

# **UNDERSTANDING FAMILY AND MEDICAL LEAVE**

(A Primer for Connecticut State Employees)

Revised July 2013

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. Section One outlines the general rules associated with state and federal family and medical leave and Section Two describes the standard procedures associated with leave requests. Specific 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 and was amended in 2008 and 2009 to extend additional leave rights to families of members of the Armed Forces. Connecticut's statute governing family and medical leaves for public sector employees (C.G.S. 5-248a) was enacted in 1988 and most recently amended in May 2009 (P.A. No. 09-70) to include military family caregiver leave. Unless otherwise specified, references to "state family/medical leave" and or "federal FMLA" include military family leave.

The federal Department of Labor issued revised regulations regarding the federal FMLA effective January 2009 and March 2013. In addition to explaining the new leave rights for military families, these regulations create new rules and procedures that emphasize more complete documentation and better communication between employers and employees.

## **SECTION 1:**

### **GENERAL GUIDELINES RELATING TO STATE FAMILY/MEDICAL LEAVE AND FEDERAL FMLA LEAVE**

#### **1. Am I eligible to take state family/medical leave or federal FMLA leave?**

You may be eligible for:

- Federal FMLA leave only,
- State family/medical leave only,
- Both federal FMLA and state family/medical leave, or
- Neither.

To be eligible for **federal FMLA leave (including military family leave)**, 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, such as sick, vacation, PL, administrative leave, or unpaid leave. Overtime hours and military leave do count towards the 1,250-hour requirement.)

To qualify for **state family/medical leave (including military family caregiver leave)**, you must be a permanent employee with the state as defined in C.G.S. 5-196(19).

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.

## **2. What situations qualify for state family/medical or federal FMLA leave?**

Under “standard” or “traditional” state family/medical or federal FMLA leave, the reasons for leave are as follows:

1. The birth of your child or adoption of a child by you (both state and federal);
2. The placement of a foster child with you (federal only);
3. The “serious illness” (state) or “serious health condition” (federal) of your “child,” “spouse,” or “parent;”
4. Your own “serious illness” (state) or “serious health condition” (federal);
5. To serve as an organ or bone marrow donor (state only); or

Under military family leave, the reasons for leave are as follows:

1. ***Military Caregiver Leave for a current servicemember***: For a spouse, son, daughter, parent or “next of kin” to care for a “covered servicemember” who has a “serious injury or illness” while on “covered active duty;” (state or federal); or
2. ***Military Caregiver Leave for a veteran***: For a spouse, son, daughter, parent or “next of kin” to care for a “covered veteran” who incurred a “serious injury or illness” while on “covered active duty;” (federal only)
3. ***Qualifying Exigency Leave***: Because of any qualifying exigency that arises out of or is directly related the fact that a spouse, son, daughter or parent of the employee is on “covered active duty” (federal only):
  - Short notice deployment;
  - Military events and related activities;
  - Childcare (non-routine) and school activities;

- Parental leave care (non-routine)
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities; and/or
- Additional activities related to the covered active duty as mutually agreed upon by the employer and employee.

### 3. **Do the words used by the state and federal leave laws have special meanings?**

Yes, both the state and federal laws use “terms of art.” It is important to be aware that the definitions of certain words may differ from each other, depending on whether one is referring to state law or federal law, as well as whether the words are used in the context of “standard” leave or military family leave.

#### **Standard Leave**

**“Child”** (*standard state family/medical and federal FMLA leave*)

- A biological, adopted or foster child, stepchild, child of a person standing in “loco parentis,” or a child of whom a person has legal guardianship or custody; AND
- Who is under age 18 years or is 18 or older and incapable of self-care because of a mental or physical disability.

**“Parent”**

- A biological, adopted or foster parent, stepparent, person standing in “loco parentis” of a child or a person who has legal guardianship or custody of a child.
- It does not include a parent-in-law.

**“Spouse”** (*state family/medical leave and federal FMLA leave*)

- Includes same sex marriages.

