

Doing Business Questionnaire

Connecticut

Prepared By

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I. Background

Please list a few useful numbers and web sites such as the Secretary of State, the clerks of the State and Federal Courts and the State Development Authority.

Administrative	Website	Phone Number
Governor	http://www.ct.gov/governor	860-566-4840
Lieutenant Governor	http://www.ct.gov/ltgovmfedele	860-524-7384
Secretary of State	http://www.ct.gov/sots	860-509-6200
Attorney General	http://www.ct.gov/ag	860-808-5318
Connecticut Online	http://www.concord-sots.ct.gov/CONCORD	860-509-6003 (Commercial Recording Division)
Department of Agriculture	http://www.ct.gov/doag	860-713-2569
Department of Banking	http://www.ct.gov/dob	860-240-8299

Department of Consumer Protection	http://www.ct.gov/dcp	860-713-7240
Department of Economic and Community Development	http://www.ct.gov/ecd	860-270-8000
Department of Environmental Protection	http://www.ct.gov/dep	860-424-3000
Department of Public Health	http://www.ct.gov/dph	860-509-8000
Department of Insurance	http://www.ct.gov/cid	860-297-3800
Department of Labor	http://www.ctdol.state.ct.us	860-263-6000
Department of Motor Vehicles	http://www.ct.gov/dmv	860-263-5700
Department of Public Safety	http://www.ct.gov/dps	860-685-8190
Department of Public Utility Control	http://www.ct.gov/dpuc	860-827-1553
Department of Revenue Services	http://www.ct.gov/drs	860-297-5962
Connecticut Development Authority	http://www.ctcda.com	860-258-7800
Connecticut Sitting Council	http://www.ct.gov/csc	860-827-2935
Legislative		
Senate	http://www.cga.ct.gov	860-240-0500
House of Representatives	http://www.cga.ct.gov	860-240-0400

Judicial	http://www.jud.state.ct.us	
Probate Court	http://www.jud.state.ct.us/probate	860-231-2442
Superior Court	http://www.jud.state.ct.us/external/super	860-757-2100
Appellate Court	http://www.jud.state.ct.us/external/supapp/appellate	860-713-2192
Supreme Court	http://www.jud.state.ct.us/external/supapp	860-757-2200
Federal District	http://www.ctd.uscourts.gov/	203-579-5861 (Bridgeport) 860-240-3200 (Hartford) 203-773-2140 (New Haven)

Please also explain how the state statutes are designated.

The Connecticut General Statutes are organized by Title, Chapters, Articles and Sections.

Titles contain chapters, articles and section of the statutes grouped in broad subject areas. For example, "Title 14 – Motor Vehicles."

Chapters contain sections of the statutes grouped in broad subject areas. For example, "Chapter 248 – Vehicle Highway Use" which is in Title 14.

Articles contain section of the statutes also grouped in specific subject areas. For example, "Article 2 – Sales; Article 4A – Funds Transfers."

Sections contain the text of each statute. For example, "Section 14-219 – Speeding" which is in Chapter 248, which is in Title 14.

Throughout this Doing Business Guide, Connecticut General Statutes will be represented by C.G.S.

Visit: <http://www.cga.ct.gov/asp/menu/statutes.asp>

II. Business Entities

1. What are the common forms of business entities?

Sole Proprietorship, General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Company, Corporation

2. What are the requirements for formation of each?

The following must be filed with the Connecticut Secretary of State:

- Formation of a Limited Partnership requires filing a Certificate of Limited Partnership.
- Formation of a Limited Liability Partnership requires filing a Certificate of Limited Liability Partnership.
- Formation of a Limited Liability Company requires filing an Articles of Organization. Formation of a Corporation requires filing a Certificate of Incorporation.

No filing with the Connecticut Secretary of State is required for a Sole Proprietorship or General Partnership. However, in forming a General Partnership there should be a written partnership agreement, which also should be done for a Limited Partnership or Limited Liability Partnership. Additionally, a Limited Liability Company should have an Operating Agreement as well.

3. What are the less common forms of business entities, e.g. business trusts?

Professional Association, Professional Corporation and Statutory Trust.

4. What are the requirements for formation of these?

The following must be filed with the Connecticut Secretary of State:

- Formation of a Professional Association requires filing Articles of Association.
- Formation of a Professional Corporation requires filing a Certificate of Incorporation.
- Formation of a Statutory Trust requires filing a Certificate of Trust.

5. What is required to be filed with the State in order to be in good standing, e.g. names of officers, directors, partners, etc.?

In addition to the timely payment of state tax returns (e.g. Corporation – Corporation Business Tax Return; LLC – Business Entity Tax Form), limited partnerships, limited liability companies and corporations must file Annual Reports with the Connecticut Secretary of State listing general partners, members and/or managers and directors and officers names and addresses.

It should be noted that in Connecticut, "good standing" is not a legally recognized concept, rather the concept is "in legal existence."

6. What industries are heavily regulated, e.g. banking, insurance?

Banking, Insurance, Energy/Utilities, Health Care, Securities

7. What are the significant consumer protection laws?

Warranties on goods sold in Connecticut are governed by the Uniform Commercial Code. Under the UCC, goods sold subject to its provisions carry an implied warranty of merchantability and an implied warranty of fitness for the particular purpose for which they were purchased unless these warranties have been specifically disclaimed in accordance with the provisions of the UCC. Goods would also be subject to whatever express warranties the manufacturer and/or seller provides.

