neutral incidents

were part of a pattern of discrimination on the basis of gender the Court may consider, for example, whether the same individual engaged in multiple acts of harassment, though some may have been overtly sexual and some not.[54] In *Raniola*, the Court concluded that, given proof of instances of overt gender hostility by the supervisor of the female plaintiff, a rational juror could have permissibly inferred that his entire alleged pattern of harassment against her was motivated by her gender, even though some of the harassment was not facially sex-based.[55] Thus, the relevant circumstances in *Raniola* included not only offensive sex-based remarks, but also one facially gender-neutral threat of physical harm by the supervisor who had made the remarks.[56]

In *Kaytor v. Electric Boat Corporation*, the United States Court of Appeals for the Second Circuit adhered to this principle.[57] In that case, the plaintiff, an administrative assistant in the defendant's engineering department, brought suit under Title VII alleging that the department manager sexually harassed her. The plaintiff alleged that in addition to constantly staring at her and making suggestive advances, the manager also threatened her with physical harm. For example, the manager allegedly told the plaintiff he wished she was dead, saying, "I'd like to see you in your coffin." Additionally, on six occasions, the manager allegedly told the plaintiff he wanted to choke her. In overturning the trial court's decision which effectively dismissed the plaintiff's case, the Appellate Court explained, "…the court should not have excluded from consideration [the plaintiff's] testimony as to [the manager's] stated desires to choke her, to see her in a coffin, and to kill her." According to the court, one could permissibly infer that the manager's harsh treatment of the plaintiff was the result of his

spurned advances and that the facially gender-neutral threats he directed at the plaintiff were, in fact, because of her sex.

If you believe you have been sexually harassed in the workplace, you should seek the advice of an attorney to determine your rights.

Connecticut Laws Regarding Sexual Harassment

On October 1, 2019, The Act Combatting Sexual Assault and Sexual Harassment expanded the sexual harassment prevention laws by requiring that employers provide additional training for employees and imposing new notice and posting requirements in the workplace. Employers of three or more employees must post a notice regarding the illegality of sexual harassment and remedies available to victims of sexual harassment in the workplace, while also emailing a copy of this information to employees within three (3) months of hiring them. The subject line of the email must include the words “Sexual Harassment Policy” or similar phrasing. If the employee does not have a company email account or has not provided the employer with a personal email address, the employer must post the information regarding the sexual harassment policy on its website, if the employer has one, or provide employees with a link to the CHRO’s website. In the event an employer fails to meet these requirements, the employer will be subject to a $750 fine.

Before the enactment of The Act Combatting Sexual Assault and Sexual Harassment, the law only required training for supervisors in companies with fifty (50) or more employees. However, as of October 1, 2019, the new law now requires all employers to provide sexual harassment training to supervisors. Further, employers with three (3) or more employees

must train all employees regarding sexual harassment. This training must occur by October 1, 2020 for all current employees. Employees who have already received sexual harassment training after October 1, 2018, do not need to be retrained. For new employees or employees promoted to supervisory roles after October 1, 2019, the sexual harassment training must occur within six (6) months. Further, pursuant to the law, employers must provide additional sexual harassment training "periodically" and at least every ten (10) years for all supervisory and non-supervisory employees. The Act Combatting Sexual Assault and Sexual Harassment also requires that the CHRO develop a free online training video or other interactive training method that employers may use. Employers should be aware that failure to provide such training and education will be classified as a "discriminatory practice," which will expose the employer to legal liability as of October 1, 2020. Employees may bring a complaint to the CHRO or in court against any employer who fails to carry out the training, and a $750 fine may be imposed against the employer. Also, as of October 1, 2019, the CHRO is now explicitly authorized to enter into businesses to ensure that posting and training requirements are being met and to review "records, policies, procedures, postings and sexual harassment training materials maintained" by the employer when the CHRO has a reasonable belief of noncompliance or within twelve (12) months of the filing of a CHRO complaint against the employer. Inspections must be done during business hours and may not "unduly" disrupt business operations.

Lastly, pursuant to The Act Combatting Sexual Assault and Sexual Harassment, as of October 1, 2019, if an employee complains about sexual harassment in the workplace, an employer may not make any changes to that employee's terms and conditions of employment as part of any corrective action unless the employee agrees to the changes in writing. This

means that the employer may not relocate an employee, transfer an employee to another department, or make any other significant change to the complaining employee's work schedule without his or her written consent in order to separate a harasser from his/her victim.

New York Laws Regarding Sexual Harassment

Pursuant to New York Consolidated Laws, Labor Law § 201-g, employers of one or more employees must conduct annual anti-sexual harassment interactive training for all employees. Employers may choose to use the model training developed by the New York Department of Labor. However, to satisfy the "interactive" requirement, employers must engage employees with questions and must answer questions from participants. Further, employers' anti-sexual harassment policies must include information on state and federal harassment laws, a standard complaint form, an outline of the procedure for a timely and impartial investigation, and information about retaliation, among other items. Additionally, New York City law, Local Law 95, requires all employers to post their anti-sexual harassment policy regarding an employee's rights in English and Spanish and to distribute a fact sheet explaining the employee's rights.

Recent changes in New York law prohibit contracts requiring mandatory arbitration for sexual harassment claims. Additionally, New York law now prohibits mandatory non-disclosure agreements that may inhibit a victim from speaking out about sexual harassment in the workplace. New York law also now extends sexual harassment protections to independent contractors.

VI. What Employers and Other Entities are Covered by Anti-Discrimination Laws?

Title VII, the ADA, and GINA apply to all private employers, state and local governments, and educational institutions that employ fifteen (15) or more individuals while the ADEA applies to employers who employ twenty (20) or more employees. The EPA covers virtually all employers in America with no minimum employee requirement and the Family Medical Leave Act covers employers with at least fifty (50) employees.

While the CTFMLA currently applies only to employers with 75 or more employees, the PFML program will apply to any employer with one or more employees working in Connecticut. The Connecticut Fair Employment Practices Act covers employers of just three (3) or more employees. The New York State Human Rights Law covers employers with four (4) or more employees.

Both the federal and state anti-discrimination laws protect employees with employment agreements and at-will employees. At-will employees do not have employment contracts and can be fired with or without cause, at any time, and for any reason unless it falls into one of the above prohibited categories or is covered by a whistleblower statute. If a discriminatory act is directed toward an employee, and the employer is subject to one of the anti-discrimination statutes, a charge or complaint may be filed accordingly.

VII. How an Employee Files a Discrimination Claim in Connecticut

Before filing an employment discrimination claim in Federal or State Court in Connecticut, the complainant —meaning the individual filing the complaint— must first exhaust their administrative remedies by filing the claim with the Connecticut Commission on Human Rights and Opportunities (CHRO) or the Equal Employment Opportunity Commission (EEOC).[58] Connecticut is known as what is called a "deferral state," as the CHRO serves as a certified "deferral agency" of the EEOC. This means that the CHRO has a "work-sharing" agreement with the federal administrative agency, the EEOC, and is recognized as a Fair Employment Practice Agency (FEPA) so the two agencies cooperate with each other to process discrimination claims filed by individuals in Connecticut.

Due to the work-sharing agreement, the EEOC will accept the CHRO's decision in a particular employment discrimination claim, subject to a limited review. When deciding on which agency to file with, a complainant should look to their underlying claims and their employer's structure. Since the Connecticut anti-discrimination statutes cover employers with fewer amounts of employees and more classes of discrimination than federal statutes, some claims should only be filed with the CHRO. However, an employee alleging federal discrimination claims in addition to state discrimination claims may want to choose to file with both agencies.

To simplify the filing process, a complainant can file two separate claims, one with the EEOC and one with the CHRO, or they can file with one agency and request that the filed claim be "cross-filed" with the other agency according to the terms of the work-sharing agreement. Cross-filing claims ensures proper filing and recordation of the claim in both

agencies and protects the complainant's rights. Once a claim is filed, a complainant employee alleging discrimination may pursue the claim through the CHRO; obtain a release from the CHRO and proceed with a private right of action in Connecticut Superior Court; or obtain a right to sue letter from the EEOC and file a lawsuit in Federal District Court.

For an employee to file an employment discrimination claim with the CHRO, he or she should speak with an attorney first. To file, the CHRO office serving the area where the alleged discrimination took place must be contacted. A list of the CHRO offices, including the appropriate contact information, can be found in Appendix A of this publication. More information on the CHRO can be found at www.ct.gov/chro. Some of the information discussed in this publication can be located on the CHRO website as well as the Connecticut Legislature's webpage "Legislative Program Review and Investigations Committee CHRO: Enforcement" at: http://www.cga.ct.gov/ps99/pridata/studies/CHRO%20Table%20of%20Contents%20Final%20Report.htm.

Statute of Limitations in Connecticut

Prior to October 1, 2019, complaints must generally be filed with the EEOC or CHRO within 180 days of the date of the alleged act of discrimination, or within 180 days of the date that the complainant became aware of the act, or 300 days for a federal claim if the discrimination falls under a state or local law banning the same conduct. However, for alleged acts of discrimination that occurred on or after October 1, 2019, complaints can now be filed with the CHRO and EEOC up to 300 days of the date that the complainant became aware of the discriminatory act.

The complaint must be filed with either the CHRO or EEOC before a claim can be filed in Connecticut Superior Court. Additionally, if the discrimination complained of was part of a pattern of discriminatory events, a complainant may be able to include all the events in their complaint, regardless of when they occurred, thereby permitting the discrimination to be viewed as a continuing violation. A continuing violation theory is often present in hostile work environment cases rather than singular specific instances of discriminatory conduct.

The accrual date for the statute of limitations on discrimination claims in Connecticut is the date of the alleged discrimination, not the date when the employee begins to suspect that the employer acted on the basis of bias. If the discriminatory act was termination of employment, the accrual date is instead the date of cessation of employment, not the date of the notice of termination. As you can see, the statute of limitations for employment discrimination is variable and rather subjective depending on numerous factors. Due to the variable nature of the statute of limitations, it is best to contact an attorney immediately when a suspected discriminatory act has occurred.

In Connecticut, a complainant has generally two (2) years from the filing of a complaint with the CHRO or the EEOC in which to bring a lawsuit in Superior Court. As previously mentioned, the CHRO has its own statute of limitations on complainants requiring that a lawsuit must be filed in Superior Court within ninety (90) days of receiving a release of jurisdiction from the commission.

Although most federal claims must be filed within 180 days, some statutes have a different timeline. For instance, a claim must be filed within two (2) years (three (3) years if willful discrimination) from the date of the last discriminatory payment under the EPA and within two (2) years (three (3) years if willful discrimination) of the last action which the

employee contends was in violation of the FMLA. Also, a lawsuit under the ADEA can be brought without the issuance of an EEOC notice of right to sue after sixty (60) days have passed from the day of the EEOC complaint filing.

The CHRO Discrimination Claim Process

When pursuing a claim through the CHRO the first step is to file a formal complaint. The complaint is a sworn written statement that identifies the entity or person complained about and describes the alleged discriminatory act. A complainant can submit the complaint on their own, with the assistance of an attorney, or with the help of CHRO staff. Once the complaint is filed, the respondent—meaning the entity or person that is alleged to have engaged in the conduct described in the complaint—will receive notice of the complaint within twenty (20) days and have thirty (30) days to file an answer (unless a fifteen-day extension is requested).[59] Alongside the notice of complaint, a respondent will also receive initial information questions from the CHRO known as "Schedule A" questions. Once the respondent files an answer, the complainant may file a rebuttal to such answer. If an answer is not filed by the respondent, the CHRO can request and grant a default dismissal in the complainant's favor.

As an alternative to the complaint process, and if the parties mutually agree, the parties may avail themselves of a recently instituted early legal intervention process through the CHRO. This voluntary program causes the CHRO to determine if there is enough evidence for the case to go directly to a public hearing; if the complainant should be given a release of jurisdiction; and if there should be some specific further investigation done by the CHRO.[60]

If early legal intervention is not desired and the complaint process proceeds, the next step for an employment discrimination complaint is the CHRO's Merit Assessment Review (MAR). Under the MAR process, the CHRO makes an initial assessment of the merits of a claim to see if it meets basic legal requirements. In its assessment, the CHRO will review the complaint, answer, rebuttal, and related documentation to determine whether the complaint should be retained for full investigation or, alternatively, dismissed. This process must occur within ninety (90) days of the filing of respondent's answer to the complaint of discrimination.[61] Additionally, complainants can ask for an expedited MAR process in order to request a release of jurisdiction before the normal 180 day waiting period. The parties can also obtain a release of jurisdiction immediately after the filing of the complaint if both parties agree to such a request.

During the MAR, the CHRO will assess the complaint using a four-part standard to determine:

1) if the complaint fails to state a claim for relief;
2) if the complaint is frivolous on its face;
3) if the respondent is exempt from the provisions of Chapter 814c of the Connecticut General Statutes; and
4) if there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause.

