

Connecticut's Family and Medical Leave Act

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Issue

This report describes the state's Family and Medical Leave Act ([CGS §§ 31-51kk](#) through [31-51qq](#)). It updates OLR Report [2015-R-0308](#) to reflect changes implemented by [PA 19-25](#) and [PA 21-2](#), June Special Session, §§ 277-281.

Summary

Connecticut's Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 weeks of job-protected leave from work for certain family- and health-related reasons, such as the birth of a child or to tend to a close relative's serious health condition. Employers are not required to pay employees on FMLA leave, but employees may qualify for partial wage replacement benefits through the state's [Paid Family and Medical Leave Program](#), which is funded by employee contributions.

Among other things, the FMLA specifies (1) what work requirements employees must meet to qualify for leave, (2) the reasons for which an employee may take leave, (3) employee notice requirements, and (4) the circumstances under which an employer can require an employee to provide certification from a health care provider. It also prohibits employers from taking certain retaliatory actions against employees who take the leave or cooperate with investigations into an employer's alleged FMLA violations. Employees aggrieved by an FMLA violation can complain to the state Department of Labor (DOL) or bring a lawsuit against their employer.

Other state laws, which are beyond the scope of this report, provide family and medical leave for certain municipal employees ([CGS § 31-51rr](#)), and family violence victims ([CGS § 31-51ss](#)).

THE CONNECTICUT FAMILY AND MEDICAL LEAVE ACT

Covered Employers and Eligible Employees

Connecticut's FMLA requires employers with at least one employee in the state to allow eligible employees to take up to 12 weeks of unpaid leave from work during a 12-month period, plus an additional two weeks for a serious health condition resulting in incapacitation that occurs during a pregnancy. Covered employers do not include municipalities, local or regional boards of education, or private or parochial elementary or secondary schools. (Most municipal employees receive the leave under the federal FMLA, although certain municipal employees may qualify for leave under a different state law.)

To be eligible for the leave, a covered employer's employee must have worked for the employer for at least three months immediately preceding the request for leave.

Leave Entitlement

Eligible Reasons. Under the law, eligible employees can take FMLA leave (1) for the birth, adoption, or foster care of their child; (2) for their own serious health condition; (3) to serve as an organ or bone marrow donor; or (4) because of a "qualifying exigency" when their spouse, son, daughter, or parent is on active duty in the armed forces or has been notified of an impending call or order to active duty.

The employee may also use the leave to care for certain family members with a serious health condition. These family members include their spouse, children (regardless of age), parents, parents-in-law, siblings, grandparents, and grandchildren. They also include anyone related by blood or affinity who has a close association with the employee that the employee shows to be the equivalent of a spouse, sibling, son, daughter, grandparent, grandchild, or parent.

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

Leave Duration. Employers can set the 12-month period during which an employee can take up to 12-weeks of leave as (1) consecutive calendar years, (2) any fixed 12-month period, (3) a 12-month period measured forward from an employee's first day of leave, or (4) a rolling 12-month period measured backward from an employee's first day of leave. If two spouses are employed by the same employer, the employer may limit their aggregate number of workweeks of leave to 12 if the leave is taken: (1) for the birth, adoption, or foster care of their child or (2) to care for a sick family member.

Unless the employee is taking leave for the birth, adoption, or foster care of their child, he or she can take the leave intermittently or on a reduced leave schedule. If the leave is foreseeable based on a planned medical treatment, the employer may require the employee to temporarily transfer to an alternative position with equivalent pay and benefits that better accommodates the employee's recurring leave periods.

Injured Armed Forces Leave

The law also allows eligible employees to take a one-time benefit of 26 workweeks of unpaid leave during a 12-month period if the employee has a spouse, child, parent, or next of kin who is a member of the armed forces undergoing medical treatment, recuperation, or therapy, or on the temporary disability retired list for a serious injury or illness incurred in the line of duty. The injured armed forces member may designate someone as their next of kin if the designee's close association is the equivalent of a family member.

Employer-Provided Paid Leave

Employers can require employees to use their accrued paid vacation, personal, or sick time while they are out on FMLA leave, if the employer offers these benefits. However, an employer must also allow an employee to keep at least two weeks of their accrued paid leave. If the employer does not require it, employees can choose whether to use their accrued paid time off. An employer may provide paid FMLA leave, but is not required to do so in any situation in which it would not normally provide the benefit. Any portions of the leave that are not covered by employer-provided paid leave may be covered by the state's Paid Family and Medical Leave [Program](#).

Employee Notice

Employees taking leave must notify their employer at least 30 days beforehand or, if the leave must begin sooner than 30 days, as soon as practicable. If the employee is taking leave for a health condition that is foreseeable based on planned medical treatment, the employee must also try to schedule the leave to avoid disrupting work operations, subject to the treating health care provider's approval.