In addition to federal consumer protection laws of general applicability, Connecticut has a number of state laws intended to protect consumers, of which the following are some of the most prominent:

- The Connecticut Product Liability Act, C.G.S. §§52-557m *et seq.*
- The Connecticut Truth in Lending Act, C.G.S. §§36a-375 *et seq.*
- The Home Solicitation Sales Act, C.G.S. §§42-134a *et seq.*
- The Home Improvement Act, C.G.S. §§20-418 *et seq.*
- The Plain Language Act, C.G.S. §§20-418 *et seq.*, which requires all consumer contracts to be written in plain language and provides tests to determine compliance with the Act. Non-compliance can result in statutory damages of \$100 and up to \$100 in attorneys' fees.
- The Home Mortgage Disclosure Act, C.G.S. § 36a-265 which regulates alternative mortgage loans.
- Retail Sales Financing Act, C.G.S. §§36a-275 *et seq.*
- State Child Protection Act, C.G.S. §§21a-335 *et seq.*
- Truth In Lending Act, C.G.S. §36a-275.
- Automobile Manufacturer's Adjustment Warranty Program, C.G.S. §§42-227.
- Solicitation of Charitable Funds Act, C.G.S. §§21a-175 *et seq.*

III. Tax Matters

1. What are the applicable state law provisions regarding significant business and personal tax, such as:

a. Corporate Income Tax

Connecticut Corporation Business Tax, C.G.S. §§12-213 *et seq.* (Chapter 208)

Corporations pay the corporation business tax for the privilege of carrying on or doing business in a corporate capacity in Connecticut. Corporations subject to the Corporation Business Tax pay the larger of the tax measured by:

1. net income (C.G.S. §12-214); or
2. the minimum tax (C.G.S. §12-219)

In any event, the amount of tax is not less than \$250.

b. Franchise Tax on Domestic and Foreign Corporations

Domestic corporations must pay a franchise tax based on the number of shares issued at incorporation or subsequent increases at the time a certificate of amendment, consolidation or merger is filed with the Connecticut Secretary of the State (the "Secretary"). The minimum franchise tax is \$150.

In addition, both domestic and foreign corporations doing business in Connecticut must file an annual report with the Secretary, along with a filing fee of \$75 for domestic stock corporations and \$300 for foreign stock corporations.

c. Sales and Use Tax

Connecticut Sales and Use Tax, C.G.S. §§12-406 *et seq.* (Chapter 219)

Except as specifically provided to the contrary, wherever in Chapter 219 reference is made to the sale or selling of tangible personal property or services described in C.G.S. §12-407(a)(2) a tax is imposed. C.G.S. §12-407(b).

d. Property Taxes, real and personal

In Connecticut, property taxes are assessed, C.G.S. §§12-40 *et seq.* (Chapter 203), levied and collected at the municipality level. All real and personal property located within Connecticut, unless exempt, is taxable. The property tax rates are fixed by the local taxing authorities.

All real and personal property is assessed as of October 1 of each year, payable in two (2) installments during following January and July. The value of personal

property is declared by the taxpayer annually while real property is revalued by the municipality every (4) years.

The property tax is generally paid in the tax district in which the real and personal property is situated.

e. Mortgage or Document Taxes

Real estate conveyance tax, C.G.S. §§12-494 *et seq.* (Chapter 223). Two conveyance taxes are imposed and payable on every transfer of real estate (unless an exemption exists), both of which are payable by the seller and both of which are computed based on the purchase price or value received, directly or indirectly, by the seller. One is payable to the Department of Revenue Services, while the second is payable to the municipality where the property is located.

Controlling Interest Transfer Tax, C.G.S. §12-638a (Chapter 228b). In Connecticut, a tax is imposed and payable on the sale or transfer of a controlling interest in any entity possessing an interest in real property, which precludes circumventing conveyance tax by selling the entity.

Recording fees are calculated according to a statutory rate and remitted to the municipalities, city or town clerk.

f. Estate, Probate, Inheritance Taxes

Connecticut Probate Courts and Procedure, C.G.S. §§45a-1 *et seq.*

Connecticut Estate Tax, C.G.S. §§12-391 *et seq.*

Connecticut Gift Tax, C.G.S. §§12-640 *et seq.*

Estate Income Tax, C.G.S. §§12-405a *et seq.*

2. What, if any, are the other taxes of significance to business entities?

Connecticut Business Entity Tax, C.G.S. §12-284b (Chapter 213a), which imposes a tax on limited liability companies, limited liability partnerships, limited partnerships, S-corporations (collectively, "Affected Business Entity). Each Affected Business Entity is liable for an annual tax of \$250. C.G.S. §12-284b(b).

IV. Property Law:

1. What are the types of ownership estates in real property?

Connecticut recognizes tenancy in common and joint tenancy, but not tenancy by entirety. Unless a conveyance specifically states that a joint tenancy is being created, there is the presumption that a grant of ownership in real estate to two or more persons creates a tenancy in common. See C.G.S. §47-36a(b)(2).

2. What are the common forms of deeds?

The most common forms of deeds in Connecticut are quitclaim deed, general warranty deed, special warranty deed and fiduciary deed. For forms of deeds, see C.G.S. §47-36a – 36s. Although there is no statutory “form” of special warranty deed set forth in the Connecticut statutes, a special warranty deed is used in instances where the grantor is only willing to warrant the title for the limited period of its ownership.

3. What type of estate is created by the grant of a mortgage?

The grant of a mortgage has the force and effect of a deed to the mortgagee in fee simple, subject to defeasance, with mortgage covenants, to secure the payment of money as well as the performance of any lawful obligations stated in the grant. See C.G.S. §47-36h – 36j.

4. What special provisions should or must be included in mortgages?

Mortgages in Connecticut must adequately describe the debt secured. A mortgage deed given to secure payment of a promissory note should state the date, the principal amount and the maximum term of the promissory note. See C.G.S. §49-31b(a). While not mandatory, it is customary in Connecticut to attach the promissory note to the mortgage. There are also safe harbor provisions for mortgages securing construction advances (C.G.S. §49-3), mortgages securing future advances (C.G.S. §49-2(c)), and mortgages as security for guaranties of future advances (C.G.S. §49-4b). In addition, most commercial lending documents contain a waiver of a hearing prior to obtaining a prejudgment remedy (C.G.S. §52-278f).

5. Will deeds or mortgages executed in another State be accepted for recording and be enforceable?

Yes, a deed or mortgage for real estate situated in Connecticut executed and acknowledged in any other state or territory in conformity with the laws of that state or territory relating to the conveyance of real estate in that state or territory is valid. See C.G.S. §47-7(a). A notary public taking an acknowledgment in any other state or territory should indicate the date of expiration of his or her commission, if any, to avoid requiring any additional authenticating certificates. See C.G.S. §47-7(b).