Most complaints filed with the CHRO survive this initial MAR review process, but the retention of a claim does not mean the CHRO believes discrimination has actually occurred. If a claim does result in a dismissal after the MAR process, the complainant has fifteen (15) days to ask for a release of jurisdiction to allow the complainant to bring a private right of

action in Superior Court. If no request is made, the CHRO legal department will review the complaint again to determine if it should be reinstated.

This second legal review is a CHRO safety net procedure to ensure complainants are afforded due process. After the second review, a complaint may be reinstated if credibility issues must be resolved, witnesses need to be interviewed, documents need to be provided, disputed issues of fact need to be resolved, information in a schedule A was not provided, or the determination regarding lack of jurisdiction was flawed. If a complaint is reinstated after this process, a letter is sent to each party informing them of the reinstatement. If the complaint fails to be reinstated, a letter is also sent to the parties with a release of jurisdiction. After a release of jurisdiction is received a complainant is required to file an action in court within ninety (90) days in order to pursue the matter any further.

If a case is retained for investigation after the MAR, the matter proceeds to a mandatory mediation process. This mediation process was recently established as a new focus of the CHRO and is now required by state law. Shortly after the MAR, a mediator will be appointed to determine an appropriate method of mediation for the parties. A mediation may be conducted in person, via email, or by telephone conference. Attendance at the mediation is mandatory, but the parties are not obligated to enter into a settlement. The CHRO believes the institution of the new mandatory mediation process will help streamline complaints while also encouraging amicable results for the parties involved.

If the matter fails to be successfully mediated, it is then assigned an investigator. The assignment of a personal investigator is also a new practice of the CHRO aimed at efficiency, fact finding, promoting the voluntary resolution of complaints, and determining if there is reasonable cause for believing that a discriminatory practice has been committed.

After an investigator is assigned, he or she will decide the best way to investigate each case by determining if a fact-finding conference or full investigation is needed. In most cases, the CHRO investigator will schedule a fact-finding conference where the parties will meet with the investigator at the CHRO to provide information and answer questions about the facts of the case. At the fact-finding conference, the parties may be required to bring witnesses and supply certain documents for the CHRO's review. Once complete, the investigator will send out a decision based upon the information presented by the parties. If the investigator determines that a full investigation is needed, the process may involve document requests, witness interviews, and interrogatories. During this time, the investigator can also subpoena documents and/or witnesses for review.[62]

Once the investigation process is complete, the CHRO investigator will prepare and present a draft finding of reasonable or no reasonable cause to the parties. Reasonable cause means a bona fide belief that the material issues of fact are such that a person of ordinary caution, prudence and judgment could believe the facts as alleged in the complaint. The investigator has 190 days from the date of the MAR decision to make the reasonable cause determination.[63] With good cause, this period may be extended for two (2) separate three (3)-month periods—six (6) months in all. This results in an overall available time period of 370 days for an investigator to make a finding of reasonable or no reasonable cause in the case. Once the determination is made, each party will be given fifteen (15) days to respond. After the 15-day response period ends, the investigator will review the parties' comments to determine if any further investigation is needed. If it is determined that no further investigation is needed the investigator will issue a final report.

If the investigator finds reasonable cause and conciliation is not forthcoming within fifty (50) days of the finding, the case will be certified to the Office of Public Hearings.[64] Within twenty (20) days from receipt of the notice of the reasonable cause finding however, the complainant has the option of electing for a civil action in lieu of an administration hearing.[65] Such action must be commenced within ninety (90) days of the election.[66] However, if no reasonable cause is found by the investigator, or if the complaint is dismissed for a failure to state a claim for relief, because it is frivolous on its face, because the respondent is exempt, or because there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause, the complainant may request reconsideration within fifteen (15) days.[67] Such reconsideration must be made or rejected within ninety (90) days of the issuance of the finding or dismissal. Alternatively, the complainant may appeal the decision to the Superior Court. [68]

If the complaint reaches the public administrative hearing stage, no further timeframe is provided, except that, once evidence gathering is complete, the human rights referee presiding over the public administrative hearing must issue a decision within ninety (90) days. Instead of deadlines, the CHRO Uniform Administrative Procedures Act calls for the hearing process to proceed with "reasonable dispatch." However, once the hearing is closed, the human rights referee must issue a decision within ninety (90) days.

If the referee determines a violation has occurred, they could usually order a respondent to cease and desist from the discriminatory practice; hire or reinstate employees; pay back pay; restore union membership; or take affirmative action in the judgment of the referee to carry out the purpose of the anti-discrimination laws.[69] This order can be enforced

by the Superior Court on proper petition.[70] If the referee determines that no violation has occurred, the complainant may appeal the decision to the Superior Court.

Flow charts of the CHRO discrimination claim process for added clarification can be located in Appendix C of this publication.

Expansion of Recoverable Damages

Pursuant to The Act Combatting Sexual Assault and Sexual Harassment, which took effect on October 1, 2019, the CHRO can now also determine the amount of damages suffered by the complainant, including the actual costs incurred by the complainant" as well as "reasonable attorney's fees and costs."[71] The new legislation expressly states that the attorneys' fees allowed will not be contingent on the amount of damages requested or awarded to the complainant. Additionally, a referee can award back pay to an employee for up to two (2) years before a complaint was filed with the CHRO. This legislation significantly expands the remedies available to an employee at the administrative level so that complainants can obtain damages more akin to a court action. Also, as of October 1, 2019, the CHRO is authorized to assign Commission Counsel to bring a regulatory enforcement action in Connecticut Superior Court, instead of proceeding to an administrative hearing following a reasonable cause finding. This regulatory enforcement action is brought on behalf of the state and is not a private action by the complainant. If the Superior Court determines that an employer has committed a discriminatory practice, by clear and convincing evidence, the court must grant the CHRO a civil penalty, not exceeding $10,000. The amount shall be payable to the CHRO and be used by the agency to advance the public interest in eliminating discrimination.

Lastly, also since October 1, 2019, courts may now award punitive damages to prevailing plaintiffs for discrimination cases, which is a drastic change from prior Connecticut Supreme Court precedent which prohibited court awards for punitive damages in discrimination actions. The Superior Court in Connecticut now has authority to grant such legal and equitable relief which it deems appropriate including temporary or permanent injunctive relief, punitive damages, attorney's fees and court costs.[72] Of course, the specific types and amount of damages will depend on the specific facts of the case. In order to determine what a potential award of damages may be, or how to limit potential damages, it is always best to contact an experienced employment law attorney.

Requesting a Release of Jurisdiction from the CHRO

As mentioned previously, a complainant also has the option of requesting a release of jurisdiction from a reviewing agency, in order to file a lawsuit in court. While an individual must first seek redress through the initial CHRO assessment for discrimination claims before the Superior Courts of Connecticut can have subject matter jurisdiction, the CHRO may release their jurisdiction and allow the parties to move to court for a variety of reasons. A release of jurisdiction may be requested when:

- the complainant and the respondent jointly request the release any time from the filing of a complaint to 210 days after the complaint has been filed;
- the complaint is still pending after 210 days from its filing;
- the complaint is dismissed after the MAR and no reconsideration is requested; or
- the case is dismissed because the complainant fails to accept the respondent's offer of "make whole relief."[73] "Make whole relief" consists of the elimination by the respondent

of the discriminatory practice complained of, the respondent taking precautionary steps to prevent the conduct in the future, and an offer of full relief to the complainant.

However, a complainant may not request a release when the CHRO has issued a finding of no reasonable cause, in cases where the complaint was dismissed because the complainant failed to appear at mandatory mediation, or when cases are otherwise dismissed.

If there are proper grounds for the request, the CHRO executive director must grant the release of jurisdiction within ten (10) days. However, if the matter is scheduled for a public hearing, the director has the option of declining to issue the release. Additionally, the director may postpone the issuing of a release for thirty (30) days if he or she believes the matter may be resolved before the end of that period. Finally, if a matter is pending with the CHRO for more than twenty-one (21) months, the executive director must send a notice to the complainant informing them of their right to request a release from the CHRO in order to bring the case directly to Superior Court.

The Respondent's Option of Make Whole Relief

At any time during the CHRO complaint process, the respondent may offer what is called "make whole relief." This means the respondent is willing to make the complainant whole in the view of the CHRO investigator, not the complainant. If such offer is made and not accepted by the complainant, the complaint can be dismissed by the CHRO.[74]

VIII. How to File a Discrimination Claim in New York

In New York, there are three places that you can file a discrimination claim outside of court: a discrimination claim can be filed with the New York Division of Human Rights (DHR), the Equal Employment Opportunity Commission (EEOC), or, if you live in New York City, the New York City Commission on Human Rights (CHR). Like in Connecticut, these agencies have a "work-sharing agreement," so filing a claim with each agency is unnecessary, as long as you indicate to one of the agencies that you want it to "cross-file" the claim with the other agencies. If you live in New York City and have an age discrimination claim, you should not file with CHR, as it does not have a work-sharing agreement for age discrimination claims.

Statutes of Limitations in New York

For claims of discrimination under the New York State Human Rights Law, you can file a claim with the DHR within one (1) year of the date on which the discriminatory act took place. Moreover, without first filing with the DHR, you may instead initiate a lawsuit in the New York State Supreme Court. An employee has three (3) years from the act of discrimination to file such a lawsuit. Employees filing charges or lawsuits in New York City or New York State should be aware that you cannot file simultaneously in two (2) venues, for example the New York City CHR and New York State Supreme Court.

Complaints must be filed with the EEOC within 180 days of date of the alleged act of discrimination, or within 180 days of the date that the complainant became aware of the act, or 300 days for a federal claim if the discrimination falls under a state or local law banning the same conduct. It is always prudent to consult with an experienced attorney before deciding the forum in which to timely file a claim for discrimination.

The New York Division of Human Rights Discrimination Claim Process

If you live in New York and you believe that you have been subjected to discrimination in employment based upon your age, race, creed, color, national origin, sexual orientation, military status, sex, disability, pregnancy-related condition, domestic violence victim status, genetic predisposition or carrier status, familial status or marital status, you can file a complaint with the New York State Division of Human Rights ("DHR" or "Division").

A complaint must be filed with the DHR within one (1) year of the alleged discriminatory act. To file a complaint, you may: 1) visit the Division's website at www.dhr.ny.gov, and download a complaint form (completed complaints must be signed before a notary public and returned to the DHR by mail or in person; 2) visit a DHR office in person to file the complaint; or 3) contact one of the DHR's office, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint.

Once a regional office receives your complaint, the investigation will begin. The first step will be to notify the respondent(s). A respondent is a person or entity that you believe discriminated against you. Next, the Division will resolve any questionable issues of jurisdiction. If applicable, a copy of your complaint will be forwarded to the EEOC or the U.S. Department of Housing and Urban Development (HUD). An investigation will then be conducted using methods like written inquiry, field investigation and investigatory conference. In most cases, the investigation will be completed within 180 days. Once the investigation is complete, the DHR will determine if there is probable cause that an act of discrimination has occurred, and will notify the complainant and respondent in writing. If there is a finding of no

probable cause, or lack of jurisdiction, the matter will be dismissed. A complainant may appeal to the State Supreme Court within sixty (60) days.

If it is determined that there is probable cause, your case will be presented in a public administrative hearing after the complainant and respondent have been notified in writing. A Division attorney or agent will present the cause in support of the complaint, or you may elect to retain outside counsel. A Notice of Hearing will be issued. The case may be adjourned only for a good cause. An Administrative Law Judge presides over the hearing, which may last one (1) or more days. A Recommended Order is then prepared and sent to the parties for comment. Finally, the Commissioner's Order either dismisses the complaint or finds discrimination. In the latter case of a finding of discrimination, the Commissioner may order the respondent to cease and desist and take appropriate action. The DHR may also order damages and/or back pay. The Order may be appealed by either party to the State Supreme Court within sixty (60) days. Within one (1) year, the Compliance Investigation Unit investigates whether the respondent has complied with the provisions of the order.

The New York City Commission on Human Rights Discrimination Claim Process

The New York City Commission on Human Rights is a city agency entrusted with the duty to eliminate and prevent employment discrimination. The Commission specifically enforces New York City Human Rights Law Section 8-107. The NYC Human Rights Law provides two (2) ways to make a claim of discrimination: 1) file a claim in court; or 2) file a claim with the Law Enforcement Bureau ("LEB") of the NYC Commission on Human Rights ("CHR" or "Commission"). Once you choose an option, if your claim fails, you will not have an

opportunity to choose the other option. The LEB only has authority to investigate discrimination prohibited by the NYC Human Rights Law. Moreover, you cannot file a claim with LEB if you have already filed the same claim based on the same facts with another agency or in court. This includes DHR, HUD, and any state and federal court. You must file your claim within one (1) year of the alleged act of discrimination.

