

STATE OF CONNECTICUT

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

Prepared by the Connecticut Department of Administrative Services

January 2022

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

DISCLAIMER

The Department of Administrative Services (DAS) has developed this manual to assist Human Resources in the administration of the Family and Medical Leave Entitlements that may be available to employees of the State of Connecticut. It does not create any contract or binding agreement between the State of Connecticut and any employee.

This handbook is subject to change or modification at DAS's discretion at any time that particular circumstances warrant.

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

TABLE OF CONTENTS

Disclaimer

Manual Organization

Part 1: FUNDAMENTALS

Chapter 1: Overview of the Laws & Guiding Principles

Chapter 2: How Does the State Notify Employees About Their Leave Entitlements?

Chapter 3: Is the State a Covered Employer?

Chapter 4: Is the Employee Eligible?

Chapter 5: What Are the Reasons an Employee Can Take Leave?

Chapter 6: Definitions - Standard Leave

Chapter 7: How Much Leave Is Available?

Chapter 8: How Is Leave Taken?

Chapter 9: How Are the Workweek and Leave Entitlement Calculated?

Chapter 10: How Is the Leave Year Calculated?

Chapter 11: What Is a Serious Health Condition?

Chapter 12: What is A Caregiver?

Chapter 13: Spouses Working for the Same Employer

Chapter 14: What Is Covered Under Pregnancy and Bonding?

Chapter 15: What Is Covered Under Adoption and Bonding?

Chapter 16: What Is Covered Under Foster Care and Bonding?

Chapter 17: How to Calculate Bonding Leave Under SEBAC Supplemental Leave

Chapter 18: What is Covered Under Organ and Bone Marrow Donor Leave?

Chapter 19: Documentation Needed to Substantiate Leave

Chapter 20: Who is a Health Care Provider?

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

TABLE OF CONTENTS

Part 2: LEAVE PROCESS

Chapter 21: Timeline for Eligibility & Designation

Chapter 22: How Does It Start? FMLA- HR1 Form

Chapter 23: When Should an Employee Provide Notice?

Chapter 24: Notice of Eligibility and Statement of Rights & Responsibilities – FMLA- HR2a Form

Chapter 25: Intent to Return to Work – FMLA-HR3 Form

Chapter 26: Medical Certification

Chapter 27: Designation of Leave – FMLA-HR2b Form

Chapter 28: What Absences are Charged Against the Leave Entitlement

Chapter 29: General Rules & Principles Regarding Substitution of Paid Leave (Earned Accruals)

Chapter 30: Employee’s Own Serious Health Condition - Accrual Usage and Sequencing of Leaves

Chapter 31: Employee as a Caregiver - Accrual Usage and Sequencing of Leaves

Chapter 32: Pregnancy & Bonding with a New Child - Accrual Usage

Chapter 33: Adoption & Bonding with a New Child - Accrual Usage

Chapter 34: Placement & Bonding with a Foster Child - Accrual Usage

Chapter 35: Leave Interaction with Workers’ Compensation

Chapter 36: Coding – FMLA-HR2c Form

Chapter 37: HR’s Responsibilities to Employee Once Leave Is Approved

Chapter 38: HR’s Responsibilities to Manager/Supervisor Regarding Employee’s Leave

Chapter 39: Manager/Supervisor’s Responsibilities to Employee Regarding Leave

Chapter 40: Employee’s Responsibilities Once Leave Is Approved

Chapter 41: Recertification and Annual Med Certs

Chapter 42: Employee’s Fitness-For-Duty Certification

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

TABLE OF CONTENTS

Chapter 43: Employee's Return to Work

Chapter 44: Employee's Inability to Return to Work

Chapter 45: Leave Interaction with ADA and CFEP

Chapter 46: Handling Suspected Fraud or Abuse

Chapter 47: Special Rules for Schools

Chapter 48: Interaction with Other State Policies

Part 3: MILITARY FAMILY LEAVE

Chapter 49: Overview of the Laws

Chapter 50: Military Family Leave - Definitions

Chapter 51: Military Caregiver Leave - Overview

Chapter 52: Military Caregiver Leave - Certification Form

Chapter 53: Qualifying Exigency Leave - Overview

Chapter 54: Qualifying Exigency Leave - Certification Form

Part 4: COMPLIANCE

Chapter 55: Recordkeeping

Chapter 56: Prohibited Activities

Chapter 57: The Complaint Process

Chapter 58: Liabilities and Penalties

Part 5: APPENDIX

Chapter 59: Sample Letters

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL ORGANIZATION

The State of Connecticut Family and Medical Leave Entitlements Manual is designed to assist agencies and Human Resources professionals with the implementation of DAS General Letter 39 - State of Connecticut Family and Medical Leave Entitlements Policy - Revised effective January 1, 2022.

For ease of use, the manual is divided into five parts:

- Each part contains chapters that cover specific areas relating to the entitlements.
- The chapters are short, easy to understand, and follow a “building block” approach.
- The chapters contain **HR PRACTICE POINTS** when applicable.
- The **HR PRACTICE POINTS** are highlighted by a yellow arrow:



	TOPICS	CHAPTERS
Part 1	Fundamentals	Chapters 1 - 20
Part 2	Leave Process	Chapters 21 - 48
Part 3	Military Family Leave	Chapters 49 - 54
Part 4	Compliance	Chapters 55 - 58
Part 5	Appendix	Chapter 59

Part 1: Fundamentals covers the basics, including an overview of the Family and Medical Leave Entitlement, guiding principles, employee notification concerning leave entitlements, covered employer, employee eligibility, leave reasons, definitions, amount of leave, types of leave schedules, documentation requirements and information about health care providers.

FAMILY AND MEDICAL LEAVE ENTITLEMENTS MANUAL

ORGANIZATION

Part 2: Leave Process covers the life cycle of a Family and Medical Leave Entitlement, including a timeline for eligibility and designation, FMLA forms, medical certification, notice requirements, leave increments, accrual usage, sequencing of leave, coding, recertification and annual medical certification, interaction with Workers Compensation, the responsibilities of Human Resources, the employee, and the manager and supervisor when leave is approved, fitness-for-duty, return to work, interaction with ADA and CFEPa, handling suspected fraud and abuse, interaction with other state policies, and special rules for schools.

Part 3: Military Family Leave covers an overview of the laws and definitions, including military caregiver leave and qualifying exigency leave and the required certification forms.

Part 4: Compliance covers recordkeeping, prohibited activities, the complaint process, and the liabilities and penalties for non-compliance with the Family and Medical Leave Entitlements.

Part 5: Appendix includes three sample letters to use in the administration of the Family and Medical Leave Entitlements.

Questions concerning this manual may be directed to the DAS Statewide Human Resources Management, Business Rules Unit.

Legislation passed at both federal and state levels provides eligible State of Connecticut employees with job-protected leave for certain family and medical reasons.

This chapter provides an overview of the Family and Medical Leave Entitlements and sets forth the guiding principles for understanding and administering these entitlements.

WHAT ARE THE FAMILY AND MEDICAL LEAVE ENTITLEMENTS AVAILABLE TO A STATE EMPLOYEE?

A state employee may be eligible for one or more of the following leave entitlements:

- Federal FMLA
- State FMLA
- SEBAC Supplemental Leave
- Pregnancy Disability Leave
- Organ Donor Leave
- Bone Marrow Donor Leave

These leave entitlements are referred to collectively as “Family and Medical Leave Entitlements.”

WHAT ARE THE SOURCES OF LEAVE ENTITLEMENTS?

Federal FMLA:

The federal Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq., (“**federal FMLA**”) was enacted by Congress in 1993 and provides eligible employees with job-protected leave for certain family and medical reasons.

- An eligible employee is entitled to a **maximum of 12 weeks of leave in a 12-month period for “standard” leave reasons.**

The federal FMLA was amended in 2008 and 2009 to extend additional leave rights to families of members of the Armed Forces. Military Family Leave is covered in Chapters 49 - 54.

2017 SEBAC Agreement:

The revised agreement between the State of Connecticut and the State Employees Bargaining Agency Coalition, ratified by the General Assembly in July 2017 (“the 2017 SEBAC Agreement”) made two significant changes to the family and medical leave entitlements of unionized state employees:

- Connecticut’s family/medical leave act, **C.G.S. §31-51kk** (“State FMLA”) applies to all state employees. This law, which was enacted in 1996, was significantly expanded by Public Act 19-25. The changes enacted as part of Public Act 19-25 will take effect on January 1, 2022.

As of January 1, 2022:

- An eligible employee is entitled to a **maximum of 12 weeks of leave within a 12-month period for “standard” leave reasons, with an additional 2 weeks of leave available for incapacitation during pregnancy.**
- Military Family Leave is covered in **Chapters 49 - 54.**
- Permanent state employees are eligible to receive supplemental leave benefits (“**SEBAC Supplemental leave**”).
 - An eligible employee is entitled to a **maximum of 24 weeks of leave within a 2-year period**, up to four calendar months of which may be used for bonding purposes.
 - SEBAC Supplemental leave is in addition to the leave taken under federal FMLA, state FMLA, Pregnancy Disability leave, and Organ and Bone Marrow Donor leave and leave provided under the state Workers’ Compensation statutes. Therefore, an employee who is eligible for one or more of these leaves must exhaust these leave entitlements before SEBAC Supplemental leave.
 - If the leave is for an employee’s own serious health condition, SEBAC Supplemental leave does not start until the employee exhausts their sick leave accruals.

Pursuant to Item No. 2495-E, these 2017 SEBAC leave entitlements are extended to all Executives, Managers, and Confidential employees of the Executive Branch, and to

Legislative and Judicial employees. This item also applies to unclassified employees of the boards of trustees of the constituent units of higher education.

Pregnancy Disability Leave:

Section 46a-60(b)(7) of the Connecticut General Statutes requires employers to grant its pregnant employees “a reasonable leave of absence for disability resulting from her pregnancy.” This “**pregnancy disability leave**” includes absences associated with pregnancy complications, such as being put on bedrest, as well as the period of time required for the employee to physically recover from the birth of the child.

Organ and Bone Marrow Donor Leave:

Section 5-248k of the Connecticut General Statutes creates an additional leave entitlement for any state employee who donates an organ or bone marrow to a person for transplantation (“**organ donor leave**” and “**bone marrow donor leave**”).

WHAT IS THE PURPOSE OF THESE LEAVE ENTITLEMENTS?

The purpose of these Family and Medical Leave Entitlements is to balance the demands of the workplace with the needs of families by enabling employees to take job-protected leave for specific medical and family reasons in a manner that accommodates the legitimate interests of employers. There are “standard” family and medical leave reasons and there are “military” family leave reasons.

WHAT ARE THE “STANDARD” FAMILY AND MEDICAL LEAVE REASONS?

The federal FMLA, the state FMLA, and the 2017 SEBAC Agreement each allow eligible employees to take “**standard**” family and medical leave for the following reasons:

- **Personal Medical Leave** - For an employee to take time off from work for the employee’s own serious health condition:
 - The employee’s own illness or injury;

- Any period of incapacity to the employee's pregnancy or prenatal care;
 - The donation of an organ by the employee;
 - The donation of bone marrow by the employee.
- **Caregiver Leave** - For an employee to take time off from work to care for a family member who has a serious health condition.
 - Under **federal FMLA** caregiver leave is available **only** to care for one's **parent, spouse or child**:
 - **Child** means a (1) 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 (2) who is under age 18 years **or** 18 or older and incapable of self-care because of a mental or physical disability.
 - **Spouse** means a person to whom one is legally married.
 - **Parent** means the 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 parents-in-law.
 - Under **CT FMLA**, caregiver leave is available to care for one's parent, spouse, child, sibling, grandparent, grandchild or an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships.
 - **Child** means 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 **of any age**.
 - **Spouse** means a person to whom one is legally married.
 - **Parent** means the 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 includes parents-in-law**.
 - **Grandchild** means a grandchild related to a person by (A) blood, (B) marriage, (C) adoption by a child of the grandparent, or (D) foster care by a child of the grandparent;

- **Grandparent** means a grandparent related to a person by (A) blood, (B) marriage, (C) adoption of a minor child by a child of the grandparent, or (D) foster care by a child of the grandparent;
 - **Sibling** means a brother or sister related to a person by (A) blood, (B) marriage, (C) adoption by a parent of the person, or (D) foster care placement;
 - An individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships, regardless of biological or legal relationship or lack thereof. Such individual's close association with the employee should involve a significant personal bond.
- **Bonding Leave** - For an employee to take time off from work in order to:
 - Bond with a newborn child;
 - Process the adoption of a child or bond with a newly adopted child;
or
 - Process the placement of a foster child or bond with a newly placed foster child.
 - Leave to bond with a foster child is available under federal and state FMLA only. It is **not** a covered reason for leave under the SEBAC Supplemental Agreement.

WHAT ARE THE "MILITARY" FAMILY LEAVE REASONS?

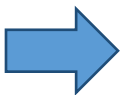
Federal FMLA and state FMLA allow eligible employees to take **military family leave**. The 2017 SEBAC Agreement does **not** create a supplemental leave entitlement for military family reasons.

Military Family leave may be taken for the following reasons:

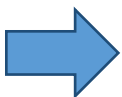
- ***Military Caregiver Leave for a current servicemember*** - For a spouse, son, daughter, parent, or next of kin to care for a covered servicemember who has a serious injury or illness while on covered active duty; or

- ***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 FMLA only*);
- ***Qualifying Exigency Leave*** - For an employee to take time off from work due to a “qualifying exigency” that arises out of or is directly related to the fact that a spouse, son, daughter or parent of the employee is on covered active duty, specifically:
 - Short notice deployment;
 - Military events and related activities;
 - Childcare (non-routine care for the child of the individual on covered active duty) and school activities;
 - Parental leave care (non-routine care for the parent of the individual on covered active duty);
 - 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.

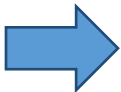
Military family leave is discussed in detail in **Chapters 49 - 54**.



The text of the federal law can be found on the Department of Labor (DOL) website: <https://www.dol.gov/whd/fmla/fmlaAmended.htm>



DOL regulations describe the rules and procedures that govern FMLA: [29 C.F.R. 825.100, et seq.](#)



The text of the State entitlement can be found on the Connecticut General Assembly website: [C.G.S. § 31-51kk](#).

**ARE ALL THE FAMILY AND MEDICAL LEAVE ENTITLEMENTS
THE SAME?**

NO. Although the leave entitlements have many similarities, they are **not** the same. There are many key differences which must be taken into consideration when administering employees' leaves, including:

- The amount of leave available;
- The kind of leave that may be taken;
- The reasons for leave;
- The eligibility requirements; and
- The interaction of the law with collective bargaining agreements
 - In some circumstances, collective bargaining agreements may supersede state law, but they cannot supersede federal law.

GUIDING PRINCIPLES TO FOLLOW

Each employee's leave entitlement must be assessed on a case-by-case basis because:

- Each leave entitlement is dependent upon specific facts about the affected employee (such as the reason for leave and the accruals held by the employee);
- The interaction of the entitlements may result in different outcomes;
- No two situations are the same.

In all circumstances, it is the employer's right and obligation to designate leave as one or more of the Family and Medical Leave Entitlements.

- If the employee is eligible for one or more of these entitlements and the reason for leave is covered by the law or policy, the employer **must** designate the leave accordingly.
- If the employer learns that the employee is absent due to a covered reason and the employee is eligible for one or more of the leave entitlements, the employer **must** designate the leave even if the employee does not make an explicit request.

- The employee does **not** have the right to refuse the designation as one of more of the Family and Medical Leave Entitlements.

**HR PRACTICE POINT**

When communicating with employees, be specific and precise about which entitlements are being referenced.

The State of Connecticut informs state employees about their Family and Medical Leave Entitlements through written documentation, the employee onboarding process, and periodic updates.

This chapter describes these methods used to notify employees about leave entitlements.

WRITTEN DOCUMENTATION

[DAS General Letter 39 - State of Connecticut Family and Medical Leave Entitlements Policy](#) provides general notice of the Family and Medical Leave Entitlements available to state employees and is intended to ensure consistent application and implementation of these leave entitlements.

The Family and Medical Leave Entitlements consist of the following:

- Federal FMLA
- State FMLA
- SEBAC Supplemental Leave
- Pregnancy Disability Leave
- Organ Donor Leave
- Bone Marrow Donor Leave

Because the federal Department of Labor considers the State of Connecticut to be one employer, the State of Connecticut Family and Medical Leave Entitlements Policy covers all State employees, regardless of agency. State agencies **must** use this policy. Agencies cannot create their own individual policies.

The State of Connecticut Family and Medical Leave Entitlements Policy complies with the federal requirement that employers provide general notice of the leave entitlements available to their employees. In addition, the federal DOL [poster](#) summarizes the major provisions of the federal FMLA and explains how to file a complaint.

Federal law mandates that every employer **must** display the federal FMLA poster in a conspicuous place where employees and applicants for employment can see it.

As of July 1, 2022, Connecticut law requires every covered employer to provide written notice to each employee at the time of hiring as well as an annual notice to all employees explaining the employees' rights under state FMLA, and their opportunity to apply for benefits pursuant to the Connecticut Paid Leave Act, as well as the fact that retaliation

for exercising rights under these laws is prohibited and that employees can file a complaint with the Connecticut Department of Labor if they believe their rights have been violated.

HR PRACTICE POINTS



Include references to the State policy in your agency handbook or manual.



Include a link to the State policy on the agency's webpage or intranet site.



Use the Family and Medical Leave Entitlements Manual in conjunction with the State policy.

The following forms are used by the State of Connecticut to administer family and medical leave entitlements:

- FMLA-HR1: Employee Request for Leave
- FMLA-HR2a: Notice of Eligibility and Rights and Responsibilities
- FMLA-HR2b: Designation Notice
- FMLA-HR2c: Core-CT Coding Form
- FMLA-HR3: Statement of Intent to Return to Work
- FMLA-HR4: Statement of Qualifying Family Relationship
- P-33A: Employee Medical Certification Form and Fitness-for-Duty Certification
- P-33B: Caregiver Medical Certification Form
- DOL-WH384: Certification for Qualifying Exigency for Military Family Leave (*federal and state FMLA*)
- DOL-WH385: Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave (*federal and state FMLA*)
- DOL-WH385-V: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (*federal FMLA only*)

HR PRACTICE POINT

Use the forms on the ct.gov website! The website has the most up-to-date versions of the forms.

EMPLOYEE ONBOARDING PROCESS

Agency Human Resources professionals should make new employees aware of the State of Connecticut Family and Medical Leave Entitlements Policy as well as any agency-specific attendance policies and call-in procedures during the initial onboarding process.

PERIODIC UPDATES

DAS notifies Human Resources professionals of changes to the federal and state laws as needed as well as changes to the policy and forms. In addition, DAS periodically offers training and information about best practices.

Agency Human Resources professionals should provide agency employees with periodic reminders and updates about their obligations and entitlements under federal and state laws.

In administering the Family and Medical Leave Entitlements, the first question to ask is whether these leave entitlements apply to my organization or, in other words, “Am I a covered employer?”

For the State of Connecticut, the answer is always YES. This chapter explains why.

Federal FMLA:

Under the federal FMLA, public agencies are considered to be a covered employer *regardless of the number of employees.*

Moreover, the federal Department of Labor considers the State of Connecticut to be one employer. It does **not** consider the different agencies to be separate employers.

State FMLA:

The State of Connecticut is a covered employer under C.G.S. §31-51kk as a result of the revised agreement between the State of Connecticut and the State Employees Bargaining Agency Coalition, ratified by the General Assembly in July 2017 (“the 2017 SEBAC Agreement) and Item No. 2495-E. One of the provisions of the 2017 SEBAC Agreement states that Connecticut’s family/medical leave act, **C.G.S. §31-51kk (state FMLA)** applies to unionized state employees

Item No. 2495-E extended the benefits of that provision of the 2017 SEBAC Agreement to all Executives, Managers, and Confidential employees of the Executive Branch, and to Legislative and Judicial employees, as well as the unclassified employees of the boards of trustees of the constituent units of higher education.

Public Act 19-25 codified these actions by stating that the State of Connecticut, as an employer, is covered by CT FMLA.

SEBAC Supplemental Leave:

The State of Connecticut is a covered employer for purposes of the SEBAC Supplemental Leave. This leave was created in the 2017 SEBAC Agreement for eligible

unionized state employees and extended to state employees not covered by collective bargaining agreements pursuant to [Item No. 2495-E](#).

Pregnancy Disability Leave:

The State of Connecticut is a covered employer under C.G.S. §46a-60(b)(7), which requires employers to grant its pregnant employees “a reasonable leave of absence for disability resulting from her pregnancy.” The definition of “employer” for purposes of this pregnancy disability leave is found in C.G.S. §46a-51(10):

“Employer” includes the state and all political subdivisions thereof and means any person or employer with three or more persons in such person's or employer's employ.

Organ or Bone Marrow Donor Leave:

The State of Connecticut is a covered employer for purposes of the organ and bone marrow donor leave. Section 5-248k of the Connecticut General Statutes creates this leave entitlement for **any state employee** who donates an organ or bone marrow to a person for transplantation (“**organ donor leave**” and “**bone marrow donor leave**”).

***Every* time an employee needs to take time away from work for a family or medical reason, Human Resources *must* determine whether the employee is eligible for leave under the Family and Medical Leave Entitlements.**

This chapter explains the necessity of this individual determination and the rules for determining eligibility for each of the Family and Medical Leave Entitlements. It also describes how a layoff may affect an employee's eligibility for leave under the Family and Medical Leave Entitlements.

WHY IS THE ELIGIBILITY DETERMINATION NECESSARY?

Each employee's situation must be analyzed individually because a state employee may be eligible for one or more of the Family and Medical Leave Entitlements.

- An employee can move in and out of eligibility.
- The employee's eligibility for leave must be determined **each time the employee needs leave for a new reason.**
- The rules for determining eligibility **differ.**

HR PRACTICE POINT



Even if the employee is not eligible for leave under one of the Family and Medical Leave Entitlements, the employee may be entitled to take time away from work under other state or federal laws (including, but not limited to the Americans with Disabilities Act), collective bargaining agreements, or state policy.

DETERMINING ELIGIBILITY FOR THE FAMILY AND MEDICAL LEAVE ENTITLEMENTS

Federal FMLA: Eligibility Requirements

To be eligible for **federal FMLA leave**, the employee must meet **BOTH** of the following requirements:

- The employee has worked at least **12 months** of total service for the State of Connecticut.
- The employee has worked at least **1,250 hours** in the **12 months** immediately preceding the beginning of the leave.

Each requirement has its own calculation method and rules. They are **not** the same!

Federal FMLA: RULES FOR CALCULATING THE 12 MONTHS OF TOTAL STATE SERVICE

- The 12 months are cumulative, not consecutive.
Example:
 - Patty works as a summer worker for 3 months in 2014.
 - Patty works as a durational employee for 6 months in 2015.
 - Patty takes a new job in classified service on February 1, 2016.
 - Patty has 12 months of total state service on May 1, 2016.
 - 3 months + 6 months + 3 months = 12 months
- If an employee has 7-year break in service, the time before the 7-year break in service is not counted, unless the break was due to National Guard or Reserve military service.
- If an employee is maintained on payroll for **any part** of a week, including any periods of paid or unpaid leave during which other benefits or compensation are provided by the employer (such as workers' compensation, group health plan benefits, etc.), the **whole week** counts as a week of employment.

Federal FMLA: RULES FOR CALCULATING THE 1,250 HOURS*What Is Included:*

- **All** hours actually worked by the employee, including overtime, compensatory time, and any other hours that an employee works – even if they are not paid for that time – are counted toward the 1,250-hour requirement.

Example: Time spent before or after school hours by a teacher preparing lesson plans and correcting homework counts toward the 1,250 hours.

- Courts generally accept an employee's claims about time worked unless the employer can prove otherwise.
- If the employee works for more than one state agency, or works for one state agency in two or more positions, the combined total of all the hours worked for all of the jobs counts toward the 1,250 hours.
- Time spent performing union business is counted toward the 1,250-hour requirement if the State, as the employer, is paying for the time.
- If the State, as the employer, is giving the employee paid time off to receive training, that time is also counted toward the 1,250 hours.
- Sabbaticals need to be reviewed on a case-by-case basis to determine if the time counts toward the 1,250 hours.
- "Hours worked" includes time that **would have been worked** by an employee who has been out on military leave.

HR PRACTICE POINT

To determine the hours worked by an employee who was on military leave, estimate the hours the employee would have worked if the employee had not been out on military leave by looking at the hours the employee had worked before the military leave and at the actual hours worked (including overtime) by other employees in comparable positions.

What Is Not Included:

Time spent away from work **does not count** as hours worked:

- Sick leave
- Vacation
- Personal leave
- Administrative leave
- Unpaid leave
- Jury duty
- Weather-related absences per gubernatorial orders
- Building closures due to emergency conditions
- Furlough days
- Voluntary Schedule Reduction (i.e., the time not worked)
- Worker's Compensation absences

Note: This is **different** from the rule for calculating the 12 months of total state service

STATE FMLA: Eligibility Requirements

As of 1/1/2022, to be eligible for **CT FMLA leave**, the employee must have worked for the employer for at least **3 months** immediately preceding their first date of leave.