**“Serious illness”** (*state family/medical leave*)

- An illness, injury, impairment or physical or mental condition that involves:
  - \* Inpatient care in a hospital, hospice or residential care facility, or
  - \* Continuing treatment or continuing supervision by a health care provider.

**“Serious health condition”** (*federal FMLA leave*)

- An illness, injury, impairment or physical or mental condition that involves:
  - \* Inpatient care;
    - Overnight stay in a hospital, hospice, or residential medical care facility, and

- Includes any period of incapacity or subsequent treatment in connection with or consequent to inpatient care.
- \* Incapacity and treatment;
  - A period of incapacity of **more than three** consecutive full calendar days, and
  - Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - Treatment two or more times **within 30 days** of the first day of incapacity, unless extenuating circumstances exist, or
    - 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.
  - The first (or only) in-person treatment visit must take place **within seven (7) days** of the first day of incapacity.
  - “Treatment” means an in-person visit to a health care provider.
- \* Incapacity due to pregnancy;
  - *For purposes of federal FMLA leave only*, this includes prenatal care.
- \* Incapacity due to chronic conditions requiring treatments (Ex: Asthma, diabetes, epilepsy);
- \* Incapacity due to permanent long-term conditions (Ex: Alzheimer's, a severe stroke, terminal states of a disease); or
- \* Absence to receive multiple treatments for a condition that would likely result in incapacity of more than three days if left untreated (e.g. physical therapy, chemotherapy, dialysis, etc.).

➤ **Note:** Common cold, flu, earaches, upset stomach, routine dental work, and cosmetic treatments are generally not considered serious illnesses or serious health conditions.

### **Military Family Leave**

“**Child**” (state and federal military family leave)

- A biological, adopted or foster child, stepchild, child of a person standing in “loco parentis,” or a child of whom a person has legal guardianship or custody.
- *For purposes of caring for a son or daughter under state and/or federal military caregiver leave, there is no age restriction.*

“**Covered active duty**” (*federal military family leave*)

- *In the case of a member of a regular component of the Armed Forces: Duty during the deployment of the member with the Armed Forces to a foreign country;*

- *In the case of a member of a reserve component of the Armed Forces: Duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.*

**“Covered servicemember”** *(state military family leave)*

- A current member of the United States Army, Navy, Marine Corps, Coast Guard and Air Force or any reserve component thereof, including the Connecticut National Guard performing duty as provided in Title 32 of the United States Code.
- *State military family leave does not cover veterans.*

**“Covered servicemember”** *(federal military family leave)*

- A current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- A “covered veteran.”

**“Covered veteran”** *(federal military family leave)*

- A veteran who is undergoing treatment, recuperation or therapy for a “serious injury or illness” as defined by the Department of Labor and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**“Next of kin”** *(federal and state military caregiver leave)*

- The service member’s nearest blood relative, other than the covered service member’s spouse, parent, son or daughter, in the following order of priority:
  - \* A blood relative who the covered service member has specifically designated in writing as his or her nearest blood relative for purposes of military caregiver leave;
  - \* Blood relatives who have been granted legal custody of the service member by court decree or statutory provisions,
  - \* Brothers and sisters,
  - \* Grandparents,
  - \* Aunts and uncles, and
  - \* First cousins.

**“Serious injury or illness”** *(state military family leave)*

- A serious injury or illness that was incurred in the line of duty on active duty in the Armed Forces.
- State military family leave does not cover aggravation of pre-existing injuries incurred in the line of duty.

**“Serious injury or illness” - current member of the Armed Forces** (*federal military family leave*)

- An injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.

**“Serious injury or illness” - veteran** (*federal military family leave*)

- An injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and that manifested itself before or after the member became a veteran, and
- Is :
  - A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank, or rating; or
  - A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
  - A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
  - An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

#### **4. How much leave can I take?**

The answer to this question depends on whether you are eligible for state or federal leave or both. It also depends on whether you are taking standard leave, qualifying exigency leave or military caregiver leave.