In order to start the complaint process, you must report the alleged discrimination by either calling 311 or (718) 722-3131 and asking for the New York City Commission on Human Rights, or sending an online inquiry here: http://www1.nyc.gov/site/cchr/about/report-discrimination.page. If the situation described in your report is covered by the NYC Human Rights Law, an intake appointment will be scheduled, either in person or over the phone. If you choose to hire an attorney to assist you with the complaint process, he or she will be able to file a complaint on your behalf.

If you have not hired an attorney to file your complaint, at the intake appointment, an attorney or investigator will interview you, gather information, and review documents. If what is reported is covered by the NYC Human Rights Law, the attorney will draft a Complaint. After the Complaint has been drafted, you must review the complaint and sign it. After the Complaint has been signed and it is sent to the respondent, the respondent has thirty (30) days to respond by filing an "Answer." After the respondent answers the complaint, the LEB investigates further. The Complainant is asked to respond to the respondent's position, by submitting a "Rebuttal." The investigation may include interviewing the parties and their witnesses, requesting documents from the parties, or other actions.

At various stages of the process, the LEB may seek to negotiate a pre-hearing resolution of each case, which could result in a conciliation agreement signed by all parties, including the Chair on the Commission's behalf. The conciliation agreement becomes an enforceable order of the Commission. The LEB may also refer the case to the Commission's Office of Mediation and Conflict Resolution ("OMCR"), independent from any other Commission office, that provides parties with mediation services, at no cost, to help facilitate resolution. In mediation, an impartial and neutral third party ("mediator"), helps the parties reach a voluntary, negotiated resolution. Any party may request mediation instead of continuing with the investigation or litigation after the Verified Complaint, Answer(s)/Position Statement(s), and Rebuttal have been filed with the LEB. To be eligible for mediation, all parties, including the LEB, must agree. If you are interested in pursuing mediation, you must contact the LEB attorney assigned to your matter.

The LEB may issue three types of determinations: 1) Probable Cause Determination; 2) No Probable Cause Determination; and 3) Dismissal for Administrative Convenience. A Probable Cause Determination will be made where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed. If the LEB finds probable cause, the parties receive a notice and the case is referred to the Office of Administrative Trials and Hearings ("OATH") for a hearing before an administrative law judge (ALJ). After the trial, the ALJ issues a Report and Recommendation, which may include findings of fact, decisions of law, and recommendations on damages and civil penalties. The Commission's Office of General Counsel gather the Report and recommendation, along with any post-trial comments or objections submitted by the parties, and provides the information to the Office of the Chair for

a final Decision and Order. The Office of the Chair then issues its Decision and Order, adopting or rejecting, in whole or in part, the ALJ's Report and Recommendation. Either party may appeal to the New York Supreme Court within thirty (30) days of service of the Decision and Order.

A No Probable Cause Determination will be made if the Law Enforcement Bureau determines that there is no probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice. In such a case, the LEB will send all parties a "Notice of Determination," which explains the LEB's decision. The parties can ask the Office of the Chair to review the determination by writing a letter within thirty (30) days of service of the notice. If, after review, the Office of the Chair does not change the determination and issues a final order of the Commission dismissing your case, the parties may appeal to the New York Supreme Court within thirty (30) days of service of the final order.

A Dismissal for Administrative Convenience means that the LEB has decided not to continue investigating, which may result from a variety of circumstances. This type of dismissal provides the complainant with the opportunity to bring his or her claim in court. The parties may also ask the Office of the Chair to review the LEB's determination to dismiss the case by writing a letter within thirty (30) days of the notice of dismissal.

If a Probable Cause Determination is issued and the case proceeds to an administrative trial, a LEB attorney litigates cases at OATH. The LEB represents the interests of the City, not the Complainant. However, the Complainant or his/her attorney may "intervene" in the case as of right before or when the first conference with the ALJ is held, or

at any time prior to the commencement of the trial, at the discretion of the ALJ. After the hearing, the judge will issue a report and recommendation about the Complainant's case. A panel of Commissioners will then review the judge's report and the panel will issue a final Decision and Order.

If the NYC Human Rights Commission finds that an employer discriminated against you, it may award several different remedies. You may be hired, reinstated to the job you lost or an equivalent position, or promoted to a higher position. Additionally, your employer may be ordered to "reasonably accommodate" your disability or religious observance. The Commission may also mandate that your employer implement anti-discrimination policies or special anti-discrimination training programs. Finally, the Commission may also award a financial award for damages, back pay, and, in some circumstances, front pay. You may be awarded uncapped compensatory damages for physical injury, pain and suffering, mental anguish, and shock and discomfort. You may succeed on a claim of "emotional distress," even if there is no "physical manifestations of your emotional distress."[75] You may also be awarded punitive damages, which aim to punish the employer for extreme or outrageous conduct, or to deter or prevent the employer from committing future acts of discrimination.

IX. How to File a Discrimination Claim with the NLRB

The National Labor Relations Board enforces the National Labor Relations Act, described in Section IV. An unfair labor practice charge may be filed with the NLRB by an employee, an employer, a labor organization, or any other person. You may obtain a claim form at the NLRB's Regional Offices, which must be signed and notarized before being filed. The appropriate Regional Office is the area where the unfair labor practice took place. You must file your claim within six (6) months from the date that the unfair labor practice occurred, or your claim will be dismissed.

Once you file a claim with the NLRB, you must provide them with evidence supporting your claim, which may include sworn statements and other information gathered during interviews with the parties and witnesses. If there is sufficient evidence to support your charge, within seven (7) days, the NLRB will initiate an investigation of the alleged unfair labor practice. Within forty-five (45) days from the date you filed your claim, the Regional Officer will make a determination whether there is "reasonable cause" to believe that an unfair practice occurred. If the Regional Office determines that no unfair labor practice has occurred, you will be asked to withdraw your charge. If you refuse, the Regional Office will dismiss your complaint. If you wish to contest a dismissal, you may appeal to the General Counsel's Office of Appeals. If the Regional Office finds that there is "reasonable cause" to believe that an unfair labor practice has occurred, they will first try to resolve the dispute informally with your employer or union. If you and your employer cannot reach a voluntary settlement, the Regional Office will then issue a formal complaint against the employer or union.

After a complaint is issued, your case will be heard before an Administrative Law Judge in a formal hearing. At this hearing, an NLRB attorney will represent your interests, and the Administrative Law Judge will then issue a decision and determine whether the discrimination occurred, and if so, the appropriate remedy. If you wish, you may appeal the Administrative Law Judge's decision to the NLRB's Main Office in Washington D.C., and then to the U.S. Court of Appeals.

X. How to File a Discrimination Claim with the EEOC

The Equal Employment Opportunity Commission (EEOC) is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The EEOC carries out its enforcement, education and technical assistance activities through fifty-three (53) field offices serving every part of the nation. To file your complaint with the EEOC, the nearest EEOC field office must be contacted. A map of the EEOC field offices and the contact information for the New York office can be found in Appendix B of this publication. Information about EEOC and the laws it enforces can also be found at: http://www.eeoc.gov. Before filing an employment discrimination claim with the EEOC, any claimant should seek independent, individual legal advice.

Except for claims under the Equal Pay Act, all other federal anti-discrimination laws require you to file your discrimination claim with the EEOC before filing a private lawsuit in court. You must file your EEOC claim within 300 days of the discriminatory incident. The EEOC will send a copy of the complaint to the employer at least ten (10) days after you file your claim. After you file your complaint and send the complaint to your employer, the EEOC will begin investigation of your discrimination claim. If, after investigating, the EEOC concludes that there is no “reasonable cause” to believe that discrimination occurred, your claim will be dismissed. A claimant must receive a “notice of the right to sue” from the EEOC before commencing a lawsuit in federal court. If the EEOC determines that there is “reasonable cause” to believe that discrimination occurred, the EEOC will first try to informally resolve the dispute with your employer. During this stage, you may need to attend a pre-hearing conference or a mediation session. If the EEOC is unable to resolve your dispute and stop the unlawful discrimination within thirty (30) days after the complaint was filed, then the EEOC may

file a lawsuit against your employer. However, if your employer is the government or a government agency, the Department of Justice will sue your employer in federal court.

You and your employer may agree to use mediation as an alternative to traditional investigation or mediation. Before the mediation session, you, the employer, and the mediator must sign a confidentiality agreement. If your dispute is not resolved through mediation, the EEOC will continue to investigate your case, and may then choose to file a claim in federal court on your behalf.

XI. Leaves of Absence

In most states, it is within an employer's discretion to offer its employees paid leave, including vacation days, sick leave, or paid time off (PTO). Additionally, as an employee, you have the right to take unpaid leave under certain circumstances.

Connecticut

In Connecticut, employers must offer employees paid sick leave. Additionally, employers with at least fifty (50) employees must provide paid time off to employees who work in the service industry. These employees are entitled to accrue one hour of paid sick leave for every forty (40) hours of work, up to forty (40) hours of leave per year. You may take sick leave for your own illness or for your family member's illness.

In Connecticut, employers must offer unpaid leave in several situations. In accordance with the Family and Medical Leave Act, discussed in more detail in Section III, eligible employees who are working for employers with at least fifty (50) employees are entitled to up to twelve (12) weeks of unpaid leave for illness, bonding with a new child, and caregiving. An employee may use FMLA to take leave upon a family member's deployment or military service. Under both Connecticut and federal law, employers must give eligible employees up to twenty-six (26) weeks of leave in one (1) year for a family member who suffers a serious injury while on active military duty. Currently, employers with at least three (3) employees must allow employees to take a reasonable period of leave while they are disabled by pregnancy, childbirth, and related conditions. However, Connecticut employees will be entitled to paid family and medical leave beginning on January 1, 2022, as described in Section IV above. Finally, Connecticut employees are entitled to paid leave for the first five

days of jury duty. An employee may not be required to work on any day that the employee is on jury duty for eight (8) or more hours.

New York

In New York, employers are not required to provide PTO to employees, including for vacation. If an employer chooses to provide PTO, however, it must abide by its own PTO terms, as written in the employee's contract or the employer's written policy. Employers may enact a "use it or lose it" rule, whereby an employee forfeits PTO if it is not used within a certain timeframe. Additionally, employers may enact a rule whereby an employee forfeits his or her accrued PTO if it is not used before terminating employment, whether voluntarily or involuntarily. However, New York courts will enforce the rule only if the employee was given proper notice of the rule.

In addition to coverage under federal FMLA, employees in New York are eligible for Paid Family Leave (PFL), which provides wage replacement to employees to help them bond with a child, care for a close relative with a serious health condition, or help relieve family pressures when someone is called to active military service. All employees covered by New York's temporary disability insurance law who have worked for an employer for twenty-six (26) or more consecutive weeks are eligible for a percentage of their weekly earnings while on leave. Employees are also guaranteed to be able to return to their job and continue their health insurance. If you contribute to the cost of your health insurance, you must continue to pay your portion of the premium cost while on PFL.

Every full-time or part-time private employee in New York State who has worked for the requisite period of time is eligible for PFL. Participation in the program is not optional for employees. If you are a public employee, your employer may opt into the program, and public employees who are represented by a union may be covered if PFL is collectively bargained. Employees do not have to take all of their sick leave and/or vacation leave before using paid family leave. An employer may permit you to use sick or vacation leave for full pay, but may not require you to use this leave.

A parent may take PFL during the first twelve (12) months following the birth, adoption, or fostering of a child. PFL is not available for prenatal conditions. If you are seeking PFL to care for a close relative with a serious condition, you must satisfy both the "close relative" requirement and the "serious health condition requirement." A close relative includes your spouse, domestic partner, child, parent, parent-in-law, grandparent, and grandchild. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. PFL is also available for families eligible for time off under the military provisions in the federal FMLA when a spouse, child, domestic partner or parent of the employee is on active duty or has been notified of an impending call or order of active duty. It should be noted that PFL cannot be used for one's own disability or qualifying military event.

The amount of compensation, available through the state's employee-funded system, will be phased in through January 1, 2021. Employers are not required to provide compensation to or contribute to the state. Employees will be eligible for payment of fifty-five

percent (55%) of the employee's average weekly wages (not to exceed fifty-five percent (55%) of the state's average weekly wage). In 2020, an employee is now eligible for sixty percent (60%) of his or her average weekly wages. On January 1, 2021, the benefit period will be capped at twelve (12) weeks, and the payment of benefits will be capped at sixty-seven percent (67%) of the employee's average weekly wages (not to exceed sixty-seven percent (67%) of the state's average weekly wage).

XII. Employment Terminations

Employment terminations may be voluntary or involuntary. While voluntary terminations are initiated by the employee, involuntary terminations are initiated by the employer. Involuntary terminations include terminations due to poor performance or violation of company policies (i.e. getting fired), as well as terminations due to a layoff, reduction in size of the workforce, or company reorganization.