6. What is the process for recording transfer documents?

The original transfer document must be recorded with the clerk of the town in which the real property lies. Recording fees must be paid at that time. If the transfer is of real

property interests other than leasehold interests or mortgages, the transfer document must be accompanied by a completed state conveyance tax form and checks for the state and local conveyance taxes due on the transaction, unless an exemption identified in the forms applies. The original instrument will be stamped with the recording information and returned to the party specified in the upper left hand corner of the first page of the document.

7. Describe the mechanic's lien process.

Strict compliance with C.G.S. §49-33 et seq. governing process, notice and filing requirements is required to perfect, maintain and foreclose on any mechanic's lien rights. In general, the requirements are as follows:

Any person having a claim for labor or material furnished in the construction or repair of any building or in the improvement of any lot or site development or subdivision by virtue of a contract with, or by consent of, the owner of the land upon which the building or improvement is located has a lien on the land, building and appurtenances.

A mechanic's lien originates as of the commencement of services or the furnishing of materials; however, it is not valid unless the lienor, within 90 days after he has ceased performing work or furnishing materials, files a certificate of lien in the office of the town clerk for the town in which the land is situated. In addition, the lienor must, not later than 30 days after filing such certificate, serve a true and attested copy of such certificate upon the owner of the land.

A duly perfected mechanic's lien will expire one year from the date of perfection of the lien unless proceedings are commenced to foreclose the same and a lis pendens is recorded with the town clerk within one year of the date of recording, or within 60 days of any final disposition of any appeal, whichever is later. If the time limit is not met, then the lien is automatically extinguished.

A mechanic's lien is foreclosed in the same manner as a mortgage.

Lien waivers are not effective in the case of commercial property, but are effective as to residential property.

8. How are liens created in personal property?

Generally, Connecticut follows the Uniform Commercial Code for the creation, perfection and priority of liens on personal property. Filings to perfect security interests that may be perfected by filing, other than fixture filings, for entities organized under the laws of the State of Connecticut are required to be made only with the Secretary of State. Fixture filings are filed with the clerk of the town in which the fixtures are located. Motor vehicle liens are noted on the certificates of title.

9. Are there significant non-uniform provisions of your State's version of Article 9 of the UCC?

No.

V. Environmental Law

1. What agency or agencies regulate environmental compliance?

Federal authorities:

US Environmental Protection Agency: Connecticut is within the jurisdiction of Region I of the US EPA, Boston, Massachusetts.

US Army Corps of Engineers: New England District, Concord, Massachusetts.

US Coast Guard: First District, Boston, Massachusetts.

State and local authorities:

Connecticut Department of Environmental Protection ("DEP") has authority for enforcing the federal Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act ("RCRA"). Connecticut regulation goes further than federal law in many of these areas. Connecticut has its own version of the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); however, Connecticut's private party liability scheme is not identical to federal law. DEP also manages the state parks, wildlife and oversees hunting and fishing activities. Coastal management, tidal wetlands and Long Island Sound issues are overseen by the DEP; inland wetlands are subject to regulation by the DEP, US Army Corps of Engineers and local municipal wetlands agencies. DEP also regulates water runoff from certain industries, dams, reservoirs and water diversions in excess of 50,000 gallons/day.

Some aspects of environmental law are administered by other agencies or are subject to overlapping jurisdiction with DEP. The Department of Public Health oversees certain aspects of water company operations, wells, drinking water quality, lead paint and asbestos regulation. Generally speaking, most of the 169 municipalities (cities and towns) regulate the dredging and filling of inland wetlands and watercourses pursuant to the state law (concurrent with the jurisdiction of the US Army Corps of Engineers and the DEP). Land development within the setback area of an inland wetlands and watercourse is regulated by the local inland wetlands agency as well as the local planning and zoning commission. Each municipality (cities and towns) has selected its own definition of setback area by local ordinance.

Connecticut has designated aquifer protection areas to protect sources of drinking water, with each municipality to designate an agency to be the local aquifer protection agency (most have selected the local planning and zoning commission). Certain regulated activities under the aquifer protection act are precluded in aquifer protection areas; with existing uses required to register with the local agency and the DEP. These uses are generally the storage, use and disposal of hazardous materials. Certain activities are precluded e.g., no new underground storage tanks are permitted in aquifer protection areas.

The Connecticut Siting Council ("CSC") has jurisdiction over the siting of certain electric generation facilities, telecommunication towers, hazardous waste facilities, gas pipelines,

switch yards and power transmission lines. Securing a certificate, license or permit from the CSC will not exempt a facility from DEP regulatory programs. CSC jurisdiction, depending on the activity, may be original or appellate (certain decisions of a local planning and zoning commission may be appealed to the CSC rather than to court). Exemptions for certain activities may apply.

- 2. What steps are necessary to accomplish the sale of:**
 - a. real estate**
 - b. an ongoing business?**

Transfers of permits and licenses on sale: Depending on the line of business, some environmental permits may not be fully assignable or transferable on the sale of an operating business; the list of possible permits and their terms is too long for inclusion in this synopsis. The terms of each permit must be individually reviewed. C.G.S. §22a-60 provides that a licensee and a proposed transferee are to register the proposed transfer with the DEP within 30 days of the transfer of a facility for which the license has been issued. One unreported Superior Court case has held that this provision does not apply to the sale of stock or limited liability interests when the entity is the permit holder or licensee. Depending on the permit program, there may be other regulatory criteria that apply depending on the line of business. Principals involved in some lines of business are subject to criminal background checks.

Connecticut Transfer Act: Is a trap for the unwary. The Act applies to the transfer of an "Establishment" (defined in the next section). A transfer of an Establishment, which can be the transfer of either real estate at which an Establishment operated or a business entity, may trigger an obligation to investigate the environmental status of the real estate involved in the transfer, the real estate upon which the Establishment operated if only an operating entity or business operation and not the real estate is transferred, the rendering of certain reports to DEP as to the environmental status of the real property, and the certification to the DEP by the transferor, transferee or some other party that the certifying party will remediate any contamination found. Remediation is required to meet the standards found in the Connecticut Remediation Standard Regulations.