#### **Federal FMLA**

- **Standard leave and/or qualifying exigency leave:**
  - \* An eligible employee is entitled to a **maximum of 12 weeks** of leave **in a twelve-month period.**

- **Military caregiver leave:**
  - \* An eligible employee is entitled to a **maximum of 26 weeks** of leave during a **single 12-month** period to care for a covered servicemember (including a covered veteran) who was injured while on active duty in the U.S. Armed Forces.
    - An employee can take this leave only one time per service member, per injury.
    - During any single 12-month period, the employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under standard FMLA and military family leave.

### **State family/medical leave**

- **Standard leave:**
  - \* An eligible employee is entitled to a **maximum of twenty-four (24) weeks of leave within a two-year period.**
  - \* State law does not provide for qualifying exigency leave.
- **Military caregiver leave:**
  - \* An eligible employee is entitled to a **maximum of 26 weeks** of leave in a **2-year period.**
    - An employee can take this leave only one time per service member, per injury.
    - During any single 24-month period, the employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under standard state family/medical leave and military family leave.

### **5. Do state and federal leaves run concurrently (overlap)?**

Sometimes, depending on the reason for the leave and whether you have accrued sick leave available.

- If you are eligible for both state family/medical leave and federal FMLA leave, generally the leaves will run concurrently. The use of accrued sick time, however, may affect when the leaves run concurrently.
- There are special rules regarding when military caregiver leave runs concurrently with federal FMLA and state family/medical leave.
- 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 federal FMLA leave during any 12-month period, if the reason for the leave

is to bond with a healthy child upon birth or adoption of a child, the placement of a foster child or to care for a parent who has a serious health condition. There is no spousal limitation under state family/medical leave.

## 6. When can I take “intermittent leave” or a “reduced leave schedule”?

“**Intermittent leave**” is leave taken in separate blocks of time due to a single qualifying reason (*e.g., medical appointments, prenatal exams*).

“**Reduced leave schedule**” is a leave schedule that reduces an employee’s usual number of working hours per workweek or hours per workday (full time, part time) (*e.g., recovery from serious health condition*).

Under federal FMLA:

- You can take intermittent leave or go on a reduced leave schedule for your own serious health condition or the serious health condition of your spouse, parent or child and for military family leave.
- The policy for the State of Connecticut is that you cannot take intermittent leave or go on a reduced leave schedule for the birth or adoption of a child or the placement of a foster child with you.

Under the state family/medical leave law, there is no provision for intermittent leave or reduced leave schedule.

## 7. Am I entitled to a paid leave of absence?

- Federal FMLA leave is either unpaid or paid with earned accruals. State law specifies that state family/medical leave is unpaid; however, depending on the reason for the leave, you may be able to use your earned accruals while you are on leave.
- If you are taking a leave of absence in connection with **your own serious illness or serious health condition**, you are required to exhaust all accrued sick leave unless your labor contract states otherwise.
  - \* If you are eligible for federal FMLA leave, the leave will run concurrently with the use of your accrued sick leave (and any other paid leave accruals you may choose to use).
  - \* If you are eligible for state family/medical leave, your state family/medical leave will not start until after you exhaust all of your own accrued sick leave.
  - \* Donated sick time or benefits under a Sick Leave Bank will run concurrently with both your federal and/or state leave entitlement.



- You may request to use your accrued vacation, personal leave or compensatory leave while you are on federal FMLA leave and/or state family/medical leave.
  - \* Your accrued vacation, personal leave or compensatory leave will run concurrently with your federal and/or state leave entitlement. It cannot be used to extend the total length of the leave.
  - \* In order to use your accrued vacation, personal leave or compensatory leave, you must comply with your agency's and /or collective bargaining agreement's leave policies.
- The use of sick leave accruals in connection with the **birth of a child** depends on whether you are the mother or the father/spouse, and for fathers/spouses, whether you are married to the mother. Contact your Human Resources Unit for more information.
- If you are eligible for federal FMLA and/or state family/medical leave and the reason for your leave qualifies under one or both statutes, but, you do not have any accruals or do not meet the requirements for use of the accruals, you remain entitled to take unpaid federal FMLA and/or state family/medical leave.