- There is no hours worked requirement.

BECOMING ELIGIBLE FOR FEDERAL WHILE ON STATE FMLA LEAVE

An employee can become eligible for leave under federal FMLA while on State FMLA leave.

Example:

- Steve started working for the State on January 2, 2023.
- Steve breaks his leg on December 1, 2023, and needs to be out of work for approximately 8 weeks, returning on February 1, 2024.
 - As of December 1st, Steve has worked more than 1250 hours, but he has not yet worked for the employer for 12 months, so he is not yet eligible for federal FMLA leave.
- However, Steve has worked for the State for more than 3 months, so he is eligible for state FMLA leave.

- On January 2, 2024, Steve will meet his 12-month requirement and will become eligible for federal FMLA leave.

THEREFORE, Steve will use approximately 8 weeks of his CT FMLA entitlement but only 4 weeks of his federal FMLA entitlement.

SEBAC Supplemental Leave: Eligibility Requirements

To be eligible for **SEBAC Supplemental leave**, the employee must meet the definition of a “permanent employee” as defined in C.G.S. §5-196(19).

- **A classified state employee is “permanent”** if they have successfully completed their initial working test period.
- **A state employee holding a position in unclassified service is “permanent”** once they hold that unclassified position for a period of more than six months.
- Unclassified employees in positions funded in whole or in part by the federal government as part of a public serve employment program, on-the-job training program or work experience program never become “permanent” and thus, never become eligible for leave under SEBAC Supplemental Leave.

HR PRACTICE POINT



Certain bargaining agreements provide that employees in classifications that have long working test periods are entitled to the benefits of “permanent” status even before they complete their working test periods. Check the bargaining agreements!

Pregnancy Disability Leave: Eligibility Requirements

For purposes of the pregnancy disability leave under C.G.S. §46a-60(b)(7), an “employee” means any person employed by the state, a political subdivision of the state or an entity that employs three or more people.

Organ Donor and Bone Marrow Donor Leave: Eligibility Requirements

All state employees are eligible for organ donor leave and bone marrow donor leave.

THE INTERACTION OF LAYOFF AND ELIGIBILITY UNDER THE FAMILY AND MEDICAL LEAVE ENTITLEMENTS

- If an employee who is **on an approved** family and medical leave is laid off and is later recalled to work or is otherwise re-employed by the State, that employee is **immediately** eligible for family and medical leave upon return to employment.
- If the employee is **on an approved** family and medical leave when the employee is terminated, through layoff or other reasons, the family and medical leave ends as of the employee's last day of employment.

The reasons a state employee may use the Family and Medical Leave Entitlements are organized into two major categories:

- **Standard Family and Medical Leave**
- **Military Family Leave**
 - Military Family Leave is available **only** under federal FMLA and state FMLA.
 - The 2017 SEBAC Agreement does **not** create a supplemental leave entitlement for military family reasons.

This chapter describes the leave reasons for each of the two categories.

“STANDARD” FAMILY/MEDICAL LEAVE REASONS

- **Personal Medical Leave** - For an employee to take time off from work for the employee’s own serious health condition:
 - The employee’s own illness or injury;
 - The disability period related to the employee’s pregnancy and childbirth;
 - The donation of an organ by the employee;
 - The donation of bone marrow by the employee.
- **Caregiver Leave** - For an employee to take time off from work to care for the employee’s family member in connection with:
 - Their disability period related to pregnancy and childbirth;
 - Their organ or bone marrow donation; or
 - Their other serious health condition.
- **Bonding Leave** - For an employee to take time off from work to:
 - Bond with a newborn child;
 - Process the adoption of a child or bond with a newly adopted child; or
 - Process the placement of a foster child or bond with a newly placed foster child.
 - Leave to bond with a foster child is available under federal and state FMLA only. It is **not** a covered reason for leave under the SEBAC Supplemental Agreement.

Chapters 11 through 18 describe the reasons to take standard leave in more detail.

MILITARY FAMILY LEAVE REASONS

- ***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; or

- ***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 FMLA only*);

- ***Qualifying Exigency Leave*** - For an employee to take time off from work due to a “qualifying exigency” that arises out of or is directly related to the fact that a spouse, son, daughter, or parent of the employee is on covered active duty, specifically:
 - Short notice deployment;
 - Military events and related activities;
 - Childcare (non-routine care for the child of the individual on covered active duty) and school activities;
 - Parental leave care (non-routine care for the parent of the individual on covered active duty);
 - 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.

Chapters 49 through 54 describe military family leave in more detail.

All of the Family and Medical Leave Entitlements use words and phrases that have specific legal meanings that may be different from the common dictionary definitions. In addition, the federal and state laws may have different definitions for the same words. Also, the definitions of certain words may differ depending upon whether they are used in the context of “standard leave” or “military family leave.”

If state statutes or regulations or the 2017 SEBAC Agreement do not specifically define a term, the State of Connecticut adopts the federal definition.

This chapter defines the terms that apply to “standard leave.” For information on the definitions used in connection with “military family leave,” refer to Chapter 50.

“Child,” “Son” or “Daughter” means:

- A biological, adopted or foster child, stepchild, a legal ward, or child of a person standing “*in loco parentis*,”
- Under **federal FMLA and SEBAC Supplemental Leave**, the definition of child **also** includes the following requirements:
 - The child must be either:
 - Under age 18 years or
 - Age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act.
 - The onset of a disability may occur at any age for purposes of the definition of an adult “son or daughter”.

Review the U.S. Department of Labor’s [Questions and Answers concerning the use of FMLA leave to care for a son or daughter age 18 or older](#) for more information about this topic.

“Health Care Provider” is defined in Chapter 20.

“**In loco parentis**” means:

- “In the place of the parent”
- An individual stands in *loco parentis* to a child if they have day-to-day responsibilities to care for or financially support the child and the individual intends to take on the role of a parent to that child.
- The person standing *in loco parentis* is not required to have a biological or legal relationship with the child.

Review Administrator’s Interpretation No. 2010-3 for more information about determining if an individual is or was “*in loco parentis*” to a child.

“**Parent**” means 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.

“**Parent-in-law**” means the parent of the employee’s spouse.

- **State FMLA** allows eligible employees to take leave to care for a sick parent-in-law.
- **An employee cannot use federal FMLA leave or SEBAC Supplemental Leave to take leave to care for a sick parent-in-law.**
 - The only exception to the “no in-laws” rule is when the employee needs to take qualifying exigency leave to care for the parent of a covered service member.
 - See **Chapters 50 and 53** for more information about this limited exception.

“**Spouse**” means a husband or wife as defined or recognized in the state where the individual was married, including a common law marriage or same-sex marriage.

- Connecticut recognizes same-sex marriages.
- Residents of Connecticut cannot enter into a common law marriage because Connecticut state law **does not** recognize common law marriage.
- If an individual enters in a common law marriage while living in a state that does recognize it, Connecticut will accept that marriage as valid.

“Serious health condition” means:

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

- inpatient care or
- continuing treatment by a health care provider

See **Chapters 11 through 18** for more information.

“Workweek” means the employee’s usual or normal schedule (hours/days per week) prior to the start of the family/medical leave.

See **Chapter 9** for more information about how to calculate an employee’s workweek.

Each of the Family and Medical Leave Entitlements provides eligible employees with a different amount of leave.

This chapter describes each of the six leave entitlements and the amount of leave available under each entitlement and includes a summary chart.

LEAVE ENTITLEMENTS

Federal FMLA:

- **Standard leave and/or qualifying exigency leave:**
 - An eligible employee is entitled to a **maximum of twelve (12) weeks** of leave **in a 12-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 service member (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 federal FMLA and military family leave.

State FMLA:

- **Standard leave and/or qualifying exigency leave:**
 - An eligible employee is entitled to a **maximum of twelve (12) weeks** of leave **within a 12-month period**.
 - An eligible employee may receive two (2) additional weeks of leave for a serious health condition resulting in incapacitation during pregnancy.

- **Military caregiver leave:**
 - An eligible employee is entitled to a **maximum of 26 weeks** of leave in a **12-month period**.
 - 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 state FMLA and military family leave.

SEBAC Supplemental leave:

- An eligible employee is entitled to a **maximum of twenty-four (24) weeks** of leave **within a 2-year period**, up to four calendar months of which may be used for bonding purposes.

Pregnancy Disability leave:

- An employee may take a “**reasonable**” amount of leave for the disability associated with pregnancy and childbirth.
 - The amount of time that is considered “reasonable” is determined on a case-by-case basis, based upon the employee’s medical condition.
 - In general, if the employee has a routine pregnancy and childbirth, with no complications, it is reasonable for an employee to need six (6) weeks of leave following a vaginal delivery or eight (8) weeks of leave following a caesarian section.

Organ Donor leave:

- A state employee who donates an organ to a person for organ transplantation shall be entitled to up to **fifteen (15) days of paid leave** from state employment as a recovery period from such donation.
 - Organ Donor leave shall not result in a reduction in pay, the loss of any leave to which the employee is otherwise entitled, or a loss of credit for time or service. It shall not affect the employee's rights with respect to any other employee benefits provided under federal or state law.

Bone Marrow Donor leave:

- A state employee who donates bone marrow to a person for transplantation shall be entitled to up to **seven (7) days of paid leave** from state employment as a recovery period from such donation.
 - Bone Marrow Donor leave shall not result in a reduction in pay, the loss of any leave to which the employee is otherwise entitled, or a loss

of credit for time or service. It shall not affect the employee's rights with respect to any other employee benefits provided under federal or state law.

SUMMARY OF LEAVE AVAILABILITY BY ENTITLEMENT

LEAVE ENTITLEMENT	STANDARD LEAVE	MILITARY FAMILY LEAVE - CAREGIVER	MILITARY FAMILY LEAVE - QUALIFYING EXIGENCY
Federal FMLA	Up to 12 workweeks within a 12-month period	Up to 26 workweeks in a single 12-month period	Up to 12 workweeks within a 12-month period
State FMLA	Up to 12 workweeks within a 12-month period, with the possibility of 2 additional weeks for incapacity during pregnancy	Up to 26 workweeks in a single 12-month period	Up to 16 workweeks within a 2-year period
SEBAC Supplemental	Up to 24 workweeks within a 2-year period	N/A	N/A
Pregnancy Disability	A "reasonable amount of leave"	N/A	N/A
Organ Donor Leave	Up to 15 days	N/A	N/A
Bone Marrow Donor Leave	Up to 7 days	N/A	N/A

There are three ways that the Family and Medical Leave Entitlements may be taken:

- Block leave
- Intermittent leave
- Reduced schedule leave

This chapter defines each type of leave and the circumstances under which they can be taken.

DEFINITIONS

“Block Leave” is a one-time continuous absence for a single qualifying reason.

- There is no minimum length of time for block leave for most of the family and medical leave entitlements, with the exception of SEBAC Supplemental leave.
- For SEBAC Supplemental leave, block leave must last for **more than 5 consecutive work days**.

Examples:

- A three-day inpatient hospital stay. (*Not covered under SEBAC Supplemental leave*)
- A broken leg requiring surgery and recovery for 4 months.
- Participation in a 30-day outpatient substance abuse rehabilitation program.

“Intermittent Leave” is leave taken repeatedly for a single qualifying reason.

- An eligible employee may take intermittent leave in periods of **weeks, days, hours, and, in some cases, even segments of an hour**.

State of Connecticut Policy: Minimum increment

When an employee takes intermittent or reduced schedule leave, **the shortest amount of leave that can be taken is 15 minutes.**

This means that if an employee on an approved intermittent leave is absent for less than 15 minutes, 15 minutes will be deducted from the employee's FMLA allotment.

Examples:

- Leaving work early because of chronic migraine headaches.
- Taking a parent to dialysis appointments weekly.
- Starting work one hour late per week to attend physical therapy appointments.

"Reduced Schedule Leave" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday for a period of time, normally from a full-time schedule to a part-time schedule.

- An eligible employee may take reduced schedule leave in periods of **weeks, days, hours and, in some cases, even segments of an hour.**

State of Connecticut Policy: Minimum increment

When an employee takes intermittent or reduced schedule leave, **the shortest amount of leave that can be taken is 15 minutes.**

This means that if an employee on an approved intermittent leave is absent for less than 15 minutes, 15 minutes will be deducted from the employee's FMLA allotment.

Examples:

- Working only 4 days per week during recovery from open heart surgery.
- Leaving work 2 hours early each day to spend time with a hospitalized child.
- Starting work at 11:30 instead of 8:30 to receive daily radiation treatments.

HOW CAN THE LEAVE BE TAKEN?

The type of leave an employee may take depends upon the source of the leave entitlement, the reason for leave, and the medical documentation provided.

The chart below summarizes how federal FMLA leave, state FMLA leave, and SEBAC Supplemental leave may be taken, including leaves taken under these entitlements for pregnancy and organ and bone marrow donation.

For information on Personal Medical Leave, refer to **Chapter 11**.

For information on Caregiver Leave, refer to **Chapter 12**.

For information on Bonding Leave and Preplacement leave, refer to **Chapters 14 through 17**.

For information on leaves taken pursuant to C.G.S. §46a-60(b)(7) and C.G.S. §5-248k, refer to **Chapters 14 and 18**.

	Federal FMLA	State FMLA	SEBAC Supplemental Leave
Personal Medical Leave (including pregnancy and organ/bone marrow donation)	Block leave Reduced Schedule leave Intermittent leave	Block leave Reduced Schedule leave Intermittent leave	Block leave only
Caregiver Leave	Block leave Reduced Schedule leave Intermittent leave	Block leave Reduced Schedule leave Intermittent leave	Block leave only
Bonding Leave	Block leave Reduced Schedule leave <i>(with employing agency's consent)</i>	Block leave Reduced Schedule leave <i>(with employing agency's consent)</i>	Block leave Reduced Schedule leave <i>(with employing agency's consent)</i>
Leave to process an	Block leave	Block leave	N/A

CH. 8

FUNDAMENTALS: HOW IS LEAVE TAKEN?

adoption (pre-adoption)	Reduced Schedule leave Intermittent leave	Reduced Schedule leave Intermittent leave	
Leave to process the placement of a foster child (pre-placement)	Block leave Reduced Schedule leave Intermittent leave	Block leave Reduced Schedule leave Intermittent leave	N/A
Military Caregiver Leave	Block leave Reduced Schedule leave Intermittent leave	Block leave Reduced Schedule leave Intermittent leave	N/A
Military Caregiver Leave - Veteran	Block leave Reduced Schedule leave Intermittent leave	N/A	N/A
Military Qualifying Exigency	Block leave Reduced Schedule leave Intermittent leave	Block leave Reduced Schedule leave Intermittent leave	N/A

The employee's "workweek" is the basis of the entitlement for Family and Medical Leave Entitlements.

This chapter explains the following:

- Definition of a workweek
- Determination of the workweek for employees with variable work schedules
- Calculation of the employee's leave entitlement for block leave and intermittent and reduced schedule leave.

DEFINITION OF A "WORKWEEK"

A "workweek" is the employee's **usual or normal schedule** (hours/days per week) prior to the start of the Family and Medical leave entitlement.

Examples: 40 hours/week;
35 hours/week;
37.5 hours/week;
20 hours/week, etc.

DETERMINATION OF THE WORKWEEK FOR EMPLOYEES WITH VARIABLE WORK SCHEDULES

When an employee's work schedule **varies from week to week**, because of overtime or other reasons, an employer uses a **weekly average** to calculate the employee's Family Medical leave entitlement.

Federal FMLA: The weekly average is determined by the hours scheduled over the **12 months** prior to the beginning of the leave and includes any hours for which the employee took any type of leave, **as well as any overtime worked by the employee.**

Example: An eligible employee whose average workweek is 50 hours (including overtime) is entitled to 12 workweeks or 60 work days or 600 hours in a 12 month period.

State FMLA: The weekly average is determined by the hours worked/week over the **12 months** prior to the beginning of the leave unless the employee has not worked 12 months, in which case the weekly average is determined by the hours worked per week since the employee's date of hire. As with federal FMLA, the hours worked for the purpose of determining the workweek includes any hours for which the employee took any type of leave, as well as any overtime worked by the employee.

SEBAC Supplemental Leave: The federal FMLA method is used for calculating the workweek for an employee with a variable work schedule.

CALCULATION OF THE EMPLOYEE'S LEAVE ENTITLEMENT

Block Leave

The leave entitlement is based on the employee's actual workweek. The number of days or hours within the workweek are not relevant because no conversions from week to day/hours are required.

Federal FMLA	12 workweeks in a 12-month period
State FMLA	12 workweeks in a 12-month period
SEBAC Supplemental Leave	24 workweeks in a 2-year period

Examples:

An employee who works 5 days per week, 8 hours a day, Monday through Friday, needs to take a block leave of 4 weeks. At the end of the 4 weeks, the employee will have 8 weeks of federal FMLA leave left and 8 weeks of state FMLA leave left.

An employee who works 3 days per week, 12 hours a day, Friday through Sunday, needs to take a block leave of 4 weeks. At the end of the 4 weeks, the employee will have 8 weeks of federal FMLA leave left and 8 weeks of state FMLA leave left.

HR PRACTICE POINT



A week is a week. When calculating an employee's leave entitlement for block leave, focus on the employee's actual scheduled workweek, **not** days and hours.

Intermittent Leave and Reduced Schedule Leave

Federal & State FMLA

For purposes of intermittent leave and reduced schedule leave, the federal FMLA and state FMLA leave entitlements can be calculated by multiplying the 12 weeks of leave by the number of hours worked by the employee.

Sample Work Schedules	Work Weeks	Work Hours
40 hours/week	12	480
38.75 hours/week	12	465
37.5 hours/week	12	450
36.25 hours/week	12	435
35 hours/week	12	420
24 hours/week	12	288
50 hours/week	12	600

Examples:

An employee who works a 40-hour week needs to take a reduced schedule leave of one day per week for 5 weeks. For this employee, one day equals 8 hours. Therefore, the employee will use 40 hours (8 hours x 5 days) of the 480 hours of federal FMLA leave and state FMLA available.

An employee who works a 35-hour week needs to take a reduced schedule leave of one day per week for 5 weeks. For this employee, one

day equals 7 hours. Therefore, the employee will use 35 hours (7 hours x 5 days) of the 420 hours of federal FMLA and state FMLA leave available.

SEBAC Supplemental Leave:

In general, SEBAC supplemental leave is available only on **block** basis. (*See above*)

In the limited exception where an agency allows an employee to take **reduced schedule leave** for bonding purposes, the SEBAC Supplemental leave entitlement is calculated by determining how many workweeks are within the period of supplemental leave (*up to 4 calendar months*) that the employee wishes to take and divides that number by the percentage of time the employee will be working.

Refer to **Chapter 17** for more information on calculating bonding leave under the SEBAC Supplemental leave entitlement.

Both the federal and state FMLA allow the employer the right to select one of four methods for determining the 12-month period in which the employee may take leave (“the leave year”) and must apply it uniformly and consistently to all employees.

State of Connecticut Policy: Measure Forward

The State of Connecticut uses the “**Measure Forward**” method for all Family and Medical Leave Entitlements.

This chapter explains how the “measure forward” method works and includes examples for federal FMLA, state FMLA and SEBAC Supplemental leave.

HOW THE “MEASURE FORWARD” METHOD WORKS

- The “leave year” for each entitlement begins on the *first day* the employee takes leave under that entitlement.
- Therefore, each employee will have their own calendar.

EXAMPLES OF LEAVES

Example: Federal FMLA Leave
(12 workweeks in a 12-month period)

Mary Smith took her first federal FMLA leave on September 5, 2022.
Her federal FMLA leave year will run until September 4, 2023.
Her next federal FMLA leave year will begin the first day she uses federal FMLA
after September 4, 2023.

9/5/2022	9/4/2023	10/1/2023	9/30/2024
X_____X	-----X	_____X	_____X
Start federal	End federal	Start new federal	End federal

Example: State FMLA Leave
(12 workweeks in a 12-month period)

Jane Doe took her first state FMLA leave on September 5, 2022.
Her state FMLA leave year will run until September 4, 2023.
Her next state FMLA leave year will begin the first day she uses state FMLA
leave **after** September 4, 2024.

9/5/2022	9/4/2023	12/1/2023	11/30/2024
X_____X	-----X	_____X	_____X
Start State	End State	Start new State	End State

*Example: SEBAC Supplemental Leave
(24 workweeks in a 2-year period)*

Joe Rogers took his first SEBAC Supplemental leave on September 5, 2022.

His SEBAC Supplemental leave year will run until September 4, 2024.

His next SEBAC Supplemental leave year will begin the first day he uses SEBAC Supplemental leave **after** September 4, 2024.

9/5/2022	9/4/2024	12/1/2024	11/30/2026
X_____X	-----X	X_____X	
Start SEBAC	End SEBAC	Start new SEBAC	End SEBAC

“Serious Health Condition” for the Family and Medical Leave Entitlements means “an illness, injury or impairment or physical or mental condition that involves inpatient care or continuing treatment.”

This chapter defines terms related to the definition of a “serious health condition,” identifies conditions requiring inpatient care and/or continuing treatment and describes conditions that are not considered a serious health condition.

Information on “serious injury or illness” for military caregiver leave can be found in Chapters 49 through 54.

RELATED TERMS

- **Incapacity**” means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.
- **“Treatment”** includes examinations to determine if a serious health condition exists and evaluations of the condition.
 - A telemedicine with a health care provider will qualify as an in-person visit provided the following criteria are met:
 - The telemedicine visit includes an examination, evaluation, or treatment by a health care provider
 - The telemedicine visit is permitted and accepted by state licensing authorities; and
 - The visit is performed by video conference or equivalent technology.
 - Communication methods that do not meet these criteria (e.g., a simple telephone call, letter, email, or text message) are insufficient, by themselves, to satisfy the requirement of the “in person visit.”
- A **“regime of continuing treatment”** includes for example, a course of prescription medication (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. It does NOT include taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

CONDITIONS REQUIRING INPATIENT CARE AND/OR CONTINUING TREATMENT

A person has a “serious health condition” if they have one or more of the following conditions summarized in the following chart.

Inpatient Care
<ul style="list-style-type: none"> • An overnight stay in a hospital, hospice, or residential medical care facility. • Includes any period of incapacity or any subsequent treatment in connection with the overnight stay. <p><i>(Note: If surgery is elective, and an overnight stay in the hospital is required, leave is covered.)</i></p>
OR
Continuing Treatment by a Health Care Provider <i>(any one or more of the following)</i>
<p>1. 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:</p> <ul style="list-style-type: none"> - Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity, unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or - At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. <i>Examples: the health provider might prescribe a course of prescription medication or therapy requiring special equipment.</i>
<p>2. Pregnancy: Any period of incapacity due to pregnancy, including prenatal treatment. <i>(See Chapter 14)</i></p>
<p>3. Chronic Conditions Requiring Treatments: Any period of incapacity due to or treatment for a chronic serious health condition which:</p> <ul style="list-style-type: none"> - Requires periodic visits for treatment for that condition by a health care provider at least twice a year; and - Recurs over an extended period of time; and - May cause episodic rather than a continuing period of incapacity. <p><i>Examples: asthma, migraine headaches, diabetes, epilepsy</i></p>

4. Permanent/Long-Term Conditions:

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider.

Examples: Alzheimer's disease; terminal states of cancer; severe stroke.

5. Multiple Treatments (Non-Chronic Conditions):

Restorative surgery after an accident or other injury; or,

A condition that would likely result in a period of incapacity of more than three consecutive full calendar days if the employee or employee's family member did not receive treatment. *Examples: chemotherapy; physical therapy.*

WHAT IS NOT CONSIDERED A SERIOUS HEALTH CONDITION?

The following ailments are NOT considered to be a "serious health condition" unless complications develop such that inpatient care or continuing treatment, as defined above, is required:

- routine physical examinations,
- common cold,
- flu,
- earaches,
- upset stomach,
- minor ulcers,
- headaches, other than migraines,
- routine dental work or orthodontia problems,
- periodontal disease, or
- minor cosmetic treatments, such as most treatments for acne or plastic surgery

Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions are met.

Mental illness or allergies may be serious health conditions, but only if all the conditions are met.

Substance Abuse: Leave under the: Federal FMLA leave, state FMLA leave and/or SEBAC Supplemental leave may be taken only for **treatment** for substance abuse by a

health care provider or by a provider of health care services on referral by a health care provider.

An employee may not use federal FMLA leave, state FMLA leave or SEBAC Supplemental leave for absences caused by the employee's use of the substance.

See **Chapter 26** for information on reading a Medical Certificate

Under the Family and Medical Leave Entitlements, an eligible employee can take leave if they are “needed to care for” an “immediate family member” due to a serious health condition.