- 3. What is the time necessary to obtain such approvals?**

Required forms are to be provided by the transferor to the transferee at closing on a sale that is subject to the Transfer Act. Initial filling of forms with the DEP under the Transfer Act are due within 10 days of transfer, and depending upon the type of form filled, require the payment of filing fees ranging up to an initial fee of \$3,000. Failure to comply with the Transfer Act or falsification of the forms can subject a party to strict liability for cleanup and removal costs, as well as civil penalties. If contamination is found, certification must be made to the DEP as to who will be responsible for the remediation. Remediation of the site will either be under supervision of the DEP or may be delegated by DEP to a "Licensed Environmental Professional" (an environmental professional with the appropriate license from the DEP in the employ of the responsible party). Similar regulation applies to closing business operations which are Establishments.

Several types of activities are Establishments under the Transfer Act, including: (i) real property at which, or business operations that, generated more than 100 kg of hazardous waste (except as a result of remediation activities) in any one month since November 19, 1980; (ii) hazardous waste generated in a different location was recycled, reclaimed, reused, stored, handled, treated, transported of all, transported or disposed of; (iii) the process of dry-cleaning was conducted after May 1, 1967; (iv) furniture stripping was conducted after May 1, 1967, or (v) a vehicle body repair facility was located on or after May 1, 1967.

The Transfer Act has a long list of exemptions for certain types of transactions. The Transfer Act was first adopted in 1985 and is amended seemingly annually.

4. What are the administrative enforcement or appeal processes available?

Administrative adjudication: The Adjudications Section of the DEP holds hearings in contested cases which involve permits issued by the various programs administered by the DEP or holds hearings on appeals of orders issued by the DEP. The Adjudications Section has very limited ability to impose civil penalties in a very narrow range of cases. It has the ability to enter orders requiring remediation or other environmental compliance. Violations of final orders are referred to the Office of the Attorney General for enforcement. Appeals of administrative orders are to the applicable Superior Court pursuant to the Uniform Administrative Procedure Act.

Enforcement: Typical civil enforcement of environmental violations start with the issuance of a Notice of Violation ("NOV") by the DEP in which the DEP describes the violations involved and directs the recipient to reply within 30 days, describing the steps taken by the recipient to correct the violation. A recipient responding to the NOV can expect to receive a draft consent order with proposed penalties from the DEP. If the recipient signs the consent order and pays a penalty the matter will be considered closed when all compliance steps are finished. If the recipient does not sign the consent order and pay the proposed penalty the matter will be referred to the Office of the Attorney General for the institution of a civil suit in the applicable Superior Court.

Private party litigation: Generally speaking, the remedies available for private party litigation under CT law for contamination, other than under the Transfer Act as described above, are inferior to the remedies available under CERCLA. However, the Connecticut Environmental Protection Act does provide that any person may seek declaratory and equitable relief against unreasonable pollution by any other person and may seek an order for the protection of the public trust in the air and other natural resources of the state from unreasonable pollution, impairment or destruction.

VI. Labor and Employment

1. Are there whistle blower or similar laws?

Connecticut prohibits employers from disciplining any employee who reports an employer's violation or suspected violation of any law or regulation to a public body, except where an employee makes a knowingly false report.

2. Are there State anti-discrimination laws that supplement or complement federal laws?

(a) Discrimination Generally. For employers with three or more employees, Connecticut prohibits employment discrimination on the basis of 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, genetic information, sexual orientation, civil union status or for smoking outside of the work place. (The last four protected categories go beyond federal discrimination laws.) Connecticut disability protections are generally more favorable to employees than the protections afforded under the Americans with Disabilities Act.

(b) Protections for Pregnant Employees. Connecticut also provides special protection to pregnant employees. Employers must (1) provide a reasonable, unpaid job-protected leave of absence for pregnancy-related disability (reasonable means as long as the disability lasts, with disability presumed for 8 weeks after a normal delivery), (2) make a reasonable effort to transfer any pregnant employee to a suitable temporary position, if available, if the employee provides the employer with written notice of her pregnancy, and the employee or the employer reasonably believes that continued employment in the employee's position may cause injury to the employee or to her fetus, and (3) inform employees that they must give written notice of the pregnancy to be eligible for transfer, and that they can appeal a transfer decision to the Connecticut Commission of Human Rights and Opportunities.

(c) Sexual Harassment. In the area of sexual harassment, Connecticut requires that employers with three or more employees post notices in the work place regarding the illegality of sexual harassment and the remedies available to victims, and that employers with 50 or more employees provide two hours of training about sexual harassment to all supervisory employees.

3. What are the basic laws regarding wages, vacation pay and sick pay?

(a) Minimum Wage and Overtime Requirements. Connecticut requires a minimum wage that is set higher than the Federal minimum wage (currently \$8.00 per hour, and on January 1, 2010, \$8.25 per hour), and overtime pay of 1-1/2 times base pay for hours worked over 40 in a week. Connecticut recognizes the "white collar" exemptions from over-time requirements for salaried executive, administrative and professional employees, with some differences from the Federal exemption requirements. Connecticut also recognizes exemptions for drivers or helpers regulated by the DOT, seamen, television or radio announcers, outside salesmen, certain inside salesmen paid on

commission, taxi drivers, route salesmen for milk or bakery products, agricultural employees, police or firemen, and some mechanics, among others. Connecticut does not recognize the computer employee exemption, or the highly compensated employee exemption permitted under Federal law.

Connecticut regulations permit employers to dock the pay of exempt employees in limited circumstances, closely paralleling those permitted under the Federal regulations.

(b) Paid Vacation, Holidays and Sick Days. Connecticut does not require that an employer provide vacation, holiday pay or paid sick days. If an employer provides paid time off, its policies regarding payment or nonpayment of accrued and unused days (particularly, vacation days) upon termination of employment should be clear and in writing.

(c) Certain Information Required to be Provided to Employees. A Connecticut employer must inform employees in writing at the time of hire of their pay rates, hours of work and wage payment schedules, and must make available in writing or with a posted notice the employer's policies regarding wages, vacation pay, sick leave, insurance benefits and similar matters.

(d) Wage Payment. Connecticut employers must pay wages weekly, on a regular pay day designated in advance by the employer, unless the employer has received authorization from the Department of Labor to pay on a less frequent basis. Payment by direct deposit is permitted, at the employee's option.

(e) Payment upon Termination. Upon a voluntary employment termination, the employer must pay all wages due no later than the next regular pay date. Upon an involuntary termination, all wages must be paid no later than the business day following the date of discharge.

