


COMPLYING WITH CONNECTICUT'S FAMILY & MEDICAL LEAVE ACT UPSEU



**CONNECTICUT DEPARTMENT OF LABOR
OFFICE OF PROGRAM POLICY
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EMPLOYEE ELIGIBILITY

2 Part Test:

1. Worked for the employer for at least 12 months within the last 7 years prior to commencing FMLA leave

- **does NOT have to be consecutive**
- **Employees become eligible for FMLA upon reaching 12 months of service, whether they are at work or on another type of leave**

EMPLOYEE ELIGIBILITY

2. Worked at least 1,000 hours in the 12 months immediately prior to commencing FMLA leave

- **Must be hours actually worked**
- **Federal FMLA - 1250 hours**

BASIC PROVISIONS

- **Maximum 16 weeks of leave over a 24 month period (Federal - 12 weeks every 12 months)**
- **Job protected (return to same or, if not available, an equivalent)**
- **Benefits protected**
- **General rule - treat employee as though they never took leave**

EQUIVALENT POSITION

- **An equivalent position is:**
 - **Virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status.**
 - **Involves the same or substantially similar duties and responsibilities, which entails substantially equivalent skill, effort, responsibility, and authority.**

FAMILY LEAVE WHEN SPOUSES WORK FOR THE SAME COMPANY

- **When spouses work for the same employer, they may be limited to a combined total of 16 (or 12) weeks of leave during any 24 (or 12) month period if the leave is for:**
 - **birth**
 - **adoption or placement of a foster child, OR**
 - **care for parent**
- **If one of the employees takes leave but returns before exhausting the total allotment, the other may take any leave remaining**

FAMILY LEAVE WHEN SPOUSES WORK FOR THE SAME COMPANY

- **Where both employees use a portion of their 16 weeks of leave - each is entitled to the difference between the amount taken individually and 16 weeks of FMLA leave for another purpose (such as their own serious health condition)**
 - **Ex: if each spouse takes 10 weeks to care for a healthy newborn, each could use an additional 6 weeks to care for their own serious health condition, or that of a child or spouse**

WHAT TRIGGERS THE FMLA?

- **The birth of a child and care within the first year after birth;**
- **The placement of a child with employee for adoption or foster care and care for child;**
- **To care for a spouse, son, daughter or parent with a serious health condition**
- **Because of the employee's own serious health condition**
- **In order to serve as an organ or bone marrow donor**

DEFINITIONS

PARENT - a biological, foster, adoptive or stepparent, or legal guardian of an eligible employee or an eligible employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

- **Federal - does not include a parent-in-law**

DEFINITIONS

- SON OR DAUGHTER** - a biological, adopted, foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is
- (A) under eighteen years of age; or
 - (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability

DEFINITIONS

SON OR DAUGHTER

- Incapable of self-care - requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” or “instrumental activities of daily living”
- ❖ ADLs – grooming, hygiene, eating....
- ❖ IADLs – using a checkbook, taking public transportation, cooking....

Spouse

Husband or wife

DEFINITIONS

What does it mean “to care for” a family member?

- **Physical and psychological care**
- **Includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care**

SERIOUS HEALTH CONDITION

An illness, injury, impairment, or physical or mental condition which involves:

(1) Inpatient care and treatment therefor or recovery therefrom

SERIOUS HEALTH CONDITION

(2) Continuing treatment by a health care provider with incapacity of more than 3 full consecutive calendar days, AND:

- **2 or more treatments by a health care provider**
- **(1st visit within 7 days of first day of incapacity and 2nd visit within 30 days of first day of incapacity)**

OR

SERIOUS HEALTH CONDITION

(3) Continuing treatment by a health care provider with incapacity of more than 3 full consecutive calendar days, AND:

- **1 treatment by a health care provider (within 7 days of the first day of incapacity) with a regimen of continuing treatment**
 - **regimen of continuing treatment - includes prescription medication or physical therapy**
 - **incapacity - means inability to work or go to school or perform other regular daily activities**

SERIOUS HEALTH CONDITION

(4) Any period of incapacity because of pregnancy or prenatal care

- **A doctor's visit at the time of each absence is not required**

- **Pregnancy Disability Act (Commission on Human Rights and Opportunities)**

In Connecticut, a pregnant employee is entitled to a “reasonable leave of absence for the period of disability resulting from pregnancy.”

SERIOUS HEALTH CONDITION

(5) Chronic condition

Any period of incapacity due to a chronic condition which :

- **Requires at least 2 visits per year for treatment**
- **Continues over an extended period of time**
- **May cause episodic rather than continuous incapacity, i.e., “intermittent leave”**
- **A doctor’s visit at the time of each absence is not required**
- **Examples - Asthma, Migraines**

SERIOUS HEALTH CONDITION

(6) Any period of incapacity for restorative surgery or for conditions that if left untreated would result in incapacity of more than three consecutive calendar days

- **Chemotherapy or radiation for cancer**
- **Dialysis for kidney disease**

SERIOUS HEALTH CONDITION

(7) Any period of incapacity for a permanent or long term condition under the continuing supervision of a health care provider

- **Alzheimer's, stroke**

SUMMARY OF SERIOUS HEALTH CONDITION

- 1. Inpatient**
- 2. Incapacitated more than 3 consecutive calendar days plus two HCP visits (1st within 7 days, 2nd within 30 days)**
- 3. Incapacitated more than 3 consecutive calendar days plus one HCP visit (within 7 days) and regimen of treatment (prescription medicine, physical therapy, etc.)**
- 4. Chronic**
- 5. Pregnancy**
- 6. Restorative surgery/illness left untreated**
- 7. Long-term condition**