**8. What benefits will I receive while I am out on leave?**

During periods of federal FMLA leave and/or state family/medical leave, you will continue to receive the same insurance benefits as if you were actually working, regardless of whether the leave is paid or unpaid.

- The State of Connecticut will continue to pay the same portion of your individual and/or dependent insurance coverage as it did before you went on leave.
  - \* If you are on unpaid leave, you will be billed directly for the portion of the cost that was previously withheld from your paycheck for that purpose.
  - \* If you have state-sponsored group life insurance, you will be billed directly for the same amount you contributed prior to the leave.
  - \* 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 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.

- 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 other employment benefit that accrued prior to the start of your leave.

**9. What are my rights when I return from my leave of absence?**

- At the conclusion of federal FMLA leave and/or state family/medical leave, you are entitled (with limited exceptions) to return to the same position or an equivalent position with equivalent pay, benefits and working conditions.
- Upon your return from the leave, the service time you accrued up to the beginning of the leave is restored for longevity and seniority purposes; some bargaining unit contracts also provide for service credit for the time spent on leave.
  - \* Consult your union contract for further information about longevity and seniority.
  - \* Consult the Comptroller's Office for further information about retirement credit.

**10. Do I have any other rights under the federal FMLA or the state family/medical leave act?**

Yes. It is 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 federal and or state family/medical leave may be directed to your Human Resources Unit or your union.

## **SECTION 2:**

### **PROCEDURES FOR REQUESTING STATE FAMILY/MEDICAL LEAVE OR FEDERAL FMLA LEAVE**

#### **1. What advance notice must I provide?**

When the leave is foreseeable (e.g., an anticipated birth, adoption or surgery), you must notify your Human Resources Unit 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 must notify your Human Resources Unit **as soon as you become aware** that you are to be absent for a state family/medical or federal FMLA leave-qualifying reason.

If you fail to provide the required notice, your agency may deny your request completely or may delay commencement of the state family/medical or federal FMLA leave.

#### **2. How do I apply for federal FMLA leave and or state family/medical leave?**

You may request federal FMLA leave and or state family/medical leave either orally or in writing.

In order for your Human Resources Unit to process your request, however, you must complete the **Form FMLA-HR-1, “Employee Request for Leave of Absence under the federal FMLA and/or state C.G.S. 5-248a.”** This form is available from the agency Human Resources Unit and from the DAS website. The completed form must be returned to your Human Resources Unit.

Within **five business days** of your request, your Human Resources Unit will provide you with a **Notice of Eligibility and Rights and Responsibilities (Form FMLA-HR-2a)**.

This form **does not** constitute an approval of your request; it simply notifies you whether you meet the eligibility requirements under the state and federal laws. At that time, your Human Resources Unit will also notify you what documentation you need to provide in order for it to make a determination regarding your leave request.

#### **3. What documentation do I need to submit in support of my request for leave?**

You must provide your Human Resources Unit with enough information for it to determine whether the state family/medical leave law or federal FMLA covers the leave requested. Failure to provide the needed documentation may result in a disapproval of the leave or a delay in its commencement. The specific documentation required depends on the reason for the leave:

- **Serious Health Condition/Serious Illness; Birth; Organ & Bone Marrow Donor**
  - \* **Form P-33A-Employee** – Medical certificate to be completed when the leave is for your own illness, including the disability portion of maternity leave.
  - \* **Form P-33B-Caregiver** – Medical certificate to be completed when you request leave to care for a child, spouse or parent with a serious health condition/serious illness.
  - You may also be required to produce documentation demonstrating the required relationship between you and your family member.
  
