

Today's Business: An employer 'hot list'

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July 22-23, 2023



Jessica A. Slippen is an attorney with Stratford-based Mitchell and Sheahan. Contributed photo

For employers, navigating the legal employment landscape can be a full-time job. Laws are ever-evolving. Failure to keep up with changes can lead to penalties and, even worse, expensive litigation.

There are two emerging legal issues facing employers: the influx of employees experiencing long COVID symptoms, and the protection of gender identity and gender expression in the workplace.

In 2022, the federal government reported that nearly one in five American adults who have had COVID-19 are experiencing long COVID, which can be a disability under the Americans with Disabilities Act. As such, employee accommodations can be required, which may include a modified work schedule, remote work, a leave of absence, or assigning the affected employee to a vacant position that is less physically demanding. Employers do not, however, have to eliminate essential job functions or provide an accommodation that creates business hardship. Because there are no medical tests to confirm the presence of long COVID, and medical evaluation and certification may be problematic for employees to provide to employers, employers may be left in a precarious situation in making disability, accommodation and leave determinations.

Gender expression is the other emerging issue.

Employers must be cognizant of the protection of gender identity and expression in the workplace. Both Connecticut and federal law prohibit discrimination and harassment based on gender identity. The U.S. Department of Labor has stated that policies barring these forms of discrimination not only protect those who openly identify as transgender, femme, masc, or non-binary, but they also protect anyone who might express their gender in any way that does not conform to preconceived notions about how people of a particular gender should express themselves.

For many employers, it will be necessary to become familiar with a host of new gender-related terms, such as cisgender, genderfluid and gender-neutral.

Gender expression, of course, may include dress, body language, make-up and tone of voice. Criticism or untoward comment in the workplace can easily be heard as a negation of the person's true self and violate an individual's right to gender expression.

Employers must ensure that employees are not subject to harassment or adverse treatment because they do not conform to societal gender expectations. Companies must — and should — consider proper training and management awareness to ensure that all employees are treated equally.

Then there are some older issues that remain critical for employers — personnel files, for one.

Employers do not have to maintain personnel files. However, there are stringent requirements if they do. A personnel file must include all documents used to determine an employee's eligibility for employment, promotion, compensation, transfer, termination, discipline or other adverse action. It should include employee performance evaluations and disciplinary notices. Employers must include a statement in any documented disciplinary action, notice of termination or performance evaluation that allows an employee to submit a written statement disputing the action. Finally, if an employee requests a copy, employers are required to provide this information quickly — seven days for a current employee and within 10 days for a former employee.

Employers are constantly faced with an ever-evolving barrage of legal issues, sometimes related to most unlikely matters. On Election Day this coming November (and in any earlier primaries), for example, Connecticut law entitles workers to up to two hours of unpaid time off between 6 a.m. and 8 p.m. to be able to vote. While employees must give at least two days notice of their intent to take time off to vote, employers should notify employees of their right to do so – and the obligation to provide notice.

Bottom line: employers need to be diligent to avoid legal problems in the workplace.

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