SUBSTANCE ABUSE

- **Substance abuse may be a serious health condition if it meets the definition**
- **FMLA leave may only be taken for treatment for substance abuse by a health care provider**
- **Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave**

INTERMITTENT LEAVE

- **FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances**
 - **when medically necessary for planned and/or unanticipated medical treatment**
 - **for recovery from treatment or recovery from a serious health condition**
 - **for the care and comfort of a family member**
 - **for absences where employee or family member is incapacitated**

SCHEDULING OF INTERMITTENT LEAVE

- If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment
 - the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations

INTERMITTENT LEAVE

- **The employer is required to count FMLA leave consistent with other leaves and cannot exceed one hour**

TRANSFER

- If an employee needs intermittent leave or leave on a reduced schedule that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternate position
- Transfer only if:
 - Position has equivalent pay and benefits
 - Employee is qualified
 - Position better accommodates recurring periods of leave
 - The position does not have to have equivalent duties

DOCKING

- **A salaried executive, administrative or professional employee, who is exempt from minimum wage and overtime requirements, may be docked for unpaid FMLA leave**
- **Such docking will not cause the employee to lose the exemption**

EMPLOYEE NOTICE – INITIATING THE LEAVE

- **When the need for leave is FORESEEABLE:**
 - Typically 30 day advance request
- **When the need for leave is NOT FORESEEABLE:**
 - Notify employer as soon as practicable
 - Request need not mention FMLA initially

EMPLOYEE NOTICE

- **If the employee is calling in absent, he or she must give adequate information to indicate that the illness may be FMLA qualifying.**
 - **“I am sick” is not sufficient**
- **When employee calls in absent due to an already approved leave, employee must notify employer that the leave is due to previously qualifying FMLA reason**

EMPLOYER RIGHTS

- **Fundamental right to know that a serious health condition exists, as determined by a health care provider**
 - **No right to ask about specific medical condition (Information has to be on medical certification.)**
- **Right to make inquiries of the employee - when will you start leave? How long will you be gone? When will you return?**

RETROACTIVE DESIGNATION

- **If an employer does not designate leave as required, the employer may retroactively designate leave as FMLA leave, if:**
 - **Appropriate notice provided to employee**
 - **Employer's failure to timely designate leave does not cause harm or injury to the employee**

MEDICAL CERTIFICATION

- **Employer may request certification of the serious health condition by a health care provider (Job description may be attached)**
- **Employee must be given at least 15 days after receipt of the form from the employer to return the medical certification**

MEDICAL CERTIFICATION

- **Terms such as “lifetime,” “unknown, or “indeterminate” will not be sufficient where more specific estimates are possible based upon the health care provider’s familiarity with the patient.**

MEDICAL CERTIFICATION

Cure

If employer finds certification incomplete or insufficient:

- **The employer must give employee 7 days to cure an incomplete certification**

MEDICAL CERTIFICATION

Authentication and Clarification

- **CT – only employer’s health care provider (not HR) can contact employee’s HCP with employee’s permission to seek clarification or authentication**
- **Federal - now allows employer personnel such as HR (not supervisor) to call HCP for authentication and clarification**

MEDICAL CERTIFICATION

- **SECOND OPINION - may be required at employer's expense**
 - The employee or the employee's family member must release relevant medical information pertaining to the serious health condition to second opinion HCP
- **THIRD OPINION - may be used at employer's expense and is binding**
- **Cannot use a HCP that employer regularly employs**

MEDICAL CERTIFICATION

TRANSLATION

- **An employee is required to provide a translation for any medical certification in a foreign language**

RECERTIFICATION

- **RULE – recertifications no more than every 30 days in conjunction with an absence**
- **Employer may ask for recertification on a “reasonable basis”**
 - **If SHC finite period – can ask every 6 months in conjunction with an absence**
- **Federal - permits more frequent recertification in cases of fraud, significantly changed circumstances of the leave or in response to requests for extension of the leave**

RECERTIFICATION

- **Employers must pay for recertifications that are not covered by the employee's health insurance plan**
- **An employer may not require a second or third opinion on recertification**

SUMMARY OF MEDICAL CERTIFICATION PROCESS

- 1. Medical Certification**
- 2. Cure/Clarification**
- 3. Second opinion**
- 4. Third binding opinion**
- 5. Recertification - every 30 days**
- 6. Clarification on recertification but no second or third opinion**

FITNESS-FOR-DUTY CERTIFICATION

- **Employer can require employee to provide a “fitness-for-duty” certification upon return from continuous absence due to employee’s own serious health condition.**
 - **Just a simple statement**
- **Federal - now allows employers to seek a more detailed fitness-for-duty certification addressing whether the employee can perform essential functions**

LIGHT DUTY

- **Employer cannot count the time the employee works “light duty” against the employee’s FMLA leave entitlement**

Is FMLA Paid or Unpaid?

- **Generally, FMLA leave is unpaid**
- **An eligible employee may choose paid leave to run concurrently with FMLA, OR**
- **The employer may require employee's accrued paid leave to run concurrently with FMLA leave**

Is FMLA Paid or Unpaid?

- **FMLA leave may run concurrently with disability leave or Workers' Compensation, STD, LTD, sick leave, vacation, PTO....**

Is FMLA Paid or Unpaid?

Use of Sick Leave for Family Member

- Employee may use up to two weeks of accumulated sick leave for the serious health condition of a parent, spouse, son or daughter, or for the birth or adoption of a son or daughter of the employee
- Employer must have a bona fide written sick leave policy
- **This is only for CT, not Federal**