This chapter describes the following:

- **Definition of terms**
- **Documentation required for caregiver leave**
- **The ways that caregiver leave may be taken.**

DEFINITION OF TERMS

“Needed To Care For” encompasses both:

- Providing physical care, or
- Providing psychological comfort and reassurance

Examples:

- Staying home to care for a spouse with a serious health condition.
- Taking a sick child to doctor’s appointments or planned medical treatment.
- Providing psychological care and comfort by spending time with an elderly parent in the hospital.

Refer to **Chapters 14 through 16** for information about bonding with a newborn, adopted or foster child.

For purposes of caregiver leave under the **federal FMLA and SEBAC Supplemental leave**, **“immediate family members”** are defined as:

- Spouse
- Parent
- Child, son or daughter, i.e.:
 - A biological, adopted or foster child, stepchild, a legal ward, or child of a person standing *“in loco parentis”* who is:
 - Under age 18 years, **or**
 - Age 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disabilities Act. (The onset of such a disability may occur at any age.)

*The definitions of son or daughter for the purposes of military family leave are different.

Refer to **Chapters 49 - 54** Military Family Leave, which includes both Qualifying Exigency Leave and Military Caregiver Leave

Reminder:

Siblings, aunts, uncles, grandparents, or other relatives are not covered under **federal FMLA or SEBAC Supplement leave** unless the individual stood *in loco parentis* to the employee or the employee stood *in loco parentis* to the individual.

Refer to **Chapter 6** for the definition of *in loco parentis*.

For purposes of caregiver leave under the **state FMLA**, "***immediate family members***" are defined as:

- Spouse
- Parent, including in-laws
- Son or daughter of any age,
- Sibling, including in-laws
- Grandparent, including in-laws
- Grandchild, including in-laws or
- An individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships

DOCUMENTATION FOR CAREGIVER LEAVE

The need for caregiver leave for a sick family member must be substantiated by medical documentation from the *family member's* health care provider.

- For "standard leave" under federal FMLA, state FMLA and/or SEBAC Supplemental leave, the employee must provide the P33B - Employee Caregiver form.
- For "military caregiver leave", the employee must provide the WH-385 or WH-385V.

Refer to **Chapter 19** Fundamentals: Documentation Needed to Substantiate Leave

HOW CAREGIVER LEAVE IS TAKEN

- Under federal FMLA, state FMLA, and/or Military Caregiver leave, caregiver leave can be taken as intermittent leave, reduced schedule leave, or block leave.
- Under SEBAC Supplemental leave, caregiver leave must be taken as **block leave**. Reduced schedule leave is available for bonding leave only with the employer's consent.

Refer to **Chapter 8** Fundamentals: How Is Leave Taken

Federal FMLA and State FMLA establish special rules for spouses who work for the same employer. In some limited situations, the spouses are required to share the 12 weeks of federal FMLA leave and/or state FMLA leave.

SEBAC Supplemental Leave does NOT require spouses to share their leave entitlement. Each eligible spouse retains the full 24 weeks of leave.

This chapter explains the following:

- **What it means for a state employee to work for the same employer as their spouse.**
- **The situations when spouses have to share or do not have to share their federal and/or state FMLA leave entitlements.**

WHAT DOES IT MEAN FOR A STATE EMPLOYEE TO WORK FOR THE SAME EMPLOYER AS THEIR SPOUSE?

Because the State of Connecticut is considered one employer, spouses who work for different state agencies are still considered to work for one employer.

Example:

Lee and Pat are married.

Lee works for the Department of Transportation.

Pat works for the Department of Correction.

Because both Lee and Pat work for state agencies, they are considered to work for the same employer – the State of Connecticut.

WHEN IS SHARING REQUIRED?

Under **federal and state FMLA**, spouses who are **both** employed by the same employer are **limited** to a combined total of 12 weeks of leave if leave is taken for **one of the following reasons**:

- To bond with a child, or
- To care for a parent (*federal and state FMLA*) or other family member (*state only*) with a serious health condition.

Example:

If Lee needs to take 8 weeks to care for their seriously ill parent, then Pat would only have 4 weeks left to care for their own parent who has a serious health condition.

Refer to **Chapter 12** Fundamentals: What is a Caregiver?

Refer to **Chapter 14** Fundamentals: What Is Covered Under Pregnancy and Bonding

Refer to **Chapter 15** Fundamentals: What Is Covered Under Adoption and Bonding

Refer to **Chapter 16** Fundamentals: What Is Covered Under Foster Care Placement and Bonding

WHEN IS SHARING NOT REQUIRED?

Under **federal and state FMLA**, spouses who are **both** employed by the same employer are not required to share the 12 weeks of leave if the reason for the leave is one of the following:

- one's own serious health condition, such as with the recovery period following the birth of a child or
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty.

In addition, under federal FMLA, spouses who are both employed by the same employer are not required to share if the reason for leave is to care for a spouse or child with a serious health condition.

Pregnancy is considered to be a serious health condition; as such, leave for pregnancy is considered to be a “personal medical leave.”

Pregnancy-related leave may be taken for the following reasons:

- Prenatal medical appointments (*federal FMLA and state FMLA only*),
- Pregnancy-related complications,
- Recovery from pregnancies that do not end in a live birth,
- Childbirth and delivery, and
- The period of time after the delivery during which the parent who was pregnant is certified by the healthcare provider as unable to perform the requirements for the parent’s job.

NOTE: For purposes of the CT FMLA, a person who is pregnant may be entitled to an extra two weeks leave for a serious health condition resulting in incapacitation during pregnancy. These extra two weeks are not available after the individual is no longer pregnant (e.g., after delivery).

Bonding with a newborn child is leave taken to allow a parent to develop a mutual emotional and psychological closeness with the child.

This chapter describes the leave entitlements available for pregnancy-related leave and bonding and the sequencing of the entitlements.

OVERVIEW OF THE ENTITLEMENTS

There are four Family and Medical Leave Entitlements that are used for pregnancy-related leave and/or bonding:

- Pregnancy Disability Leave under C.G.S. §46a-60(b)(7)
- Federal FMLA
- State FMLA
- SEBAC Supplemental leave

Under the Family and Medical Leave Entitlements, there are specific rules for pregnancy- related leave and bonding with a newborn child, including the sequencing of the entitlements.

The rules depend on whether the **employee or employees** fit one or more of the following categories:

- **Pregnant Parent** - the parent who is/was pregnant
- **Other Parent Legally Married to the Pregnant Parent** - a parent of the newborn child who is also the spouse of the Pregnant Parent and
- **Other Parent in a Relationship Equivalent to Marriage with Pregnant Parent**
 - A parent of the newborn child who is not legally married to the Pregnant Parent but is in a relationship with the Pregnant Parent that is equivalent to marriage.
 - Under state FMLA, the definition of a family member includes a person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.
 - Accordingly, a person who has a significant personal bond with the pregnant parent that is equivalent to marriage will be treated as the spouse of the pregnant parent **under state FMLA only**.
 - The federal FMLA and SEBAC Supplemental do not include this expansive definition of a family member. Accordingly, **a person who is not legally married to the pregnant parent will not be treated as the spouse for purposes of federal FMLA leave or SEBAC Supplemental leave.**
- **Other Parent Not Married to Pregnant Parent (federal FMLA and SEBAC Supplemental) and Not in an Equivalent Relationship to Pregnant Parent (state FMLA)** - a parent of the newborn child who is not married to the Pregnant Parent and who does not have a significant personal bond with the Pregnant Parent that is equivalent to marriage.
- **Family Caregiver to Pregnant Parent** - a family member of the Pregnant Parent who is not a parent of the newborn child.

LEAVE ASSOCIATED WITH PREGNANCY

Pregnant Parent

The parent who is pregnant is entitled to **Pregnancy Disability leave under C.G.S. §46a-60(b)(7)**, regardless of whether they are also eligible for federal FMLA or state FMLA.

Pregnancy Disability leave provides a reasonable period of leave for the “disability resulting from her pregnancy.” This “**disability period**” includes both the hospital stay and any period of time **prior to** and **subsequent to** the delivery certified by the attending physician as time when the employee is unable to perform the requirements of the job. Barring complications, a reasonable disability period is usually 6 weeks after a vaginal delivery and 8 weeks after a Cesarean section. This statute does not provide any entitlement to take leave for the purpose of bonding.

A Pregnant Parent who is eligible for Federal FMLA and/or state FMLA has the following entitlements:

Federal FMLA

- The Pregnant Parent can use federal FMLA leave on an **intermittent, reduced schedule** and/or **block** basis as medically necessary for routine prenatal care and appointments, pregnancy complications, and morning sickness.
- During the disability period (as defined above), federal FMLA leave is used on a **block** basis.
- Federal FMLA leave runs concurrent with the Pregnancy Disability leave and, if the employee is eligible, state FMLA leave.

State FMLA

- The Pregnant Parent can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis as medically necessary for routine prenatal care and appointments, pregnancy complications, and morning sickness.
- **A person who is pregnant may be entitled to the additional 2 weeks of leave under state FMLA** if their medical provider certifies they have a serious health condition resulting in incapacitation during pregnancy.
 - These two additional weeks may be used for routine prenatal care and appointments, pregnancy complications, and morning sickness.
 - They may also be used for any other serious health condition that occurs during the pregnant person’s pregnancy.
 - The two additional weeks cannot be used after childbirth.
- During the disability period (as defined above), state FMLA leave is used on a **block** basis.

- State FMLA leave runs concurrent with the Pregnancy Disability Leave and, if the employee is eligible, federal FMLA leave.

SEBAC Supplemental leave

Because the SEBAC Supplemental leave is in addition to the Pregnancy Disability leave, a pregnant employee will never use SEBAC Supplemental leave entitlement during the pregnancy; however, SEBAC Supplemental leave remains available for bonding. (See BONDING - RELATED LEAVE)

Married Parent

An employee who is legally married to the pregnant parent (“the Married Parent”) may take **caregiver leave** to care for the pregnant parent if they are eligible for leave under federal FMLA and/or state FMLA. Caregiver leave includes taking time away from work for the following reasons:

- Taking the Pregnant Parent to prenatal appointments
- Providing care and comfort to the Pregnant Parent on bedrest or otherwise experiencing complications prior to the birth;
- Providing care and comfort to the Pregnant Parent during the childbirth and delivery; and
- Providing care and comfort to the Pregnant Parent during the disability period following the birth of the child.

A person who is not pregnant is not entitled to take Pregnancy Disability Leave under C.G.S. 46a-60(b)(7).

A Married Parent who is eligible for Federal FMLA, state FMLA and/or SEBAC Supplemental leave has the following entitlements:

Federal FMLA

- The Married Parent can use federal FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent in connection with routine prenatal care and appointments, pregnancy complications, and morning sickness.
- The Married Parent can use federal FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent during the disability period.

- If the employee is also eligible for state FMLA, federal FMLA leave runs concurrent with the state FMLA leave.

State FMLA

- The Married Parent can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent in connection with routine prenatal care and appointments, pregnancy complications, and morning sickness.
- The Married Parent can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent during the disability period.
- If the employee is also eligible for federal FMLA, state FMLA leave runs concurrent with the federal FMLA leave.
- **A person who is not pregnant is not entitled to the additional 2 weeks of leave available under state FMLA** for a person who has a serious health condition resulting in incapacitation during pregnancy.

SEBAC Supplemental

- The Married Parent can use SEBAC Supplemental leave to care for a pregnant spouse.
- SEBAC Supplemental leave by a Married Parent to care for a pregnant spouse must be used on a **block basis** only.
- If the married parent is **eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave does not start until the federal FMLA and/or state FMLA leaves are exhausted.
- If the married parent is **not eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave starts on the first day the employee takes time off to serve as a caregiver to their pregnant spouse.

Other Parent in a Relationship Equivalent to Marriage with Pregnant Parent

An employee who is not legally married to the Pregnant Parent but is in a relationship with the Pregnant Parent that is equivalent to marriage (“Other Parent/Equivalent Relationship”) may take caregiver leave for the Pregnant Parent if they are eligible for leave under state FMLA.

Under state FMLA, the definition of a family member includes a person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship. Accordingly, a person who has a significant personal bond with the pregnant parent that is equivalent to marriage will be treated as the spouse of the pregnant parent **under state FMLA**.

The federal FMLA and SEBAC Supplemental do not include this expansive definition of a family member. Accordingly, **a person who is not legally married to the pregnant parent will not be treated as the spouse for purposes of federal FMLA leave or SEBAC Supplemental leave.**

The **Other Parent/Equivalent Relationship** may take **caregiver leave** to care for the Pregnant Parent if they are eligible under state FMLA. This includes taking time away from work for the following reasons:

- Taking the pregnant parent to prenatal appointments
- Providing care and comfort to the pregnant parent on bedrest or otherwise experiencing complications prior to the birth;
- Providing care and comfort to the pregnant parent during the childbirth and delivery; and
- Providing care and comfort to the pregnant parent during the disability period following the birth of the child.

The Other Parent/Equivalent Relationship who is eligible for state FMLA has the following entitlements:

State FMLA Leave

- The Other Parent/Equivalent Relationship can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent in connection with routine prenatal care and appointments, pregnancy complications, and morning sickness.
- The Other Parent/Equivalent Relationship can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent during the disability period.
- A person who is not pregnant is not entitled to the additional 2 weeks of leave available under state FMLA for a person who has a serious health condition resulting in incapacitation during pregnancy.

A person who is not pregnant is not entitled to take Pregnancy Disability Leave under C.G.S. 46a-60(b)(7).

Other Parent Not Married and Not in an Equivalent Relationship to Pregnant Parent

If the other parent of the newborn child is not married to the Pregnant Parent and does not have a significant personal bond with the Pregnant Parent that is equivalent to marriage, then the other parent **cannot** use any of the Family and Medical Leave Entitlements to care for the Pregnant Parent.

Family Caregiver to Pregnant Parent

Because pregnancy is considered a serious health condition, a family member can take leave to care for the person who is pregnant in accordance with the standard rules associated with caregiver leave.

Because of the way the **federal FMLA** and **SEBAC Supplemental** define “caregiver leave,” “spouse,” “parent” and “child” the only time a person who is not legally married to the “Pregnant Parent” can take federal FMLA leave or SEBAC Supplemental leave to serve as a caregiver to the Pregnant Parent is when the Pregnant Parent’s own parent takes caregiver leave and the Pregnant Parent meets the federal definition of a child – i.e., is under the age of 18 or is 18 or older and has a disability as defined by the Americans with Disabilities Act that prevents them from engaging in three or more activities of daily living.

Because the **state FMLA** has more expansive definitions of “caregiver leave” and “family member,” an employee could take state FMLA to serve as a caregiver to the Pregnant Parent as long as the Pregnant Parent is the child (of any age), sibling, or grandchild of the employee or a significant personal bond that is like one of those relationships exists between the employee and the Pregnant Parent.

If the Family Caregiver is eligible for state FMLA, they have the following entitlements:

State FMLA Leave

- The Family Caregiver can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent in connection with routine prenatal care and appointments, pregnancy complications, and morning sickness.
- The Family Caregiver can use state FMLA leave on an **intermittent, reduced schedule** and/or **block** basis to care for the Pregnant Parent during the disability period.

- A person who is not pregnant is not entitled to the additional 2 weeks of leave available under state FMLA for a person who has a serious health condition resulting in incapacitation during pregnancy.

LEAVE ASSOCIATED WITH BONDING WITH A NEWBORN CHILD

Under Federal FMLA, state FMLA and SEBAC Supplemental, only the parent of a newborn child may take leave to bond with a newborn child.

An eligible employee may take leave to bond with the newborn child regardless of whether the employee is married to the child's other parent.

Pregnancy Disability Leave under C.G.S. 46a-60(b)(7) cannot be used for bonding.

How Much Time is Available for Bonding with a Newborn Child?

The amount of time available to an employee for bonding depends upon three factors:

- Whether employee is eligible for federal FMLA, state FMLA and/or SEBAC Supplemental leave;
- Whether any of the leave entitlements have already been used by the employee; and
- Whether the employee is married to another State employee.

If the parent IS eligible for Federal FMLA, state FMLA, and/or SEBAC Supplemental leave, they have the following entitlements for bonding with a newborn child:

Federal FMLA Leave

- The parent can take up to 12 weeks of leave in a 12-month period for bonding, (less any federal FMLA leave already used in the leave year).
- The parent can use federal FMLA leave on a **block basis** or, with the agency's consent, on a reduced schedule basis.
- If the employee is also eligible for state FMLA, federal FMLA leave runs concurrent with the state FMLA leave.

- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for federal FMLA and (3) they are married to each other.

State FMLA Leave

- The parent can use up to 12 weeks in a 12-month period for bonding (less any state FMLA leave already used in the leave year).
- The parent can use state FMLA leave on a **block basis** or, with the employee's consent, on a reduced schedule basis.
- If the employee is also eligible for federal FMLA, state FMLA leave runs concurrent with the state FMLA leave.
- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for state FMLA and (3) they are married to each other.

SEBAC Supplemental Leave

- The parent can use up to 4 months of the 24-week SEBAC Supplemental leave entitlement for bonding (less any SEBAC Supplemental leave already used in the leave year).
- The parent can use SEBAC Supplemental leave on a **block basis** or, with the employer's consent, on a reduced schedule basis.
- If the parent **is eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave for bonding does **not** start until the federal FMLA and/or state FMLA leaves are exhausted.
- If the parent **is not eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave starts on the **first day** the employee takes time off to bond.
- The parents are **never required to share** the SEBAC Supplemental leave entitlement.

When Does an Employee Have to Share Their Leave Entitlements?

If married employees **both** work for the State of Connecticut and are eligible for federal FMLA and/or state FMLA, they will be required to share the leave entitlement if the reason for the leave is to bond with a child.

The married employees are **not** required to share their SEBAC Supplemental leave entitlements.

How Can Bonding Leave with a Newborn Child Be Taken?

A parent can take bonding leave either on a **block leave** basis or, if the agency consents, on a **reduced schedule leave**.

Because reduced schedule leave for bonding is available **only** with the agency's consent, the following rules apply:

- The agency has the right to decide whether to allow it, how long to allow it to continue, and what schedule the employee must work.
- Agencies make these decisions on a case-by-case basis in a fair and equitable manner.
- If the agency's business needs are such that it cannot allow the employee to work on a reduced schedule at all or can allow the reduced schedule for less than the requested amount of time, the agency is free to make that decision.
- An agency **cannot** deny an eligible employee the right to take bonding leave on a block basis.

When Can an Employee Take Leave to Bond with a Newborn Child?

- Bonding leave may be taken **any time within the 12-month period** beginning with the date of birth.
- **All bonding leave must be completed no later than the end of that 12-month period.**

EXAMPLE OF LEAVE SEQUENCING:

MARRIED PARENTS BOTH WORKING FOR THE STATE OF CT

FACTS:

- Both parents are eligible for Federal FMLA, State FMLA and SEBAC Supplemental Leave
- Both parents typically work Monday through Friday
- Pregnancy Complications start on 5/3/2022
- Baby born on 6/23/2022
- Post-birth pregnancy disability period ends August 4, 2022
- Both parents want to bond with the newborn child.

Step 1 – Start with the Pregnant Parent’s entitlements:

The Pregnant Parent will use up the entire federal FMLA entitlement due to their own serious health condition (5/3/22- 7/25/22: almost 8 weeks pre-birth and just over 4 weeks into the post-birth pregnancy disability period.) Therefore, there is no requirement for the parents to share their federal FMLA leave entitlements.

The Pregnant Parent’s state FMLA will also start on 5/3/22 and will continue until 8/8/22. Because the Pregnant Parent has a serious health condition causing incapacitation during the pregnancy, the additional two (2) weeks of state FMLA are utilized first. They will use up almost all their state FMLA entitlement due to their serious health condition (5/3/22 – 8/4/22).

The Pregnant Parent’s bonding will start on 8/5/22. Because their state FMLA entitlement ends on 8/8/22, they will only use 2 days of the state FMLA entitlement for bonding.

Only 4 months of SEBAC Supplemental leave is available to them for bonding. If they use all of it on a block basis starting on 8/5/22, they will use the SEBAC Supplemental leave from 8/5/22 until 12/5/22.

In this scenario, the Pregnant Parent has used **all** their federal and state FMLA entitlements and 4 months of their 24-week SEBAC Supplemental entitlement. Looking at the number of weeks in the 4 months between 8/5/22 and 12/5/22, they will have used 17 weeks and 1 day of SEBAC, so they will have 6 weeks and 4 days of SEBAC Supplemental leave entitlement available to them to be used for other qualifying reasons before their 2-year SEBAC Supplemental leave period ends on 8/5/2024.

Step 2: Determine the Married Parent’s entitlements:

The first step is to make sure the Married Parent knows they have a right to take leave on a block, reduced schedule or intermittent basis to care for the Pregnant Parent during their absence due to their own serious health condition. If the Married Parent does not

want or need to take any time off to care for the pregnant parent before the birth, the Married Parent's federal FMLA will start on the date of birth, presumably 6/23/22.

Thus, the federal FMLA will start on 6/23/22 and will continue until 9/14/22 (12 weeks). To maximize the Married Parent's flexibility, the time between 6/23/22 and 8/4/22 can be characterized as caregiver leave, which means the Married Parent could take the time on a reduced schedule or intermittent basis (without requiring agency approval), with the time between 8/5/22 and 9/14/22 being coded as bonding. Coding it this way also reduces the amount of state FMLA entitlement that must be shared. (Because the Pregnant Parent did not use any federal FMLA for bonding, there is no obligation to share the federal FMLA.)

Married Parent's state FMLA also starts on 6/23/22. Because the pregnant parent used 2 days of state leave for bonding and because the State requires married parents to share their bonding leave entitlement, if the Married Parent coded the full amount of time as bonding leave, the Married Parent would be able to take a maximum of 11 weeks and 3 days of leave. By coding the time from 6/23/22 to 8/4/22 (6 weeks) as caregiver leave, the Married Parent can take the remainder of the state FMLA entitlement (6 weeks).

If the Married Parent wants to return to work upon the exhaustion of the 12-week state FMLA entitlement, they will return to work on 9/15/22, having used only 6 weeks of the state FMLA entitlement for bonding purposes. Alternatively, the Married Parent could take an additional 4 months of bonding leave, from 9/16/22 through 1/16/23 by utilizing their SEBAC Supplemental leave entitlement.

Adoption is when a person assumes the permanent and legal relationship of parenting of a child when it is not possible for the child to be raised by their parents or within the birth family. There are various steps that are taken during the adoption process.

Leave for adoption may be taken for the following reasons:

- **Pre-Adoption Activities:** Absences required for the adoption to proceed, such as required counseling sessions, court appearances and travel to different localities;
- **Bonding With Child Upon Legal Adoption:** Absences taken to allow a parent to develop a mutual emotional and psychological closeness with the child upon the legal adoption of the child.

This chapter describes the leave entitlements available for adoption and bonding and the sequencing of the entitlements.

OVERVIEW OF THE ENTITLEMENTS

There are three Family and Medical Leave Entitlements that are used for adoption and bonding.

- Federal FMLA
- State FMLA
- SEBAC Supplemental Leave

Under the Family and Medical Leave Entitlements, there are **specific rules for pre-adoption activities and bonding with the child upon legal adoption, including the sequencing of the entitlements.** The rules depend on whether the **employee or employees** fit one or more of the following categories:

- **Married Parents** – both work for the State
- **Unmarried Parents** – both work for the State, or
- **Only One Parent Working for the State**

NOTES:

- The State of Connecticut recognizes same-sex marriage for purposes of federal FMLA, state FMLA and SEBAC Supplemental leave.
- Under state FMLA, the definition of a family member includes a person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship. Accordingly, if a state employee who has a significant personal bond with another state employee that is equivalent to marriage, they will be considered to be married parents who both work for the State **under state FMLA**.
- The federal FMLA and SEBAC Supplemental do not include this expansive definition of a family member. Accordingly, state employees who have a significant personal bond with each other state employee that is equivalent to marriage, will not be considered to be married parents who both work for the State **for purposes of federal FMLA leave or SEBAC Supplemental leave**.

WHAT IS COVERED UNDER LEAVE FOR ADOPTION?

Depending on the employee's eligibility, the leave reason and the documentation provided, **all leave associated with adoption is considered "bonding leave"**. Depending on the specific circumstances, the bonding leave may be taken on a block basis, as intermittent leave, or as reduced schedule leave.

BONDING WITH AN ADOPTED CHILD

How Much Time is Available for Bonding with an Adopted Child?

The amount of time available to an employee for bonding depends upon three factors:

- Whether employee is eligible for federal FMLA, state FMLA and/or SEBAC Supplemental leave;
- How much of the leave entitlements have already been used by the employee; and
- Whether the employee is married to another State employee.