Voluntary Terminations

In the typical case of a voluntary termination, the employee usually gives his or her employee a notice of resignation approximately two (2) weeks prior to resigning from his or her position. Upon receiving a notice of resignation, an employer may decide to counter-offer or accept the resignation. If the employer accepts the resignation, it must then decide whether or not the employee should continue working through the notice period. In general, an employee who voluntarily resigns from employment will not be eligible for unemployment compensation. If an employer refuses to allow an employee to work (and receive compensation) during his or her notice period, this may constitute an involuntary termination, which could make the employee eligible for unemployment compensation.

Involuntary Terminations

Involuntary termination occurs when an employer fires or “lays off” an employee. If you are an “at will” employee, as is the case for most employees, your employer may involuntarily terminate your employment for any reason. Under New York and Connecticut law, all employers must provide employees with written notice of termination.

The Connecticut Department of Labor requires all employers to provide employees with a signed and completed unemployment notice and employee information packet "immediately" upon layoff or separation from employment. The regulation states, "the notice and packet must be provided regardless of 1) the reason why the employee is separating from employment or 2) whether the employer is subject to the state's unemployment law...Among other things, the notice requires the employer to provide the 1) employer's registration number; 2) employee's employment dates and earnings; and 3) reason for unemployment, which can either be "lack of work," "voluntary leaving," "discharge/suspension," "leave of absence," or "other."[76]

Meanwhile, New York State Labor Law §195 states, "[e]very employer shall notify any employee terminated from employment, in writing, of the exact date of termination as well as the exact date of cancellation of employee benefits connected with such termination. In no case shall notice of such termination be provided more than five working days after the date of termination. Failure to notify an employee of cancellation of accident or health insurance subjects an employer to an additional penalty..."[77]

Connecticut recognizes three major exceptions to the "at will" doctrine: 1) the termination cannot violate an important public policy; 2) the termination cannot breach an implied contract of employment if one has been formed; and 3) the termination cannot violate any state or federal law, such as the laws prohibiting discrimination. Under the third exception, as explained in more detail in the previous sections of this guidebook, an employer cannot fire an employee based on the employee's race, color, religion, age, disability, national origin, sexual orientation, or gender. Also, under this exception, an employee cannot be fired for

taking off time from work as allowed by the Family Leave Act, or for reporting illegal activities at work.

In New York, “absent a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer’s right at any time to terminate an employment at will remains unimpaired.”[78] However, as described previously in Section IA, New York courts have carved out three major exceptions to this rule: the “handbook exception,” the “professional exception,” and the “whistleblower exception.” An employer cannot terminate you in retaliation if you complain about discrimination or harassment in the workplace, because such complaints are protected activities under state and federal law. If you are fired after you have made such a complaint, you may file a retaliation claim against your employer.

If you are a member of a union, the collective bargaining agreement usually will list the reasons a person may be fired. For instance, many of these agreements state that an employee can only be fired for “cause,” which is usually defined in the agreement. If you are a member of a union and have been fired, you should contact your union representation to determine if you have grounds to challenge the termination.

If you have a contract of employment with your employer, the contract should specify the circumstances under which you can be fired. Even if you do not have a written contract, an implied contract may have been formed through the actions, words, or practices of the employer. Under Connecticut law, an employment contract must contain a definite date of expiration of employment. If there is no expiration date, then the court will not recognize the agreement as an enforceable contract and therefore you will be deemed an at-will employee.

If you have been terminated in violation of an employment contract, you may file a claim for breach of contract against your employer in Connecticut or New York state court. In both Connecticut and New York, if the contract was in writing, you have six (6) years to file your breach of contract claim; meanwhile, if the contract was oral, you only have three (3) years to file your claim.[79]

Separation/Severance Agreements

During difficult economic times and business cycles, layoffs may become increasingly frequent. Unfortunately, employees of all experience levels may be left with no job and facing a harsh job market. During such times, employees may think accepting a separation agreement, also known as a severance agreement or severance package, is the best choice. However, before signing anything, it is important to understand the basics of the severance package and the potential rights that might be relinquished in the process.

A separation agreement is a contract whereby consideration is offered, often in exchange for a release of various legal claims against the employer, as well as other restrictive provisions. There is no set rule in Connecticut or New York, or any other U.S. jurisdiction for that matter, on how much severance is warranted under the circumstances. However, surveys have shown that U.S. employees typically earn between 1.23 to 2.76 weeks of severance per year of service in cases of voluntary separation, and 1.44 to 3.04 weeks per year of service in cases of involuntary separation. Not surprisingly, employees with higher level positions (corporate executives) tend to earn longer severance periods.[80]

Before deciding to accept, negotiate, or reject a severance package, it is important to understand completely what is being offered to you, including compensation, benefits and insurance. If you are in an industry that provides for compensation beyond your hourly wage or base salary, such as deferred stock options or bonuses, it is important to understand whether you would still be entitled to such compensation. You should gather information concerning your employer's welfare plans, health plans, vacation and sick leave policies, as well as any structured bonus plans or stock options (vested and unvested). If the severance package is only offering you what you would be entitled to, the agreement may lack adequate consideration.

Consideration, in the context of severance packages, means that an employee must receive something of value in exchange for giving up certain rights. This "something of value" must be something other than what the employee is already entitled to. Often, this comes in the form of additional pay or prolonged benefits. For instance, along with severance pay, separation agreements may also include other forms of financial compensation, such as commission, bonus, deferred compensation, accrued vacation time, stock award or options, profit sharing, or unpaid expenses.

In exchange for this compensation, separation agreements often contain a release of a variety of legal claims against the employer. This typically involves a release of all claims against the former employer that are based on age, race, national origin, gender, disability, and religion. These are critical rights all employees are granted under the ADEA, Americans with Disabilities Act, Employee Retirement Income Security Act, and Title VII of the Civil

Rights Act. Giving up these rights, if the employee considers themselves having been victimized by such conduct, is not one to be taken lightly.

Many separation agreements also include non-competition, non-solicitation, and confidentiality and non-disclosure clauses. As discussed in detail in Section XIV, a non-competition clause is a clause under which an employee agrees not to enter into or start a similar profession or trade in competition against an employer. A non-solicitation clause is a clause under which an employee agrees not to solicit an employer's clients, customers, or employees, for his own benefit or for the benefit of a competitor, after leaving the company. Non-solicitation clauses are enforced more frequently than non-compete clauses, since they place less restraint on trade and the employee's ability to earn a living elsewhere than the latter. Confidentiality and non-disclosure clauses prohibit an employee from disclosing trade secrets to others without proper authorization. These clauses are readily enforceable, as they are least likely to be a restraint of trade. Employees are often bound not to disclose trade secrets or other confidential information regardless of whether or not they have signed such a contract, pursuant to applicable state and federal laws.

Most separation agreements also address the continuation of insurance benefits upon termination. Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), employers with twenty (20) or more employees must offer employees and their families the opportunity for a temporary extension of health coverage (continuation coverage) in certain instances where coverage under the plan would otherwise end. If you elect COBRA continuation coverage, however, you will likely be required to pay the entire premium, unless

your employer agrees to continue paying a contribution as part of your agreement. COBRA coverage generally lasts for eighteen (18) to thirty-six (36) months.[81]

Although it is lawful for employers to include general releases of claims in their severance agreements, under the Older Workers Benefit Protection Act (OWBPA), there are additional requirements that apply to any separation agreement with employees who are over forty (40) years old. The OWBPA requires that: 1) the waiver must be written in plain English so that the employee can understand the agreement; 2) the waiver must specifically mention that the employee is giving up his or her claims under ADEA; 3) the waiver cannot waive rights that arise after the date the release is signed; 4) the employee must receive consideration of value above anything to which the employee is already entitled; 5) the employee must be advised to consult with an attorney; 6) the employee must have at least twenty-one (21) days to consider the agreement; 7) the employee must have seven (7) days to revoke his or her acceptance of the agreement; 8) if the termination is part of a reduction in force or a voluntary program that affects two (2) or more employees, the employee must be given at least forty-five (45) days to consider the agreement and be given a "release attachment" that has a list of those selected for the program (or termination) and those who are not; and 9) if the separation agreement is the settlement of an existing charge or lawsuit, then the employee need only be given a "reasonable amount of time" to consider the separation agreement.[82]

Before you attempt negotiations, you should first understand that, unless the OWBPA applies, there is no statutory minimum amount of time an employee must be given to consider the severance agreement. A prevalent misconception is that all employees are entitled to

twenty-one (21) days to review a severance package offer. However, unless the package is offered to an employee over the age of forty (40) years, there is no specific review period defined by law.

When negotiating, it is important to keep the above facts in mind, but also know that most employers are willing to negotiate severance on some level. While it might seem like the package is a "take it or leave it" deal, most employers are open to negotiate reasonable requests. There is always a risk that an employer will revoke the offer if any negotiations are attempted, but your chances of negotiating successfully increase if there is a claim that your particular severance package is not fair in light of your industry, your position, or the circumstances of your employment. Additionally, the negotiations should not focus solely on the dollar amount connected with the severance agreement. Employers might be willing to extend insurance coverage, disability benefits, or other items in lieu of an increase in dollar amount. Given the breadth of the claims released and the intricacies of most severance packages, it is extremely important to consult with an attorney before signing, or entering negotiations concerning any such agreement.

Post-Termination Benefits

If you are terminated from your job involuntarily and without cause, you may qualify for unemployment benefits. Once you start receiving benefits, you must make reasonable efforts to find new employment in order to continue receiving them. If you are eligible, you will receive a percentage of your previous earnings for twenty-six (26) weeks while you are seeking new employment.

In Connecticut, unemployment insurance provides temporary income for workers who are unemployed through no fault of their own and who are either looking for new jobs, participating in approved training, or awaiting recall to employment. The funding for unemployment insurance benefits comes from taxes paid by employers to the state. To qualify for unemployment benefits, you must have earned sufficient wages during a specified time. To collect benefits, you must meet certain legal eligibility requirements.

To qualify for unemployment insurance benefits in New York, you must have worked and earned enough wages in covered employment. In New York, employers also pay contributions that fund unemployment insurance. It is not deducted from your paycheck. The Department of Labor decides if you qualify for benefits. Ideally, you should file your unemployment claim in the first week that you lose your job. Since you must service an unpaid "waiting period" before you receive payments, a delay in filing may cost you benefits. You can apply online at www.labor.ny.gov, or you can apply by phone at 1-888-209-8124. In order to file your claim, you will need the following: your Social Security number; your driver's license or Motor Vehicle ID card number, your complete mailing address and zip code, your contact info, your Alien Registration card number (if applicable), your Employer Registration number or Federal Employer Identification number, forms SF8 and SF50 if you were a federal employee, and your most recent separation from military service form (if applicable). Although you can file without all of these documents, missing information may delay your first payment.

Most state and local government employees who involuntarily lose their jobs are eligible to collect unemployment insurance, except employees who held "a major nontenured policymaking or advisory position."[83] Since job titles and related duties and responsibilities

may differ greatly between governmental entities, the Department of Labor (DOL) advises anyone with doubts about eligibility to collect unemployment insurance benefits to file a claim for benefits. The Department of Labor will review the job title and duties of the government employee to determine eligibility.

Teachers and school employees generally do not qualify for unemployment insurance benefits during breaks in the school years or terms. This applies when: they have a contract for a similar job in the next school year or term, or there is reasonable assurance of a similar job in the next school year or term, or after the break. Reasonable assurance exists when an educational institution: a) has said it will employ a worker; b) will make a good faith effort to do so; and c) offers salary and benefits similar to the prior job. If you work for an educational institution and lose your job through no fault of your own, you might qualify for unemployment insurance benefits. Examples of the latter include discharge or firing for not meeting performance or production standards, layoffs, expired contracts, furloughs, and reductions in force (RIF). Under COBRA, you may have the right to continue your health insurance coverage after your termination. However, you must pay the full premium, including the employer's previous contribution, plus up to two (2%) of the premium for administrative costs. You may continue these benefits for eighteen (18) or thirty-six (36) months, depending on your situation.[84]

XIII. Non-Compete Clauses

Both employers and employees often desire to be protected from adverse consequences upon termination of the employment relationship. The employer seeks protection from a former employee engaging in actions inimical to the company, while the employee wants free rein to secure new employment. A "non-competition clause" (aka "non-compete clause" or "covenant not to compete") is the most common legal vehicle to preclude a former employee from obtaining new employment that would likely cause the company to suffer adverse consequences. An employer may ask an employee to sign a non-compete clause as part of the employee's contract prior to the commencement of employment, as a stand-alone agreement after employment has begun, or upon termination as a part of a severance agreement. While Connecticut and New York law adhere to the notion that contracts in restraint of trade and commerce are unlawful, courts have enforced non-competition clauses as long as they are reasonable in temporal (time) and geographic scope and provide the employer with no more protection than it reasonably requires. Legitimate protectable interests on the employer side could include, but are not limited to, trade secrets, confidential customer relationships, and confidential customer information.

