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May 11, 2022

From: The Office of the City Attorney

To: All City Council Members / Officials
All City of Bridgeport Employees
All City of Bridgeport Contractors

Re: Legal Notice Regarding Political Activity of Municipal Employees

Honorable Council Persons / Officials, City of Bridgeport Employees and Contractors:

During this year’s State election cycle, the City of Bridgeport reminds its officers, employees and agents that Connecticut law protects the rights of municipal employees to participate in the political process, and specifically prohibits discrimination against, or the discipline or discharge of any city employee based on his or her status as a candidate for, member elect to, or holder of the office of representative or senator in the General Assembly. Connecticut General Statutes § 2-3a (“*Employer not to discriminate against candidate for, member-elect of or member of the General Assembly. Employee permitted choice of shifts*”) provides that:

(a) No employer of twenty-five or more persons shall discriminate against, discipline or discharge any employee because such employee (1) is a candidate for the office of representative or senator in the General Assembly, (2) holds such office, (3) is a member-elect to such office, or (4) loses time from work in order to perform duties as such representative, senator or member-elect, provided the failure of such employer to pay wages or salaries for any such time lost shall not be considered a violation of this section. Such employee shall solely determine the activities which constitute duties as such representative, senator or member-elect, as applicable, as provided in this section. No employee under this section shall lose any seniority status which may have accrued to him. Where the function of such employee is performed in work shifts, such employee shall be given a choice of shifts, provided such choice of shifts shall be given at a time that reasonably allows adjustment of the schedules of the employee and employer to accommodate both

the duties of such employee as a representative, senator or member-elect and the proper functioning of the employer's operations, taking into account the timeframes within which meetings and hearings of the General Assembly are scheduled. During any regular legislative session, the employee shall not be required to choose a shift more than two weeks in advance of the time such shift is to be worked and, during any special legislative session, the employee shall not be required to choose a shift more than one week in advance of the time such shift is to be worked.

(b) Any employer violating the provisions of this section shall reinstate any employee so discriminated against, disciplined or discharged to his full status as an employee as of the date of such violation and shall pay him any wages withheld or diminished retroactive to the date of such violation. In addition, such employee may recover costs and a reasonable attorney's fee in any action brought under this section. Any employee nominated to such office shall, within thirty days following his nomination, give written notice thereof to his employer.

The City of Bridgeport is committed to effective enforcement of C.G.S. § 2-3a. Violation of the law will not be tolerated. City of Bridgeport employees, officers and agents who violate the provisions of the statute expose themselves to disciplinary action, penalties for ethics violations and personal financial liability for civil violations.

The political activities of classified municipal employees are further protected by C.G.S. § 7-421. That statute addresses the "political activities of classified municipal employees [and the] candidacy of municipal employees for elective office." It provides in relevant part:

(a) No person employed in the classified civil service may (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; or (2) directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.

(b) A person employed in said classified service retains the right to vote as he chooses and to express his opinions on political subjects and candidates and shall be free to participate actively in political management and campaigns. Such activity may include, but shall not be limited to, membership and holding of office in a political party, organization or club, campaigning for a candidate in a partisan election by making speeches, writing on behalf of the candidate or soliciting votes in support of or in opposition to a candidate and making contributions of time and money to political parties, committees or other agencies engaged in political action, except that no classified employee shall engage in such activity while on duty or within any period of time during which such employee is expected to perform services for which he receives compensation from the municipality, and no such employee shall utilize municipal funds, supplies, vehicles or facilities to secure support for or oppose any candidate, party, or issue in a political partisan election. Notwithstanding the provisions of this subsection, any municipal employee may be

a candidate for a federal, state or municipal elective office in a political partisan election and no municipality or any officer or employer thereof shall take or threaten to take any personnel action against any such employee due to such candidacy. No person seeking or holding state or municipal office in accordance with the provisions of this subsection shall engage in political activity or in the performance of the duties of such office while on municipal duty or within any period of time during which such person is expected to perform services for which such person receives compensation from the municipality.

See, C.G.S. § 7-421 (“Political activities of classified municipal employees. Candidacy of municipal employees for elective office. Leaves of absence. Service on governmental bodies of the town in which the employee resides.”)(emphasis added).

