

Employee Benefit ■ Plan Review

Paid Family and Medical Leave Is Coming to Connecticut

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Public Act No. 19-25,¹ entitled “An Act Concerning Paid Family and Medical Leave” (“Act”), which Connecticut Governor Ned Lamont has signed into law, makes a number of significant changes to Connecticut’s existing Family and Medical Leave Act (“FMLA”). The Act provides Connecticut employees with one of the most generous paid leave programs in the country.

WHO WILL BE COVERED?

Currently, Connecticut’s FMLA applies to employers with 75 or more employees (while the federal FMLA applies to employers with 50 or more employees within a 75-mile radius). Pursuant to the Act, commencing on January 1, 2022, the Connecticut FMLA will apply to all private-sector employers with at least one employee.

Under the current version of Connecticut’s FMLA, an “eligible employee” is defined as an employee who has worked for the employer for at least 12 months and 1,000 hours. Under the Act, an “eligible employee” is defined as an individual who is presently employed and who has been employed in the previous three months. For purposes of the paid FMLA portion of the Act, a “covered employee” means an individual who earned not less than \$2,325 during the employee’s highest earning quarter

within the “base period” (defined as the first four of the five most recently completed quarters), who is presently employed and has been employed by an employer in the previous 12 weeks.²

Connecticut’s current FMLA provides employees with 16 weeks of leave over a two-year period, although the leave is unpaid. Under the Act, covered employees may receive paid leave of up to 12 weeks over a 12-month period, plus an additional two weeks of paid leave due to a serious health condition that results in incapacitation during pregnancy.

Thus, on January 1, 2022, the then-current Connecticut FMLA will be more closely aligned with the federal FMLA in that it will allow for 12 weeks of leave over a 12-month period. Under the Act, Connecticut FMLA leave will be paid, as discussed below.

WHY CAN AN EMPLOYEE TAKE PAID LEAVE?

An employee will be able to take paid leave for one or more of the following reasons:

- 1) The birth of a son or daughter of the employee;
- 2) The placement of a son or daughter with the employee for adoption or foster care;

- 3) To care for a family member of the employee, if such family member has a serious health condition;
- 4) Because of the serious health condition of the employee;
- 5) To serve as an organ or bone marrow donor; or
- 6) Because of any qualifying exigency, as determined in regulations adopted by the U.S. Secretary of Labor, arising out of the fact that the spouse, son or daughter, or parent of an employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces.³

While these reasons already exist under Connecticut's current FMLA, the Act expands upon the existing law in several ways. For instance, under the Act, "family members" for whom an employee can take FMLA leave to care for if they have a serious health condition include the employee's siblings, grandparents, grandchildren, and "an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships."

Furthermore, the definition of "parent" will include a parent-in-law as well as "an individual who stood in loco parentis to the eligible employee when the employee was a child." The definition of "son or daughter" will include an individual to whom the employee stood in loco parentis when the individual was a child and will remove the age limitations for a son or daughter.

HOW MUCH PAY WILL AN EMPLOYEE ON LEAVE RECEIVE?

Leave under Connecticut's current FMLA does not have to be paid. Under the Act, employees who qualify for leave can receive a maximum of \$900 per week for up to 12 weeks.⁴

WHO WILL PAY FOR THE LEAVE?

Paid leave under the Act will be funded by employee contributions through a payroll tax, which will go into effect on January 1, 2021, but no later than February 1, 2021. The Act creates the Paid Family and Medical Leave Authority ("Authority"), which will determine the employee contribution each year; such contribution cannot exceed one-half of one percent of employee earnings. The Act will also cap the amount of employee's earnings that are subject to contributions at the same amount of earnings subject to Social Security taxes (currently \$132,900). If employee contributions are at the maximum rate allowed and the Authority determines that they are not sufficient to ensure the program's solvency, the Act requires the Authority to reduce the benefit by the minimum amount needed to ensure the program's solvency.

CAN AN EMPLOYER OPT OUT OF THE REQUIREMENTS OF THE ACT?

The Act allows employers to apply to the Authority for approval to alternatively furnish benefits through a private plan that provides their employees with at least the same level of benefits, under the same conditions and employee costs, as the Act. Private plans must meet certain requirements for approval, and employees covered by an employer's private plan do not have to contribute to the state's program through the payroll tax.

CAN AN EMPLOYEE BE REQUIRED TO USE PAID LEAVE CONCURRENTLY?

Connecticut's current FMLA allows an employer to require employees to use their accrued employer-provided paid vacation, personal, family, medical or sick leave when they are on FMLA

leave. The Act limits the extent to which employers may impose this by requiring that employers allow employees to retain at least two weeks of their employer-provided paid leave.

WHAT ARE THE EMPLOYER'S REQUIREMENTS TO PROVIDE NOTICE TO EMPLOYEES REGARDING THE CONNECTICUT FMLA?

Effective July 1, 2022, the Act requires that employers provide written notice to each employee, at the time of hiring and annually thereafter:

- 1) Of the employees' entitlement to FMLA leave;
- 2) Of the opportunity to file a claim for compensation under the program;
- 3) That retaliation by the employer against the employee for requesting, applying for, or using FMLA for which the employee is eligible is prohibited; and
- 4) That the employee has a right to file a complaint with the Connecticut Department of Labor for any violation.

IS THERE A PRIVATE RIGHT OF ACTION?

The Act does not provide for a private right of action. Instead, employees can file a complaint with the Connecticut Department of Labor, which will investigate the complaint. If the Department of Labor finds that an employer violated an employee's right under the Act, the employee can be entitled to reinstatement, lost wages, and other benefits.

WHEN IS THE ACT EFFECTIVE?

The establishment of the Authority became effective from the Act's passage (on June 25, 2019). For the most part, the revisions to the Connecticut

FMLA, however, are not effective until January 1, 2022. The notice provisions of the Act become effective on July 1, 2022. The Act requires the Connecticut Department of Labor to adopt regulations regarding paid FMLA by the effective date of the Act, January 1, 2022. Sometime next year, employers should take action in anticipation of the effective date. 🌟

NOTES

1. <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>.
2. An employee who has not earned \$2,325 during the employee's highest earning quarter within the base period but has been employed for at least three months immediately preceding

his or her request for leave will be eligible to take 12 weeks of unpaid leave. Furthermore, a self-employed individual or sole proprietor and Connecticut resident who has enrolled in the program pursuant to the terms of the Act will also be considered a covered employee.

3. A covered employee who is the spouse, son or daughter, parent, or next of kin of a current member of the armed forces who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty is also entitled to a one-time benefit of 26 weeks of leave during a 12-month period.
4. The weekly compensation will be calculated as 95 percent of the covered employee's base weekly earnings up to an amount equal to 40 times the minimum wage and 60 percent of that covered employee's base weekly earnings above an amount equal to 40 times the minimum wage, except that the total weekly compensation cannot exceed an amount equal to 60 times the minimum wage. Connecticut also passed legislation

to increase the minimum wage to \$11.00 on October 1, 2019; \$12.00 on September 1, 2020; \$13.00 on August 1, 2021; \$14.00 on July 1, 2022; and \$15.00 on June 1, 2023. Therefore, the maximum weekly benefit will be \$780 per week when the Act first goes into effect in January 2022 and will increase to \$900 per week when the minimum wage rises to \$15.00 in June 2023.

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