Contract Law Governing Non-Compete Clauses

Non-compete clauses are contractual provisions to which signatory parties agree and intend to be legally bound. Courts view it as unconscionable to permit a party to avoid contractual obligations contained in an enforceable agreement that he or she willingly entered into and from which he or she received a sufficient benefit. This policy is based on the idea of "fairness" and is meant to discourage contractual breaches. A crucial factor in a court

asserting its power to enforce a non-compete clause is that the underlying agreement must itself be valid and enforceable. An enforceable contract requires the parties to experience a respective benefit or detriment that they would not otherwise receive or suffer in association with the terms and conditions they agree to, a legal concept referred to as "consideration." Courts in both Connecticut and New York may refuse to enforce a non-compete clause when the underlying contract lacks bargained-for and sufficient benefits or detriments.

The bar is set considerably high for employers that provide employees with a contract of employment and the courts are more demanding in what they will deem "adequate consideration" to bind the parties to the employment and non-compete agreement. If the non-compete clause or the employment contract containing a non-compete clause is executed *prior* to the employee commencing work, there is a prima facie case for adequate consideration flowing from the clauses stipulating the employee's compensation and other employment-related benefits and even the employer's overall hiring of the employee in and of itself. There is an issue, however, when the parties execute a non-compete clause in a separate agreement *after* employment has begun and the employer brings an action to enforce the non-compete provision. For employees working under a valid employment contract, continued employment alone is insufficient consideration and there must be a new and adequate defined benefit to make the non-compete agreement binding.[85] Courts require that the employer confer a new/enhanced benefit upon the employee in order to satisfy the consideration requirement.

The situation is different when an employee is classified as "at-will," with the bar set much lower for a court to find "adequate consideration." Connecticut and New York have

historically accepted continued at-will employment as adequate consideration for the imposition of new obligations under a restrictive covenant after employment has begun. The Connecticut Federal District Court has specifically acknowledged that "Connecticut recognizes that continued employment is adequate consideration to support non-compete covenants with at-will employees."[86] Similarly, New York courts have ruled non-compete agreements to be enforceable where the employee was an at-will employee who received continued employment as consideration.[87] The policy underlying the different treatment of "at-will" employees is based upon the fundamental nature of "at-will" employment. Under this employment relationship, the employer, at any time it sees fit, has the right to terminate the employee for any reason, or no reason at all. The prospect of continued employment as consideration for a non-compete is viewed as a new bargaining event where new benefits are offered and conferred upon the parties. The employer receives services and benefits associated with the restrictive covenant while the employee receives continued employment, a benefit he is not otherwise entitled to under the existing employment relationship.

There must be a meeting of the minds with regard to the contractual terms and conditions in order to create an enforceable agreement between the parties. Courts have held that "in order to form a binding and enforceable contract, there must exist an offer and an acceptance based on a mutual understanding by the parties… The mutual understanding must manifest itself by a mutual assent between parties."[88] This requirement means that "it is not the subjective meeting of the minds, but the objective manifestation of mutual assent, that is essential to the making of a contract."[89] The parties are presumed to have had a "meeting

of the minds" in the opinion of the court when the language in the contract is clear and unambiguous in articulating the contractual clauses.

Close attention must be paid to the period of time specified in the non-compete agreement, as this will likely determine the applicable period of enforcement for the agreement's provisions. Courts can only enforce the provisions of a non-compete agreement in accordance with its contractually agreed upon temporal limit. Various states approach this issue differently and have established divergent policies regarding whether to extend the duration of a non-compete agreement in order to provide a remedy for a contractual breach.[90] Some jurisdictions, following a Florida Supreme Court decision, have permitted courts to exercise "broad equitable power to extend even an expired restrictive covenant as a remedy for breach."[91] Connecticut courts have thus far refused to apply this expansive standard to extend a restrictive covenant's duration due to an alleged breach when applying Connecticut law.[92] Connecticut state law renders moot a request for enforcement of a non-compete upon the expiration of the time limitation specified in the agreement. Meanwhile, an appellate court in New York has upheld contractual provisions tolling an employee's non-compete period due to the employee's violation of a non-compete agreement.[93] It should be noted, however, that some non-compete provisions by their terms extend the operative period for the same amount of time as an employee has been shown to be in breach.

Effect of Termination on Non-Compete Agreements

When an employee is terminated, a previously signed non-compete agreement may be legally binding regardless of whether the employee voluntarily terminates his employment or

the employer involuntarily terminates the employee. Similarly, constructive discharge does not invalidate a non-compete agreement executed under Connecticut law. Constructive discharge occurs "when an employer, rather than directly discharging an individual, intentionally creates an intolerable work atmosphere that forces an employee to quit involuntarily."[94]

However, there are some states that simply will not enforce a non-compete where there has been an involuntary termination without cause. New York is perhaps the most well-known example, with one court capturing the sentiment as follows: "Enforcing a noncompetition provision when the employee has been discharged without cause would be 'unconscionable' because it would destroy the mutuality of obligation on which a covenant not to compete is based."[95] Some federal courts have held that when an employee is involuntarily terminated without cause, non-competition provisions are per se not enforceable under New York law.[96]

Most states, however, give an involuntary termination less than determinative effect, although to varying degrees. Pennsylvania, by itself, illustrates the range of impact an involuntary termination can have. In a 1995 decision, the Pennsylvania Superior Court held that an employer who fires an employee for poor performance effectively deems the employee to be "worthless" and therefore, in most circumstances, cannot be heard to argue that the employee should not be permitted to compete against it.[97] In September 2010, however, the same court held that "the circumstances of termination are but one of many factors to be considered by the court and that the issue of enforceability is one to be determined on a case-by-case basis."[98]

Still other courts, absent evidence that the employer breached an employment agreement with the employee or acted in bad faith, can seem relatively unconcerned about the fact that it was the employer, rather than the employee, who severed the employment relationship. In one case before the Indiana Court of Appeals, the former employee, a doctor, argued that the fact that he was terminated without cause "creates such an issue concerning the reasonableness of the covenant. . ."[99] The Court, citing the at-will employment doctrine and its respect for and belief in "individual freedom to contract," disagreed and had no trouble enforcing the non-competition provision at issue.[100]

Enforcement of a Non-Compete

An employer may be entitled to relief if a former employee is engaging in activities expressly prohibited by a non-compete agreement that would cause harm to the employer. An employer may also be entitled to relief where the former employee has not breached the agreement yet, but is threatening to do so. Under these circumstances, the former employer may be entitled to injunctive relief from the court, restraining any breach regardless of the potential damages.

For an employer to obtain an injunction against a former employee seeking the enforcement of the non-compete agreement, it must demonstrate both breach *and* incurred or imminent irreparable harm. The Supreme Court of the United States has rarely commented on the subject of non-competes, but in *Doran v. Salem Inn, Inc.*, the Court reiterated the traditional standard for granting injunctive relief, explaining that it "requires the plaintiff to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits." [101] Thus, a successful plaintiff must show that it has incurred or is likely

to incur irreparable harm from the actual or proposed activities of a former employee that constitute a contractual breach.

Two typical situations that require the court to determine what constitutes prohibited conduct and therefore a breach of a non-compete agreement are: a) defining the parameters of “competing business activity;” and b) discerning the permissible engagement within the restricted geographical area. Some defendants accused of breach may assert the position that they were merely “marketing” and that this does not amount to a “competing business activity” that would violate a restrictive covenant. Marketing is in fact a “competing business activity” in violation of many non-compete agreements and marketing includes not only the actual sale of products or services, but also any efforts to promote and effectuate a sale of those very products or services.[102]

A second issue arises when a former employee engages in activities within the prohibited geographic area, even though the new employer’s place of business does not, itself, violate the terms of the agreement. Courts have consistently held that this situation involves competing business activities and breach of the restrictive covenant. The specific location of new employment may not violate a non-compete agreement but conducting business operations and acting in furtherance of the new employment within the prohibited area does constitute a breach. Contracts that restrict employment activities focus on competing activities of former employees, rather than the particular location of the employee’s new office.

A further bone of contention that often arises is whether covenants not to compete prohibit an employee from working for a former client that had a relationship with his or her

prior employer. Courts have rejected the theory that the prohibition on competing business activities extends to former clients and have concluded that employers are not thereby entitled to enforcement of a non-compete agreement under those circumstances. Injunctive relief for breach of a non-compete agreement is designed to prevent a former employee from working for a competing company rather than a former client.

Lastly, a final principle of contract law that applies to the enforcement of covenants not to compete is the application of the Parole Evidence Rule, which prohibits the use of evidence outside the four (4) corners of the non-compete contract concerning matters included within the finalized document. The Parole Evidence Rule, often concerning itself with oral statements, essentially prohibits the use of evidence not contained in a finalized agreement that vary or contradict the terms of the contract.[103] When litigating a case regarding the enforcement of a non-compete agreement, in most cases, parties may not present collateral evidence (other writings, oral representations, etc.) that contradict the finalized written restrictive covenant. A finalized restrictive covenant document will cause most courts to refuse admission of conflicting evidence and, only occasionally will admit some supplemental evidence only to clarify ambiguous provisions of the contract. The courts will consider a contract as the "final agreement" when "there is no evidence to contradict a finding that the parties intended the writing to be the final expression of the parties."[104]

The Test for Reasonableness/Enforceability

The application of basic contract principles is just one (1) step in the process of enforcement of a covenant not to compete. Once the court has determined that the parties

properly executed a non-compete agreement, it must analyze the enforceability of the agreement's provisions.

Connecticut has developed a five-prong test to assess the enforceability of a restrictive covenant. It examines the reasonableness of the restrictions to determine how enforcement would impact the relevant parties: the employer, the employee, and the public at large.[105] When determining the enforceability of a Connecticut non-compete agreement, the court will look to 1) the reasonableness of the time restriction, 2) the reasonableness of the geographical restriction, 3) the degree of protection afforded to the employer, 4) whether it unnecessarily restricts the employee's ability to pursue his career, and lastly 5) the degree to which it interferes with the interests of the public.[106] This five-prong test used by Connecticut courts is disjunctive (rather than conjunctive), meaning that a non-compete agreement can be deemed unenforceable and invalidated if it violates just one of the five factors.[107] While certain factors may assume greater importance, the legal analysis of non-compete agreements in Connecticut shows that each factor is essentially on equal footing and of equal weight when deciding enforceability of a restrictive covenant.

New York courts determine the reasonableness of non-compete agreements using a similar test, and will only find them reasonable if they: 1) are no greater than required to protect an employer's legitimate protectable interests; 2) do not impose undue hardship on the employee; 3) do not cause injury to the public; and 3) are reasonable in duration and geographic scope.[108]

For many employees, the geographical restriction can be more problematic and of greater concern than the time restriction. The general rule in both Connecticut and New York

is that the application of a restrictive covenant will be "confined to a geographic area which is reasonable in view of the particular situation." The geographic terms are analyzed in the context of the specific facts of the situation and the particular industry in which the employer and employee are engaged. Connecticut courts have invalidated non-compete agreements when a geographic restriction is so broad that it severely limits or prevents a former employee "from carrying on his usual vocation and earning a livelihood, thus working undue hardship."[109] Meanwhile, New York courts have been willing to enforce very broad geographic restrictions on employees where the "nature of the business requires that the restricting be unlimited in geographic scope," so long as the duration of those restrictions was short.[110]

Types of Breach

There are various circumstances under which an individual can be found in violation of a restrictive covenant. The two most common types of activity resulting in litigation are: (a) the solicitation of prohibited parties in violation of the time and/or geographical restrictions; and (b) the unauthorized dissemination of confidential and proprietary information belonging to the plaintiff employer.

Solicitation activities can generally be divided into two categories: 1) direct solicitation and 2) indirect solicitation. Under a theory of direct solicitation, the employer alleges that the former employee personally solicited business in violation of the covenant not to compete. The employer bears the burden of proof and must submit sufficient evidence to the court to show that the former employee knowingly took action to solicit business from prohibited parties. Indirect solicitation occurs when a former employee induces a third party to engage in activities the employee was personally contractually prohibited from doing using knowledge

or information that the employee acquired during his or her employment with the plaintiff employer. In order to be successful in an "indirect solicitation" claim, the employer must demonstrate that the actions of others (parties not affiliated with the covenant not to compete) evince "conscious disregard" of the non-compete agreement by the former employee.[111] A court may find breach of the non-compete agreement even though the employee did not personally violate its terms, but used information to induce a third party to perform activities that would otherwise be considered a contractual breach.

The second common activity alleged to constitute breach of a non-compete agreement is the employee's dissemination of confidential or proprietary information that gives his new employer an economic advantage, thus creating unlawful competition. In order to be classified as confidential information, protected data, unique business formula or strategy or a trade secret, the information must reflect a substantial degree of secrecy. Employers typically seek injunctive relief when the alleged breach of a restrictive covenant takes the form of the misappropriation of confidential information.