To avoid any “inconsistent statutory or charter provisions,” Connecticut General Statutes § 7-421a provides that: “notwithstanding any general statute, special act or local law, ordinance or charter to the contrary, the provisions of section 7-421 shall apply to all municipal employees in the classified service.” *See, C.G.S. § 7-421a.* Connecticut law then goes further to expressly extend the rights afforded by C.G.S. § 7-421 to those employed by municipalities which have yet to adopt a merit system. Connecticut General Statutes § 7-421b provides that: “[n]otwithstanding any general statute, special act or local law, ordinance or charter to the contrary, any municipality which has not adopted a merit system shall not impose restrictions on the political rights of its employees other than those provided in section 7-421.” *See, C.G.S. § 7-421b.*

The foregoing statutes protect the rights of municipal employees to seek and hold public office, openly express their political views and participate in the political process free of interference or political retribution. A municipal officer or employee acts at his or her own peril in violating the political rights extended to municipal employees.

Municipal officers and employees possess no legal immunity or right to indemnification for wilful¹ acts of misconduct. *See, C.G.S. §52-557n; §7-101a; 7-465.* In the context of Connecticut’s municipal defense and indemnification statutes, a “willful act” is the same as a wanton or reckless act. *Dubay v Irish, 207 Conn. 518, 533 (1988)*(“while we have attempted to draw definitional distinctions between the terms wilful, wanton or reckless, in practice three terms have been treated as meaning the same thing.”); *see also, City of Hartford v. Edwards, 946 F.3d 631, 637, n.5, (2020).*

“Under Connecticut law, to hold a municipal employer liable for damages awarded in a claim against a municipal employee, the plaintiff must affirmatively plead and eventually prove that [his or her] injuries were not the result of the employee’s wilful or wanton act.” *City of Hartford v. Edwards, 946 F.3d 631, 634 (2020).* “Connecticut law cabins a municipality’s liability to injuries and damages caused by municipal employees (1) in the performance of their duties, (2) within the scope of their employment, (3) that do not arise from wilful or wanton acts.” *Id.* The City of Bridgeport zealously pursues wilful and wanton act exceptions to municipal liability.

¹ This is the spelling contained in the Connecticut General Statutes. The Connecticut General Statutes do not use the common spelling “willfull.”

Connecticut law affirmatively protects municipalities against liability for the wilful misconduct of their officers and employees. Connecticut General Statutes §52-557n provides the City of Bridgeport immunity from liability for the “acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or wilful misconduct.” In other words, the City of Bridgeport is immune from liability for such acts or omissions, and it is not required to indemnify an employee, officer or agent found liable for committing such acts or omissions.

Connecticut General Statutes §7-101a further protects municipalities from “[m]alicious, wanton or wilful acts or conduct, and or ultra vires acts or conduct” outside the scope of authority or employment of a municipal officer or employee. The statute provides in part:

(a) Each municipality shall protect and save harmless any municipal officer . . . or municipal employee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence, or for alleged infringement of any person's civil rights, on the part of such officer or such employee while acting in the discharge of his duties.

(b) In addition to the protection provided under subsection (a) of this section, each municipality shall protect and save harmless any such municipal officer or municipal employee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand or suit instituted against such officer or employee by reason of alleged malicious, wanton or wilful act or ultra vires act, on the part of such officer or employee while acting in the discharge of his duties. *In the event such officer or employee has a judgment entered against him for a malicious, wanton or wilful act in a court of law, such municipality shall be reimbursed by such officer or employee for expenses it incurred in providing such defense and shall not be held liable to such officer and employee for any financial loss or expense resulting from such act.* (Italics added for emphasis).

At bottom, pursuant to C.G.S §7-101a, the City of Bridgeport is required to provide a legal defense to municipal officers and employees in connection with claims alleging malicious, wanton, wilful or ultra vires acts, *but* the officer or employee becomes personally liable for the costs of that defense and any financial judgment resulting from his or her malicious, wanton or wilful acts. Connecticut General Statutes §7-465 (“*Assumption of liability for damage caused by employee of municipality ...*”) also excepts “wilful or wanton” acts from a municipality’s assumption of liability for damage caused by its employees.

Construed as a whole, Connecticut law provides no safe harbor for municipal officials, employees or agents who wilfully interfere with a municipal employee’s political rights, or wilfully discriminate against, discipline or discharge a municipal employee based on his or her status as a candidate for, member elect to, or holder of the office of representative or senator in the General Assembly.

All officers, employees and agents of the City of Bridgeport are cautioned to heed the admonitions contained in this opinion.

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