(f) Penalties for Noncompliance with Wage Laws. Employers can be liable for statutory fines and penalties, as well as double damages and attorneys fees, for failing to comply with the Connecticut wage payment laws. Offices, agents and other persons authorized by an employer to pay wages who violate these laws are subject to statutory fines and imprisonment for each offense.

4. Is there a State family leave law?

Connecticut's family and medical leave act requires employers of 75 or more employees to provide eligible employees with 16 weeks of unpaid job-protected leave every 24 months for the birth, adoption or foster placement of a child, or for the serious health condition of the employee or the employee's child, spouse, civil union partner, parent, or parent-in-law. (The extension of leave rights to care for civil union partners and parents-in-law is an expansion of Federal FMLA.)

Eligible employees are those who have worked for the employer for at least 12 months, and who have worked 1,000 hours in the preceding 12 months (a lower threshold than for eligibility under Federal FMLA.)

Connecticut does not require that health insurance coverage be continued during a Connecticut FMLA leave.

An employee may use his or her accrued and unused sick days for any Connecticut FMLA leave required for the birth, adoption or foster placement of a child, or for the serious health condition of the employee's child, spouse, civil union partner, parent or parent-in-law.

5. What is the current law with respect to wrongful discharge?

Although Connecticut is generally an “at-will” state, the at-will employment relationship can be modified if there are oral or written promises, policies or practices that (a) establish a promise of continued employment, (b) require “cause” for termination or (c) require a particular internal procedure for termination.

A statement specifying the at-will relationship should be included in employee handbooks, offer letters and employment applications.

Regardless of the existence of an “at-will” employment relationship, employees cannot be terminated or disciplined (a) in retaliation for reporting a violation or suspected violation of law to a public body, or participating in a court action or an investigation by a public body, (b) in retaliation for exercising rights under federal or state law (for example, by requesting a reasonable accommodation for a disability, taking an FLMA leave, exercising rights under the workers’ compensation laws or filing a harassment or discrimination complaint with the CHRO), (c) for refusing to perform hazardous work or for exposing a hazardous condition to another employee, (d) for discriminatory reasons based on the person’s age, religion, sexual orientation or any other protected category or (e) for any other reason that violates the law or established public policy (for example, for refusing to break the law).

6. Are polygraphs, drug tests or other pre-employment screenings permitted?

(a) Polygraphs. Connecticut employers may not require polygraph tests of prospective or current employees.

(b) Drug Tests. Pre-employment drug tests are permitted, provided that applicants are notified of the requirement in writing at the time of application, and the tests are conducted in accordance with statutory requirements. (Drug tests of current employees is also highly restricted in Connecticut (see §10(e) below)).

(c) Criminal History. An employer who requests information about an employment applicant's criminal history must give the applicant written notice in clear and conspicuous language (1) that the applicant need not disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased, (2) of the types of records which are subject to erasure (these include records regarding a finding of delinquency, a determination that a child’s family had service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolle, a criminal charge for which a person has been found not guilty, or a conviction for which a person received an absolute pardon), and (3) that any person whose criminal records have been erased

shall be deemed to have never been arrested and may so swear under oath. Employers are also prohibited from denying employment or discriminating against an employee because of an arrest, criminal charge or conviction, the records of which have been erased.

Connecticut law also requires that access to the portion of an employment application which includes criminal history information be strictly limited to the personnel department or if there is none, to those involved in interviewing an applicant, with exceptions for certain permitted disclosures by broker-dealers, insured depository institutions and insurance producers.

7. What provisions are enforceable and unenforceable in non-competition agreements and restrictive covenants?

(a) Noncompetition Generally. Connecticut courts generally enforce noncompetition restrictions given in exchange for adequate consideration, provided that they are reasonable (in terms of scope, geography and time) to protect the employer's legitimate business interests, while not preventing an employee from pursuing an occupation. Nonsolicitation agreements are far more likely than noncompetition agreements to be deemed reasonable, and therefore enforced.

Connecticut statutes include restrictions on non-competition agreements with security guards, and they also provide certain protections to broadcast employees from restrictive covenants which prohibit employment in a geographic area after the term of an employment agreement ends, or which give the current employer matching rights for subsequent employment offers.

Connecticut courts are split on whether continued at-will employment is valid consideration for a noncompetition agreement.

Connecticut courts are willing to "blue pencil" a covenant to make it enforceable, at least if the parties have expressed that intent.

(b) Employee Duty of Loyalty. An employee in Connecticut has a duty of loyalty to his employer, and may not compete with the employer while still employed.

(c) Trade Secret Protection. Connecticut has adopted the Uniform Trade Secrets Act, C.G.S. §§35-50 *et seq.*, prohibiting the disclosure of confidential information during or after employment.

8. What are the State law requirements in the case of a plant closing or other mass layoff?

(a) Payment for Health Coverage. Employers of more than 100 employees who shut down operations (except pursuant to bankruptcy) or who move their operations outside of Connecticut must pay for the continuation of group health insurance for their employees for 120 days after the date of relocation or closing. The law provides that the federal COBRA and State "mini-COBRA" continuation periods commence after the expiration of this 120-day period. (This is subject to preemption arguments for a Connecticut

employer subject to federal COBRA, but it should be binding on an insurer providing benefits under a fully insured plan of a Connecticut employer.)

(b) Notice to Retirees. An employer with 25 or more employees which sells its business must provide 30 days' prior notice from the employer's chief executive to any retirees who are receiving life or health insurance benefits (with a copy to the Labor Commissioner), explaining what the status of these benefits will be after the sale.

(c) Notice of Cancellation of Health Coverage. An employer must give 15 days' prior written notice to an insured employee of the cancellation or discontinuance of group health insurance coverage.

9. For what employment related obligations can officers and directors be held liable?

Officers, agents and other persons authorized by an employer to pay wages are subject to statutory fines and imprisonment per offense for violations of the wage payment laws.

10. Other noteworthy Connecticut employment laws?

(a) Electronic Monitoring. Connecticut laws prohibit monitoring in areas designed for employee's health or personal comfort or for safeguarding employees' possessions, such as rest rooms, locker rooms or lounges. Connecticut also requires that employers who engage in electronic monitoring inform employees in advance of the types of monitoring which may occur, including posting a notice in a conspicuous place.