If the parent IS eligible for Federal FMLA, state FMLA, and/or SEBAC Supplemental leave, they have the following entitlements for bonding with an adopted child:

Federal FMLA Leave

- The parent can use up to 12 weeks in a 12-month period for bonding (less any federal FMLA leave already used in the leave year).
- For pre-adoption activities, the parent can use federal FMLA leave on an intermittent, reduced schedule or block basis.
- For bonding upon legal adoption, the parent can use federal FMLA leave on a **block basis** or, with the agency's consent, on a **reduced schedule** basis.
- If the employee is also eligible for state FMLA, federal FMLA leave runs concurrent with the state FMLA leave.
- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for federal FMLA and (3) they are married to each other.

State FMLA Leave

- The parent can use up to 12 weeks in a 12-month period for bonding (less any state FMLA leave already used in the leave year).
- For pre-adoption activities, the parent can use state FMLA leave on an intermittent, reduced schedule or block basis.
- For bonding upon legal adoption, the parent can use state FMLA leave on a **block basis** or, with the agency's consent, on a **reduced schedule** basis.
- If the employee is also eligible for federal FMLA, state FMLA leave runs concurrent with the federal FMLA leave.
- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for state FMLA and (3) they are married to each other.

SEBAC Supplemental Leave (only 4 months of the 24-week entitlement is available for bonding)

- For both pre-adoption activities and bonding upon adoption, the parent can use SEBAC Supplemental leave on a **block basis** or, with the employee's consent, on a **reduced schedule** basis.
- SEBAC Supplemental leave for bonding is for a 4-month period only.

- If the parent is **eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave **does not** start until the federal FMLA and/or state FMLA leaves are exhausted.
- If the parent is **not eligible** for federal FMLA and/or state FMLA, the SEBAC Supplemental leave starts on the **first** day the employee takes time off to bond with the adopted child.
- The parents are **never required to share** the SEBAC Supplemental leave entitlement.

When Does an Employee Have to Share Their Leave Entitlements for Bonding with an Adopted Child?

If married employees **both** work for the State of Connecticut and are eligible for federal FMLA and/or state FMLA, they will be required to share the leave entitlement if the reason for the leave is to bond with an adopted child.

The married employees are **not** required to share their SEBAC Supplemental leave entitlements to bond with an adopted child.

How Can Bonding Leave Be Taken?

A parent can take bonding leave either on a **block leave** basis or, if the employer consents, on a **reduced schedule leave**.

Because reduced schedule leave for bonding is available **only** with the agency's consent, the following rules apply:

- The employer has the right to decide whether to allow it, how long to allow it to continue and what schedule the employee must work.
- Agencies make these decisions on a case-by-case basis in a fair and equitable manner.
- If the agency's business needs are such that it cannot allow the employee to work on a reduced schedule at all or can allow the reduced schedule for less than the requested amount of time, the agency is free to make that decision.
- An agency **cannot** deny an eligible employee the right to take bonding leave on a block basis.

What Is the Period of Time an Employee Can Take Bonding Leave in Connection with the Adoption of a Child?

- For purposes of calculating the employee's usage of the federal FMLA and/or state FMLA leave entitlement, **the leave begins on the first day that the employee takes time away from work for a bonding-related purpose**, (i.e., pre-adoption activity or bonding upon the actual legal adoption of the child).
- Regardless of whether the employee takes pre-adoption bonding leave, all **bonding leave must be completed no later than 12 months from the date of the legal adoption.**
- SEBAC Supplemental leave is in addition to the leave entitlements provided by federal FMLA and state FMLA. Therefore, the start date of the SEBAC Supplemental leave depends upon the employee's eligibility for the leave entitlements:

Refer to **Chapter 33** for information about accrual usage in connection with leave for adoption and bonding.

Foster Care Placement is a temporary living situation for children whose parents cannot take care of them and whose need for care has come to the attention of a child welfare agency.

Leave for foster care placement may be taken for the following reasons:

- **Pre-placement Activities:** Absences required for the foster care placement to proceed, such as required counseling sessions, court appearances and travel to different localities;
- **Bonding with Child Upon Placement:** Absences taken to allow a parent to develop a mutual emotional and psychological closeness with the child upon the placement of the foster child.

This chapter describes the leave entitlements available for foster care placement and bonding.

OVERVIEW OF THE ENTITLEMENTS

There are two Family and Medical Leave Entitlements that are used for foster care placement and bonding.

- Federal FMLA
- State FMLA

SEBAC Supplemental Leave does *not* cover placement and bonding with a new foster child.

Under the Family and Medical Leave Entitlements, there are **specific rules for foster care pre-placement activities and bonding with child upon placement, including the sequencing of the entitlements.** The rules depend on whether the **employee or employees** fit one or more of the following categories:

- **Married Parents** – both work for the State
- **Unmarried Parents** – both work for the State, or
- **Only One Parent Working for the State**

NOTES:

- The State of Connecticut recognizes same-sex marriage for purposes of federal FMLA, state FMLA and SEBAC Supplemental leave.
- Under state FMLA, the definition of a family member includes a person with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship. Accordingly, if a state employee who has a significant personal bond with another state employee that is equivalent to marriage, they will be considered to be married parents who both work for the State **under state FMLA**.
- The federal FMLA and SEBAC Supplemental do not include this expansive definition of a family member. Accordingly, state employees who have a significant personal bond with each other state employee that is equivalent to marriage, will not be considered to be married parents who both work for the State **for purposes of federal FMLA leave or SEBAC Supplemental leave**.

WHAT IS COVERED UNDER LEAVE FOR FOSTER CARE PLACEMENT?

Depending on the employee's eligibility, the leave reason and the documentation provided, **all leave associated with foster care placement, including pre-placement activities, is considered "bonding leave"**. The bonding leave may be taken on a block basis, as intermittent leave or as reduced schedule leave, depending upon the circumstances.

BONDING LEAVE WITH A FOSTER CHILD

How Much Time is Available for Bonding with a Foster Child?

The amount of time available to an employee for bonding depends upon three factors:

- Whether employee is eligible for federal FMLA and/or, state FMLA;
- How much of the leave entitlements have already been used by the employee;
and
- Whether the employee is married to another State employee.

If the parent IS eligible for Federal FMLA and/or state FMLA, they have the following entitlements for bonding with a foster child:

Federal FMLA Leave

- The parent can use up to 12 weeks in a 12-month period for bonding (less any federal FMLA leave already used in the leave year).
- For pre-placement activities, the parent can use federal FMLA leave on an intermittent, reduced schedule or block basis.
- For bonding upon the placement, the parent can use federal FMLA leave on a **block basis** or, with the agency's consent, on a **reduced schedule** basis.
- If the employee is also eligible for state FMLA, federal FMLA leave runs concurrent with the state FMLA leave.
- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for federal FMLA and (3) they are married to each other.

State FMLA Leave

- The parent can use up to 12 weeks in a 12-month period for bonding (less any state FMLA leave already used in the leave year).
- For pre-placement activities, the parent can use state FMLA leave on an intermittent, reduced schedule or block basis.
- For bonding upon placement, the parent can use state FMLA leave on a **block basis** or, with the employee's consent, on a **reduced schedule** basis.
- If the employee is also eligible for federal FMLA, state FMLA leave runs concurrent with the federal FMLA leave.
- This entitlement must be shared between the two parents if: (1) they both work for the State; (2) they are both eligible for state FMLA and (3) they are married to each other.

When Does an Employee Have to Share Their Leave Entitlements for Bonding with a Foster Child?

If married employees **both** work for the State of Connecticut and are eligible for federal FMLA and/or state FMLA, they will be required to share the leave entitlement if the reason for the leave is to bond with a foster child.

- Under CT FMLA, the definition of a family member includes a person with whom the employee has a significant personal bond that is or is like

a family relationship, regardless of biological or legal relationship. Accordingly, a person who has a significant personal bond with the other parent that is equivalent to marriage will be treated as the spouse of the other parent **under CT FMLA**.

- **The federal FMLA does not include this expansive definition of a family member.** Accordingly, a person who is not legally married to the other parent will not be treated as the spouse for purposes of federal FMLA leave.

How Can Bonding Leave Be Taken?

A parent can take bonding leave either on a **block leave** basis or, if the employer consents, on a **reduced schedule leave**.

Because reduced schedule leave for bonding is available **only** with the employer's consent, the following rules apply:

- The employer has the right to decide whether to allow it, how long to allow it to continue and what schedule the employee must work.
- Agencies make these decisions on a case-by-case basis in a fair and equitable manner.
- If the agency's business needs are such that it cannot allow the employee to work on a reduced schedule at all or can allow the reduced schedule for less than the requested amount of time, the agency is free to make that decision.
- An agency **cannot** deny an eligible employee the right to take bonding leave on a block basis.

What Is the Period of Time an Employee Can Take Bonding Leave in Connection with the Placement of a Foster Child?

- For purposes of calculating the employee's usage of the federal FMLA and/or state FMLA leave entitlement, **the leave begins on the first day that the employee takes time away from work for a bonding-related purpose**, (i.e., pre-placement activity or bonding upon the actual placement of the foster child).
- Regardless of whether the employee takes pre-placement bonding leave, all **bonding leave must be completed no later than 12 months from the date of the placement**.

Refer to **Chapter 34** for information about accrual usage in connection with leave for foster care and bonding.

CH. 17 FUNDAMENTALS: HOW TO CALCULATE BONDING LEAVE UNDER SEBAC SUPPLEMENTAL LEAVE

Under the SEBAC 2017 Agreement, an employee may use up to 4 months of the 24-week SEBAC Supplemental Leave entitlement in order to bond with a newborn child or a newly adopted child. This leave entitlement is available on a “block basis” and, with agency consent, on a “reduced schedule basis.”

This chapter provides guidelines for calculating block leave and reduced leave schedules for bonding under SEBAC Supplemental Leave.

GUIDING PRINCIPLES FOR BONDING

There are two very important principles to remember when considering whether to allow an employee to take leave on a “reduced schedule basis” for bonding instead of block leave.

- An employee **must** complete all bonding (federal FMLA, state FMLA and SEBAC Supplemental) within 12 months from the date of the child’s birth or adoption (i.e., before the child’s first birthday).
- **Reduced schedule leave for bonding** is available **only** with the employer’s consent. Therefore:
 - The employer has the right to decide whether to allow it, how long to allow it to continue, and what schedule the employee must work.
 - Agencies make these decisions on a case-by-case basis in a fair and equitable manner.
 - If the agency’s business needs are such that it cannot allow the employee to work on a reduced schedule at all or can allow the reduced schedule for less than the requested amount of time, the agency is free to make that decision.
 - An agency **cannot** deny an eligible employee the right to take bonding leave on **a block basis**, regardless of its business needs.

CH. 17 FUNDAMENTALS: HOW TO CALCULATE BONDING LEAVE UNDER SEBAC SUPPLEMENTAL LEAVE

For all of the examples below, assume the following scenario:

- *Employee gives birth on February 21, 2022 via Caesarian-section.*
- *According to the medical documentation, the disability period ends on April 17, 2022.*
- *The employee has exhausted federal FMLA and state FMLA entitlements and is a permanent state employee, so is eligible for SEBAC Supplemental leave.*
- *The employee would like to use SEBAC Supplemental to bond with the baby.*

BLOCK LEAVE

How to Determine Block Leave Under SEBAC Supplemental Leave:

Because the overall SEBAC leave entitlement is calculated in weeks, it is necessary to convert the months into work weeks in order to determine how much time can be utilized for bonding:

1st – Determine the date the employee wants to start bonding – that is the first day of the first “calendar month” for bonding.

Example: April 18, 2022

2nd – Count the number of work weeks that are in the 4 calendar months starting on that day, going forward.

Example: April 18, 2022 through August 17, 2022 equals four calendar months. There are 17 weeks and 3 days in that time frame, i.e. 17.6 weeks. {3 days ÷ 5 days in the workweek = .6}

This gives you the total number of workweeks that an employee has available for bonding.

In this example, an employee who takes the full 4 months for bonding will use 17.6 weeks of the SEBAC Supplemental leave entitlement.

REDUCED SCHEDULE LEAVE

General Rules for Reduced Schedule Leave for Bonding

- Any time not worked by an employee due to the reduced schedule leave must be accounted for using the applicable leave codes.
- Human Resources must be careful about approving any reduced schedule leave that may result in the employee being placed in “benefit billing” status, or, during SEBAC Supplemental leave, would jeopardize the employee’s benefits status (i.e. any schedule that would result in the employee being off payroll for more than 20 hours/week).
- If the employee is eligible for one or more of the Family and Medical Leave Entitlements and the reason for leave is covered by the leave entitlement(s), then the employee must use the leave entitlement(s).
 - Accordingly, an eligible employee who wants to work a reduced schedule for bonding must use the applicable family and medical leave entitlement.
 - **The employee is not allowed to use the Voluntary Schedule Reduction Program instead of the Family and Medical Leave Entitlements.**
- SEBAC Supplemental leave is in addition to the federal FMLA, state FMLA, and the leave for the pregnancy disability provided for under C.G.S. §46a-60(b)(7).
 - If the employee is eligible for federal FMLA and/or state FMLA, SEBAC Supplemental leave **does not** start until the federal and/or state FMLA entitlements have been exhausted.
 - If the employee is not eligible for federal FMLA and/or state FMLA, SEBAC Supplemental leave does not start until after the pregnancy disability period.

CH. 17 FUNDAMENTALS: HOW TO CALCULATE BONDING LEAVE UNDER SEBAC SUPPLEMENTAL LEAVE

How to Determine Reduced Schedule Leave for Bonding Under SEBAC Supplemental:

1st - Determine the date the employee wants to start bonding - that is the first day of the first "calendar month" for bonding.

Example: April 18, 2022

2nd - Count the number of work weeks that are in the 4 calendar months starting on that day, going forward.

Example: April 18, 2022 through August 17, 2022 equals four calendar months. There are 17 weeks and 3 days in that time frame, i.e. 17.6 weeks. $\{3 \text{ days} \div 5 \text{ days in the workweek} = .6\}$

This gives you the total number of workweeks that an employee has available for bonding.

In this example, an employee who wants to use the full 4 months for bonding will use 17.6 weeks of the SEBAC Supplemental leave entitlement.

3rd - Determine what percentage of the work week the employee will **not** be working because **time spent working cannot be counted against the SEBAC Supplemental entitlement.**

Example: the employee wants to work only 2 days/week and use leave for the remaining 3 days /week, i.e., 60% $\{3 \div 5 = .6\}$

4th - Divide the number of work weeks in the 4 calendar months by the percentage of the work week the employee will **be using the leave.**

Example: $17.6 \div 60\% (17.6 \div .6) = 29.3$ $\{3/10 \text{ of a week equals } 1.5 \text{ days}\}$

That result gives you the total number of weeks that may be available to the employee to be used for bonding on a reduced schedule.

In this example, the maximum number of weeks that the employee could work on a reduced schedule for bonding is 29 weeks and 1.5 days. In other words, the employee would work on a 2 days/week reduced schedule basis from April 18, 2022 through November 7, 2022 -- provided the employer consents.

CH. 17 FUNDAMENTALS: HOW TO CALCULATE BONDING LEAVE UNDER SEBAC SUPPLEMENTAL LEAVE

Additional Reduced Schedule Leave Examples:

EXAMPLE: Employee wants to work 4 hours/day and to bond 4 hours/day.

- The first day of bonding will be April 18, 2022 and the employee has up to 17.6 work weeks of SEBAC Supplemental leave available.
- To determine the number of weeks that may be available to the employee to be used for bonding on a reduced schedule, **divide 17.6 by 50%**. $17.6 \div .5 = 35.2$
- The maximum number of weeks that the employee could work on a reduced schedule for bonding, **if the employer consents**, is 35 weeks and 1 day. {2/10 of a week equals 1 day}
- Thus, the employee would use SEBAC Supplemental leave to work on a 50% reduced schedule from April 18, 2022 through December 19, 2022.

EXAMPLE: Employee wants to take 2 months of bonding on a block basis and then work a reduced schedule of 2 days/week and use leave for 3 days/week (i.e. 60%) for as long as they are allowed to.

- The first day of bonding will be April 18, 2022 and the employee has up to 17.6 work weeks of SEBAC Supplemental leave available.
- The employee stays out on block leave from April 18, 2022 until June 19, 2022, using 9 weeks of the 17.6 weeks of SEBAC Supplemental leave available.
- The employee has 8.6 weeks of SEBAC Supplement leave available for bonding.
- To determine how many weeks remain to be used for reduced schedule leave, divide 8.6 by 60%. { $8.6 \div .6 = 14.3$ } The maximum number of weeks that the employee could work on a reduced schedule for bonding, **if the employer consents**, is 14 weeks and 1.5 days.
- Thus, the employee would use SEBAC Supplemental leave on a block leave from April 18, 2022 until June 19, 2022 and then 3 days/weeks from June 30, 2022 through September 27, 2022.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

Organ donation and bone marrow donation are considered to be serious health conditions; as such, leave for organ or bone marrow donation is considered to be a “personal medical leave.”

- **Organ transplantation** is the process of surgically transferring a donated organ to someone diagnosed with organ failure. In this context, “organ” refers to all or part of a human liver, pancreas, kidney, intestine or lung. **Organ donor leave** is leave taken to donate an organ to another person.
- A **bone marrow transplant** is a procedure in which when stem cells are removed from the bone marrow, filtered, and given to another person. **Bone marrow donor leave** is leave taken to donate bone marrow to another person.

Organ or bone marrow donor leave may be taken for the following reasons:

- **Pre-donation medical appointments**, i.e., required tests, examinations, and counseling (*federal FMLA and state FMLA only*), and
- **Surgery and recovery from the surgery** (*federal FMLA, state FMLA, SEBAC Supplemental and CGS 5-248k*).

This chapter provides an overview of organ and bone marrow leave entitlements, the usage of accruals, and the sequencing of leave entitlements.

OVERVIEW OF ENTITLEMENTS

There are four Family and Medical Leave Entitlements that are used when an employee donates an organ or bone marrow to a person for transplantation (“**organ donor leave**” and “**bone marrow donor leave**”):

- Federal FMLA
- State FMLA
- SEBAC Supplemental leave
- Section 5-248k of the Connecticut General Statutes

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

Federal FMLA, state FMLA, & SEBAC Supplemental leave

Under these leave entitlements, serving as an organ or bone marrow donor is treated as taking leave for one's own serious health condition.

Organ Donor and/or Bone Marrow Donor Leave Pursuant to C.G.S. §5-248k:

All employees in the executive, judicial or legislative branch of state government - whether in the classified or unclassified service and whether full or part-time - are eligible for **organ donor leave** and **bone marrow donor leave**. Accordingly, they are entitled to take job-protected paid leave under this statute regardless of whether they are also eligible for any other Family and Medical Leave Entitlements (i.e. federal FMLA, state FMLA, and SEBAC Supplemental leave).

The C.G.S. §5-248k entitlement is limited in scope and in length of time:

- **Scope:** This entitlement applies only to the surgery and the recovery from the surgery. It does not cover pre-donation absences.
- **Length of time:**
 - This entitlement provides up to **15 work days of paid leave** for organ donation.
 - This entitlement provides up to **7 work days of paid leave** for bone marrow donation.

Taking organ donor leave or bone marrow leave pursuant to this statute **shall not** result in a reduction in pay, the loss of any leave to which the employee is otherwise entitled, or a loss of credit for time or service. It shall not affect the employee's rights with respect to any other employee benefits provided under federal or state law.

An employee who needs to take organ donor or bone marrow donor leave must provide **at least seven days' advance notice** when practicable.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

HOW ORGAN AND BONE MARROW DONOR LEAVE CAN BE TAKEN

Depending on the employee's eligibility, the leave reason, and the medical documentation provided, the leave may be taken as block leave, intermittent leave, or reduced schedule leave.

Organ and Bone Marrow Donor Leave			
IF ELIGIBLE	C.G.S. §5-248k	Federal FMLA and State FMLA	SEBAC Supplemental
REASON			
Pre-donation Medical Appointments (i.e. testing, examinations, counseling)	Not Applicable	May be taken as block, intermittent or reduced schedule leave.	May be taken as block leave only.
Surgery and Recovery Period: 15 work days for organ donor 7 work days for bone marrow donor	May be taken as block, intermittent or reduced schedule leave.	May be taken as block, intermittent or reduced schedule leave.	May be taken as block leave only.
Additional Recovery Period Beyond 15 or 7 Work Days	Not Applicable	May be taken as block, intermittent or reduced schedule leave.	May be taken as block leave only.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

ACCRUAL USAGE AND SEQUENCING

OF

ORGAN DONOR AND/OR BONE MARROW DONOR LEAVE

The amount of leave and the order in which the leave entitlements are taken depends upon the reason for leave and the employee's eligibility.

An employee who is eligible for leave under C.G.S. §5-248k ONLY:

- **Pre-donation Medical Appointments:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - The employee **must** use their sick leave accruals (if any) for required pre-donation medical appointments.
 - If the employee does not have sick leave accruals, they may request to use other accruals or request to take unpaid leave in connection with these absences.

- **Surgery and Recovery:**
 - C.G.S. §5-248k covers absences for this reason.
 - This is the **only** period of time for which this statute provides job-protected leave.
 - **The employee is paid their salary for up to 15 work days (organ donor) or up to 7 work days (bone marrow donor).**
 - The employee's sick time or earned accruals are **not** used during the 15 or 7 day recovery period.

- **Additional Recovery Beyond 15 or 7 Work Days:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - If the employee needs additional time beyond the 15 work days or 7 work days of paid leave provided by the statute, the employee **must** use their sick leave accruals (if any).
 - If the employee does not have sick leave accruals, they may request to use other earned accruals or may request to take unpaid leave in connection with this absence.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

An employee who is eligible for leave under C.G.S. §5-248k and SEBAC Supplemental leave ONLY:

- **Pre-donation Medical Appointments:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - The employee **must** use their sick leave accruals (if any) for required pre-donation medical appointments.
 - If the employee does not have sick leave accruals, they may request to use other accruals or request to take unpaid leave in connection with these absences.
 - SEBAC Supplemental leave can only be used during this period **if both of the following requirements are met:**
 - Sick leave is exhausted; **and**
 - The medical documentation requires the employee to be out of work for this reason **for more than five consecutive working days.** (This would be considered block leave.)
 - During SEBAC Supplemental leave, the employee may use vacation leave, personal leave, compensatory time, advanced sick leave, extended sick leave, donated leave, or sick leave bank, in accordance with existing policies and the applicable collective bargaining agreement or take unpaid leave

- **Surgery and Recovery:**
 - C.G.S. §5-248k covers absences for this reason.
 - This is the only period of time for which the statute provides job-protected leave.
 - **The employee is paid their salary for up to 15 work days (organ donor) or up to 7 work days (bone marrow donor).**
 - The employee's sick time or earned accruals are **not** used during the 15 or 7 day recovery period.
 - SEBAC Supplemental leave is **not** used during this period of time.

- **Additional Recovery Beyond 15 or 7 Work Days:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - If the employee needs additional time beyond the 15 work days or 7 work days of paid leave provided by the statute, the employee **must** use their sick leave accruals (if any).
 - If the employee does not have sick leave accruals, they may request to use other earned accruals or may request to take unpaid leave in connection with this absence.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

- SEBAC Supplemental leave can only be used during this period **if both of the following requirements are met:**
 - Sick leave is exhausted; **and**
 - The medical documentation requires the employee to be out of work for this reason **for more than five consecutive working days.** (This would be considered block leave.)
- During SEBAC Supplemental leave, the employee may use vacation leave, personal leave, compensatory time, advanced sick leave, extended sick leave, donated leave or sick leave bank, in accordance with existing policies and the applicable collective bargaining agreement or take unpaid leave

An employee who is eligible for leave under C.G.S. §5-248k, federal FMLA and/or state FMLA, and SEBAC Supplemental leave:

- **Pre-donation Medical Appointments:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - The employee **must** use their sick leave accruals (if any) for required pre-donation medical appointments.
 - If the employee does not have sick leave accruals, they may request to use other accruals or request to take unpaid leave in connection with these absences.
 - The absences must be designated as federal FMLA and/or state FMLA (as applicable).
 - The federal FMLA and state FMLA run concurrently if the employee is eligible for both.
 - SEBAC Supplemental leave can only be used during this period **if all of the following requirements are met:**
 - Sick leave is exhausted;
 - Federal FMLA and/or state FMLA are exhausted; **and**
 - The medical documentation requires the employee to be out of work for this reason **for more than five consecutive working days.** (This would be considered block leave.)
 - During SEBAC Supplemental leave, the employee may use vacation leave, personal leave, compensatory time, advanced sick leave, extended sick leave, donated leave, or sick leave bank, in accordance with existing policies and the applicable collective bargaining agreement or take unpaid leave.

CH.18 FUNDAMENTALS: WHAT IS COVERED UNDER ORGAN AND BONE MARROW DONOR LEAVE

- **Surgery and Recovery:**
 - C.G.S. §5-248k covers absences for this reason.
 - This is the only period of time for which the statute provides job-protected leave.
 - **The employee is paid their salary for up to 15 days (organ donor) or up to 7 days (bone marrow donor).**
 - The employee's sick time or earned accruals are **not** used during the 15 or 7 day recovery period.
 - Neither Federal FMLA or state FMLA are used during this period of time. (If federal FMLA or state FMLA was used during the pre-donation period, the FMLA use **must stop** during this time period).
 - SEBAC Supplemental leave is **not** used during this period of time.

