SB-41

Testimony of Eric W. Gjede
Assistant Counsel, CBIA
Before the Committee on Labor and Public Employees
Hartford, CT
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Testifying on SB 41 AAC The Labor Department

Good afternoon Senator Gomes, Representative Tercyak, Senator Hwang, Representative Rutigliano and members of the Labor and Public Employees Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA), which represents more than 10,000 large and small companies throughout the state of Connecticut.

CBIA suggests alternative language for SB 41.

SB 41 appears to be a placeholder bill, similar to a bill bearing the same title from a previous session. In lieu of the study required by this bill, we ask that you consider using the attached draft bill language. The attached language would make the following changes to Connecticut law:

1. The first draft bill would eliminate the requirement that new businesses submit an application to the labor department to get permission to pay employees on a biweekly basis. Currently, an application needs to be filed and approved in order to pay employees on anything other than a weekly basis. This is an unnecessary burden on new businesses, particularly given that the vast majority of businesses pay wages biweekly rather than weekly. Under this suggested language, an employer would still have to apply to the labor department to pay employees on any other schedule besides weekly or biweekly.

2. The second draft bill would allow businesses to suspend without pay salaried workers that violate an employer's written policy on harassment or workplace violence. Currently, an employer can suspend without pay an hourly worker for such violation, but not a salaried employee. A salaried employee can be suspended for violating such policies, but the employer is still required to pay that individual. Federal law allows both salaried and hourly employees to be treated the same in this respect, but Connecticut law does not. We ask that you give Connecticut employers the tools to treat both hourly and salaried employees the same when it comes to dealing with workplace harassment issues and violence.

Thank you for considering these two small reforms. We hope you will consider adopting our suggested language in lieu of the study required in this bill.

Connecticut Business & Industry Association
350 Church Street, Hartford, CT 06103-1126 | 860.244.1900 | 860.278.8562 (f) | cbia.com | @CBIANews

Proposed Title:
An Act Modifying Outdated Employee Pay Waiver Requirements

Section 1. Section 31-71i of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage):

The commissioner may, upon application, waive the provisions of section 31-71b with respect to any particular week or weeks, and may also, upon application, permit any employer, subject to the provisions of this section, to establish regular pay days less frequently than weekly **or biweekly**, provided each employee affected shall be paid in full at least once in each calendar month on a regularly established schedule.

Sec.2. Section 31-71b of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage):

(a)(1) Except as provided in subdivision (2) of this subsection, each employer, or the agent or representative of an employer, shall pay [weekly] all moneys due each employee on a regular pay day, designated in advance by the employer, in cash, by negotiable checks or, upon an employee's written request, by credit to such employee's account in any bank that has agreed with the employer to accept such wage deposits.

(2) Unless otherwise requested by the recipient, the Comptroller shall, as soon as is practicable, pay all wages due each state employee, as defined in section 5-196, by electronic direct deposit to such employee's account in any bank, Connecticut credit union or federal credit union that has agreed with the Comptroller to accept such wage deposits.

(b) The end of the pay period for which payment is made on a regular pay day shall be not more than [eight] **fifteen** days before such regular pay day, provided, if such regular pay day falls on a nonwork day, payment shall be made on the preceding work day.

(c) This section shall not be construed to (1) prohibit a local or regional board of education or an entity called a state-aided institution pursuant to section 5-175 and a recognized or certified exclusive bargaining representative of its certified or noncertified employees from including within their collective bargaining agreement a schedule for the payment of wages to certified employees or noncertified employees that differs from the requirements of subsections (a) and (b) of this section, or (2) prohibit a private or parochial school from entering into a written agreement with its certified or noncertified employees for the payment of wages to such employees that differs from the requirements of subsections (a) and (b) of this section.

(d) Any agreement entered into pursuant to subdivision (2) of subsection (c) of this section shall be null and void if such private or parochial school ceases to operate prior to completing payment of all wages due to its certified or noncertified employees and such private or parochial school shall be liable for the payment of all wages due to its certified or noncertified employees.

(e) Nothing in this section shall be construed to apply to employees swapping workdays or shifts as permitted under a collective bargaining agreement.

Proposed Statement of Purpose:

To remove the requirement that businesses apply to the labor department for a waiver in order to pay employees on a biweekly basis.

Proposed Title:
An Act Allowing Employers To Deduct The Pay of Salaried Exempt Employees Suspended For Committing Harassment Or Workplace Violence

Section 1. (NEW) (*Effective from passage*) (a) An employer, as defined in section 31-58 of the general statutes, may deduct the wages of an employee employed in a bona fide executive, administrative or professional capacity, as defined in title 31 of the Regulations of Connecticut State Agencies, for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a written workplace conduct rule prohibiting harassment or workplace violence.

Proposed Statement of Purpose:
To allow employers to deduct the wages of a salaried exempt employee that was suspended from the workplace for violating a written rule prohibiting harassment or workplace violence, just as they already can for hourly employees.

More Info: See attached Federal Regulation:

§ 541.602 Salary basis.

(a) ***General rule.*** An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) ***Exceptions.*** The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

(1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

(2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

(3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can

offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

(5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.