Certifications

Employers may require employees requesting leave related to serious health conditions or injured armed forces leave to provide a certification from a health care provider. Depending on the reason for the leave, the law deems a certification sufficient if it states the following (as applicable):

1. when the serious health condition began;
2. the condition's probable duration;

3. the appropriate medical facts about the condition;
4. that the employee is needed to care for a family member and an estimate of how long the employee must do so (for leave to care for a family member);
5. that the employee is unable to perform the functions of his or her position (for leave for the employee's own health condition);
6. the expected treatment dates and duration (for intermittent leave or leave on a reduced leave schedule for planned medical treatment);
7. the medical necessity of the leave and its expected duration (for intermittent leave or leave on a reduced leave schedule for the employee's own health condition); and
8. that the leave is necessary for the care of a family member who has a serious health condition, or will assist in their recovery, and the leave's expected duration and schedule (for intermittent leave or leave on a reduced leave schedule to care for a family member).

For injured armed forces leave on an intermittent or reduced schedule, the certification must also state (1) that the leave is necessary for the care of the employee's spouse, son, daughter, parent, or next of kin who is a current member of the armed forces undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty, and (2) the leave's expected duration and schedule.

Second Opinions and Recertifications. Employers who doubt a certification's validity can require, at their own expense, an employee to obtain a second opinion from a health care provider designated or approved by the employer. However, this provider cannot be one employed by the employer on a regular basis. If the second opinion differs from the original certification, the employer may require a third opinion, at its own expense, from a third health care provider designated or approved jointly by the employer and the employee. This third opinion is final and binding on the employer and employee.

Employers may also require employees to obtain subsequent recertifications on a reasonable basis, which may be determined under a collective bargaining agreement, but which cannot be more than once per a 30-day period. The employer must pay for recertifications that are not covered by the employee's health insurance.

Confidentiality

With certain exceptions, employers must keep records and documents related to their employees' medical histories and medical certifications as confidential medical records under the state's Personnel Files Act. The law allows exceptions for:

1. supervisors and managers to know about an employee's necessary work restrictions or accommodations;
2. first aid and safety personnel to know, when appropriate, if an employee's physical or medical condition might require emergency treatment; and
3. government officials, upon request, investigating an employer's compliance with certain laws.

Legal Protections

The law protects the employment rights and benefits of an employee who takes FMLA leave. Employees who return from leave must be restored to the position they held when they went on leave. If their original position is unavailable, they must be restored to an equivalent position with equal pay, benefits, and other employment terms and conditions. If they return but are medically unable to perform their original job, they must be transferred to work suitable to their condition, if it is available. Employees who take the leave cannot lose any employment benefits they accrued before taking the leave; however, they are not entitled to accrue seniority or other benefits while on leave.

The law also prohibits employers from:

1. interfering with, restraining, or denying employees from exercising their FMLA rights;
2. discharging or discriminating against someone who exercised their FMLA rights, filed a claim alleging an FMLA violation, or provided information or testimony in an FMLA investigation or proceeding;
3. denying an employee the right to use up to two weeks of accrued paid sick leave, if provided by the employer, for a child's birth or adoption, or to attend to a family member's serious health condition; and
4. discharging, threatening to discharge, demoting, suspending, or discriminating against an employee for using or trying to use up to two weeks of accrued paid sick leave, if provided by the employer, for a child's birth or adoption, or to attend to a family member's serious health condition.

Enforcement

Employees who are aggrieved by a violation can (1) file a complaint with the labor commissioner within 180 days after the action that prompted the complaint, unless there is good cause for a late filing, or (2) bring a civil action against an employer within 180 days after the alleged violation without first filing an administrative complaint.

In an administrative complaint, the DOL commissioner or her designee must investigate and make a finding about jurisdiction and whether a violation occurred.

If the commissioner or designee finds that DOL has no jurisdiction or no violation occurred, they must dismiss the complaint and issue a release of jurisdiction that allows the complainant to bring a civil action in Superior Court. The complainant must initiate the lawsuit within 90 days after the finding's release date. In the suit, the employee may be awarded all appropriate relief, including rehiring or reinstatement to their job and any compensation or benefits for which he or she would have otherwise been eligible.

But if the commissioner or designee finds that DOL has jurisdiction and a violation occurred, they may require a mandatory settlement conference with the parties. If there is no settlement, they must designate a hearing officer to hold a hearing and render a final decision. The officer may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, back wages, and reestablishment of benefits for which the employee would have been eligible if the violation had not occurred. Any party aggrieved by the hearing officer's decision can appeal to the Superior Court.

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