

UNDERSTANDING FAMILY AND MEDICAL LEAVE

(A Primer for Connecticut State Employees)

The Department of Administrative Services has prepared this brochure to help State of Connecticut employees understand the federal and state laws governing family and medical leave. Questions regarding your individual situation should be directed to your agency's Human Resource Department.



Introduction

Legislation passed at both federal and state levels provides eligible employees with job-protected leave for certain family and medical reasons. The federal Family and Medical Leave Act (FMLA) was enacted by Congress in 1993. Connecticut's statute governing family and medical leaves for public sector employees (C.G.S. 5-248a) was enacted in 1988.

Eligibility

To be eligible for *federal* FMLA, you must have at least 12 months of total service and have worked at least 1,250 hours in the 12 months immediately preceding the beginning of your leave. ("Hours worked" does not include time spent on paid leave – sick, vacation, PL, administrative – or unpaid leave. Overtime hours do count towards the 1,250-hour requirement.)

To qualify for *state* family/medical leave, you must have permanent status with the state as defined in C.G.S. 5-196(20).

You may be eligible for:

- Federal FMLA only,
- State family/medical leave only, or
- Both federal FMLA and state family/medical leave.

If you are eligible under only one law you will receive benefits in accordance with that law only. If the leave qualifies for both federal FMLA leave and state family/medical leave, the leave may count against your entitlement under both laws and run concurrently. Federal FMLA (though not state family/medical leave) may run concurrently with a Workers' Compensation absence.

If both you and your spouse work for the State of Connecticut and are eligible for federal FMLA leave, you may be limited to a combined total of 12 weeks of leave during any 12-month period, depending on the reason for leave. There is no spousal limitation under state family/medical leave.

Reasons for Leave

The reasons for leave are:

- The birth of your child or adoption of a child by you (*both state and federal*);
- The placement of a foster child with you (*federal only*);
- The “serious illness (*state*) or “serious health condition” (*federal*) of your child, spouse or parent; or
- Your own “serious illness” (*state*) or “serious health condition” (*federal*).

Serious Health Condition

“Serious health condition” is very specifically defined under federal FMLA. Following is a brief description of the covered categories:

- Inpatient care (i.e., overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to inpatient care.
- Absence plus treatment - a period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves (a) treatment two or more times by a health care provider or (b) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Pregnancy—includes prenatal care.
- Chronic conditions requiring treatments (**Ex:** *Asthma, diabetes, epilepsy*)
- Permanent long-term conditions (**Ex:** *Alzheimer’s, a severe stroke, terminal states of a disease*)
- Multiple treatments (non-chronic conditions) (**Ex:** *cancer, kidney disease*)

Amount of Leave

Under federal FMLA, eligible employees are entitled to 12 weeks of paid or unpaid leave in a twelve-month period. Under state family/medical leave, eligible employees are entitled to a maximum of twenty-four (24) weeks of unpaid leave within a two-year period. The leave period will be measured forward from the date you are first absent for a family/medical reason. Where possible, leave time granted under the state's family/medical leave law will run concurrently with the federal FMLA entitlement.

Under federal FMLA, if necessary, you may take leave intermittently if the reason is for a serious health condition - either your own or that of your spouse, parent or child. There is no intermittent leave following the birth of a child, although agencies may invoke the provisions of General Letter 217-A at their discretion.

Under state family/medical leave there is no provision for intermittent leave.

Advance Notice and Medical Documentation Requirements

You are required to submit a medical certificate to substantiate leave taken for a serious health condition/serious illness. You must use the following forms:

- **Form P-33A-Employee** – when the leave is for your own illness, including the disability portion of maternity leave;
- **Form P-33B-Caregiver** – when you request leave to care for a child, spouse or parent with a serious health condition/serious illness.

In the case of adoption, you must provide a letter from the adoption agency establishing the date of the adoption. You are allowed to submit this ahead of time – i.e., once you have been notified of the impending adoption – to be effective on the date of adoption.

When leave is foreseeable (e.g., an anticipated birth, adoption or surgery), you must submit the medical certificate form at least 30 days in advance, using approximate dates if definite ones are not yet available. When there is no forewarning (e.g., major unexpected illness), you should submit the medical form as soon as you become aware that you are to be absent for an FMLA qualifying reason. Failure to provide the needed documentation may result in a disapproval of the leave or a delay in its commencement.

