



# House of Representatives

General Assembly

**File No. 144**

*January Session, 2011*

Substitute House Bill No. 6406

*House of Representatives, March 22, 2011*

The Committee on Labor and Public Employees reported through REP. ZALASKI of the 81st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING EMPLOYER'S RESPONSIBILITIES AND EMPLOYEE RIGHTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2012*) (a) Each employer, at the  
2 time of hiring, shall provide notice to each employee (1) of the  
3 employee's entitlements and benefits, whether negotiated or statutory,  
4 (2) that retaliation in any form by the employer against the employee  
5 for requesting to use or using entitlements and benefits, whether  
6 negotiated or statutory, is prohibited, and (3) that the employee has a  
7 right to file a complaint with the Labor Commissioner for any violation  
8 of this section. Employers may comply with the provisions of this  
9 section by displaying a poster in a conspicuous place, accessible to  
10 employees, at the employer's place of business that contains the  
11 information required by this section in both English and Spanish. The  
12 Labor Commissioner may adopt regulations, in accordance with  
13 chapter 54 of the general statutes, to establish additional requirements  
14 concerning the means by which employers shall provide such notice.

15 The Labor Commissioner shall administer this section within available  
16 appropriations.

17 (b) For the purposes of this section and section 2 of this act, (1)  
18 "employee" means any person engaged in service to an employer in the  
19 business of the employer, who has worked a minimum of five hundred  
20 twenty hours for an employer within the past twelve months and is  
21 (A) paid on an hourly basis, or (B) not exempt from the minimum  
22 wage and overtime compensation requirements of the Fair Labor  
23 Standards Act of 1938 and the regulations promulgated thereunder, as  
24 amended from time to time. "Employee" does not include (i) day or  
25 temporary workers, and (ii) employees of any constituent unit of the  
26 state system of higher education, as defined in section 10a-1 of the  
27 general statutes, who are part-time or adjunct faculty members,  
28 university assistants working less than twenty hours per work,  
29 educational assistants or other part time professional employees; (2)  
30 "employer" means any person, firm, business, educational institution,  
31 nonprofit agency, corporation, limited liability company or other entity  
32 that employs fifty or more persons in the state; (3) "entitlements and  
33 benefits, whether negotiated or statutory" means paid sick leave,  
34 maternity leave, vacation time, medical coverage, prescription drug  
35 coverage, dental coverage, vision coverage, employee discounts,  
36 family and medical leave, and worker's compensation benefit; and (4)  
37 "retaliatory personnel action" means any termination, suspension,  
38 constructive discharge, demotion, unfavorable reassignment, refusal to  
39 promote, disciplinary action, warning, whether verbal or written or  
40 other adverse employment action taken by an employer against an  
41 employee.

42 Sec. 2. (NEW) (*Effective January 1, 2012*) (a) No employer shall take  
43 retaliatory personnel action or discriminate against an employee  
44 because the employee (1) requests or uses entitlements and benefits,  
45 whether negotiated or statutory, or (2) files a complaint with the Labor  
46 Commissioner alleging the employer's violation of this section. The  
47 Labor Commissioner shall administer this section within available  
48 appropriations.

49 (b) Any employer who is found by the Labor Commissioner, by a  
 50 preponderance of the evidence, to have violated the provisions of this  
 51 section shall be liable to the Labor Department for a civil penalty of six  
 52 hundred dollars for each violation. The Labor Commissioner may  
 53 award the employee all appropriate relief, including rehiring or  
 54 reinstatement to the employee's previous job, payment of back wages  
 55 and reestablishment of employee benefits to which the employee  
 56 otherwise would have been eligible if the employee had not been  
 57 subject to such retaliatory personnel action or discriminated against.  
 58 Any party aggrieved by the decision of the commissioner may appeal  
 59 the decisions to the Superior Court in accordance with the provisions  
 60 of chapter 54 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2012	New section
Sec. 2	January 1, 2012	New section

**Statement of Legislative Commissioners:**

In subsection (a) of section 2, "in accordance with section 2 of this act" was deleted and "section 2 of this act" was also deleted in subsection (a) and (b) of section 2 and replaced with "this section" for accuracy of reference and to conform with the style of the general statutes.

**LAB** Joint Favorable Subst.-LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Labor Dept.	GF - Potential Cost	84,860	86,557
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Potential Cost	20,162	20,565
Labor Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill allows complaints to be filed with the Department of Labor (DOL) if an employer of at least 50 people retaliates or discriminates against employees for requesting or using certain entitlements and benefits. This is anticipated to increase the number of complaints received by the department and may require a half-time Special Investigator (salary of \$35,554). This is also anticipated to result in an increase in the number of probable cause hearings conducted by DOL, which may require a half-time Staff Attorney II (salary of \$49,306).

The bill establishes a \$600 civil penalty for each violation, which results in a potential minimal revenue gain.