- **Additional Recovery Beyond 15 or 7 Work Days:**
 - C.G.S. §5-248k **does not** cover absences for this reason.
 - If the employee needs additional time beyond the 15 work days or 7 work days of paid leave provided by the statute, the employee **must** use their sick leave accruals (if any).
 - If the employee does not have sick leave accruals, they may request to use other earned accruals or may request to take unpaid leave in connection with this absence.
 - Federal FMLA and/or state FMLA resumes when the C.G.S. §5-248k entitlement ends.
 - The federal FMLA and state FMLA run concurrently if the employee is eligible for both.
 - SEBAC Supplemental leave can only be used during this period **if all of the following requirements are met:**
 - Sick leave is exhausted;
 - Federal FMLA and/or state FMLA are exhausted; **and**
 - The medical documentation requires the employee to be out of work for this reason **for more than five consecutive working days.** (This would be considered block leave.)
 - During SEBAC Supplemental leave, the employee may use vacation leave, personal leave, compensatory time, advanced sick leave, extended sick leave, donated leave or sick leave bank, in accordance with applicable collective bargaining agreement or take unpaid leave.

The employee must provide documentation to Human Resources to substantiate their need for leave under the Family and Medical Leave Entitlements. The documentation required depends upon the reason for the leave.

This chapter provides a chart of the documents required by the State of Connecticut for “standard” Family and Medical Leave Entitlements based on the reason for leave.

Information on the documentation required for Military Family leave can be found in Chapters 49 - 54.

REASON FOR LEAVE	DOCUMENTATION	FORM	NOTES
Employee’s own serious health condition	Medical certification establishing that condition meets state and/or federal definitions.	P-33A or equivalent document that provides all of the information that would be contained in the P-33A	Must be completed by employee’s treating “ health care provider ” (defined in Chapter 20).
Caring for family member with a serious health condition	Medical certification establishing that condition meets state and/or federal definitions.	P-33B or equivalent document that provides all of the information that would be contained in the P-33B	Must be completed by the family member’s treating “ health care provider ” (defined in Chapter 20).
	Documentation of a qualifying family relationship <i>(Employer may request this but is not required to do so. If employer requests this, the employee must provide it.)</i>	FMLA-HR 4, Statement of Qualifying Family Relationship , asserting that the requisite family relationship exists, or other documentation such as a child’s	The employer cannot require an affidavit or court document.

		birth certificate or a court document.	
Bonding with newborn child	Documentation of a qualifying family relationship <i>(Employer may request this but is not required to do so. If employer requests this, the employee must provide it.)</i>	FMLA-HR 4, Statement of Qualifying Family Relationship, asserting that the requisite family relationship exists AND the child's birth certificate.	The employer cannot require the employee to provide a medical certification (P33A or P33B) for the bonding period.
	Pregnant Parent is required to provide medical certification that the "pregnancy disability period" is over.	P-33A or equivalent document	
Bonding with a child placed for adoption	Documentation of a qualifying family relationship <i>(Employer may request this but is not required to do so. If employer requests this, the employee must provide it.)</i>	FMLA-HR 4, Statement of Qualifying Family Relationship, asserting that the requisite family relationship exists AND the child's adoption papers or a court document	The employee can choose what kind of documentation to provide. The employer cannot require a P-33B, affidavit or, if the employee provides the adoption papers, a court document.
Bonding with a child placed for foster care (federal and state FMLA only)	Documentation of a qualifying family relationship <i>(Employer may request this but is not required to do so. If employer requests this, the employee must provide it.)</i>	FMLA-HR 4, Statement of Qualifying Family Relationship, asserting that the requisite family relationship exists	The employee can choose what kind of documentation to provide. The employer cannot require a

		AND the child's foster care documentation from a state agency or a court document	P-33B, affidavit or, if the employee provides the foster care documentation from a state agency, a court document.
--	--	--	--

HR PRACTICE POINTS



Human Resources cannot require that the "written statements" be notarized.



If Human Resources determines that the document provided is false, it should deal with the situation as potential fraud. Refer to Chapter 46 - Handling Suspected Fraud or Abuse

For information on reading a medical certification, refer to **Chapter 26 - Medical Certification**

For most Family and Medical Leave Entitlements, an employee must provide medical certification from a health care provider.

- **Both the federal FMLA and state FMLA** define who is a health care provider, as listed below.
- The **Organ and Bone Marrow Donor** law states “The employer may require verification from a physician licensed pursuant to chapter 370 of the Connecticut General Statutes.”
- Neither the **2017 SEBAC Agreement** nor the **Pregnancy Disability** law defines health care provider. For purposes of the SEBAC Supplemental and pregnancy disability leaves, the State of Connecticut adopts the federal definition of a “health care provider.”

This chapter provides a definition and rules regarding health care providers.

DEFINITION

A “**health care provider**” is defined as one of the following:

- A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices,
- A podiatrist, dentist, clinical psychologist, or optometrist authorized to practice in the state and performing within the scope of their practice;
- A chiropractor authorized to practice in the state and performing within the scope of their practice:
 - **Federal FMLA:** A chiropractor may certify a serious health condition only when they are providing treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist.
 - **State FMLA:** There is no limitation on when a chiropractor may certify a serious health condition.

- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state and performing within the scope of their practice;
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or
- Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

The term "health care provider" includes any provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of their practice as defined under such law.

RULES REGARDING HEALTHCARE PROVIDERS

- The person who signs the medical certification must be the medical professional who is providing treatment for the condition that puts the employee out of work or the medical professional who is responsible for overseeing and coordinating the provision of care by several medical professionals.

HR PRACTICE POINTS



Human Resources can accept a medical certification from a medical professional who is overseeing and coordinating care provided by multiple medical professionals.



Although members of the Professional Health Care Employees Bargaining Unit (P1) have negotiated for some flexibility in connection with medical certifications, for the purposes of Family and Medical Leave Entitlements, **the medical certification must be signed by the treating medical provider.**

- A medical certification on a doctor's letterhead (instead of on P-33A or P-33B form) must be accepted if it contains **all** the information that is included on the P-33A or P-33B forms.
- Human Resources **cannot** refuse to accept a fax or copy of the medical certification.
 - Refer to **Chapter 26** for information on what to do if Human Resources has doubts about the authenticity of the medical certification.
- A medical certificate from a medical professional practicing in another country must be accepted as long as the health care provider is authorized to practice in that country and is performing within the scope of their practice.
 - If the medical certification is not written in English, the employee may be required to provide a written translation at the employer's request.
 - If Human Resources has concerns or questions about the accuracy of the translation, it may choose to arrange for the translation itself.

For more information about reading the medical certificates, refer to **Chapter 26**.

Both the employee and the employer have specific obligations with regard to a request for family/medical leave. These obligations are summarized in the “Timeline for Eligibility and Designation” chart.

This chapter explains the “Timeline for Eligibility and Designation” chart, which provides an overview of the life cycle of a family/medical leave request and describes the roles and responsibilities of the employee and Human Resources, the applicable forms, and the timetable for completion.

Under **federal FMLA** and **state FMLA**, there are notice obligations and specific timeframes that human resources and the employee must follow.

While the **2017 SEBAC Agreement, Pregnancy Disability Act, and the Organ and Bone Marrow Donor laws** do not explicitly address notice obligations and specific timeframes, these entitlements follow the federal guidelines.

TIMELINE FOR ELIGIBILITY AND DESIGNATION

The employer should have already complied with the general notice obligations by posting the federal FMLA poster and giving the general policy notice to employees.

ACTION	TIMETABLE
<p>1. Employee: Request for Leave</p> <p>Employee notifies employer that they needs Family or Medical leave (either explicitly referencing FMLA or giving HR enough information that HR can reasonably infer that FMLA applies).</p>	<p>30 calendar days before start date of leave, or as soon as practicable, under the specific facts and circumstances.</p>

<p>2. HR Response: Eligibility Notice</p> <p>HR gives the employee the Notice of Eligibility and Rights and Responsibilities (FMLA-HR2a) and notifies the employee that s/he must complete and return a FMLA-HR1 and the necessary certification form (FMLA-HR3, FMLA-HR4, P33A, P33B, DOL-WH384, DOL-WH385 or DOL-WH385V) if employee has not already done so.</p>	<p>Within 5 business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason.</p>
<p>3. Employee Response: Certification</p> <p>Employee returns the completed FMLA-HR1 and the appropriate certification form with any required supporting documentation.</p> <p>(Employee is responsible for notifying HR about any problems that make it impossible for the employee to provide the completed certification form within the 15 days.)</p>	<p>Within 15 calendar days of receipt of the forms from HR, unless it is not possible to do so despite employee's diligent good faith efforts.</p>
<p>4. HR Response: Designation Notice</p> <p>HR reviews the certification (FMLA-HR3, FMLA-HR4, P33A, P33B, DOL-WH384, DOL-WH385 or DOL-WH385V) and determines whether it has enough information to designate leave or whether the certification is incomplete.</p>	<p>Within 5 business days of receipt of the certification.</p>
<p>4a. Incomplete Certification:</p> <p>If certification is incomplete, HR must notify the employee in writing what additional information is necessary and must give the employee the opportunity</p>	

to correct the deficiency. (**FMLA-HR2b, Section 2**)

Employee Response:

Employee must return the completed certification to HR **within 7 calendar days** of receipt of the notification that the original certification was insufficient, unless it is not possible to do so despite the employee's diligent good faith efforts.

Employee is responsible for notifying HR about any problems that make it impossible for the employee to provide the completed certification **within 7 calendar days**.

4b. Complete Certification:

If certification is complete, but HR needs clarification or authentication, HR may contact the employee's medical provider but HR cannot ask for more information than is indicated on the form.

Note: Under State FMLA, only a medical provider (not HR) may contact the employee's medical provider.

Completion of Certification: **Within 7 Calendar days**

<p>5. HR Response: Designation Notice</p> <p>Once HR has sufficient information to make a determination about whether the requested leave is covered by the Family and Medical Leave Entitlements, it must notify the employee in writing a</p> <ul style="list-style-type: none"> • How the leave will be designated, • How much time will be counted against the employee's leave allotments, • Whether any paid leave will run concurrently with the leave (and how much) and • Whether a fitness for duty certification will be required before the employee returns to work. (FMLA-HR2b) <p>HR should also notify employee of CORE CT Coding (FMLA-HR2c)</p>	<p>Within 5 business days of receipt of the complete and sufficient certification.</p>
--	---

NOTE:

The medical provider may be unwilling to talk to Human Resources without written consent from the employee. The employee cannot be required to sign a written consent form, but, if the employee's unwillingness to permit communication between the medical provider and Human Resources deprives Human Resources of the information it needs to designate the leave as FMLA-protected, Human Resources has the right to deny the leave.

HR PRACTICE POINTS



Communication and documentation are critical at all stages of the leave process:

- **If at all possible, invest some time (*at least 15 minutes*) actually talking to the employee (face-to-face is preferable) confirming the following:**
 - Your understanding of why the employee needs leave;
 - How much time the employee will be away from work and the nature of the leave (block vs. intermittent vs. reduced schedule or some combination thereof);
 - How the employee's accruals will be used and how to code the time;
 - Whether the employee will need to provide a basic fitness for duty or a fitness for duty that addresses the employee's ability to perform the essential functions of the job;
 - What the employee will need to do if circumstances change (i.e., needs additional time, develops a new medical condition, etc.).

- **Verify that the employee received the notices.** Possible options include:
 - Send the forms by both regular mail and certified mail;
 - Use a mail provider that verifies delivery;
 - Send the forms to an email address you know the employee is using and has access to, using the "read receipt" function; or
 - Give the forms to the employee in person, with employee signing to verify receipt.

The leave process starts when the employer has sufficient information to reasonably infer that an employee may need leave for a family or medical leave reason.

This chapter describes how the leave process starts and explains the Employee Request form.

HOW DOES AN EMPLOYEE NOTIFY AN EMPLOYER THAT LEAVE IS NECESSARY?

There are many different ways that an employee could make an employer aware that leave may be necessary, such as:

- An employee tells a supervisor or manager that they need time off from work for a medical reason;
- An employee is absent for more than 3 consecutive calendar days for an illness;
- An employee calls out sick from work several times, each time for the same reason;
- An employee requests time off from work to attend multiple doctor appointments;
- An employer tells a supervisor or manager that they need to take time off to care for a sick parent, spouse or child;
- An employee who is being counseled for repeated absences, exhaustion of leave accruals or other dependability issues, discloses the absences are due to a serious medical condition;
- An employee makes a request for time off or a schedule change as an accommodation under the Americans with Disabilities Act;
- An employee is absent from work due to an injury covered by the Workers' Compensation Act;
- An employee asks Human Resources for medical or "FMLA" leave;
- An employee asks for maternity or paternity leave; or
- The employee submits a completed FMLA-HR-1 to Human Resources.

An employer is considered to be aware of an employee's potential need for leave as soon as ANY manager has that knowledge.

HR PRACTICE POINT

Managers and supervisors must be directed to notify Human Resources **immediately** if they learn that an employee may need medical leave.

Who can make a leave request?

- The employee
- The employee's union representative
- The employee's spouse, parent, or child
- Any other person acting on behalf of the employee

Does a leave request have to be in writing?

NO. A leave request may be **verbal or in writing**.

Human Resources should ask employees to submit a completed **FMLA-HR1 form** in order to memorialize the request and gather necessary information, but Human Resources **cannot** delay acting on the request just because an FMA-HR1 has not been submitted.

Can the leave process start without a request by the employee?

YES. Even if the employee does not actually request family or medical leave, Human Resources **must** start the leave process when the employer becomes aware that an employee needs time away from work for a potentially qualifying reason.

When an employer has enough information to determine that an eligible employee is taking leave for a qualifying reason under the Family and Medical Leave Entitlements, the employer has the right to designate it accordingly even if the employee objects.

HR PRACTICE POINTS

Every time Human Resources learns that an employee needs to take time away from work due to a medical reason – whether from the employee, the supervisor or someone else – Human Resources **must** assess what rights the employee may have under the Family and Medical Leave Entitlements as well as the Americans with Disabilities Act and the Connecticut Fair Employment Practices Act.



Human Resources must pay attention to potential **patterns and trends** with their employees' absenteeism and must remind managers and supervisors to do the same.

Refer to **Chapter 38** for more information about Human Resources' roles and responsibilities to managers and supervisors.



Managers and supervisors **must** notify Human Resources as soon as:

- They learn that an employee needs medical leave;
- An employee is absent for more than **3 consecutive calendar days** due to an illness; or
- When they observe potential patterns and trends that may indicate the need for leave.



Managers and supervisors **must** keep the employee's information confidential.

Refer to **Chapter 39** for more information about the roles and responsibilities of managers and supervisors.



When Human Resources learns that an employee is or has been absent from work for more than 3 consecutive calendar days due to an illness, Human Resources **must** contact the employee to make the employee aware of their leave-related rights and responsibilities.

- The **“Notice of Rights” Sample letter** can be used to provide notice to an employee who is out of work for a non-workers’ compensation-related illness or injury.
- The **“Workers’ Compensation Leave” Sample letter** can be used when an employee is out of work due to a workers’ compensation-related illness or injury that also qualifies as a serious health condition under federal FMLA and state FMLA.
- The **“Workers’ Compensation Denial / Contested” Sample letter** can be used when the employee’s workers’ compensation claim has been denied or is contested and the illness or injury may qualify under the Family and Medical Leave Entitlements.

Refer to **Chapter 59** for the three sample letters.

FMLA HR1 - EMPLOYEE REQUEST FORM

This form is completed by the employee for a family/medical leave request and returned to Human Resources.

- The FMLA-HR1 is used for **all Family and Medical Leave Entitlements**, including Military Family Leave.
- The form consists of the following:
 - Employee Contact Information
 - Reason for Leave
 - Use of Accruals Designated by Employee (e.g. vacation, personal leave, comp time accruals, sick family days, and/or parental days)
 - Employee’s Signature or electronic signature.
 - Human Resources Return Information

HR PRACTICE POINTS

Use the **FMLA-HR1 - Employee Request** form located on the ct.gov website. Do not create your own forms.



The employee's failure to complete the FMLA-HR1 is **not** a reason to deny the leave.



If the employee refuses to complete the FMLA-HR1, place a note in the employee's file but continue the leave process.

An employee has an obligation to provide notice of the need for family/medical leave and to follow the agency's usual and customary rules for requesting leave.

This chapter describes when employees must notify the agency of their need for leave.

Federal FMLA and state FMLA establish specific timeframes for the employee to provide notice of a need for leave.

While the **2017 SEBAC Agreement, and the Pregnancy Disability and Organ and Bone Marrow Donor laws** do not establish specific timeframes, the State has adopted the federal guidelines in connection with these leave entitlements.

GUIDING PRINCIPLES

- The employee is **not required** to specifically mention the words "Family and Medical Leave" or "FMLA." (Refer to **Chapter 22**)
- The employee is required to provide enough information for the employer to know that the leave may be covered under the Family and Medical Leave Entitlements.

FORESEEABLE LEAVE

Generally, an employee must provide at least **30 days advance notice** of the need to take leave that is foreseeable, i.e., when the reason for the leave is pre-scheduled or known in advance.

Examples: Birth of a child
Adoption or foster care placement
Planned medical treatment (such as surgery)

If the employee fails to give timely advance notice with no reasonable excuse, the employer **may deny** leave coverage until 30 days after the date the employee provides notice. Alternatively, depending upon the circumstances, the employer may choose to waive the notice requirement.

Sometimes the 30 days advance notice is not practicable because of lack of knowledge, change in circumstances, or an emergency. In these situations, notice may be given “**as soon as practicable.**”

Example: Pregnant employee’s due date was May 1st but employee goes into labor early and delivers the baby on April 18th.

- **Generally, this means giving at least a verbal notice to the employer within 1 - 2 business days of learning of the need to take leave.**
- If the employee fails to give notice “**as soon as practicable**”, the extent to which the employer may deny leave coverage depends on the facts of the case.

Example: If an employee should have given the employer 2 weeks’ notice but unjustifiably provided only 1 week notice, the employer may deny leave for the first week. The second week would be covered by the applicable leave entitlement.

UNFORESEEABLE LEAVE

When leave is unforeseeable, an employee must provide notice “**as soon as practicable**” under the facts and circumstances of the particular case.

Examples: Employee is receiving emergency medical care for appendicitis.
Family member is injured in a severe car accident.

If the employee fails to give notice, the extent to which an employer may deny leave depends on the facts of the particular case.

Once the employer knows that the employee may need time away from work due to a family/medical reason, the employer must provide the employee with specific information about the Family and Medical Leave Entitlements.

This chapter describes the contents of the FMLA-HR2a form (Notice of Eligibility and Statement of Rights and Responsibilities) including the consequences of not using the form.

Under **federal FMLA and state FMLA**, the employer must notify the employee whether the employee is eligible for leave and give the employee a statement of rights and responsibilities for taking leave.

Because the **2017 SEBAC Agreement and the Pregnancy Disability and Organ and Bone Marrow Donor laws** do not explicitly define the notice that must be provided, these leave entitlements follow the federal guidelines.

FMLA-HR2a NOTICE OF ELIGIBILITY AND STATEMENT OF RIGHTS AND RESPONSIBILITIES

This form provides employees with the written information required for eligibility notification and rights and responsibilities.

- The FMLA-HR2a is used for **all** Family and Medical Leave Entitlements.
- The FMLA-HR2a is completed by Human Resources.
- The FMLA-HR2a consists of three parts:
 - Part A - Notice of Eligibility**
 - This section contains information concerning:
 - Requested dates for leave
 - Reason for leave
 - Eligibility for leave

Part B – Documentation Needed to Assess Your Leave Request**Part C – Rights and Responsibilities for Taking Family or Medical Leave**

This section contains information concerning:

- Benefits
- Sick Leave
- Periodic Reports
- Service Credit
- Key Employees
- The rights guaranteed to employees who take leave

HR PRACTICE POINTS

HR must read and know the contents of this form. It is a valuable summary of the employee's rights.



Remember to run eligibility **each and every time a request is being considered** in order to determine if the employee's status has changed.



While you can and should require the employee to complete the FMLA-HR1, remember that the deadline for giving the employee the FMLA-HR2a **cannot be delayed** just because you are waiting for the FMLA-HR1.



Use the **FMLA-HR2a – Notice of Eligibility and Rights and Responsibilities** form located on the ct.gov website. Do not create your own forms!



The completed FMLA-HR2a form can be emailed, hand delivered or mailed to the employee.

“Additional Documentation Requirements”

It is the employee’s responsibility to provide Human Resources with documentation substantiating the need for leave as well as other documents relating to the processing of the leave.

The required documentation is addressed in other chapters.

- Refer to **Chapter 19** – Fundamentals: Documentation Needed to Substantiate Leave (P33A, P33B, etc.)
- Refer to **Chapter 22** – Leave Process: How Does It Start (FMLA-HR1)
- Refer to **Chapter 25** – Leave Process: Intent to Return to Work (FMLA-HR3)

“Key Employee”

Federal FMLA allows the employer to designate a limited number of individuals as “key employees” if necessary to prevent substantial and grievous economic injury to its operations. The State of Connecticut, however, does not exercise this option.

- A “*key employee*” is a salaried, FMLA-eligible employee who is among the highest paid 10% of all employees, both eligible and not eligible, within 75 miles of the worksite.
- This is different from the definition of “key employee” under the Administrative and Residual (P-5) Bargaining Unit contract.

There is no “key employee” exception under the SEBAC Supplemental Leave.

State of Connecticut Policy: Key Employee

The State of Connecticut **does not** designate any employees as “key employees” for purposes of the Family and Medical Leave Entitlements.

FAILURE TO PROVIDE NOTICE

The employer is required to provide the general notices (i.e. displaying the posters, or distributing the policy) and to provide an eligibility notice. If the employer fails to provide these notices, then it cannot deny an employee's family or medical leave request or to take any other adverse action against the employee on the basis that the employee failed to provide advance notice or failed to comply with other such requirements.

HR PRACTICE POINTS



Failure to comply with the law does not mean that the employee is automatically entitled to leave **but** it does mean that you cannot use the employee's failure to provide advance notice or to follow other State leave procedures as a basis for denying leave.



Failure to provide notice makes the employer - and the individual Human Resource professional - susceptible to a legal claim that you interfered with the employee's ability to exercise their leave rights.

An employee has an obligation to inform their employer that they plan to return to work at the conclusion of the leave.

This chapter describes the FMLA-HR3 form (Intent to Return to Work).

Federal FMLA and State FMLA allow the employer to require an employee to verify their intent to return to work.

The employer's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

Pursuant to state statute (C.G.S. §5-248a(e) and C.G.S. §46a-60(b)(7)), an employee who takes **SEBAC Supplemental leave and/or Pregnancy Disability leave** is required to submit a signed statement of their intent to return to their position in state service.

The **Organ and Bone Marrow Donor law** (C.G.S. §5-248k) is silent on the issue of intent to return to work; however, per the statute this leave is limited to 15 days or 7 days, respectively.

FMLA-HR3

INTENT TO RETURN TO WORK

This form is to be completed by the employee, or the employee's representative, and returned to Human Resources **before** the beginning of the leave, absent any extenuating circumstances.

- The FMLA-HR3 is used for all Family and Medical Leave Entitlements, including Military Family Leave.
- The form consists of the following:
 - The employee's confirmation of their intent to return to work,
 - The projected end date of the leave, and
 - The employee's signature or electronic signature.

HR PRACTICE POINTS

State law requires the form to be submitted by the employee **prior** to the start of the leave; however, if the leave is unforeseeable, the employee or the employee's representative should provide the form as soon as possible.



Human Resources **cannot** deny a leave only because the employee failed to return the FMLA-HR3 form.



On the other hand, if you become aware any time before or during the leave that the employee is **choosing** not to return to work for reasons not associated with the need for leave, then the employee is not entitled to the protections of the Family and Medical Leave Entitlements.

Examples:

- An employee chooses to relocate permanently to another state in order remain with a parent even though the parent no longer requires the employee's care.
- An employee accepts a job with a different (non-State) employer.



If the projected end date of the leave provided by the employee on the FMLA-HR3 form differs from the date provided on the medical certificate completed by the medical provider, rely on the date provided on the medical certificate.

Refer to **Chapter 44** for information on an employee who is unable to return to work.

A medical certificate is used by Human Resources to verify the employee's need for and scope of leave.

