
OLR Bill Analysis

HB 7501

Emergency Certification

AN ACT CONCERNING THE WORKFORCE TRAINING NEEDS IN THE STATE AND REVISIONS TO AND REGULATION OF GRATUITIES PERMITTED OR APPLIED AS PART OF THE MINIMUM FAIR WAGE.

SUMMARY

This bill repeals the state regulation that governs how restaurants can apply the minimum wage tip credit to service employees who spend some, but not all, of their shift doing work for which tips or gratuities are received (the “dual duties” regulation). It requires the labor commissioner to post a notice of intent to adopt a new regulation concerning dual duties and the tip credit and to consult with stakeholders before doing so. The notice must also repeal the existing dual duties regulation (Conn. Agency Reg. § 31-62-E4) when the new regulation becomes effective.

The bill limits court awards in cases alleging wages owed under the current dual duties regulation, if the defendant employer had a good faith belief that its wage underpayment was legal. It also changes what courts must consider before granting class action status for cases alleging violations of the current regulation.

The bill also makes several changes to the Workforce Training Authority (WTA), including changing its board membership, making public-private entities eligible for authority-awarded grants, and expanding the industry sectors eligible for training assistance. The bill specifies that the authority is within the Department of Labor (DOL) and that its purpose is to provide and oversee grants to eligible recipients.

Lastly, the bill requires DOL to (1) study programs offered to people

seeking employment in the state and (2) submit the study to the Labor and Public Employees Committee by January 1, 2021.

It also makes other minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage for the tip credit provisions and the employment program study and May 1, 2020, for the changes to the WTA.

§§ 5-6 — NEW DUAL DUTIES REGULATION

By law, employers of hotel and restaurant staff and bartenders who customarily receive tips may use a “tip credit,” which allows them to pay these employees a certain percentage less than minimum wage as long as their tips make up the difference. Under existing law, unchanged by the bill, the employer’s share of the current \$11.00 minimum wage is \$6.38 for hotel and restaurant staff and \$8.23 for bartenders.

Notice of Intent to Adopt Regulations (§ 5)

The bill requires the labor commissioner, by April 1, 2020, to post a notice of intent to adopt regulations concerning the tip credit and employees who perform both service and nonservice duties. The notice must also provide for the repeal of Conn. Agency Reg. § 31-62-E4 (the current dual duties regulation) upon the effective date of the new regulations. Under the bill, the new regulations become effective when the secretary of the state posts them on the eRegulations System.

The current dual duties regulation prohibits employers from applying the tip credit to restaurant employees who perform both service (e.g., serving food to patrons at tables) and non-service duties unless the employer segregates and records their time spent on each type of duty. Under the regulation, the tip credit can apply to the time the person spends performing service duties only if the time is recorded as such. Thus, if a worker spends one hour of an eight-hour shift washing dishes or setting tables, then the tip credit cannot be applied to that hour since he or she is not serving tables.

The bill also requires the commissioner to (1) consult with the

restaurant industry, restaurant employees, services employees, and other interested stakeholders before posting the notice and (2) consider any state and federal guidance on the subject.

Court Awards and Civil Class Actions (§ 6)

The bill (1) limits court awards in certain types of cases alleging a violation of the current dual duties regulation and (2) changes what courts must consider before granting class action status for cases alleging a violation of the current regulation.

Court Awards. Under current law, if an employer pays an employee less than the required minimum wage or overtime, the employee can recover in a civil action either (1) twice the wage amount still owed, plus costs and attorney’s fees, or (2) if the employer establishes that it had a good-faith belief that the wage underpayment was legal, the wage amount still owed, plus costs and attorney’s fees.

The bill removes the court’s authority to award attorney’s fees in civil actions alleging wages owed under the current dual duties regulation if the employer had a good faith belief that the wages paid were legal. It specifies that a good-faith belief can include reasonable reliance on written DOL guidance. It does not change the award amounts and attorney’s fees permitted for cases that do not involve a good-faith belief by the employer.

Civil Class Action. Under current law, when there are numerous parties in a legal matter, the court may authorize one or more to act for the benefit of all when it would be impracticable or unreasonably expensive to make them all individual parties. The bill supersedes this law for cases alleging violations of the current dual duties regulation. It instead prohibits the court from authorizing someone to sue for the benefit of other similarly situated persons unless the person demonstrates that the defendant is liable to all individual proposed class members because they all:

1. performed nonservice duties while employed by the defendant, for more than a de minimis amount of time, that were not

incidental to service duties, and

2. were not properly compensated by the defendant for some portion of their nonservice duties as required under the current dual duties regulation.

The individual seeking the class action status must do so under the appropriate burden of proof and satisfy any additional judicial rules of practice governing class-action certifications.

§§ 1-3 — WORKFORCE TRAINING AUTHORITY (WTA)

WTA Board Changes (§§ 2 & 3)

The bill terminates the existing 16-member WTA board on April 30, 2020, and establishes a new 21-member board on May 1, 2020, with the new appointments to be made by July 1, 2020. The new board retains the labor, economic and community development, and corrections commissioners, or their designees, as members. The bill adds the agriculture commissioner and the Technical Education and Career System superintendent, or their respective designees, to the board. It removes from the board the presidents of the Connecticut State Colleges and Universities and UConn.