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with changes in personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 23.76%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/10 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 12 and FY 13. Therefore, new positions will not impact the state's pension contribution until FY 14 after the next scheduled certification on 6/30/2012.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6406*****AN ACT CONCERNING EMPLOYER'S RESPONSIBILITIES AND EMPLOYEE RIGHTS.*****SUMMARY:**

This bill prohibits employers of at least 50 people in Connecticut from retaliating or discriminating against certain employees for (1) requesting or using certain negotiated or statutory "entitlements and benefits" or (2) filing a complaint with the labor commissioner alleging retaliation or discrimination because of such a request or use. It defines the entitlements and benefits as (1) paid sick leave, (2) maternity leave, (3) vacation time, (4) medical coverage, (5) prescription drug coverage, (6) dental coverage, (7) vision coverage, (8) employee discounts, (9) family and medical leave, (10) and workers' compensation benefits.

The bill also establishes (1) a procedure for the labor commissioner to enforce the bill's provisions and (2) a notice requirement for employers.

EFFECTIVE DATE: January 1, 2012

**COVERED EMPLOYERS AND EMPLOYEES**

The bill's notice requirement and ban on retaliation and discrimination apply to "employers" which it defines as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or other entity (which appears to include state and municipal employers) that employs 50 or more people in Connecticut.

An "employee" is someone who has worked for any employer for at least 520 hours within the last 12 months. It does not specify that the

employee must have worked the 520 hours for the current employer (see "COMMENT").

An "employee" must also be someone (1) paid on an hourly basis or (2) subject to the federal Fair Labor Standards Act's minimum wage and overtime compensation requirements. These requirements generally exclude managers who have authority to hire and fire staff, professional occupations (such as lawyers and physicians), salespeople, and certain skilled computer professionals.

The bill also excludes "day or temporary workers," and employees of the state higher education system who are (1) part-time or adjunct faculty members, (2) university assistants working less than 20 hours per "work" (presumably, this means "work week"), (3) educational assistants, or (4) other part-time professional employees. It does not define "day or temporary workers."

### **RETALIATION OR DISCRIMINATION REGARDING ENTITLEMENTS AND BENEFITS**

The bill prohibits employers from retaliating or discriminating against certain employees who request or use their entitlements and benefits, whether negotiated or statutory. It defines retaliation as termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action, written or verbal warning, or other adverse employment action.

The bill requires the labor commissioner to impose a \$600 civil penalty for each violation the commissioner finds by a preponderance of the evidence. It allows the commissioner to award all appropriate relief, such as rehiring, reinstatement, payment of back wages, and reinstatement of benefits. It allows parties to appeal the commissioner's decision in Superior Court, but does not address sovereign immunity issues that could arise from cases with state employees. The bill requires the labor commissioner to administer its provisions within available appropriations.

Existing law provides protection from retaliation or discrimination

for using some of the benefits covered by the bill. For example, the state's family and medical leave act (FMLA) prohibits covered private sector employers from discharging or in any other manner discriminating against individuals because they exercised their FMLA rights or filed a complaint regarding a violation of their rights. It also prohibits employers from discriminating against an employee in any manner for using up to two weeks of accrued paid sick leave, if the employer provides it in a bona fide written policy, for any of the reasons allowed under the state's FMLA law. Aggrieved employees can file a complaint with the labor commissioner, who must hold a hearing, and can award all appropriate relief, including rehiring, reinstatement, payment of back wages, and reinstatement of benefits. Parties aggrieved by the commissioner's decision can appeal to the Superior Court (CGS § 31-51pp).

The federal FMLA and the state's workers' compensation law provide similar protections and enforcement procedures for employees. Maternity leave could also fall under the protection of state and federal family medical leave laws. In addition, the state's Commission on Human Rights and Opportunities (CHRO) investigates and mediates discrimination complaints.

The bill does not specify how the protections it provides would relate to existing laws and enforcement procedures.

It also does not specify how it would relate to the enforcement procedures and remedies provided by collective bargaining agreements.

#### **NOTICE REQUIREMENT**

The bill requires an employer to notify each employee at the time of hire, (1) of his or her negotiated and statutory entitlements and benefits, (2) that employer retaliation for requesting or using the entitlements and benefits is prohibited, and (3) that the employee can file a complaint with the labor commissioner if his or her employer fails to provide notice. Employers can comply with the requirement

by displaying a poster that contains the information in English and Spanish in a conspicuous place accessible to employees. The labor commissioner can adopt regulations specifying additional requirements for how employers provide notice. Current law requires employers to post notice of their policies regarding wages, vacation pay, sick leave, health and welfare benefits, and comparable matters (CGS § 31-71f).

**COMMENT**

***Definition of “Employee”***

The bill requires an employer to provide an “employee” with notice of his or her benefits and rights at the time of hire, but a person does not become an “employee” subject to the bill’s notice requirement and protections until he or she has worked for at least 520 hours within the past 12 months.

Because the bill does not specify that the 520 hours of work is for the current employer, it presumably requires the hiring employer to determine how many hours the newly hired employee has previously worked in order to determine if and when the bill’s notice requirement and protections apply. It could also allow an employee to start a new job with the protections offered by the bill and then subsequently lose them (i.e., an employee who worked full-time earlier in the year, was unemployed for several months, and then took a part-time job, could initially meet the 520 hour requirement, but then subsequently lose it for a period of time).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 6 Nay 4 (03/11/2011)