(b) Breastfeeding. Employees are expressly permitted to breast feed or express breast milk at the work place during meal or break periods. Employers must make a reasonable effort to provide a place close to the work area (other than a toilet stall) where an employee can express her breast milk in private.

(c) Personnel Files. Connecticut employers may disclose only very limited information from employee personnel files without employee consent. Employees may inspect their personnel files upon request no more than twice per year, may provide a statement explaining any disagreement with items in their personnel files and may have copies of their personnel files. Medical records should be kept separately and are subject to the same protections.

(d) Smoking in the Workplace. Employers with 5 or more employees must prohibit smoking in any business facility, except that the employer may provide designated smoking rooms (provided that there are sufficient nonsmoking break rooms). Employers with fewer than 5 employees in a facility must establish work areas in the business facility sufficient to accommodate nonsmokers. An employer may designate an entire business facility as nonsmoking. Some facilities are exempt from these requirements.

(e) Employee Drug Testing. Except for the drug testing of drivers of commercial motor vehicles in interstate commerce, which is regulated by Federal law, and certain drivers of commercial motor vehicles in intrastate commerce, mechanics, forklift drivers and those who transport school children, for which testing is required or permitted under

Connecticut law, Connecticut restricts both the circumstances under which an employer may require applicants or current employees to submit to urinalysis drug tests, and the methods used to conduct such tests. Generally, current employees may be subject to such tests only if the employer has a reasonable suspicion that an employee is under the influence which adversely affect or could adversely affect the employee's job performance, unless the employee's position has been specifically designated as safety-sensitive, or the drug test is part of a voluntary employee assistance program. Applicants may be tested if they are told in writing at the time of application that a drug test will be required. In addition, the results of urinalysis drug tests conducted by employers are considered part of an employee's medical file and are given the attendant privacy protections.

VII. Intellectual Property

1. What are the State laws applicable to trade secrets?

In Connecticut, commercial trade secrets, in addition to common law are protected by the Uniform Trade Secrets Act. C.G.S. §§ 35-50 *et seq.* Trade secrets include any non-public information from which a business derives economic value. Trade secrets may include technical or design data as well as confidential business or financial information whose secrecy is of value to the business.

The Uniform Trade Secrets Act prohibits the use or disclosure of any trade secret obtained through improper means. The Act allows for injunctive relief, the recovery of compensatory and punitive damages, and attorneys' fees in a civil action for misappropriation of trade secrets.

2. What are the State laws applicable to trade names?

See §3 below regarding the Connecticut law on trademarks.

Trade names must be registered with the town clerk of any town in which business is conducted using a trade name. See C.G.S. §35-1. Failure to comply is identified as being a violation of the Connecticut Unfair Trade Practices Act. Limited Liability Companies and Limited Partnerships are not required to register if they file their articles of organization with the Connecticut Secretary of State and conduct business under their legal names. Also, general partnerships need not register a partnership name that includes the true surname of at least one general partner.

3. Are there other State laws that apply to intellectual property?

Connecticut law allows for registration of trademarks with the Secretary of State. Also, plaintiffs may bring actions under both state statutory and common law for trademark dilution or infringement. Trademarks do not have to be registered in order for the owner to bring a lawsuit for trademark dilution. However, the defendant in a trademark case may not challenge the validity of a trademark that has been continuously registered for five years.

4. How do such laws interact with Federal laws relating to intellectual property?

Subject to applicable requirements, trademarks may be registered both with Connecticut's Secretary of State and the federal Patent and Trademark Office. Lawsuits for trademark infringement and dilution may be brought concurrently under Connecticut state law and the federal Lanham Act. In determining validity, trademarks registered with the federal Patent Office have priority over state-registered trademarks.

VIII. Dispute Resolution

1. Describe the court structure of your State.

Connecticut's judicial system has a trial court and two levels of appellate courts. The Probate Courts are not a branch of the state judicial system, but are municipal courts serving one or more towns.

- Probate Courts: These are throughout the state.
- Superior Court: This where most criminal and civil matters are initiated and tried. It is divided geographically into 13 judicial districts.
- Appellate Court: The intermediate appellate court.
- Supreme Court: The state's highest appellate court.

2. Please identify any specialized courts.

Specialized courts within the Superior Court:

- The full list of special sessions within the Superior Court are: Child Protection Session, Community Court in Hartford, Complex Litigation Docket, Domestic Violence Dockets, Housing Session, Regional Family Trial Docket, Small Claims Session, Tax Session.
- There is a Civil Division consisting of the following courts: Administrative Appeals; Civil Jury; Civil Non-Jury; Landlord-Tenant, including evictions (called summary process); Small Claims.
- There is a Criminal Division.
- There is a Family Division.
- Juvenile Matters is a special subdivision of Superior Court designed to protect the rights of children, family relationships and confidentiality.

Probate Courts: The Probate Courts are not a branch of the state judicial system, but are municipal courts serving one or more towns.

Tribal Courts: Within Connecticut, there are two Indian tribes that maintain Tribal Courts, the Mashantucket Pequots and the Mohegans.

3. Is there an automatic stay of judgment during the appeal period or must a stay be sought and granted?

There is an automatic stay of enforcement in civil appeals, with the exception of administrative appeals and certain types of domestic relations cases. The trial judge may, upon motion, terminate the stay if the purpose of the appeal is solely for delay or the administration of justice requires.

4. Are bonds or other forms of surety required a) for appeals or b) in connection with other actions?

No bond or other form of surety is required to file an appeal in state court. Plaintiffs seeking prejudgment attachments or liens may be required to post a bond to protect

defendants from adverse consequences. Also, court-appointed receivers are required to post a bond in order to carry out their duties. Otherwise, no bond or surety is required to commence a civil action or appeal.

Defendants who are subject to a prejudgment remedy have the option of substituting a bond for the lien or attachment. Bonds substituted for prejudgment liens are subject to approval by the court.