Forms of Relief

When a party commences an action against another, it can request from the court two (2) types of relief: legal and equitable. Legal relief typically manifests itself in the form of pecuniary damages, a financially compensatory judgment that uses money to "right the wrong." Equitable relief, on the other hand, usually involves an order from the court instructing a party to perform or refrain from performing a specified activity. In cases of restrictive covenants, the employer will typically request a court order (equitable relief)

seeking to enforce the provisions of the agreement and order the former employee to cease engaging in activities that violate the agreement. Equitable relief is the preferred and most common form of relief for cases involving breach of a non-compete agreement because the basis of the claim is that the employer has experienced irreparable harm that cannot be measured in dollars. Also, equitable relief is favored by plaintiffs because it enjoins the other party from further violations of the agreement and thus, the court order addresses both past and possible future breaches with respect to conduct going forward.

Modification and "Blue Lining"

When dealing with non-compete agreements and litigation involving an alleged breach, there is the possibility that the terms of the contract might be modified so as to make an otherwise unenforceable agreement reasonable and enforceable. This can result from the parties specifically stating in the contract that the court has the express authority to alter its terms in order to enforce it or the court can apply the "blue pencil doctrine". While ordinarily, courts do not rewrite contracts, application of the doctrine results in the court amending terms to render them reasonable without the express permission of the parties. Connecticut recognizes the "blue pencil doctrine" but requires parties to submit evidence from which the court can conduct an informed analysis and establish appropriate geographic and/or time boundaries.[112] The more straightforward option, if the parties are open to court modification of terms, would be to include contractual language and clauses in the restrictive covenant that permit the court to modify certain terms in order to make the agreement valid and reasonable. An example of such a contractual clause is:

> In the event that any provision of this Agreement is held, by a court of competent jurisdiction, to be invalid or unenforceable due to the scope, duration, subject matter or any other aspect of such provision, the court making such determination shall have power to modify or reduce the scope, duration, subject matter or other aspect of such provision to make such provision enforceable to the fullest extent permitted by law and the balance of this Agreement shall be unaffected by such validity or unenforceability.[113]

Under this scenario, both parties are consenting to giving the court authority to resolve the dispute through the express power to modify terms of the restrictive covenant in order to make the contract as wholly reasonable and fully enforceable under Connecticut law and the circumstances.

New York courts have also been receptive to blue-penciling an overbroad non-compete agreement. However, the Court of Appeals has emphasized that, under New York law, non-compete agreements will not be blue penciled if there is "coercive use of dominant bargaining power" to achieve their formation.[114] The Court noted that a "case-specific analysis" is necessary to determine the surrounding circumstances.[115]

<u>For Example: Physician Non-Competes in Connecticut</u>

In the 2016 legislative session, the Connecticut legislature enacted Section 20-14p, which provides, among other things, that a non-competition agreement with a physician may not restrict the physician's activities for more than one (1) year or apply to a geographic region larger than fifteen (15) miles from the primary site where a physician practices. Section 20-

14p applies to any covenant not to compete that is “entered into, amended, extended or renewed on or after July 1, 2016.”[116] The “primary site where such physician practices” is defined as “the office, facility, or location where a majority of the revenue derived from such physician’s services is generated” or “any other office, facility or location where such physician practices and mutually agreed to by the parties and identified in the covenant not to compete.” [117] Consequently, the default “primary site” will be the facility where the physician conducts the majority of his or her practice. The parties to a physician non-compete may, however, explicitly agree upon a different facility as the basis for the 15-mile restriction if the physician actually practices at such facility.

The law also states that physician non-compete agreements are unenforceable if the employer terminates the physician’s employment or the contractual relationship without cause. Consistent with well-established Connecticut law, the Act states a non-competition agreement is valid and enforceable only if it is “(A) [n]ecessary to protect a legitimate business interest; (B) reasonably limited in time, geographic scope, and practice restrictions as necessary to protect such business interest; and (C) otherwise consistent with the law and public policy.”[118] The law clarifies that where a non-compete is rendered void and unenforceable due to the law’s limitations, the remaining provisions of the employment contract remain in full force and effect, including provisions that require the payment of damages resulting from any injury suffered by reason of termination of the employment contract.

Conclusion:

The world of employment is often difficult to navigate. Complex legal issues surround almost every aspect of employment, so it is always recommended to contact an experienced employment attorney immediately following an incident of discrimination or a termination to determine your rights. The employment law attorneys of Maya Murphy, P.C. in Westport, CT can be reached by telephone at 203-221-3100, by email at JMaya@mayalaw.com, EFox@mayalaw.com, and LMacdonald@mayalaw.com and by viewing the website at www.Mayalaw.com.

Appendix A: CHRO Office Locations and Contact Information

Capital Region Office
450 Columbus Boulevard

Hartford, CT 06103-1835

860/ 541-3400

Connecticut Toll Free 1-800-477-5737

TDD 860-541-3459
Areas Served
Contact this office if the alleged discrimination took place in: Avon, Bloomfield, Canton, Collinsville, East Granby, Farmington, Granby, Hartford, New Britain, Newington, Plainville, Rocky Hill, Simsbury, Suffield, West Hartford, Wethersfield, Windsor, Windsor Locks, Unionville

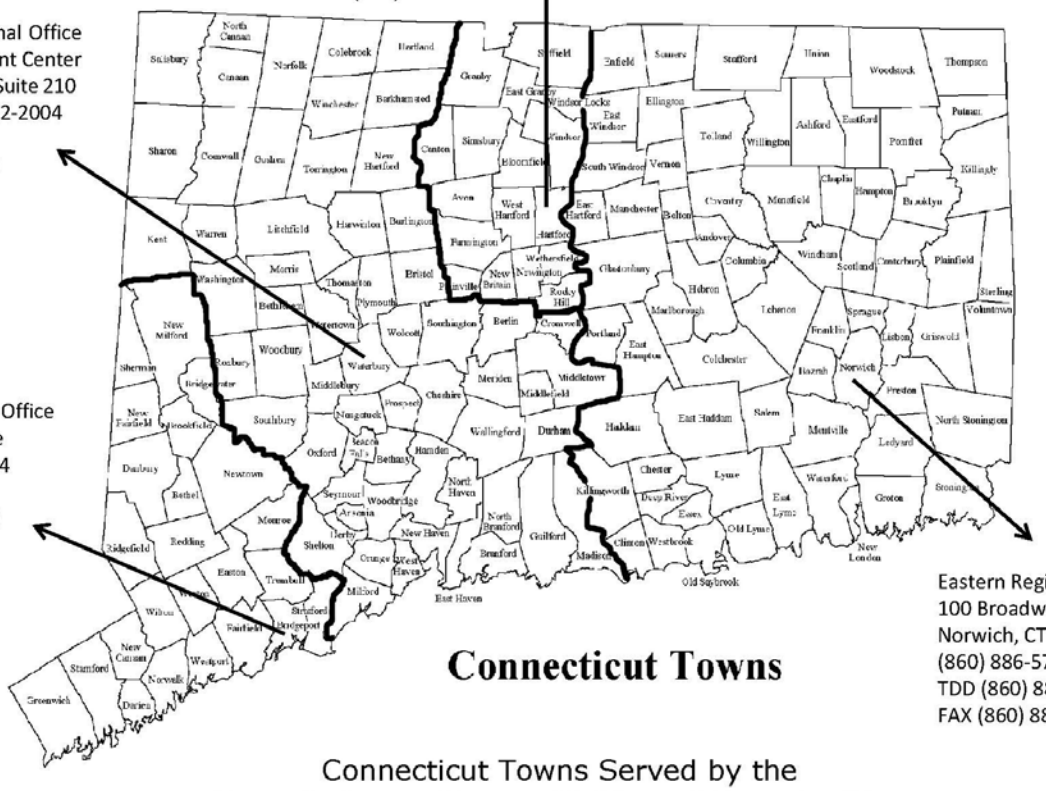
Eastern Region Office
100 Broadway
Norwich, CT 06360
Phone: (860) 886-5703
Fax: (860) 886-2550
TDD: (860) 886-5707
Areas Served
Contact this office if the alleged discrimination took place in: Andover, Ashford, Bolton, ,Bozrah, Brooklyn, Canterbury, Chaplin, Chester, Clinton, Colchester, Columbia, Coventry, Deep River, Eastford, East Haddam, East Southington, Thomaston, Torrington, Wallingford, Warren, Washington, Waterbury, Watertown, West Haven, Winchester, Wolcott, Woodbridge, Woodbury, Winsted Hampton, East Hartford, East Lyme, East Windsor, Ellington, Enfield, Essex, Franklin, Glastonbury, Griswold, Groton, Haddam, Hampton, Hebron, Killingly, Killingworth, Lebanon, Ledyard, Lisbon, Lyme, Manchester, Mansfield, Marlborough, Montville, New London, North Stonington, Norwich, Old Lyme, Old Saybrook, Plainfield, Pomfret, Portland, Preston, Putnam, Salem, Scotland, Somers, South Windsor, Sprague, Stafford, Sterling, Stonington, Thompson, Tolland, Union, Vernon, Voluntown, Waterford, Westbrook, Willington, Windham, Woodstock.

West Central Region Office
Rowland State Government Center
55 West Main Street, Suite 210
Waterbury, CT 06702-2004
Phone: (203) 805-6530
Fax: (203) 805-6559
TDD: (203) 805-6579
Areas Served
Contact this office if the alleged discrimination took place in: Ansonia, Barkhamsted, Berlin, Bethany, Bethlehem, Branford, Bristol. Burlington, Canaan, Cheshire, Colebrook, Cornwall, Cromwell, Derby, Durham, East Haven, Goshen, Guilford, Hamden, Hartland, Harwinton, Kent, Litchfield, Madison, Meriden, Middlebury, Middlefield, Middletown, Milford, Morris, Naugatuck, New Hartford, New Haven, Norfolk, North Branford, North Canaan, North Haven, orange, Oxford, Plymouth, Prospect, Roxbury, Salisbury, Seymour, Sharon, Shelton, Southbury,

Southwest Region Office
350 Fairfield Avenue, 6th Floor
Bridgeport, CT 06604
Phone: (203) 579-6246
Fax: (203) 579-6950
TDD: (203) 579-6246
Areas Served
Contact this office if the alleged discrimination took place in: Bethel, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport, Wilton.

Capitol Region Office and Central Office
450 Columbus Boulevard, Suite 2
Hartford, CT 06103
(860) 566-7710
TDD (860) 566-7710
FAX (860) 566-1997

West Central Regional Office
Rowland Government Center
55 W. Main Street, Suite 210
Waterbury, CT 06702-2004
(203) 805-6530
TDD (203) 805-6579
FAX (203) 805-6559



Southwest Regional Office
350 Fairfield Avenue
Bridgeport, CT 06604
(203) 579-6246
TDD (203) 579-6246
FAX (203) 579-6950

Eastern Regional Office
100 Broadway
Norwich, CT 06360
(860) 886-5703
TDD (860) 886-5707
FAX (860) 886-2550