The bill also increases the number of legislative appointees from seven to 12 while maintaining the same number of gubernatorial appointees (four) as provided in current law. Under current law, the board’s gubernatorial appointees have no qualification requirements, and its legislative appointees must have skill, knowledge, or experience in industries and sciences related to insurance, financial services, bioscience, or advanced manufacturing, among others. The bill instead creates specific qualifications for each appointed member of the new board, as shown in the table below.

WTA-Appointed Board Member Qualifications Under the Bill

<i>Appointing Authority</i>	<i>Number of Appointments</i>	<i>Member Qualifications</i>

<i>Appointing Authority</i>	<i>Number of Appointments</i>	<i>Member Qualifications</i>
Governor	Four	<ul style="list-style-type: none"> • A community college representative • A state university representative • A UConn representative • An independent colleges representative
Senate President	Two	<ul style="list-style-type: none"> • A formerly incarcerated individual or someone who helps formerly incarcerated individuals find employment • A Connecticut AFL-CIO representative
Senate Majority Leader	Two	<ul style="list-style-type: none"> • A workforce investment board representative • A Connecticut State Building and Construction Trades Council representative
House Speaker	Two	<ul style="list-style-type: none"> • A UConn Health Center representative • A representative from a Connecticut affiliate of the National Urban League or the National Association for the Advancement of Colored People
House Majority Leader	Two	<ul style="list-style-type: none"> • A Connecticut Center for Advanced Technology representative • A representative of a Connecticut chamber of the United States Hispanic Chamber of Commerce
Senate Minority Leader	Two	<ul style="list-style-type: none"> • An individual who has skill, knowledge, or expertise in the financial services industry's workforce needs • A Connecticut Business and Industry Association Manufacturers Advisory Council representative
House Minority Leader	Two	<ul style="list-style-type: none"> • A Connecticut Association of Public School Superintendents representative • An individual who has skill, knowledge, and expertise in the digital media industry's workforce needs

By law, the labor commissioner serves as the board's chairperson. The bill requires him to call the new board's first meeting by July 1, 2020.

WTA Function and Grant Assistance (§§ 1 & 3)

Under current law, the Workforce Training Authority Fund must provide training grants to eligible recipients (i.e., business entities) to target job growth in areas such as insurance, financial services, biosciences, advanced manufacturing, digital media, green technology, and tourism. The bill adds construction, healthcare, and early

childhood education to the list of targeted job growth areas. It also redefines an “eligible recipient” as a public or private entity seeking to develop a workforce-training program, either to grow an existing business or, in the case of a public entity, as part of partnership with business entities that have committed to hire successful trainees from an authority-funded workforce-training program.

The bill also expands the list of training programs and career pathways that the WTA board must consider developing to include women, minorities, and individuals soon to be released from incarceration. (The board already must consider programs and pathways for formerly incarcerated individuals.)

Under current law, the WTA must establish an application and approval process with guidelines for assistance, which must include a requirement that applicants obtain matching funds. The bill removes the matching funds requirement and instead requires applicants to provide an unspecified level of funding or in-kind services.

Annual Report to the Legislature (§3)

By law, the authority's administrator must provide an annual report to the WTA board for approval and then submit it to the Labor and Public Employees, Commerce, and Higher Education and Employment Advancement committees. The bill requires that the report (1) be about the WTA's expenditures, rather than its activities, and (2) include information on the status and progress of WTA-funded programs.

The bill designates the labor commissioner, rather than the department, as the authority's administrator.

§ 4 — WORKFORCE TRAINING PROGRAM STUDY

The bill requires DOL, in collaboration with the regional workforce development boards , to study programs offered to individuals seeking employment in the state. It requires DOL to (1) begin the study by May 1, 2020, and (2) submit its findings to the Labor and Public

Employees Committee by January 1, 2021.

The study must include the following topics:

1. the location, ownership, and management of the boards' offices within the state;
2. the number of employees dedicated to assisting individuals seeking employment in each of DOL's American Job Center offices (formerly known as Connecticut Works One-Stop Career Centers);
3. the number of individuals seeking employment who are served through each job center office and by which program on an annual basis;
4. the number of employers, classified by industry, that use regional workforce development boards in the state;
5. the number of individuals who (a) find employment through the job centers and the nature of that employment, classified by industry, and (b) found, but then lost, employment and re-enrolled in a job center program;
6. the type of training programs;
7. whether activities offered by individual boards are planned in conjunction with DOL to maximize efficiency and avoid duplication of resources;
8. each board's funding sources and any in-kind state contributions (e.g., office space and equipment);
9. whether an individual seeking employment can simultaneously participate in a DOL employment program and a board program;
10. the methods by which DOL and the boards coordinate employment programs in each region; and

11. the methods by which the boards report to DOL and whether the resources DOL currently allocates to the boards are adequate to operate the boards' programs.