If the validity of the medical certification is in doubt, your agency can require a *second* opinion with a health care provider of its choice at its own expense. If the two opinions conflict, the agency may pay for a *third* opinion. The third opinion will be final and binding.

If you request leave under state family/medical leave you are required to sign a statement confirming your intent to return to work immediately following the leave. During your leave, you may be required to furnish your agency with periodic reports of your status. Failure to return to work at the end of the leave period may be treated as a resignation unless an extension has been agreed upon and approved in writing by the agency.

Paid vs. Unpaid

Generally, federal FMLA leave is unpaid. However under certain circumstances, federal law permits an eligible employee to choose to substitute paid leave to cover some or all of the FMLA leave. Your HR representative can review this with you.

Unless a labor contract specifies otherwise, if you are requesting leave for your own serious illness you will be required to exhaust all your accrued sick time before going on unpaid time. In this case, the leave will be counted towards federal FMLA only. Once you have exhausted accrued sick time, the leave will be counted toward your 24-week entitlement under state law (if you are eligible). If there is time left under federal FMLA, the leaves will run concurrently.

If you need leave for maternity reasons, you must use your accrued sick time for the disability portion of your leave. Once you have been cleared to return to work, you may continue on family leave but you may no longer use accrued sick time.

You may also request that vacation and personal leave be applied toward your family/medical leave. If employees do not apply their vacation and personal leave time prior to going out on unpaid family/medical leave, they cannot be guaranteed that such a request will be approved later. That decision would be at the agency's discretion.

Donated sick time or benefits under a Sick Leave Bank will be counted toward leave entitlement under both federal and state family/medical leave laws.

Benefit Continuation

During periods of paid and/or unpaid family/medical leave, you will continue to receive the same benefits as if you were actually working. The State of Connecticut continues to pay the same portion of your individual and/or dependent insurance coverage as it did previous to the leave; however, if you are on unpaid leave you will be billed directly for the same portion of the cost that was previously withheld from your paycheck for that purpose. If you have dependent health coverage but wish to change to individual health coverage, you need to contact your Payroll Unit immediately for forms to cancel dependent coverage. If you have state-sponsored group life insurance, you will be billed directly for the same amount you contributed prior to the leave.

In the case of any other deductions being made from your paycheck (e.g. disability insurance, life insurance, deferred compensation, credit union loans), you must deal directly with the appropriate vendor to discuss payment options.

The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of your leave. Upon return from the leave, service time accrued up to the beginning of the leave is restored for longevity and seniority purposes; some bargaining unit contracts even provide for service credit for the time spent on leave. Consult your union contract for further information.

If you do not return to work immediately following the leave for reasons other than a health condition or another good reason beyond your control, the agency may charge you retroactively for its portion of the cost of the health insurance during the unpaid leave.

Return to Work

At the conclusion of family/medical leave, employees are entitled with limited exceptions to return to the same position or an equivalent position with equivalent pay, benefits and working conditions. In the vast majority of cases, employees will be returned to the position they occupied prior to the leave. If this is not possible, the agency will notify them of their new position prior to their return from leave.

If your case involves your own serious health condition, the agency will require you to produce a fitness-for-duty report on which the physician has certified that you are able to return to work. This requirement protects you, your co-workers and the public from the negative consequences that can result when an individual returns to work before being medically ready to do so. Therefore, if you are notified of the need for a fitness-for-duty certification, you will not be allowed to return to work without it.

Application Procedure

If you wish to apply for family/medical leave you must complete **Form HR-1**, "Employee Request for Leave of Absence under the federal FLMA and/or state C.G.S. 5-248a" or provide the information on this form in whatever form your agency has designated. These forms are available from the agency Human Resources Unit and from the DAS website. The form is to be submitted through the department/unit manager to your Human Resources Unit, or directly to your Human Resources Unit, along with required documentation listed under "**Advance Notice and Medical Documentation Requirements**" above.

Failure to provide the needed documentation may result in a disapproval of the leave or a delay in its commencement. Upon receipt, your Human Resources Unit will review the request and complete **Form HR-2**, "Agency Response to Employee Request for Leave of Absence under the federal

Unlawful Acts

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations regarding the federal FMLA. Complaints regarding state family/medical leave may be directed to your Human Resources professional or your union.

More Information

If you have additional questions please contact your Human Resource professional.