Connecticut Towns Served by the
Commission on Human Rights and Opportunities

Appendix B: The CHRO Discrimination Complaint Process Flow Charts

Figure IV-1. Discrimination Complaint Process

Phase One

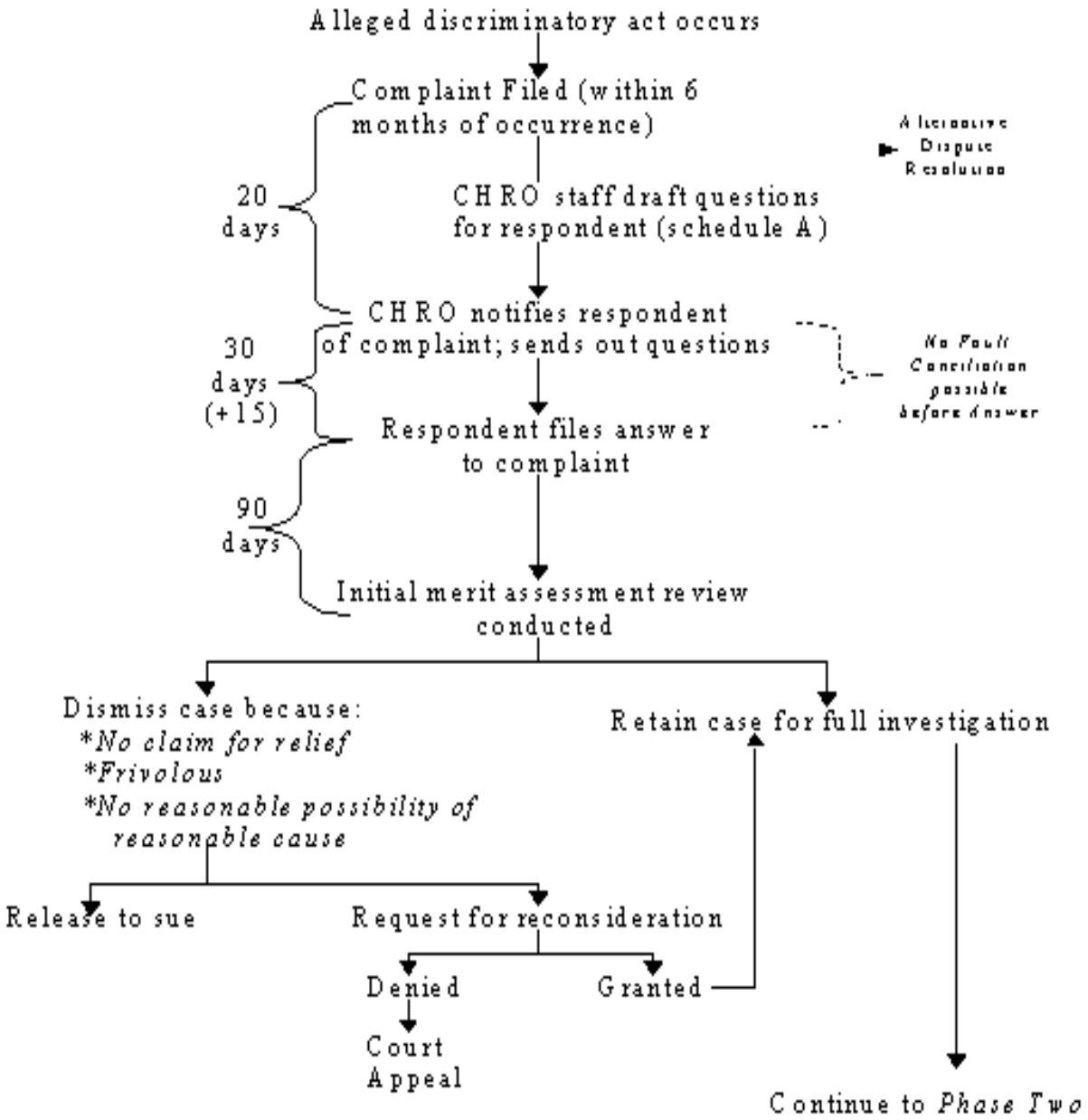


Figure IV-2. Discrimination Complaint Process

Phase Two

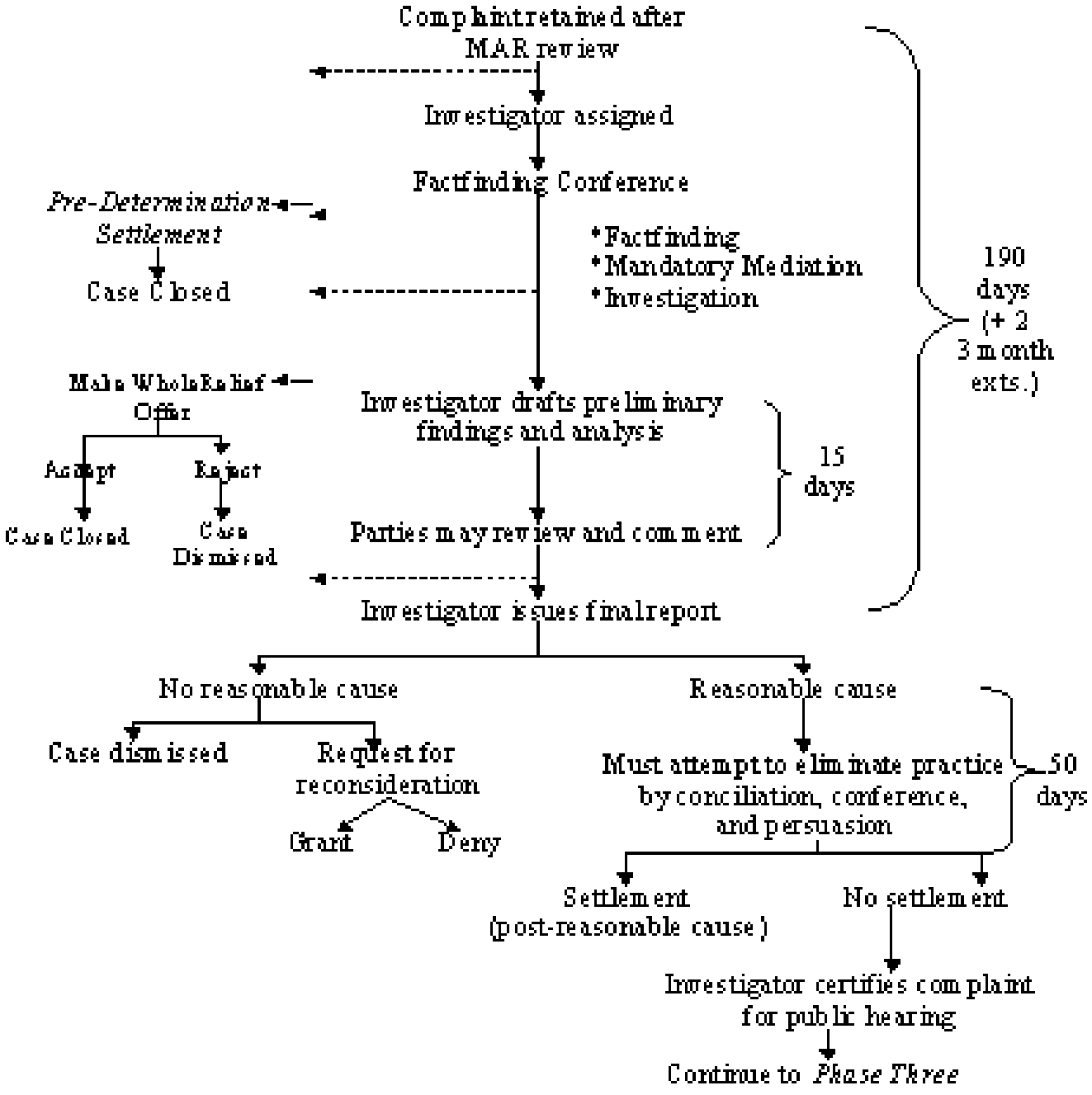
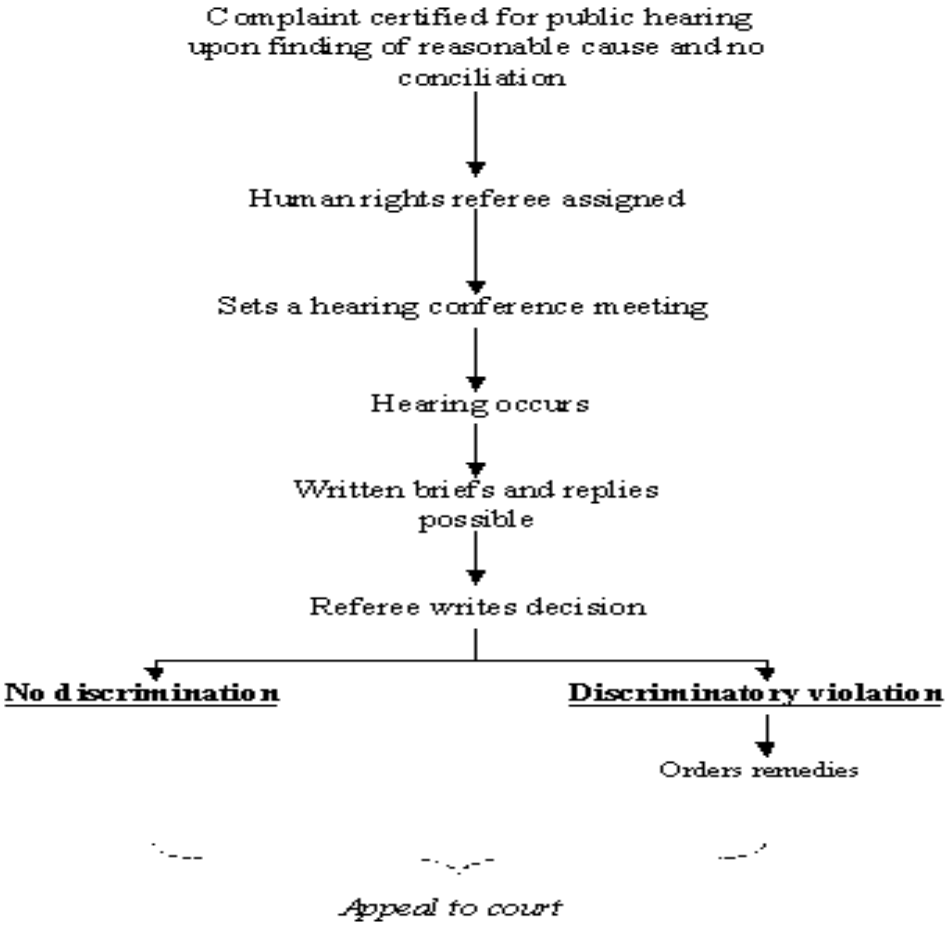


Figure IV-3. Discrimination Complaint Process

Phase Three



Appendix C: EEOC Contact Information

Boston Area Office (Covers all of CT)

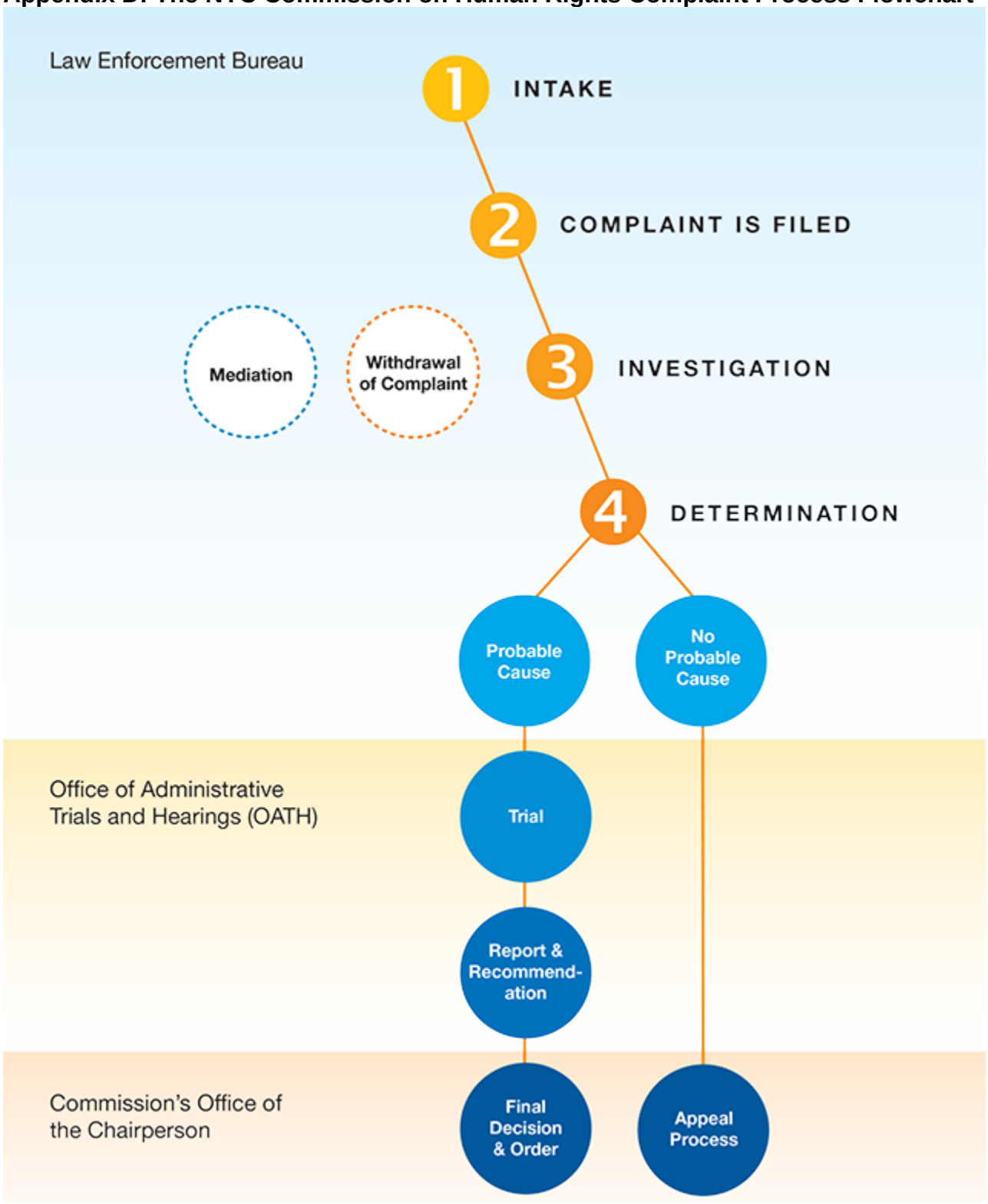
Location:	John F. Kennedy Federal Building 475 Government Center Boston, MA 02203
Phone:	1-800-669-4000
Fax:	617-565-3196
TTY:	1-800-669-6820
Director:	Feng K. An
Regional Attorney:	Jeffrey Burstein
Office Hours:	The Boston Area Office is open Monday-Friday from 8:30 a.m. - 5:00 p.m. Intake hours are Monday - Friday, from 8:30am to 3:00 pm.