- **Human Resources has the responsibility to determine if the medical certificate is complete and sufficient.**
- **Upon receipt of the employee's medical certificate, Human Resources must read the certificate in its entirety to determine if the medical facts substantiate the need for leave under the Family and Medical Leave Entitlements.**

This chapter addresses the following topics relating to medical certificates:

- What are the forms used for medical certification?
- When is a medical certificate required?
- What is a complete and sufficient medical certificate?
- What is an incomplete or insufficient medical certificate?
- What should Human Resources do with an incomplete or insufficient medical certificate?
- When can the health care provider be contacted directly?
- Who can contact the health care provider?
- What should Human Resources do if it still doubts the validity of the medical certificate?
- What happens if the employee never provides a complete and sufficient medical certificate?
- What are the rules regarding medical certificates from abroad?

WHAT ARE THE FORMS USED FOR MEDICAL CERTIFICATION?

The reason for the leave determines which form must be used for medical certification:

REASON FOR LEAVE	FORM
The employee's own serious health condition including organ and bone marrow donation and the disability period related to pregnancy.	Form P-33A
The serious health condition of the employee's family member.	Form P-33B
Military Caregiver Leave	Form WH-385 Form WH-385V

WHEN IS A MEDICAL CERTIFICATE REQUIRED?

A medical certificate is required for **all** Family and Medical Leave Entitlements except for bonding leave and military qualifying exigency leave.

See **Chapter 19** for information about documentation.

In addition, **Section 5-247-11 of the Regulations of Connecticut State Agencies** is a separate state regulation that requires State employees to provide medical certifications to their Human Resources, in the following situations:

- Any period of absence consisting of **more than five consecutive working days**;
- Support of a request for sick leave of any duration during annual vacation;
- Leave of any duration if absence from duty recurs frequently or habitually provided the employee has been notified that a certificate will be required; or
- Leave of any duration when evidence indicates reasonable cause for requiring such a certificate.

HR PRACTICE POINTS

The employee must provide a medical certificate in the circumstances listed above regardless of whether the reason for the absence meets the definition of a “serious health condition” and regardless of whether the employee is eligible for any of the Family and Medical Leave Entitlements.



Human Resources must require the employee to produce a medical certificate in any of the circumstances described above even if the employee does not ask for or want to use the Family and Medical Leave Entitlements.



Human Resources shall use the information contained in the medical certificate to determine if the employee’s absences should be designated as one or more of the Family and Medical Leave Entitlements.

**WHAT IS A “COMPLETE AND SUFFICIENT”
MEDICAL CERTIFICATE?**

A medical certificate is considered “*complete and sufficient*” when all the required information has been provided.

- The employer **cannot** require the medical certificate to include the employee’s diagnosis.
- The medical certificate must provide medical facts sufficient to support the need for the leave, including symptoms, planned treatment, and medication prescribed, as well as information about the employee’s inability to perform the essential job functions, including the frequency and duration of the anticipated leave.

An employer **must** accept a complete and sufficient medical certificate, regardless of the format. The employer cannot reject a medical certificate that contains **all** the information needed to determine if the leave qualifies under the Family and Medical Leave Entitlements.

HR PRACTICE POINTS



A fax or copy of the medical certificate is acceptable.



If the medical certificate has **all** of the necessary information, the medical certificate is acceptable, even if the information is not located in the correct area on the form.



Even if the medical information is provided on the healthcare provider's letterhead or on a different form, it is acceptable if it includes **all** the necessary information requested on the P33A/P33B.



In all circumstances the medical certificate must include the healthcare provider's signature.

WHAT IS AN "INCOMPLETE OR INSUFFICIENT" MEDICAL CERTIFICATE?

A medical certificate is "*incomplete*" if one or more applicable entries has **not** been completed.

Examples:

- The medical facts section is blank.
- For an intermittent leave, the duration and frequency of leave questions have not been answered.
- The healthcare provider did not sign the form.
- The reason is "incapacity and treatment", or "chronic condition" and the treatment section is blank.

A medical certificate is “*insufficient*” if the information provided is vague, ambiguous, or non-responsive to the questions.

Examples:

- The doctor indicates the frequency of intermittent leave is “sporadic” and “cannot be determined” or the duration of intermittent leave is “as needed.”
- The doctor indicates that physical therapy is required as a part of the ongoing treatment but provides no definitive timeframes, dates, etc.

HR PRACTICE POINT



Intermittent leave can be indicated by ranges of frequency and duration and the doctor’s best estimate based on their medical knowledge, experience and examination of the patient.

Example:

Frequency: 2 to 4 times per month

Duration: 4 hours per episode

WHAT SHOULD HUMAN RESOURCES DO WITH AN INCOMPLETE OR INSUFFICIENT MEDICAL CERTIFICATE?

Upon review, if it is determined that the certificate is either “**incomplete and/or insufficient**”, Human Resources **must** give the employee a **written notice** stating what additional information is necessary to make the certificate complete and sufficient. The employee has **at least seven calendar days** to correct any deficiency in the certificate.

HR PRACTICE POINT



Use the **FMLA-HR2b - Section 2** to describe the information needed and provide the form to the employee. If additional space is needed, attach additional pages.

If it is not practicable under the circumstances for the employee to cure any deficiency in the 7-day period despite the employee's good faith efforts, the employer should provide additional time.

If the employee refuses or fails to provide a complete and sufficient certificate, an employer may **deny** the employee's request for family/medical leave.

WHEN CAN THE HEALTH CARE PROVIDER BE CONTACTED DIRECTLY?

The health care provider may be contacted directly **only** for the purposes of "**authentication**" or "**clarification**" of the medical certification.

"Authentication" means providing the health care provider with a copy of the certification and confirming that the information contained on the certification form was completed and/or authorized by the health care provider who signed the form.

Examples:

- It appears that the doctor's signature and date have been whited out and changed.
- It appears that the number 6 was changed to number 8 for doctor appointments.

An employer **may not** ask the health care provider for additional information beyond that in the certification form.

"Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.

Example:

- The doctor's handwriting is not legible.

The employer **should not** contact the health care provider for clarification unless the employer has already notified the employee that the medical certificate was incomplete and insufficient and has given the employee the opportunity to cure the deficiency.

- Under CT FMLA, an employer can contact the health care provider for clarification only after obtaining permission from the employee.
- An employer **may not** ask the health care provider for additional information beyond that in the certificate form.

If the health care provider refuses to authenticate or clarify the medical certificate without authorization from the employee:

- The employer may ask the employee to provide the authorization but cannot require the employee to do so.
- If the employee chooses not to provide such authorization and thus the health care provider does not clarify the medical certification (and the employee does not otherwise provide the necessary clarification), the employer may **deny** the leave request.
- In all circumstances, it is the employee's obligation to provide a complete and sufficient medical certificate to substantiate the need for leave.

HR PRACTICE POINTS



One way to verify authentication of the medical certificate, is to fax or email a copy to the healthcare provider's office and ask them to compare it with their records.



If the medical certificate is fraudulent, take appropriate disciplinary action. See **Chapter 46** Leave Process: Handling Suspected Fraud or Abuse

WHO CAN CONTACT THE HEALTH CARE PROVIDER?

The employer must use a health care professional, a human resources professional, a leave administrator or a management official to contact the health care provider.

- Under no circumstances, may the employee's direct supervisor contact the employee's health care provider.

- For all Family and Medical Leave Entitlements **except for state FMLA**, Human Resources may contact the health care provider and the employee's permission is not required.
- Under state FMLA, Human Resources is **not allowed** to contact the health care provider to authenticate or clarify the medical certificate. Instead, the employer must use a **health care professional** to authenticate or clarify the medical certificate and the employee's permission is required.

WHAT HAPPENS IF THE EMPLOYER STILL DOUBTS THE VALIDITY OF THE MEDICAL CERTIFICATE?

An employer who doubts the validity of a complete and sufficient medical certificate may require the employee to get a second opinion at the employer's expense, and, if necessary, a third opinion.

Second Opinion:

If an employer receives a complete and sufficient certificate, but has **reason to doubt that it is valid**, the employer may require the employee to obtain a second opinion.

- The employer selects the doctor and pays for the second opinion.
- The selected health care provider **cannot** be someone who the employer employs on a regular or routine basis.
- While waiting for the second opinion, the employee is **provisionally** entitled to leave and, under federal FMLA, the employee is entitled to maintain their group health benefits.
- If the second opinion confirms that the employee is entitled to Family and Medical leave, then the entire time the employee is absent for that reason is treated as Family and Medical leave.
-

- If the second opinion differs from the original medical certificate, the employer may seek a third opinion. (See below)
- If the employee requests a copy of the second opinion, the employer **must** provide the copy within 5 business days absent extenuating circumstances.
- If the second health care provider requests information from the employee's or their family member's health care provider, and the employee **does not** authorize release of the information from their health care provider, the Family and Medical leave may be **denied**.
- The employer must reimburse the employee for any reasonable "out of pocket" travel expenses (i.e. parking, gas) incurred to obtain a second medical opinion. The employer may not require the employee or family member to travel outside normal commuting distance for the purpose of obtaining a second opinion.

HR PRACTICE POINTS



Second opinions (and third opinions) are not allowed on recertifications.



The State of Connecticut Workers' Compensation Medical Provider Directory is a useful resource for identifying doctors who may provide a second opinion.



FMLA Regulations prohibit the use of a medical provider who is employed or regularly used by the employer. Therefore, do not use any medical providers employed by any state agency, including UCONN Health Center.



Human Resources and the employee should work cooperatively to schedule the second opinion as soon as possible.

Third Opinion:

If the original medical certification and the second opinion reach **different conclusions**, the employer may require a third opinion.

- The third health care provider must be approved by **both** the employer and employee.
- The employer pays for the third opinion.
- The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider.
 - If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification.
For example, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.
 - If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification.
For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith.
- If the third health care provider requests information relevant to the serious health condition from the health care provider of the employee or the relevant family member, and the employee **refuses** to have the health care provider release such information, the leave may be **denied**.
- While waiting for the third opinion, the employee is **provisionally** entitled to leave and the right to maintain their group health benefits.
- The third opinion is **final**.
- If the employee requests a copy of the third opinion, the employer **must** provide the copy within 5 business days absent extenuating circumstances.

- The employer must reimburse the employee for any reasonable “out of pocket” travel expenses incurred to obtain a third medical opinion. The employer may not require the employee or family member to travel outside normal commuting distance for purpose of obtaining a third opinion.

HR PRACTICE POINTS



The State of Connecticut Workers’ Compensation Medical Provider Directory is a useful resource for identifying doctors who may provide a third opinion.



Regulations prohibit the use of a medical provider who is employed or regularly used by the employer. Therefore, do not use any medical providers employed by any state agency, including UCONN Health Center.

WHAT HAPPENS IF THE EMPLOYEE NEVER PROVIDES A COMPLETE AND SUFFICIENT MEDICAL CERTIFICATE?

If the employee never provides a complete and sufficient medical certification, the leave should be denied.

HR PRACTICE POINT



Nothing about the Health Insurance Portability and Accountability Act (HIPAA) eliminates the employee’s obligation to provide a complete and sufficient medical certification.

WHAT ARE THE RULES REGARDING MEDICAL CERTIFICATES FROM ABROAD?

If the employee or employee's family member is visiting another country, or a family member resides in another country, the employer **must** accept a medical certificate, including second and third opinions, from a health care provider who is authorized to practice in that country and is performing within the scope of their practice.

- If a certificate by a foreign health care provider is not in English, the employer may require the employee to provide a written translation.
- Alternatively, the employer may contact a certified translator to translate the document. The employer pays for the translation.

Once the employer receives the medical certification, the employer must notify the employee whether they:

- Is approved to take leave pursuant to one or more of the leave entitlements,
- Must provide additional information, or
- Is not approved to take leave pursuant to one or more of the leave entitlements.

This chapter describes the contents of the FMLA-HR2b form (Designation Notice), including fitness-for-duty requirements, retroactive designations, and consequences of failure to provide the form.

Federal FMLA and state FMLA establish specific requirements regarding the designation of leave and the notice given to the employee.

Because the 2017 SEBAC Agreement and the Pregnancy Disability and Organ and Bone Marrow Donor laws do not have specific requirements regarding the designation of leave, these leave entitlements follow the federal guidelines.

HR PRACTICE POINTS



The employee **cannot** say that they do not want FMLA or want to save the entitlement for another purpose. If the employee is eligible and the reason qualifies, the leave will be designated as the appropriate Family and Medical Leave Entitlement(s).



If an employee absolutely refuses to fill out the FMLA-HR1, but you have sufficient information to justify determining it qualifies for one or more of the Family and Medical Leave Entitlements (as opposed to unauthorized absence), you must designate it accordingly. Apply the employee's sick leave accruals if the leave is for the employee's own serious health condition, and the remainder of the leave is unpaid.

FMLA-HR2b**DESIGNATION NOTICE**

This form provides employees with the written information required by the regulation for designation of leave.

- The FMLA-HR2b is used for **all** Family and Medical Leave Entitlements.
- The FMLA-HR2b is completed by Human Resources.
- The FMLA-HR2b is a multi-purpose form:
 - The cover sheet (p. 1) contains the employee's contact information, reason for leave, and a summary of the leave designation.
 - **Part A: Approved Leaves** (pp. 2 - 4) is used to notify the employee if leave is approved under one or more of the Family and Medical Leave Entitlements.
 - It includes the parameters of any approved Family and Medical Leave Entitlements, the time frames of leave usage and whether a **fitness-for-duty** will be required.
 - **Part B: Additional Information Required** (pp. 4 - 5) is used to notify the employee that additional information is needed to determine if the leave can be approved.
 - It includes space for Human Resources to explain why the medical certification is **incomplete or insufficient**.
 - It also includes space to specify when the employee must provide the additional information. (Human Resources must give the employee **at least seven calendar days** to do so.)
 - This section is also used to notify the employee that a **second or third medical opinion** is necessary.
 - **Part C: Leave Requests Not Approved** (p. 5) is used to notify the employee if leave is not approved under one or more of the Family and Medical Leave Entitlements.
 - **Part D: Use of Accruals** (pp. 6 - 7) provides the rules for accrual usage and is used to designate which accruals will be used for the employee's approved leave.

HR PRACTICE POINTS

**INTERMITTENT LEAVE APPROVALS**

When an employee requests intermittent leave and the medical certification substantiates that the condition and need for leave will continue for more than a year, Human Resources **must approve the leave for the full leave period** (i.e. 12 months).

Human Resources **cannot** approve the leave for a shorter length of time and then require the employee to re-apply for the same condition within the leave year. Human Resources may request a medical recertification at the six-month mark. (See **Chapter 41** for information about recertifications).

**LEAVE DENIALS**

Leave may be denied for the following reasons:

- The reason for leave does not qualify under the leave entitlement.
- The employee has already exhausted the leave entitlement.
- The employee fails to explain the reason for requesting leave and the reason is not clear from the supporting documentation.
- The employee fails to provide complete and sufficient documentation to substantiate the leave.
- The employee engaged in fraud in connection with the leave request or exercise of the leave. (See **Chapter 46 - Handling Suspected Fraud or Abuse**)

**ALLOCATION OF ACCRUALS**

Human Resources must complete pages 6 and 7 of the FMLA-HR2b based the employee's choices made on the FMLA-HR1 form.

If the employee **did not** complete the FMLA-HR1 form, and the reason is for the employee's own serious health condition/illness,

all sick time accruals available will be used, and the remainder of the leave will be unpaid.

Accruals can be listed in days or hours.

Human Resources **cannot** deny leave or delay leave approval based upon a dispute about paid leave accruals. Human Resources should document all disputes concerning designation of paid leave.

Human Resources **must** complete the FMLA-HR2c Core-CT Coding form describing how the designated accruals will be used (i.e., the order of accrual usage, including the specific days, if known). (See **Chapter 36** – Coding).

Human Resources must provide the completed FMLA- HR2c form to the employee at the same time as the FMLA- HR2b, unless there are extenuating circumstances justifying a delay, such as a dispute over the amount of accruals available to the employee.

FITNESS-FOR-DUTY NOTIFICATION

When an employee is approved to take leave for their own serious health condition/illness, Human Resources **must** require the employee to provide a fitness-for-duty certification.

- An employer **cannot** require an employee to provide a fitness-for-duty certification if the employee is taking leave to be a caregiver or to bond with a child.
- The employee **must** be notified of fitness-for-duty requirement at the time of designation of leave, using the FMLA-HR2b (page 3).
- The “fitness-for-duty” can be requested only for the health condition that caused the employee’s need for leave.
- The employee is responsible for the cost of the “fitness-for-duty” certification.
- If the employee is taking intermittent or reduced schedule leave, a “fitness-for-duty” certification **cannot** be required to return to duty after each absence.
 - Under **federal FMLA only**, the employer can require a fitness-for-duty certification in connection with intermittent or reduced schedule leave if

reasonable safety concerns exist regarding the employee's ability to perform their duties.

- Even in this situation, the fitness-for-duty certification can be required no more than once every 30 days.

Types of Fitness-For-Duty Certification

There are two types of fitness-for-duty certifications: simple and, under federal FMLA only, detailed.

- In a **simple fitness-for-duty certification**, the employee's health care provider must simply provide a written statement that the employee can return to work on a particular date and state whether the employee has any restrictions.
- In a **detailed fitness-for-duty certification**, the employee's health care provider must certify that the employee can perform the **essential functions** of their job at reinstatement.
 - If requesting a detailed certification, Human Resources **must** provide the employee with a list of the essential functions of the employee's job **with the FMLA-HR2b approving the leave**.
 - Refer to **Chapter 45, Interaction with ADA and CFEPA**, for more information about identifying the essential functions of a job.

If the employee is taking leave under **state FMLA** only, Human Resources must accept a simple fitness-for-duty certification. It **cannot** require a detailed fitness-for-duty certification.

RETROACTIVE DESIGNATION

The employer may retroactively designate the absence as a Family and Medical leave if the employer provides appropriate notice to the employee and the retroactive designation doesn't cause harm or injury to the employee.

If the employer fails to designate the leave in a timely fashion and that failure causes the employee to suffer harm, the employer may be liable for damages or be required to take remedial actions.

Examples of situations when retroactive designation is appropriate:

- Employer learns of the leave reason after employee returns to work.
- Employer believes it knows the reason for the absence, but is unable to confirm with the employee, or employee's representative.
- Employer is awaiting medical certificate or 2nd or 3rd opinion.

Example of a situation when retroactive designation causes harm to the employee:

Employee takes every Monday off to bring parent to radiation treatments. Human Resources does not designate these absences as federal and state FMLA even though the employee is eligible. In November, the employee schedules knee surgery and expects to be out for 12 weeks. Human Resources notifies the employee for the first time that the Monday absences counted against the federal and state entitlements, and that the employee has only 6 weeks federal FMLA and state FMLA left. If Human Resources had designated the caregiver leave in a timely fashion, the employee would have made other arrangements with the parent in order to have enough time to cover the absence related to the knee surgery.

FAILURE TO PROVIDE DESIGNATION NOTICE

Failure to provide the designation notice makes the employer – and the individual Human Resources professional – susceptible to a legal claim of interference with the employee's ability to exercise their leave rights.

The interaction between the employee and Human Resources does not end with the notification that leave has been approved (i.e., the HR2b Form). Human Resources has a continuing obligation to administer the leave, which includes tracking the employee's absences.

This chapter describes the absences charged against an employee's leave entitlement.

GENERAL PRINCIPLES

In administering the leave, Human Resources must apply the following general principles:

- **If an employee is scheduled to work and does not work due to the employee's approved Family Medical Leave Entitlement(s), the time away from work is counted against the employee's leave entitlement(s).**
- **The employer cannot require an employee to take more family/medical leave that the employee needs.**

TYPES OF ABSENCES

The application of these principles requires particular attention in certain situations:

- Overtime
- Physical Impossibility
- Holidays
- Shutdowns of greater than one week
- Voluntary Schedule Reduction Program (VSRP)
- Furlough Days
- Closures due to weather or other emergencies

Federal FMLA and state FMLA have specific rules for handling overtime, physical impossibility, holidays and shutdowns.

Because the **2017 SEBAC Agreement and the Pregnancy Disability and Organ and Bone Marrow Donor laws** do not have specific rules, these leave entitlements follow the federal guidelines.

The **State of Connecticut** has specific policies regarding VSRP, furloughs and closures that must be followed in conjunction with the Family Medical Leave Entitlements.

Overtime:

If an employee would **normally be required** to work overtime but is unable to do so because of a qualifying family/medical leave reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's leave entitlement.

Example: Employee eligible for federal and state FMLA

If an employee is normally required to work 48 hours per week, but due to a serious health condition the employee is unable to work more than 40 hours per week, the employee would utilize 8 hours of federal and state FMLA-protected leave per week.

Voluntary overtime hours that an employee does not work due to a family/medical qualifying reason may **not** be counted against the employee's leave entitlement.

Physical Impossibility:

Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, the entire period that the employee is unable to work due to this impossibility is designated as family/medical leave and counts against the employee's leave entitlement.

Example: Employee eligible for federal and state FMLA

The laboratory protocol states that if a lab needs to be a sealed "clean room," such that no one can enter or leave the lab during that time. Due to a federal/state FMLA-covered medical appointment, a laboratory worker arrives at work after the room is sealed. Accordingly, the employee cannot start work until the room re-opens. The entire time the employee is unable to work because

they cannot enter the room counts against the employee's federal/state leave entitlement.

Holidays:

When a holiday falls during a week in which an employee is taking the full week of family/medical leave, the entire week – including the holiday – is counted against the employee's Family and Medical Leave Entitlement(s).

When a holiday falls during a week when an employee is taking less than a full week of family/medical leave, the holiday is **not** counted against the employee's Family and Medical Leave Entitlement(s) unless the employee was scheduled and expected to work on the holiday and used the Family and Medical Leave Entitlement for the day.

Examples: Assume Thanksgiving Day occurs on November 24, 2022.

An employee takes a block family/medical leave on November 14, 2022 and return to work on November 28th. That employee has used 10 days - i.e., 2 full weeks – of their leave entitlement. Thanksgiving is counted as part of the leave entitlement because the employee took family/medical leave for the full week.

Another employee takes a block family/medical leave from November 14, 2022 and returns to work on November 25th. That employee has used 8 days of their leave entitlement. Thanksgiving is not counted as part of the leave entitlement because the employee did not take a full week of family/medical leave that week.

Shutdowns of Greater Than One Week:

If an agency temporarily stops business activity and employees are not expected to report for work for one or more weeks (i.e., a school that closes two weeks for the winter holiday), the period of time that the agency's business activities have stopped **does not count** against an employee's Family and Medical Leave Entitlement(s).

Voluntary Schedule Reduction Program (VSRP):

C.G.S. 5-248c gives employees the opportunity to request unpaid days off or a reduction in work schedule for a limited period of time (*no more than three months*) with agency

approval, while maintaining health insurance benefits. **Use of this program must be reviewed on a case-by-case basis.** Refer to **CT-HR-7c** form on ct.gov.

- Employees are **not allowed** to use VSRP instead of or to avoid using any Family and Medical Leave Entitlements.
- When an employee who is on a reduced schedule under VSRP needs a **block leave** under one or more Family and Medical Leave Entitlements, the VSRP arrangement **must** be suspended. The employee will revert to their regular schedule for the duration of the Family and Medical Leave Entitlement(s).
- An employee who is on an approved intermittent or reduced schedule family/medical leave may request time off under VSRP only for reasons **unrelated** to the family/medical leave.

Example: Employee eligible for federal and state FMLA

An employee who takes federal and state FMLA intermittent leave on Mondays to care for a seriously ill parent may request VSRP on Fridays for a non-medical reason. The employee cannot, however, take VSRP instead of intermittent leave to care for the parent.

Leave Options	Federal FMLA	State FMLA	SEBAC Supplemental	Voluntary Schedule Reduction Program (VSRP)
Block Leave	Yes	Yes	Yes	No, VSRP must be suspended during a block leave.
Intermittent Leave	Yes	Yes	Not Available	Yes, if unrelated to family/medical leave and with agency consent.
Reduced Schedule Leave	Yes	Yes	For bonding with newborn or adoption only, with agency consent.	Yes, if unrelated to family/medical leave and with agency consent.

Furlough Days:

If furlough days are mandated by collective bargaining agreement, General Notice or other State directive, refer to the applicable document for rules about when and how the furlough days must be taken.

Even if the furlough day(s) must be taken within a defined timeframe, the State cannot force an employee to take a furlough day while they are using a leave entitlement.

In all situations, the following rules apply:

- An employee who is out of work on a **block leave** has the **option** to take the furlough day(s) during the block leave or the employee may opt to take the furlough day(s) within a reasonable amount of time after returning from leave.
 - If the employee chooses to take the furlough day(s) during the block leave, the day(s) should be coded as a furlough day and the day(s) shall not be counted against the leave entitlement.
- An employee who is out of work on an **intermittent or reduced schedule leave** has the **option** to take the furlough day(s) on a day the employee would otherwise be taking intermittent leave or working a reduced schedule, or the employee may opt to take the furlough day(s) on a different day.
 - If the employee chooses to take the furlough day(s) on a day that they would otherwise be taking intermittent leave or working a reduced schedule, the whole day(s) should be coded as a furlough day and no part of the day(s) shall be counted against the leave entitlement.