- **Military Family Leave**
  - \* **DOL-WH384** - Certification of Qualifying Exigency for Military Family Leave (*Federal*)
  - \* **DOL-WH385** - Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave (*Federal and State*)
  - \* **DOL-WH385-V** – Certification for Serious Injury or Illness of Veteran for Military Caregiver Leave (*Federal*)
  - You may also be required to produce documentation demonstrating the required relationship between you and the service member.
  
- **Placement of Foster Child/Adoption**
  - In the case of the placement of a foster child, you must provide a letter from the state establishing the placement date.
  - In the case of adoption, you must provide a letter from the adoption agency establishing the date of the adoption.

#### **4. When do I need to submit this documentation?**

You must submit the completed **medical certificate or military family documentation** to your Human Resources Unit no later than **fifteen calendar days** after receiving the Notice of Eligibility and Rights and Responsibilities (Form FMLA-HR2a) or demonstrate that you made diligent good faith efforts to do so.

You must submit the documentation regarding the **placement of a foster child or adoption** to your Human Resources Unit **as soon as practicable** and, in all cases, before the leave commences.

5. **What happens if the medical certificate or military family documentation is incomplete or insufficient?**

If the medical certificate or military family documentation is incomplete or insufficient, your Human Resources Unit will notify you in writing of the deficiencies and you will have **seven calendar days** to cure the deficiencies. If it is not possible for you to submit a complete and sufficient medical certificate or military family documentation within the seven calendar days, you must demonstrate that you made diligent good faith efforts to do so. Failure to provide complete and sufficient documentation may lead to the denial of your leave request.

After receiving your completed medical certificate, your Human Resources Unit has the right to contact your medical provider to authenticate or receive clarification regarding the certificate. 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.

The rules for military caregiver leave are slightly different. Your Human Resources Unit has the right to contact the medical provider to authenticate or receive clarification but second and third opinions are not permitted if the medical provider is from the Department of Defense (“DOD”), the Department of Veterans’ Affairs or a DOD Tricare authorized provider.

6. **How will I know if my agency has designated my leave as state family/medical leave and/or federal FMLA leave?**

Your Human Resources Unit will make every effort either to designate your leave as federal FMLA leave, state family/medical leave, both or to notify you that your request has been denied within **5 business days** after receiving all of the necessary documentation from you.

Your Human Resources Unit will send you a **Form FMLA-HR-2b “Agency Response: Designation Notice,”** which serves as an official notice of how your leave has been designated.

7. **What do I need to do after my leave has been approved as either federal FMLA leave and/or state family/medical leave?**

Even if you are approved to take federal FMLA leave and/or state family/medical leave, you must follow your agency’s standard call-in policies. When you notify your agency that you will be absent you must specifically state that your absence is connected to your state family/medical leave and/or federal FMLA leave.

- Even if you have been approved to take FMLA leave on an intermittent basis, you must explicitly notify your agency **each time** that you are absent for a FMLA-covered reason.

If you are responsible for entering your own time and attendance coding, contact your Human Resources Unit to determine which CORE-CT codes to use.

**8. Do I need to notify my agency if I intend to return to work after my leave expires?**

**Yes.** Before you commence your leave you are required to sign a statement confirming your intent to return to work immediately following the leave. (**Form FMLA-HR3 “Intent to Return to Work”**). You must sign this form and return it to your Human Resources Unit **before** you commence your 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. Regardless of the total length of your leave of absence, the portion of the leave that is covered by state and/or federal leave shall not exceed the benefit provided under federal or state law.

**9. Will I be required to provide a fitness-for-duty report?**

If your case involves your own serious health condition, your agency may 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.

If your agency requires you to provide a fitness-for-duty report, it will be indicated on the **Form FMLA-HR-2b Designation Notice**. If you are notified of the need for a fitness-for-duty certification, you will not be allowed to return to work without it. The completed fitness-for-duty certification must be returned to your Human Resources Unit.

**10. More Information**

If you have additional questions, please contact your Human Resource Unit.

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