New York District Office

Location:	33 Whitehall Street, 5th Floor New York, NY 10004
Phone:	1-800-669-4000
Fax:	212-336-3790
TTY:	1-800-669-6820
ASL Video Phone:	844-234-5122
Director:	Kevin J. Berry
Regional Attorney:	Jeffrey Burstein
Office Hours:	The New York District Office is open Monday-Friday from 9:00 a.m. - 5:00 p.m. Intake hours are Monday - Friday, from 9:00am to 3:00 pm.


Equal Employment Opportunity Commission
15 Districts
AK
WA
OR
San Francisco
CA
ID
NV
MT
WY
UT
AZ
CO
NM
Los Angeles
Phoenix
ND
SD
NE
KS
OK
TX
MN
IA
MO
AR
LA
Chicago
WI
IL
MS
TN
Memphis
Dallas
Houston
MI
IN
KY
AL
Indianapolis
Birmingham
GA
Atlanta
FL
Miami
SC
NC
Charlotte
VA
WV
OH
Philadelphia
PA
NY
New York
ME
VT
NH
MA
RI
CT
NJ
DE
MD
Washington, DC
HAWAIIAN ISLANDS
American Samoa
Guam
Northern Mariana Islands
Wake Island
VIRGIN ISLANDS
St. Thomas
St. John
St. Croix
PUERTO RICO

Appendix D: The NYC Commission on Human Rights Complaint Process Flowchart



Endnotes

[1] *Sheets v. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 474 (1980).
[2] *D'Ulisse-Cupo v. Board of Directors of Notre Dame High School*, 202 Conn. 206, 212 n. 2 (1987).
[3] *Murphy v. American Home Products*, 448 N.E.2d 86, 87 (1983).
[4] *Weiner v. McGraw-Hill, Inc.* 57 N.Y.2d 458 (1982).
[5] *Wieder v. Skala*, 80 N.Y.2d 628 (1992).
[6] *Remba v. Fed'n Emp't & Guidance Serv.*, 545 N.Y.S.2d 140 (N.Y. App. Div. 1989).
[7] Black's Legal Dictionary (2nd ed. 1910).
[8] *Command System, Inc. v. Wilson*, No. CV 91-0702529S, 1995 Conn. Super. LEXIS 406, at 9 (Conn. Super. Ct. Feb. 8, 1995).
[9] Conn. Gen. Stat. § 46a-60(1).
[10] Conn. Gen. Stat. § 46a-51 *et seq.*
[11] Conn. Gen. Stat. § 31-51kk-qq.
[12] Conn. Public Act 16-83.
[13] Conn. Gen. Stat. § 46a-51 *et seq.*
[14] *Id.*
[15] Conn. Gen. Stat. § 31-51kk-qq.
[16] Conn. Public Act 16-83.
[17] N.Y. Executive Law §§291, 296-a (McKinney 2005).
[18] Administrative Code of the City of New York, Title 8.
[19] N.Y. Executive Law §§291 (McKinney 2005).
[20] Administrative Code of the City of New York, Title 8.
[21] N.Y. Executive Law §§291 (McKinney 2005).
[22] N.Y. Executive Law Article 15, Human Rights Law, §292.
[23] Administrative Code of the City of New York, Title 8.
[24] N.Y. Labor Law §740
[25] N.Y. Executive Law §§291 (McKinney 2005).
[26] Civil Rights Act of 1964 §7, 42 U.S.C. §2000e et seq (1964).
[27] *Baldwin v. Department of Transportation*, Appeal No. 0120133080 (July 15, 2015).
[28] *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. Apr. 4, 2017).
[29] *Id.* at 349.
[30] *Id.* at 351.
[31] The three cases that the Supreme Court will decide to resolve this issue are: (i) Altitude Express v. Zarda, 139 S.Ct. 1599 (2019); Bostock v. Clayton County, Georgia, 139 S.Ct. 2049 (2019); and (iii) R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C. 139 S. Ct. 2049 (2019).
[32] Equal Pay Act of 1963, 29 U.S.C. Chapter 8 §206(d).
[33] The Age Discrimination in Employment Act of 1967, 29 U.S.C. §621.
[34] The Americans with Disabilities Act of 1990, 42 U.S.C. Chapter 126 §12101 et seq.
[35] 29 U.S.C. §501
[36] 29 U.S.C. §501
[37] Pub. L. 110-233.
[38] 42 U.S.C. 1981 et seq.
[39] Pub. L. 103-3.
[40] 29 U.S.C. §153-156.
[41] Sarbanes Oxley Act, 18 USC Section 1514(A).
[42] Clean Air Act, 42 USC Section 7622.
[43] Toxic Substance Control Act, 15 USC Section 2622.
[44] Water Pollution Control Act, 33 USC Section 1367.
[45] 42 U.S.C. § 2000e-2(a)(1).
[46] *Harris v. Forklift Systems, Inc*., 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993).
[47] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998).

[48] *Echevarria v. Utitec, Inc*., No. 3:15-cv-1840, 2017 U.S. Dist. LEXIS 159721 (D. Conn. 2017).
[49] *Harris v. Forklift Systems, Inc*., 510 U.S. 17, 23.
[50] *Id.*
[51] *Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 567 (2d Cir. 2000).
[52] *Raniola v. Bratton*, 243 F.3d 610, 621 (2d Cir. 2001).
[53] *Alfano v. Costello, 294 F.3d 365, 378 (2d Cir. 2002).*
[54] *Id.*
[55] *Raniola v. Bratton*, 243 F.3d 610, 621 (2d Cir. 2001).
[56] *Id.*
[57] *Kaytor v. Electric Boat Corporation*, 609 F. 3d 537 (2d Cir 2010).
[58] Conn. Gen. Stat. § 46a-82, *et seq.*
[59] Conn. Gen. Stat. § 46a-83(a).
[60] Conn. Gen. Stat. § 46a-83b.
[61] Conn. Gen. Stat. § 46a-83(b).
[62] Conn. Gen. Stat. § 46a-83(h).
[63] Conn. Gen. Stat. § 46a-83(d)(1).
[64] Conn. Gen. Stat. § 46a-83(f).
[65] Conn. Gen. Stat. § 46a-84.
[66] Conn. Gen. Stat. § 46a-83(d)(2).
[67] Conn. Gen. Stat. § 46a-83(e).
[68] Conn. Gen. Stat. § 46a-94a(a).
[69] Conn. Gen. Stat. § 46a-86(a) and (b).
[70] Conn. Gen. Stat. § 46a-95(a).
[71] Conn. Gen. Stat. § 46a-54.
[72] Conn. Gen. Stat. § 46a-104.
[73] Conn. Gen. Stat. § 46a-101.
[74] Conn. Gen. Stat. § 46a-83 (m).
[75] New York City Administrative Code §8-502.
[76] Conn. Agencies Reg., §31-222-9.
[77] New York State Labor Law §195.
[78] *Murphy v. American Home Products*, 448 N.E.2d 86, 87 (1983).
[79] Conn. Gen. Stat. Ann. §52-575 et seq.; N.Y. Civ. Prac. Laws & Rules §201 et seq.
[80] Compensation Force, *Global & US Severance Pay Benchmarks Released*, (Dec. 5, 2008), http://compforce.typepad.com/compensation_force/2008/12/global-us-severance-pay-benchmarks-released.html
[81] NYS Labor Law §565.
[82] 61 FR 13793.
[83] NYS Labor Law §565.
[84] Pub. L. 99-272.
[85] *J.M. Layton & Co. v. Millar*, No. CV040084446S, 2004 Conn. Super. LEXIS 2226, at 13, 16 (Conn. Super. Ct. Aug. 9, 2004).
[86] *Sartor v. Town of Manchester*, 312 F. Supp.2d 238, 245 (D. Conn. 2004).
[87] *Ikon Office Solutions v. Leichtnam*, 2003 U.S. Dist. LEXIS 1469.
[88] *Krondes v. O'Boy*, 37 Conn. App. 430, 434, 656 A.2d 692 (1995).
[89] 17 A Am Jur 2d Contracts 31.
[90] *Aladdin Capital Holdings, LLC v. Donoyan*, No. 3:11cv655, 2011 U.S. Dist. LEXIS 61095, at 7-8 (D. Conn. June 8, 2011).
[91] *Capelouto v. Orkin Exterminating Co.*, 183 So. 2d 532 (Fla. 1966).
[92] *Aladdin Capital Holdings, LLC v. Donoyan*, No. 3:11cv655, 2011 U.S. Dist. LEXIS 61095, at 7-8 (D. Conn. June 8, 2011).
[93] *Delta Enterprise Corp. v. Cohen*, 93 A.D.3d 411 (N.Y. App. Div. 2012).
[94] *Pena v. Brattleboro*, 702 F.2d 322, 325 (2d Cir. 1983).
[95] *Arakelian v. Omnicare, Inc.,* 735 F. Supp. 2d 22, 41, 2010 U.S. Dist. LEXIS 84828, *49 (S.D.N.Y. 2010), quoting *Morris v. Schroder Capital Mgmt. Int'l,* 445 F.3d 525, 529-30 (2d Cir. 2006).

[96] *Arakelian v. Omnicare, Inc*., 735 F. Supp. 2d 22, 41-42 (S.D.N.Y. 2010); *SIFCO Indus., Inc. v. Advanced Plating Technologies, Inc.*, 867 F. Supp. 155, 158 (S.D.N.Y. 1994).
[97] *Insulation Corp. of Am. v. Brobston*, 446 Pa. Super. 520, 532, 667 A.2d 729, 735, (1995).
[98] *Missett v. Hub Int'l Pa*., LLC, 6 A.3d 530, 540, (Sup. Ct. 2010).
[99] *Gomez v. Chua Medical Corp*., 510 N.E.2d 191, 194, 1987 Ind. App. LEXIS 2858 (1987).
[100] *Id.* at 195.
[101] *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 95 S. Ct. 2561 (1975).
[102] *Express Scripts v. Sirowich*, 2002 Conn. Super. LEXIS 3444, *6 (Conn. Super. Ct. Oct. 24, 2002)
[103] *Hood v. Aerotek, Inc.*, No. 3:98 CV 1524, 2002 U.S. Dist. LEXIS 3513, at 3 (D. Conn. Feb. 20, 2002).
[104] *United Rentals, Inc. v. Bastanzi*, No. 3:05CV596, 2005 U.S. Dist. LEXIS 45268, at 20 (D. Conn. Dec. 22, 2005).
[105] *New Haven Tobacco Co. v. Perrelli*, 11 Conn. App. 636, 641, 528 A.2d 865 (1987).
[106] *Scott v. General Iron & Welding Co.*, 171 Conn. 132, 137 (1976).
[107] *New Haven Tobacco Co. v. Perrelli*, 11 Conn. App. 636, 641, 528 A.2d 865 (1987).
[108] *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 388-89 (1999).
[109] *Mattis v. Lally*, 138 Conn. 51, 56 (1951).
[110] *Natsource LLC v. Paribello*, 151 F.Supp.2d 465, 471-71 (S.D.N.Y. 2001).
[111] *PCRE v. Unger*, No. HHDCV106008981S, 2010 Conn. Super. LEXIS 1129, 3-4 (Conn. Super. Ct. Apr. 30, 2010).
[112] *Beit v. Beit*, 135 Conn. 195, 204-5, 63 A.2d 161 (1948); *Ranciato v. Nolan*, No. CV970401729S, 2002 Conn. Super. LEXIS 489, at 13-4 (Conn. Super. Ct. Feb. 7, 2002).
[113] *Weseley Software Dev. Corp. v. Burdette*, 977 F. Supp. 137, 142 (D. Conn. 1996); See also, *Ranciato v. Nolan*, No. CV970401729S, 2002 Conn. Super. LEXIS 489, at 3 (Conn. Super. Ct. Feb. 7, 2002); *United Rentals, Inc. v. Frey*, CIV. NO. 3:10CV1628, 2011 U.S. Dist. LEXIS 16375, at 16-7 (D. Conn. Feb. 17, 2011).
[114] *Brown & Brown Inc. v. Johnson*, 25 N.Y.3d 364, 371 (2015).
[115] *Id.*
[116] Conn. Gen. Stat. § 20-14p.
[117] *Id.*
[118] *Id.*