State Closure Due to Weather or Other Emergencies:

When state offices are closed by the Governor due to weather or other unforeseen circumstances, the following shall apply:

- When a closure occurs during a week in which an employee is taking the full week of family/medical leave, the entire week – including the closure – is counted against the employee’s Family and Medical Leave Entitlement(s).
- When a closure occurs during a week when an employee is taking less than a full week of family/medical leave, the closure is **not** counted against the employee’s Family and Medical Leave Entitlement(s) unless the employee was scheduled and expected to work on the closure and used the Family and Medical Leave Entitlement for the day.

The Family Medical Leave Entitlements, except for Organ and Bone Marrow Donor leave, are unpaid. Federal and state law authorize the employer to decide whether to allow the employee to use their earned accruals and similar benefits (i.e. donated sick leave, sick leave bank, etc.) during the leave in order to maintain a source of income.

This chapter describes the general rules and principles regarding the substitution of paid leave (earned accruals) and the interaction of the policies of the State (as an employer) with the Connecticut Paid Leave Act.

See Chapter 18 for information on Organ and Bone Marrow Donor leave.

USE OF ACCRUALS

The State of Connecticut allows the use of accruals in conjunction with Family and Medical Leave Entitlements; however, accrual usage depends upon the following:

- The reason for leave and the employee's eligibility under the various leave entitlements,
- The employee's accrual selection,
- The employee's accrual balance.

The accruals that **may be available** to a state employee to use during a family/medical leave are the following:

- Sick leave
- Vacation leave
- Personal leave
- Earned compensatory time
- Donated sick leave
- Sick leave bank
- Advanced sick leave
- Extended sick leave

The State of Connecticut requires the use of sick leave for an employee's own serious illness or health condition; however, it does not require usage of sick leave for family leave and does not require the use of other accruals.

There are two exceptions to this policy requirement:

- (1) The State FMLA (as revised effective January 1, 2022) provides that an employer may not require an employee to exhaust **all** of their accruals while they are on state FMLA leave.
 - C.G.S. 31-51ll(e) states an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, **provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. is able to retain not less than two weeks of such paid time off.**
 - This means that if an employee has less than two weeks of accruals (in any combination), then the employee cannot be required to use their sick leave accruals while they are taking state FMLA leave, even if they are taking leave for their own serious health condition.
- (2) An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the **exception** of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a **volunteer firefighter**.

REMINDER: SEBAC Supplemental leave for an employee's own serious health condition **does not** start until the employee exhausts their sick leave accruals.

If the employee is eligible for one or more Family and Medical Leave Entitlements and the reason for leave is covered by these entitlements but the employee does not have any accruals or does not meet the requirements for the use of the accruals, the employee remains entitled to take **unpaid** leave.

EXCEPTION: The Organ and Bone Marrow Donor Leave law provides that a state employee who donates an organ receives 15 days of paid leave (i.e., the

employee receives their regular salary during this time and accruals are not used) and a state employee who donates bone marrow receives 7 days of paid leave. See **Chapter 18** for more information.

The specific rules for usage of earned accruals depend on the employee's reason(s) for leave. For additional information on accrual usage, refer to the following chapters:

Employee's Own Serious Health Condition or Illness	Refer to Chapter 30
Organ or Bone Marrow Donor	Refer to Chapter 18
Employee as a Caregiver	Refer to Chapter 31
Pregnancy	Refer to Chapter 32
Adoption	Refer to Chapter 33
Foster Care	Refer to Chapter 34
Military Family Leave	Refer to Chapters 49 - 54

GUIDING PRINCIPLES FOR DESIGNATION OF EARNED ACCRUALS

Principle #1: Employees should be encouraged to use their accruals while they are on leave but, other than the use of sick time for an employee's own illness, employees cannot be required to use their accruals.

Principle #2: Barring extenuating circumstances (such as an unforeseen emergency leave where all the paperwork must be done while the person is already out of work), employees should designate their accrual usage **PRIOR** to beginning their leaves.

Principle #3: An employee may need to change their accrual designation based upon changes in their circumstances.

Example: An employee taking caregiver leave may think that they would be back to work before the end of the year and thus want to reserve their personal leave days. If that employee has to stay out longer than expected, it would be reasonable to allow them to use the personal leave days rather than have them be lost.

Example: An employee may not realize when they goes out on leave that their co-workers will be willing to donate sick time to them. Once they become aware of that possibility, they may have to change their accrual designation in order to qualify for the donated sick time.

Principle #4: Barring the two exceptions listed above, when an employee is out for the employee's own serious health condition/illness, they must use all of their sick time accruals before using vacation accruals or personal leave accruals.

- This rule applies even if it results in an employee losing the opportunity to use vacation accruals, personal leave accrual, and/or compensatory time before the end of a calendar year.

Principle #5: Barring extenuating circumstances, changes to accrual usage should be made on a PROSPECTIVE basis only.

Example: If an employee who originally said not to use vacation accruals (or failed to return the FMLA-HR1 form) subsequently asks to use the vacation accruals, the change will begin as of the date of the request and will be seen in the next paycheck – with no retroactive pay or adjustments to old timesheets.

HR PRACTICE POINTS



If at all possible, Human Resources should talk with employees BEFORE they go out on family/medical leave to make sure that they understand the options and the effects on them if they choose or do not choose to use their earned accruals.



Always consult individual labor contracts for usage of earned accruals.



Have the employee fill out the FMLA- HR1 form to denote accrual usage. If the form is not completed, the leave entitlement(s) will be unpaid, unless the reason is for the employee's own serious health condition, in which case, sick leave accruals (if any) will be used, unless one of the two exceptions listed above applies.

INTERACTION WITH CT PAID LEAVE BENEFITS

The Connecticut Paid Leave Act, which provides income-replacement benefits to eligible employees who take leave for qualifying reasons, applies to state employees who are not covered by a state collective bargaining unit (e.g., managers, confidentials, appointed officials, legislators, and judges) as well as members of any state collective bargaining unit that has negotiated inclusion in the program.

State employees who are covered by the Connecticut Paid Leave Act are required to contribute 0.5% of their wages to the Connecticut Paid Leave Trust and may apply to the Connecticut Paid Leave Authority for income-replacement benefits. The CT Paid Leave Act states that an employee may receive income-replacement benefits from the Authority and employer-provided benefits concurrently provided the total amount does not exceed 100% of the employee's regular wages.

NOTE: Under the Connecticut Paid Leave Act, an individual cannot receive any Connecticut Paid Leave benefits ("CT PL benefits") if they are also receiving Workers' Compensation benefits, Unemployment Insurance benefits or wage replacement benefits from any other state or federal program.

There are 3 possible scenarios associated with a covered state employee receiving CT Paid Leave benefits:

- If an employee does not receive any employer-provided paid time off (through earned accruals, PL or comp time) and the employee is eligible for CT PL benefits, the employee will start receiving the full amount of CT PL benefits, with no offsets, as of the first day of the leave.
 - *Example: Employee takes state FMLA leave to serve as a caregiver for a family member.*
 - *Because the State does not require employees to use accruals for caregiver leave, the employee can choose not to use any accruals – i.e., go on unpaid leave from the State's perspective -- and may apply to the CT Paid Leave program for income-replacement benefits.*

- If the employee receives employer-provided paid time off that is equal to the employee's regular pay for the full amount of time the employee is out on leave, the employee shall not receive any CT PL benefits during that leave.
 - *Example: Employee who has 4 weeks of sick leave accruals and 3 weeks of vacation accruals needs to take 4 weeks of state FMLA leave for their own serious health condition.*
 - *Because the employee will have at least two weeks of accruals available to use even after using all of their sick leave accruals and because the employee is taking leave for their own serious health condition, the employee will be required to use their sick leave accruals while on leave.*

- If the employee receives employer-provided paid time off that is equal to the employee's regular pay for a portion of the time the employee is out on leave, and the employee is eligible for CT PL benefits, the employee shall receive CT PL benefits only for the remainder of the leave (i.e., the period of time the employee is on leave but not receiving employer-provided paid time off).
 - *Example: Employee who has 3 weeks of sick leave accruals and no vacation, PL or comp time needs to take 4 weeks of state FMLA leave for their own serious health condition.*
 - *Because the employee must be allowed to reserve two weeks of accruals to be used for non-state FMLA reasons, the employee will be required to use one week of sick leave accruals and can choose whether or not to use the remaining two weeks.*
 - *If the employee chooses not to use the remaining two weeks of sick leave accruals, the employee can apply to CT Paid Leave for income-replacement benefits after the first week of sick leave accruals are utilized.*

When the employee is permitted or required to use the employer-provided benefits which are equal to the employee's regular pay, such that the employee does not qualify for CT PL benefits, such day or days shall not count against the employee's maximum allotment of CT Paid Leave benefits.

CH.30 LEAVE PROCESS: EMPLOYEE'S OWN SERIOUS HEALTH CONDITION – ACCRUAL USAGE AND SEQUENCING OF LEAVES

When an employee needs to take leave for their own serious health condition, Human Resources must make sure the employee understands the rules for accrual usage and the sequencing of the Family and Medical Leave Entitlement(s).

This chapter describes the rules for accrual usage and the sequencing of leave entitlements for an employee's own serious health condition other than pregnancy and organ and bone marrow donor leave.

- For information on **pregnancy** (included pregnancy-related caregiving and sequencing of leave entitlements) refer to **Chapter 14** and refer to **Chapter 32** for accrual usage during pregnancy.
- For information on **organ and bone marrow donor leave** refer to **Chapter 18** for accrual usage and sequencing of leaves.

Chapter 29 provides information critical to the proper understanding of the rules and principles regarding the substitution of paid leave (i.e., earned accruals) and should be read in conjunction with this chapter.

RULES FOR ACCRUAL USAGE

- An employee who needs to take Family and Medical Leave for their own serious health condition **may** be able to utilize the following accruals if eligible:
 - Sick Leave Accruals (*federal FMLA and state FMLA only – SEBAC Supplement Leave starts only after sick leave is exhausted*)
 - Vacation Accruals
 - Personal Leave (PL)
 - Compensatory Time
 - Donated Leave
 - Sick Leave Bank
 - Advanced Sick Leave
 - Extended Sick Leave

CH.30 LEAVE PROCESS: EMPLOYEE'S OWN SERIOUS HEALTH CONDITION – ACCRUAL USAGE AND SEQUENCING OF LEAVES

- Sick leave accruals **must** be exhausted first, **before** going on unpaid leave or using accrued vacation time, personal leave, or compensatory time.

There are two exceptions to this policy requirement:

(1) The State FMLA (as revised effective January 1, 2022) provides that an employer may not require an employee to exhaust **all** of their accruals while they are on state FMLA leave.

- C.G.S. 31-51ll(e) states an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, **provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. is able to retain not less than two weeks of such paid time off.**
- This means that if an employee has less than two weeks of accruals (in any combination), then the employee cannot be required to use their sick leave accruals while they are taking state FMLA leave, even if they are taking leave for their own serious health condition.

(2) An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the **exception** of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a **volunteer firefighter.**

- After sick time accruals are exhausted, the employee has the **option** to use vacation, personal leave or earned compensatory leave or to go immediately into unpaid status.
- The employee is **not** required to exhaust vacation, personal leave or compensatory leave.

Example: The employee may choose to use all but 1 week of vacation or could choose not to use all 3 personal leave days.

CH.30 LEAVE PROCESS: EMPLOYEE'S OWN SERIOUS HEALTH CONDITION – ACCRUAL USAGE AND SEQUENCING OF LEAVES

- It does not matter what order the employee uses vacation, personal leave or compensatory leave.
- Once the employee has made their election of accrual usage on the FMLA- HR1 form, all the paid time that the employee has elected to use is spent down completely **before** the employee goes into unpaid status.
- If the employee does not make an election of accrual usage on the FMLA-HR1 form, the employee's leave will be **unpaid** after the sick leave accruals are exhausted, or, if necessary to comply with CGS 31-511l(e), when the employee has used all but two weeks of their accruals.
- The employee **is not** allowed to intersperse unpaid time with paid time.

Examples:

The employee cannot code each Monday, Tuesday and Wednesday as vacation and each Thursday and Friday as unpaid.

The employee cannot code 4 hours of each day as vacation time and the remaining 4 hours of the day as unpaid time.

- **There are no exceptions to this rule, even if the employee wants to avoid benefits billing or to earn additional accruals.**

SEQUENCING OF LEAVE ENTITLEMENTS

- **Federal FMLA and state FMLA leave** starts on the first day of the incapacity due to the serious health condition or illness, assuming the employee is eligible for both leave entitlements.
- Sick leave accrual usage also starts on the first day of the incapacity.
- **SEBAC Supplemental** leave is **in addition to** leave taken under federal FMLA and state FMLA.
 - An employee who is eligible for federal FMLA or state FMLA must exhaust the statutory leaves **before** taking SEBAC Supplemental leave.

CH.30 LEAVE PROCESS: EMPLOYEE'S OWN SERIOUS HEALTH CONDITION – ACCRUAL USAGE AND SEQUENCING OF LEAVES

- **SEBAC Supplemental** leave is also **in addition** to the employee's own earned sick leave accruals.
 - The employee's SEBAC Supplemental leave **does not start until the employee exhausts their sick leave accruals.**
 - None of the other forms of paid time off listed above delay the start of the SEBAC Supplemental leave.
 - If sick time accrues **after** the start of SEBAC Supplemental leave, the sick leave accrual is available to be used by the employee **only after their return to work. It cannot be used during the SEBAC Supplemental leave.**
 - An employee who is eligible for federal and/or state FMLA and who has sick leave accruals **will not start SEBAC until both the statutory entitlements and the sick leave accruals are exhausted.**

When an employee needs to take leave to act as a caregiver, Human Resources must make sure the employee understands the principles and rules for the usage of accruals and the sequencing of leave entitlements.

This chapter describes the rules for accrual usage and sequencing of leave entitlements for caregiver leave taken by an employee to care for a parent, spouse or child who has a serious health condition other than pregnancy.

- **Included** in this chapter is information relating to serving as a caregiver to a parent, spouse or child who is an organ or bone marrow donor.
- For information on pregnancy (including pregnancy-related caregiving) refer to **Chapter 14** for sequencing of leaves and **Chapter 32** for accrual usage.

Chapter 29 provides information critical to the proper understanding of the rules and principles regarding the substitution of paid leave (i.e., earned accruals) and should be read in conjunction with this chapter.

RULES FOR ACCRUAL USAGE

- An employee who needs to take Family and Medical Leave to act as a caregiver **may** be able to utilize the following accruals if eligible but is not required to do:
 - Sick Leave Accruals
 - Sick Family leave
 - Vacation Accruals
 - Personal Leave (PL)
 - Compensatory Time
- If the employee is eligible for federal FMLA leave and/or state FMLA leave, the employee may request to use sick leave accruals during the federal FMLA, state FMLA and SEBAC Supplemental leave, but is **not required** to do so.
 - An employee who is eligible for federal FMLA and/or state FMLA would **not** use their sick family leave entitlement to act as a caregiver. The sick family leave entitlement would be used only for situations that do not involve a parent, spouse or child with a serious health condition.

- If the employee is **not eligible** for federal FMLA leave or state FMLA leave, the employee **may choose to use their “sick family leave” entitlement during the SEBAC Supplemental leave but is not allowed to use any other sick leave accruals.**
 - The employee is not required to use their sick family leave entitlement.
- The employee is **not** required to exhaust sick leave, sick family leave, vacation, personal leave or compensatory leave.

Example: The employee may choose to use all but 1 week of vacation or could choose not to use all 3 personal leave days.

- It does not matter what order the employee uses sick leave, sick family leave, vacation, personal leave or compensatory leave.
- Once the employee has made their election of accrual usage on the FMLA- HR1 form, all of the paid time that the employee has elected to use is spent down completely **before** the employee goes into unpaid status.
- If the employee does not make an election of accrual usage on the FMLA-HR1 form, the employee’s leave will be **unpaid**.
- The employee **is not** allowed to intersperse unpaid time with paid time.

Examples:

The employee cannot code each Monday, Tuesday and Wednesday as vacation and each Thursday and Friday as unpaid.

The employee cannot code 4 hours of each day as vacation time and the remaining 4 hours of the day as unpaid time.

- **There are no exceptions to this rule, even if the employee wants to avoid benefits billing or to earn additional accruals.**

HR PRACTICE POINTS

If an employee who is eligible for federal FMLA and/or state FMLA indicates on the FMLA-HR1 that they want to use the sick family entitlement, Human Resources must explain that the State allows the employee to use their sick leave accruals and that the sick family entitlement is no longer used for this purpose.



If an employee who is **not** eligible for federal FMLA and/or state FMLA indicates on the FMLA-HR1 that they want to use their sick leave entitlement, Human Resources must explain that the employee can **use only the sick family entitlement**.

SEQUENCING OF LEAVE ENTITLEMENTS

- **Federal FMLA and state FMLA leave** each start on the first day the employee takes leave to care for a family member with a serious health condition, assuming the employee is eligible for each leave entitlement.
 - If the employee is eligible for both leave entitlements and the leave reason qualifies under both federal and state FMLA, the federal and state FMLA leaves will run concurrently.
- **SEBAC Supplemental leave is in addition to** leave taken under federal FMLA and state FMLA.
 - An employee who is eligible for federal FMLA or state FMLA must exhaust the statutory leaves **before** taking SEBAC Supplemental leave.

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

When an employee needs to take leave for pregnancy and bonding with a new child, Human Resources must make sure the employee understands the rules for accrual usage during pregnancy and bonding.

This chapter describes the rules for accrual usage during pregnancy and bonding with a newborn child.

- **Chapter 14** provides in depth information on pregnancy (including pregnancy-related caregiving) and the sequencing of leave entitlements.
- **Chapter 17** provides information about calculating bonding leave under the SEBAC Supplemental leave entitlement.
- **Chapter 29** provides general rules and principles regarding substitution of paid leave (earned accruals).

All three chapters should be read in conjunction with this chapter.

NOTE: The State FMLA (as revised effective January 1, 2022) provides that an employer may not require an employee to exhaust **all** their accruals while they are on state FMLA leave.

- C.G.S. 31-51ll(e) states an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, **provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. is able to retain not less than two weeks of such paid time off.**
- This means that if an employee has less than two weeks of accruals (in any combination), then the employee cannot be required to use their sick leave accruals while they are taking state FMLA leave, even if they are taking leave for their own serious health condition.

RULES FOR ACCRUAL USAGE

Under the Family and Medical Leave Entitlements, there are specific rules regarding accrual usage for pregnancy and bonding with a newborn child.

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

The rules for accrual usage depend on whether the **employee or employees** fit one or more of the following categories:

- **Pregnant Parent**
- **Other Parent Married to Pregnant Parent**
- **Other Parent Not Married to Pregnant Parent and not in an Equivalent Relationship**
- **Other Parent in a Relationship Equivalent to Marriage with Pregnant Parent**
- **Family Caregiver to Pregnant Parent**

Accrual Usage by Pregnant Parent			
IF ELIGIBLE FOR ACCRUALS	C.G.S. §46a-60(b)(7)	Federal FMLA and/or State FMLA	SEBAC Supplemental
Prenatal care and appointments	Mandatory: Sick leave if available Optional: Vacation, personal leave, or compensatory time	Mandatory: Sick leave if available {subject to the requirements of CGS 31-511l(e)} Optional: Vacation, personal leave, or compensatory time	Not Applicable
Pregnancy complications, bed rest and severe morning sickness	Mandatory: Sick leave if available Optional: Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick	Mandatory: Sick leave if available {subject to the requirements of CGS 31-511l(e)} Optional: Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick	Not Applicable

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

<p>Birth and disability period</p>	<p>Mandatory: Sick leave if available</p> <p>Optional: Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</p>	<p>Mandatory: Sick leave if available {subject to the requirements of CGS 31-511l(e)}</p> <p>Optional: Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</p>	<p>Not Applicable</p>
<p>Bond with child</p>	<p>Not Applicable</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave.</p> <p>If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</p>

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

Accrual Usage by Other Parent Married to Pregnant Parent			
IF ELIGIBLE FOR ACCRUALS	C.G.S. §46a-60(b)(7)	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pregnant spouse's pre-natal care and appointments (including providing transportation)	Not Applicable	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: Sick Family leave in accordance with the applicable collective bargaining agreement or policy.</p>
Care for spouse on bed rest or otherwise meets definition of serious illness before the birth	Not Applicable	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: Sick Family leave in accordance with the applicable collective bargaining agreement or policy.</p>
Care for spouse in connection with birth and disability period	Not Applicable	Optional: Vacation, personal leave, or compensatory time	Optional: Vacation, personal leave, or compensatory time In addition:

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

		<p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>If eligible for federal FMLA or state FMLA: sick leave.</p> <p>If not eligible for federal or state FMLA: Sick Family leave in accordance with the applicable collective bargaining agreement or policy.</p>
Bond with child	Not Applicable	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave.</p> <p>If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</p>

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

<p align="center">Accrual Usage by Other Parent Not Married to Pregnant Parent and NOT in an Equivalent Relationship</p>			
<p>IF ELIGIBLE FOR ACCRUALS</p>	<p>C.G.S. §46a-60(b)(7)</p>	<p>Federal FMLA and/or State FMLA</p>	<p>SEBAC Supplemental</p>
<p>Prenatal care and appointments</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>
<p>Pregnancy complications, bed rest and severe morning sickness</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>
<p>Birth and disability period</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>
<p>Bond with child</p>	<p>Not Applicable</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave.</p> <p>If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</p>

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

Accrual Usage by Other Parent in a Relationship Equivalent to Marriage with Pregnant Parent			
IF ELIGIBLE FOR ACCRUALS	C.G.S. §46a-60(b)(7)	Federal FMLA and/or State FMLA	SEBAC Supplemental
Prenatal care and appointments	Not Applicable	<p>Federal FMLA: Not Applicable</p> <p>State FMLA: Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for state FMLA, use of sick leave is also an option.</p>	Not Applicable
Pregnancy complications, bed rest and severe morning sickness	Not Applicable	<p>Federal FMLA: Not Applicable</p> <p>State FMLA: Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	Not Applicable
Birth and disability period	Not Applicable	Federal FMLA: Not Applicable	Not Applicable

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

		<p>State FMLA: Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	
Bond with child	Not Applicable	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</p>

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

<p style="text-align: center;">Accrual Usage by Family Caregiver to Pregnant Parent</p>			
<p>IF ELIGIBLE FOR ACCRUALS</p>	<p>C.G.S. §46a-60(b)(7)</p>	<p>Federal FMLA and/or State FMLA</p>	<p>SEBAC Supplemental</p>
<p>Prenatal care and appointments</p>	<p>Not Applicable</p>	<p>Federal FMLA: Not Applicable</p> <p>State FMLA: Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for state FMLA, use of sick leave is also an option.</p>	<p>Not Applicable</p>
<p>Pregnancy complications, bed rest and severe morning sickness</p>	<p>Not Applicable</p>	<p>Federal FMLA: Not Applicable</p> <p>State FMLA: Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	<p>Not Applicable</p>
<p>Birth and disability period</p>	<p>Not Applicable</p>	<p>Federal FMLA: Not Applicable</p> <p>State FMLA: Optional: Vacation,</p>	<p>Not Applicable</p>

CH.32 LEAVE PROCESS: PREGNANCY & BONDING WITH A NEW CHILD – ACCRUAL USAGE

		<p>personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	
Bond with child	Not Applicable	Not Applicable	Not Applicable

When an employee needs to take leave for adoption and bonding with a new child, Human Resources must make sure the employee understands the rules for accrual usage for adoption and bonding.

This chapter describes the rules for accrual usage for adoption and bonding with a new child.

- **Chapter 15** provides in depth information on adoption and the sequencing of leave entitlements.
- **Chapter 17** provides information about calculating bonding leave under the SEBAC Supplemental leave entitlement.
- **Chapter 29** provides general rules and principles regarding substitution of paid leave (earned accruals).

All three chapters should be read in conjunction with this chapter.

NOTE: The State of Connecticut recognizes same-sex marriage.

RULES FOR ACCRUAL USAGE

Under the Family and Medical Leave Entitlements, there are specific rules regarding accrual usage for pre-adoption activities and bonding with child upon legal adoption.

The rules depend on whether the **employee or employees** fit one or more of the following categories:

- **Married Parents** – both work for the State
- **Unmarried Parents** – both work for the State, or
- **Only One Parent Working for the State**

Accrual Usage by Married Parents – Both Work for State of CT		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.
Bonding with child upon legal adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.

Accrual Usage by Unmarried Parents - Both Work for State of CT		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.
Bonding with child upon legal adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.

Accrual Usage by Only One Parent Working for the State		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.
Bonding with child upon legal adoption	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Optional: Vacation, personal leave, or compensatory time In addition: If eligible for federal FMLA or state FMLA: sick leave. If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.

When an employee needs to take leave for foster care placement and bonding with a foster child, Human Resources must make sure the employee understands the rules for accrual usage for foster care and bonding.