5. How are legal actions commenced?

“Civil actions shall be commenced by legal process consisting of a writ of summons or attachment, describing the parties, the court to which it is returnable, the return day, the date and place for the filing of an appearance and information required by the Office of the Chief Court Administrator. The writ shall be accompanied by the plaintiff’s complaint. The writ may run into any judicial district and shall be signed by a commissioner of the Superior Court or a judge or clerk of the court to which it is returnable.” C.G.S. § 52-45a; *see also* Connecticut Practice Book § 8-1 *et seq.*

6. Are there rights and remedies available to a plaintiff pre-judgment?

Yes. In Connecticut, a “prejudgment remedy” is defined as “any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment but shall not include a temporary restraining order.” C.G.S. § 52-278a. Though a temporary restraining order is not statutorily defined as a “prejudgment remedy,” a party may seek a temporary restraining order. A party may also seek a preliminary injunction.

7. Do the Federal Rules of Civil Procedure apply to state court actions?

No, Connecticut has its own rules of civil procedure as set out in the Connecticut Rules of Court, more commonly known as the Connecticut Practice Book.

8. What is the discovery process?

The discovery process in Connecticut is similar in state and federal courts. Parties to a lawsuit may serve each other with written interrogatories and requests for production of documents. In federal court, litigants are limited to twenty-five interrogatories, while in state court there is no limit. Parties may object to discovery requests on the grounds that, among other reasons, the requests are unreasonably burdensome and/or not reasonably calculated to lead to the discovery of admissible evidence.

Parties may take each other’s depositions and depose third-party witnesses by subpoena. Federal rules limit the number of depositions to ten, and limit the time for each deposition to one day. There are no comparable limits under state court rules.

In both state and federal court, parties are called on to set a schedule for completing discovery prior to trial. Scheduling orders are entered by the courts but may be modified

for good cause. Such orders include deadlines for written discovery, disclosure of expert witnesses and opinions, and depositions.

9. How are cases assigned, geographically and by judge?

If the parties reside in the state of Connecticut, civil cases may be filed in the judicial district where either the plaintiff resides or the defendant resides, with exceptions. *See* C.G.S. § 51-345(a)(3). If all the parties reside outside of Connecticut, civil cases may be filed in the judicial district where (A) the injury occurred, (B) the transaction occurred, or (C) the property is located or lawfully attached. Jurisdiction over out-of-state businesses is subject to United States constitutional limitations and is carried out with “contemporary views of fair play and substantial justice.”

Special rules apply to certain matters:

- Matters involving consumer transactions are to be brought in the judicial district where the consumer resides or where the transaction occurred.
- Cases involving land are generally required to be filed in the judicial district where the property is located.
- Landlord-tenant matters are to be brought to the court location where the property is located, although there are exceptions to this rule. (*See* C.G.S. § 51-348(b), and C.G.S. § 51-349 as amended by P.A. 97-40, §§ 15, 16 & 17 and C.G.S. § 47a-68.)
- Small claims matters shall be filed in the clerk’s office serving the small claims area designated by the chief court administrator where venue exists, as set forth in C.G.S. §§ 51-345, 51-346 and 51-347, with some exceptions.

In most instances, cases are not assigned to a judge until trial. In each court location the presiding judge, subject to the approval of the chief court administrator, shall assign to trial judges for trial those cases not resolved at pretrial in accordance with Connecticut Practice Book § 14-12. Upon request of a party and for good cause shown, the presiding judge may postpone a case or reassign it to another judge. A common exception is the Complex Litigation Docket where one judge is assigned to an action from in the beginning, handling the scheduling orders and all matters throughout trial.

10. What is the average length of time from commencement of an action to trial?

It varies, but usually at least one year.

11. What is the expected cost of litigation?

It varies.

12. What procedures exist to encourage pre-trial resolution, e.g. imposing costs on the losing party, offers of judgment, ADR, etc.?

Connecticut has both an offer of judgment system and alternative dispute resolution procedures.

Offer of Judgment: The offer of judgment statute is intended to encourage defendants to accept reasonable offers of judgment, and requires defendants who fail to accept such offers to pay penalty interest.

ADR: Concerning alternative dispute resolution, upon agreement of the parties, any civil or family matter is eligible to be referred to a private ADR program. The court uses designated attorneys with knowledge and expertise in specific areas to mediate and facilitate settlement conferences to move cases more quickly through the judicial system and reduce court caseloads.

Court-sponsored ADR programs available: Arbitration, Attorney Trial Referee , Attorney Trial Referee/Special Master for Administrative Appeals, Court Annexed Mediation, Early Intervention, Early Neutral Evaluation, Expedited Process Track, Fact-Finding, Housing Specialists-Housing Matters, Family Services Mediation, Special Masters-Family Matters, Summary Jury Trials.

Attorneys' Fees: Connecticut follows the "American Rule" for imposing costs on the losing party: absent a contractual agreement or a statute providing for the losing party to pay attorneys' fees, the parties pay their own legal costs.

13. Describe the foreclosure process: procedure, extent of court involvement, time, cost, defenses, ability to evict occupants, etc.

Connecticut's foreclosure procedure is described in C.G.S. §49 -1 *et seq.* There are two ways to foreclose real property, by auction sale and by "strict foreclosure." Typically, an auction sale is used when there may be equity in the property beyond the amount needed to pay taxes and all secured lenders; in other cases, the strict foreclosure process is used. In a strict foreclosure, the borrower and the secured parties are given the opportunity to pay the foreclosing mortgagee in full to preserve/acquire ownership of the property. If the foreclosing mortgagee is not fully paid, that mortgagee becomes the owner without an auction. A deficiency judgment can be awarded under either procedure, although the method for determining the amount of the deficiency varies. Unlike many states, there is no "non-judicial" foreclosure process in Connecticut.

Because of the many protections for residential borrowers, including court-mandated "foreclosure mediation," a simple, uncontested residential foreclosure may take 4 to 7 months to Judgment. Connecticut's pleading procedure allows significant delay, even when meritless defenses are raised. Although Connecticut law generally recognizes only defenses arising at the time the note and mortgage are entered into, significant delay can occur to dismiss meritless defenses. Contested residential foreclosures may take a year or more to Judgment.

Commercial foreclosures use the same process as residential foreclosures and are completed in a similar amount of time. It is common for contested commercial foreclosures to take more than a year to Judgment.

If a Judgment of foreclosure by sale is obtained, the sale is typically scheduled by the Court 8 to 11 weeks after entry of Judgment. The sale must be approved by the Court,

usually within 4 weeks after the sale. If a Judgment of strict foreclosure is obtained, the parties typically have 8 weeks after Judgment until the official deadline (“law days”) for payment to the foreclosing plaintiff.

If the tenants or occupants of the property are named as defendants and properly served, the Court will order their “ejectment” on the date title vests. If they were not named as defendants, then the owner must use Connecticut’s eviction process, which could take months to remove a resistant occupant.

Attorneys’ fees for a residential strict foreclosure can be approximately \$3,000, but contested and commercial matters, and foreclosures by sale, can cost substantially more.

14. What are the limitation periods for common causes of action, e.g. tort, intentional tort, contract?

The statute of limitations for a negligence claim for injury to one’s person or personal property is two years. *See* C.G.S. § 52-584.

The statute of limitations for a claim for breach of a written contract claim is six years. *See* C.G.S. § 52-576. The statute of limitations for a claim for breach of an oral contract is three years. *See* C.G.S. § 52-581.

The statute of limitations for a violation of the Connecticut Unfair Trade Practices Act (known as “CUTPA”) is three years. *See* C.G.S. § 42-110g. The Connecticut Attorney General's office takes the position that this statute of limitations applies only to private litigants and not to claims pursued by the state.

15. How broadly do your courts interpret jurisdiction?

Connecticut’s long-arm statute, C.G.S. § 52-59b, governs the statutory limits of personal jurisdiction. Under the long-arm statute, “a court may exercise personal jurisdiction over any nonresident individual, foreign partnership or foreign voluntary association, or over the executor or administrator of such nonresident individual, foreign partnership or foreign voluntary association, who in person or through an agent:

- (1) transacts any business within the state;
- (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act;
- (3) commits a tortious act outside the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if such person or agent:
 - (A) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
 - (B) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce;

- (4) owns, uses or possesses any real property situated within the state; or
- (5) uses a computer, as defined in subdivision (1) of subsection (a) of section 53-451, or a computer network, as defined in subdivision (3) of subsection (a) of said section, located within the state.”

16. Are punitive damages available? What are the standards and limitations?

Yes. The basic requirement to justify an award of punitive or exemplary damages is described in terms of wanton and malicious injury, evil motive and violence. Punitive damages may be awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others. Certain statutes also provide for punitive damages. See, e.g., the Connecticut Unfair Trade Practices Act, C.G.S. §§ 42-110a to 42-110q.

Connecticut does not have a well-defined public policy against the award of excessive punitive damages. See *Hadelman v. Deluca*, 274 Conn. 442 (2005).

17. Is there an “unfair trade practice” or similar law that permits damages to be multiplied?

The Connecticut Unfair Trade Practices Act (CUTPA), C.G.S. §§ 42-110a to 42-110q, regulates unfair trade practices. That statute does not speak specifically about damages being “multiplied.” However, punitive damages and attorneys’ fees and costs are recoverable in the court’s discretion.

18. What are the procedures for pro hac admission?

For pro hac vice admission to the United States District Court for the District of Connecticut, applicants must comply with Local Rule 83.1. See www.ctd.uscourts.gov/PDF%20Documents/local_rules_with_tableofcontents.pdf.

For pro hac vice admission to the Connecticut Superior Court, applicants must comply with Connecticut Practice Book § 2-16.

19. Is there a reputation or description that applies to your juries generally?

The reputation of Connecticut juries differs from district to district. However, the voir dire process of Connecticut state courts is unique in that it allows the parties’ attorneys to voir dire each potential juror individually, which can lead to a lengthy process.

IX. Creditors Rights

1. How are judgment liens created and enforced on real and personal property?

Connecticut's real property judgment lien procedure is described in C.G.S. §52-380a *et seq.* The judgment creditor or his attorney records the judgment lien on the land records in the municipality (cities and towns) where real property of the judgment debtor is located. Unlike other states, in Connecticut, the judgment lien applies only to the judgment debtor's property specifically identified in the judgment lien; it is not a lien on all property owned by the judgment debtor. Judgment liens must be served on judgment debtors, C.G.S. §52-351a. Judgment liens are foreclosed using the same procedure as a mortgage; priority is dictated by the date of recording of the judgment lien.

Connecticut's personal property judgment lien procedure is described in C.G.S. §52-355a. Personal property judgment liens, except judgments on consumer debts, may be filed against residents and non-residents, but such liens only apply to property located in Connecticut. The lien, on any nonexempt personal property, is filed with the Secretary of State, and expires after five years. The judgment lien must be served on judgment debtors, C.G.S. §52-351a.

2. What are the exemptions available to individuals?

Property exempt from execution in Connecticut is identified in C.G.S. §52-352b. Tools of the trade, wedding rings, "necessary" clothing and household furniture and appliances, and health aids are exempt. Other exemptions include payments from public assistance, health and disability insurance, social security, and unemployment compensation. The largest exemption is the \$75,000 homestead allowance for each individual. A bankrupt debtor may choose either Connecticut or federal exemptions.

3. How are foreign judgments enforced?

Connecticut has adopted the Uniform Enforcement of Foreign Judgments Act, codified at C.G.S. §52-604 *et seq.* The judgment creditor files a certified copy of the foreign judgment with an affidavit that the judgment was not obtained by an appearance default or confession of judgment, recites the amount unpaid, confirms that enforcement of the judgment has not been stayed (or in some cases, not on appeal), and provides information about the judgment debtor. Notice of the filing of a foreign judgment must be made to the judgment debtor.

4. What are personal exposures of members and managers of LLCs?

In a limited liability company that is not formed to render professional services, a member or manager is not liable solely by reason of his or her member or manager status for a debt, obligation, or liability of the company. The operating agreement can limit the personal liability of a member or manager for monetary damages for breach of a management duty, and may also provide indemnification for a member or manager for judgments, settlements, penalties, fines and expenses sustained in a proceeding to which

an individual is a party as a consequence of the individual's status as member or manager.

Meanwhile, a member of a limited liability company which is formed to render professional services is only personally liable if, while providing professional services as an agent of the company, the member personally, or another under his or her direct supervision and control, is negligent or commits a wrongful act or misconduct to the person for whom such services were rendered. . See C.G.S. §34-133.