This chapter describes the rules for accrual usage for foster care placement and bonding with a foster child.

- **Chapter 16** provides in depth information on foster care and the sequencing of leave entitlements.
- **Chapter 29** provides general rules and principles regarding substitution of paid leave (earned accruals).

Both chapters should be read in conjunction with this chapter.

NOTE: The State of Connecticut recognizes same sex marriage.

RULES FOR ACCRUAL USAGE

Under federal FMLA and state FMLA, there are specific rules regarding accrual usage for foster care, including pre-placement activities and bonding with child upon placement.

These rules depend on whether the **employee or employees** fit one or more of the following categories:

- **Married Parents** – both work for the State
- **Unmarried Parents** – both work for the State, or
- **Only One Parent Working for the State**

SEBAC Supplemental Leave does *not* cover placement and bonding with a new foster child.

Accrual Usage by Married Parents – Both Work for State of CT		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Not applicable
Bonding with child upon placement	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Not applicable

Accrual Usage by Unmarried Parents - Both Work for State of CT		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Not applicable
Bonding with child upon placement	Optional: Vacation, personal leave, or compensatory time In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.	Not applicable

Accrual Usage by Only One Parent Working for the State		
IF ELIGIBLE FOR ACCRUALS	Federal FMLA and/or State FMLA	SEBAC Supplemental
Pre-placement activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the placement	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	Not Applicable
Bonding with child upon placement	<p>Optional: Vacation, personal leave, or compensatory time</p> <p>In addition, pursuant to the 2017 SEBAC agreement, because the employee is eligible for federal FMLA or state FMLA, use of sick leave is also an option.</p>	Not Applicable

Human Resources needs to work closely with the agency staff who handle workers' compensation. An employee's absence due to a workers' compensation injury may be covered under the Family and Medical Leave Entitlements as well.

This chapter describes the interaction of a workers' compensation injury with Family and Medical Leave Entitlements.

OVERVIEW OF THE ENTITLEMENTS

Under federal and state FMLA, an employer may count a workers' compensation absence against the employee's federal FMLA and/or state FMLA leave entitlement when the injury meets the criteria for a "serious health condition."

- If the workers' compensation and the federal FMLA and/or state FMLA leave run together, the workers' compensation statutes permit the employer to follow the workers' compensation statutes and contact the doctor.

- If the leaves run together and the employee is unable to return to work after 12 weeks of federal FMLA leave and/or state FMLA:
 - The employee is no longer protected under federal FMLA and/or state FMLA.
 - The employee may have additional entitlements under the workers' compensation statute, or
 - The employee may have additional entitlements under the Americans with Disabilities Act (ADA) and/or the Connecticut Fair Employment Practices Act (CFEPA). (Refer to **Chapter 45**).

- If the workers' compensation and federal FMLA and/or state FMLA leaves run together and the doctor certifies the employee for light duty, the employee may decline to return to work on a light duty basis until the 12-week entitlement is over **but** doing so may result in the employee losing workers' compensation payments.

SEBAC Supplemental Leave for an employee's own serious health condition **does not** start until workers' compensation wage replacement benefits have stopped.

HR PRACTICE POINTS



Use the Workers' Compensation sample letters that can be found in **Chapter 59 Appendix: Sample Letters**.

Sample Letter: Workers' Compensation Leave can be used when an employee is out of work due to a workers' compensation-related illness or injury that also qualifies as a serious health condition/illness under federal and/or state FMLA.

Sample Letter: Workers' Compensation Denial/Contested can be used when the employee's workers' compensation claim has been denied or is contested and the illness or injury may qualify under the Family and Medical Leave Entitlements.



If the reason for leave qualifies as a "serious medical condition" under federal and/or state FMLA, and the employee is eligible for federal FMLA and/or state FMLA, then the **employee should be coded as being out on federal and/or state FMLA from day 1**, even if the absence is not yet determined to be covered by workers' compensation.



Refer to **Chapter 36: Coding - FMLA-HR2c Form** for information on the codes to use when an employee is out on Federal and/or State FMLA with Worker's Compensation.



"Light Duty" does not mean "reduced work schedule." "Light Duty" is different work; it is less arduous but it is full-time.



Questions specifically about Workers' Compensation questions should be directed to DAS Statewide Workers' Compensation Unit.

Core CT Codes are used to track an employee's usage of the Family and Medical Leave Entitlements. The codes also denote whether the employee's time away will be paid (using earned accruals) or unpaid.

This chapter describes the types of codes that are used and the coding process.

TYPES OF CODES

Human Resources is responsible for identifying the appropriate codes to use and applying the rules for accrual usage appropriately.

- In Job Data, the Core CT codes are called **Action Reason Codes (ARC)**. These codes directly affect benefits processing.
 - Action Reason Codes must be used when the employee is out for **more than 5 consecutive work days**, regardless of whether the leave is paid or unpaid.
 - Action Reason Codes (paid) must also be used any time an employee is out on a Workers' Compensation leave of any length of the time, even if the employee will not be supplementing worker's compensation with accruals.
 - Failure to enter Action Reason Codes on a timely basis may cause interruption and/or cancellation of health and life insurance benefits.
 - There are Action Reason Codes for both paid and unpaid leaves.
- In Time and Labor, the Core CT codes are called **Time Reporting Codes (TRC)** and are used on the employee's timesheet to provide more specific information regarding the employee's accrual usage and the nature of the leave.
- In Time and Labor, there are also **Override Reason Codes** that are available for use by agencies utilizing the Timesheet in Time and Labor.
 - Override Reason Codes provide additional information for attendance posted on the Timesheet.

- These codes can be selected for use along with a correlating Time Reporting Code (TRC) when a need exists to expand upon the nature of a specific payment or leave code.
- The "Override Reason Code" field is located to the right of the "Time Reporting Code" field on the Timesheet.

HR PRACTICE POINTS



Use the Core CT Family Medical Leave TRCs when filling out the FMLA-HR2c Core CT Coding form.



Use the Core CT job aides for assistance in processing these transactions

- [Human Resources Job Aids](#)
- [Time & Labor Job Aids](#)

REMINDER

State of Connecticut Policy: Sick Leave Accrual Usage

The state's policy requires the use of sick leave accruals for an employee's own serious illness; however, it does not require usage of sick leave accruals or sick family for family leave and it does not require use of vacation, personal leave or compensatory time.

There are two exceptions to this policy requirement:

- (1) The State FMLA (as revised effective January 1, 2022) provides that an employer may not require an employee to exhaust **all** their accruals while they are on state FMLA leave.
 - C.G.S. 31-51ll(e) states an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, **provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. is able to retain not less than two weeks of such paid time off.**
 - This means that if an employee has less than two weeks of accruals (in any combination), then the

employee cannot be required to use their sick leave accruals while they are taking state FMLA leave, even if they are taking leave for their own serious health condition.

- (2) An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the **exception** of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a **volunteer firefighter**.

THE CODING PROCESS

- When the employee is approved for a family and medical leave entitlement, Human Resources completes the **FMLA - HR2c Core CT Coding Form** using the appropriate Family Medical Leave TRCs, based on the employee's reason for leave and requested accruals on the employee's FMLA-HR-1 form.
- Subject to the two exceptions listed above, if the employee fails to complete the FMLA-HR1 form, the time is coded as unpaid, unless the reason is for the employee's own illness and the employee has sick leave accruals, in which case sick leave accruals **must** be used.
- The completed **FMLA-HR2c form is provided to the employee with the FMLA-HR2b-Designation Notice**. The employee is instructed to use the TRCs as designated on the form when completing their timesheet.
- A copy of the FMLA-HR2c form is provided to payroll and the employee's manager/supervisor for verification of the employee's timesheet and leave tracking.

- The FMLA-HR2c form is also used when a worker's compensation absence is counted against the employee's federal FMLA and/or state FMLA entitlement.
- When the employee calls in their absence, the employee must specifically reference either the qualifying reason for leave or the need for "FMLA" leave. Calling in "sick" without providing more information is not sufficient to trigger the entitlement for timesheet coding purposes.
- If the employee will be out for more than 5 consecutive work days, Human Resources must enter the corresponding **Action Reason Code** (paid or unpaid) in the employee's job data record when the employee goes out on leave and then when the employee returns from leave.

Employees who are on an approved Family and Medical Leave Entitlement remain part of the agency. Human Resources must continue to treat them accordingly. Ongoing communication between the employee and Human Resources is critical to assure that Human Resources fulfills its ongoing responsibilities to the employee on leave.

This chapter describes Human Resources' responsibilities to the employee once leave is approved.

Human Resources needs to interact with an employee on leave in connection with the following issues:

- Maintaining Confidentiality
- Employee Leave Status
- Timesheet
- Benefits Continuation
- Transfer/Reassignment
- Job Interviews
- Discipline
- Moonlighting and Dual Employment
- Layoff

MAINTAINING CONFIDENTIALITY

Human Resources must ensure that the employee's medical information is maintained in a confidential manner so as not to violate the employee's privacy.

- Employee medical documentation is sent directly to Human Resources and not to the manager and/or supervisor.
- Employee medical documentation (i.e. certifications, re-certifications, FMLA forms) is maintained in a separate file from the employee's personnel file.

See **Chapter 55** – Recordkeeping

- It is Human Resources responsibility to notify the employee's manager and or supervisor using the FMLA-HR2c Coding Form.
- An employee determines what to share with their co-workers concerning leave.

EMPLOYEE LEAVE STATUS

Human Resources should maintain ongoing communication with the employee without being overbearing.

- An employer may require an employee to report periodically on the employee's status and intent to return to work.
 - Use the FMLA-HR2a form to notify the employee about this obligation.
- An employer is not allowed to require a doctor's note for each family and medical leave-related absence once the leave is approved.
- It may be necessary for the employee to take more leave or less leave than originally anticipated. In either situation, the employer may require that the employee provide the employer reasonable notice of the changed circumstances (*i.e. at least two business days where foreseeable*) and a medical certification to justify the change.

TIMESHEET

Human Resources should ensure the employee is coding their timesheet correctly based on the FMLA-HR2c Coding Form.

- If the employee's absences are inconsistent with the medical documentation, HR should request a recertification from the employee and include the employee's attendance record for the doctor's review.

See **Chapter 41** for additional information about Recertifications

BENEFITS CONTINUATION

Under the **Family and Medical Leave Entitlements**, Human Resources must:

- Maintain the employee's group health coverage on the same conditions as offered to all other employees.

- Notify the employee of any opportunities to change benefits or plans.
- Offer the employee any changes in benefits or plans.
- Restore the employee returning from leave to the same health coverage as prior to leave (even if employee chooses not to retain coverage while on leave).
(Exception: COBRA Requirements)
- Neither federal FMLA nor state FMLA obligates the employer to continue the employee's individually purchased health policies where participation is voluntary.
 - If the employer opts to pay for non-mandatory benefits to meet responsibilities, the employee must reimburse employer whether or not the employee returns to work.
 - The employer may recover the costs through deduction from any sums due the employee or legal action.

TRANSFER/REASSIGNMENT

Under **federal FMLA and/or state FMLA**, when an employee is on **intermittent** or **reduced schedule leave** and the employee's leave is **foreseeable** based on planned medical treatment of the employee or family member, the employer may transfer or reassign the employee temporarily to an alternative position (with equivalent pay and benefits).

The alternative position:

- May require compliance with the Collective Bargaining Unit contract, federal law, and state law.
- May include altering an existing job.

If the need for intermittent leave or reduced schedule leave is **not foreseeable**, there is no authority under federal and/or state FMLA for a transfer.

HR PRACTICE POINT

Human Resources should engage in an interactive dialogue with the employee to determine if the employee has a disability and if a transfer or reassignment may constitute a reasonable accommodation in lieu of state or federal FMLA leave.

See **Chapter 45** for more information on Leave Interaction with ADA and CFEP

JOB INTERVIEWS

Agencies cannot refuse to consider an employee's application for a job simply because that employee is taking family/medical leave.

An employee who applies for a job while out of work on family/medical leave should be treated like the other applicants; however, the employee may be entitled to certain accommodations.

If interviews are scheduled to occur while an applicant is out on block leave, Human Resources must work in good faith with the employee to understand the employee's medical restrictions and the needs of the job, including the timeframe in which the job must be filled. Human Resources must then determine if reasonable accommodations are needed to enable the employee to be interviewed, such as conducting the interview via phone or videoconference.

DISCIPLINE

If an employee is placed on paid or unpaid administrative leave and then, during that leave, submits a medical certificate for family/medical leave, Human Resources must fulfill its obligations under both federal and state family/medical leave laws.

Human Resources must determine if the employee is eligible and if the reason qualifies under both laws.

- Administrative leave **cannot run** concurrent with family/medical leave.
- If the employee is eligible and the reason qualifies, Human Resources must suspend the administrative leave and spend down the federal and or state family/medical leave entitlements.

- Once the federal and or state family/medical leave is completed, the administrative leave can be resumed.
- Documentation: Human Resources must notify the employee in writing that the administrative leave is being suspended and will resume when the federal and or state family/medical leave is over.
 - If applicable, Human Resources shall notify the employee that the investigation will continue during the federal and or state family/medical leave absence.
 - Depending upon the circumstances, Human Resources may need to defer a *Loudermill* meeting until after the federal and or state family/medical leave entitlement(s) ends.

MOONLIGHTING AND DUAL EMPLOYMENT

- Human Resources must communicate with the employee about the agency's policies about moonlighting and dual employment, including but not limited to, the Code of Ethic, and the employee's continuing obligation to comply with those policies.
 - The employee **cannot** use any of the Family and Medical Leave Entitlements in order to have the time to work at another job – whether with the State of Connecticut or with an outside employer.
 - If an agency's policy prohibits an employee from taking a second job if they are not on leave, then that policy applies even when the employee is utilizing one or more of the Family and Medical Leave Entitlements.
 - If an agency does not have a policy prohibiting moonlighting or allows employees to take second jobs with agency permission, then the agency **cannot** deny permission only because the employee is utilizing one or more of the Family and Medical Leave Entitlements.

Example: An employee who works as a direct care provider for a state agency may need to take federal or state leave from their state job to recuperate from a broken leg but would still be able to work as a telemarketer.

- Human Resources must inform the employee that it is the **employee's** responsibility to notify Human Resources if they are working at another job while utilizing one or more of the Family and Medical Leave Entitlements.
- When the employee informs Human Resources of the secondary job, Human Resources **must** assess the employee's medical certification and the duties of **both** jobs in order to determine if the employee's ability to work at a second job casts doubt on the employee's claim to be incapacitated from the employee's primary state job.
- Human Resources must review the employee's time reporting and accrual used to ensure that the employee is following the rules:
 - The employee cannot use **sick leave accruals for the period during which such employee performs full-time employment for another employer.**
 - The employee cannot use **any accruals for any hours spent working at another job in which the State of Connecticut is the employer.**

Example: An employee who works as a direct care provider for a state agency and needs to take federal or state family medical leave from that job to recuperate from a broken leg may take a second State job (in accordance with the Dual Employment laws and policies) provided that the hours of the second job do not conflict with the hours of the primary job.

- An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the **exception** of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a **volunteer firefighter.**
- If potential fraud or abuse is suspected, refer to **Chapter 46 - Handling Suspected Fraud or Abuse.**

LAYOFF

An employee on an approved leave under one or more of the Family and Medical Leave Entitlements **may be** subject to layoff.

- For all layoff purposes, an employee on an approved leave under one or more of the Family and Medical Leave Entitlements **is treated as though they were not on leave.**

Example: If an entire work unit is being laid off and one of the employees is out on family/medical leave, they would also be included in the layoff.

- An employee cannot be chosen for layoff **because** they are utilizing one or more of the Family and Medical Leave Entitlements.
- An employee who is on leave when they are noticed for layoff will remain on leave until the notice period has ended. The employee will be terminated at the end of the notice period, consistent with their contractual and statutory rights.

Example:

- Tom is out of work on an approved federal FMLA block leave which starts on April 15th and is expected to last until August 1st.
- On April 24th, Tom is noticed for layoff. He has a contractual right to a 4-week notice period. His layoff date is May 10th.
- Tom will remain on federal FMLA leave until May 10th, at which time his employment will be terminated.
- If the employee is on leave under one or more of the Family and Medical Leave Entitlements and is laid off, the employee must be **rehired before** being eligible for additional family or medical leave. If the employee is rehired, an eligible employee is immediately entitled to further federal and or state FMLA.

Example:

- Tom (from the example above) has re-employment rights to a position which becomes available on June 20th.
- Tom accepts this job opportunity. Tom is returned to state service effective June 20th and is **immediately** placed on federal FMLA leave.
- Tom will remain on federal FMLA leave until August 1st.

- Tom' payroll records will reflect that Tom used federal FMLA leave from April 24th until May 10th (2 weeks and 2 days) and then again from June 20th until August 1st (6 weeks).
- From May 11th until June 19th, Tom was not employed by the State and did not use any of his federal FMLA entitlement.

Managers and Supervisors are the front line in managing employees. Therefore, Human Resources must ensure that Managers and Supervisors have the tools and knowledge to recognize the reasons that may qualify under one or more of the Family and Medical Leave Entitlements, to manage employees who are on leave, and to maintain open lines of communication.

This chapter describes HR's responsibilities to Managers and Supervisors regarding employee's leave.

Human Resources must assist Managers and Supervisors with the following:

- Maintaining confidentiality
- Training on the basics of the laws
- Implementing effective "call-in" procedures
- Tracking and documenting attendance patterns
- Using FMLA-HR2c Coding form
- Conducting Performance Appraisals
- Avoiding retaliation/interference

MAINTAINING CONFIDENTIALITY

Human Resources must ensure that the employee's medical information is maintained in a confidential manner so as not to violate the employee's privacy.

- Employee medical information is sent directly to Human Resources and **not** to the employee's manager and/or supervisor.
- It is the responsibility of Human Resources to notify the employee's manager and/or supervisor using the FMLA-HR2c Coding Form.
- Managers/supervisors must not solicit or disclose any medical information from or about an employee.
- The employee determines what to share with their co-workers concerning leave. Managers/supervisors cannot be the source of such information.

TRAINING ON THE BASICS OF THE LAWS

Managers and Supervisors need to understand the basics of the Family and Medical Leave Entitlements.

HR PRACTICE POINTS

Human Resources should use General Letter 39 – State of Connecticut Family and Medical Leave Entitlements Policy to train managers and supervisors.

Chapter 39 of this manual explains the responsibilities of managers and supervisors.



Training materials that address federal FMLA only or state FMLA only are **insufficient** because they do not include the other Family and Medical Leave Entitlements.

IMPLEMENTING EFFECTIVE CALL-IN PROCEDURES

In addition to having an agency attendance policy, Human Resources should implement agency-wide “call-in procedures” for managers/supervisors to use. When an employee is out from work, the first person they call is usually the manager/supervisor.

Absent any unusual circumstance (e.g. employee receiving emergency medical care), employers may deny or delay leave if the employee fails to follow the employer’s call-in procedures.

Effective call-in procedures should include the following, at a minimum:

- **When** the employee should report any absence. (*Example: “One hour before the start of your work shift.”*).
- **To whom** the employee should report the absence, and whether voicemail or texting is acceptable, or not.
- **What information** should be included in the telephone call. This can consist of a list of questions that managers/supervisors ask of all employees, or the employee provides, when they call in to report an absence.

Examples:

- The specific reason for the absence (If the employee is sick, you don't need a medical diagnosis, just the medical facts);
 - Whether the absence is connected with an approved family and medical leave;
 - The expected return date (or time, if less than a day);
 - A telephone number where the employee may be reached for further information;
 - What duties of the job they cannot perform;
 - Whether they will see a doctor if the reason is for an injury/illness.
- The call-in procedures should also include a uniform approach for managers/supervisors to **document** call-in absences, such as a log book, with as much information as possible.
 - This will enable the manager/supervisor to identify patterns of absence that may trigger a family/medical protected leave (*Example:* an employee has been to the doctor and was given antibiotics and told to stay home for four days) and a call to Human Resources.
 - Typically, there is no business need to require an employee who is on an approved block leave to call in every day of the leave. The employer has the discretion to decide the frequency of contact.
 - The FMLA-HR2a is used to notify the employee how often they are required to provide periodic updates on their status.

HR PRACTICE POINTS

Human Resources must notify the manager/supervisor if the employee is **not** required to call-in on a daily basis.



Human Resources must notify the manager/supervisor if the employee's need for leave changes in any way.

TRACKING AND DOCUMENTING ATTENDANCE PATTERNS

Human Resources must ensure that Managers/Supervisors are proactive when tracking employee absences. Managers/Supervisors need to know the signs that could indicate a need for family/medical leave and patterns of absence that may require review.

Examples of signs:

- An employee is absent for her own illness for more than three (3) consecutive days.
- An employee has been calling out of work intermittently for the same reason.
- An employee is being counseled for repeated absences, exhaustion of leave and other dependability issues.
- An employee is utilizing all of their sick family accruals for a sick family member, and they have indicated a need for more time to take care of this person.
- **On the other hand**, an employee calling in saying, "I'm sick today" or "My son has the flu," may **not** trigger family/medical leave. In situations like these, the absences would be subject to the agency's usual attendance policies and disciplinary action.

Examples of patterns of absence/potential abuse:

- An employee has been approved for 3-4 days of federal FMLA leave a month due to migraines, and you notice that the absences are occurring on Fridays and Mondays for the last two months.
- An employee is out of work for 6 weeks under SEBAC Supplemental leave due to back surgery. One of their co-workers shows you the employee's social media posts, complete with pictures of the employee water skiing in Florida a week after the surgery.

Human Resources must ensure that Managers/Supervisors communicate when a tracking pattern is noticed.

- When the manager/supervisor notices a pattern of absence, the manager should **inform the employee** that they may be eligible for leave under one or more of

the Family and Medical Leave Entitlements and that they should contact the Human Resources.

- The manager/supervisor should then **notify Human Resources** that that a pattern of leave usage has been noted and that the employee may need leave under one or more of the Family and Medical Leave Entitlements.
- The manager/supervisor should also place a **note in the employee's supervisory file** indicating that the employee was informed of their possible eligibility for leave under one or more of the Family and Medical Leave Entitlements.
- The manager/supervisor should **not** receive medical certifications or family/medical leave paperwork. The employee is responsible for submitting the document(s) **directly to Human Resources**.
- When the leave under one or more of the Family and Medical Leave Entitlements is approved, the manager/supervisor should ask the employee to schedule any foreseeable treatment around work.

See **Chapter 41** for additional information about Recertifications

USING THE FMLA-HR2C - CODING FORM

Human Resources is responsible for approving an employee's leave request under one or more of the Family and Medical Leave Entitlements and completing the FMLA-HR2c-Coding Form. This form is sent to the employee, payroll, and the employee's manager/supervisor.

- It is the manager/supervisor's responsibility to ensure that the employee is coding their timesheet with the appropriate family/medical leave codes designated on the form.
- If the actual absences occur more frequently or less frequently than the number indicated on the FMLA-HR2c form, the manager/supervisor should notify Human Resources.

CONDUCTING PERFORMANCE APPRAISALS

Human Resources must ensure that absences under one or more of the Family and Medical Leave Entitlements are not used as a negative factor in an employee's review.

Managers and Supervisors **may not** reference such absences on the employee's performance appraisal form.

AVOIDING RETALIATION/INTERFERENCE

Human Resources must ensure that Managers/Supervisors:

- Do not interfere with, restrain or discourage an employee from using leave under one or more of the Family and Medical Leave Entitlements.

Examples:

- Harassing an employee for taking leave.
 - Making negative comments about the Family and Medical Leave Entitlements.
 - Suggesting that the employee should not take leave under one or more of the Family and Medical Leave Entitlements.
- Do not use the taking of leave under one or more of the Family and Medical Leave Entitlements as a negative factor in employment actions, such as hiring, promotions or disciplinary action.

Examples:

- Failing to reinstate the employee to the same or similar position as held before taking leave under one or more of the Family and Medical Leave Entitlements.
- Denying a promotion due taking leave under one or more of the Family and Medical Leave Entitlements.
- Treating employees who have taken leave under one or more of the Family and Medical Leave Entitlements differently from employees who have not utilized such leave.

See **Chapters 56 - 58** for more information on prohibited activities, complaints, and potential liability and penalties.

Managers and supervisors play an integral role in the family/medical leave process. They are the first line in identifying employee absences that may trigger the need for one or more of the Family and Medical Leave Entitlements. Additionally, when an employee's leave is approved, managers and supervisors are responsible for monitoring the employee's usage of the leave entitlement.

This chapter describes the roles and responsibilities of the manager and supervisor regarding leave.

The family/medical leave process requires managers and supervisors to:

- Maintain confidentiality
- Be proactive
- Communicate
- Maintain good documentation, and
- Avoid interference claims under the laws.

MAINTAIN CONFIDENTIALITY

Managers and supervisors must maintain the confidentiality of all employee information received so as not to violate the employee's privacy.

- Managers and supervisors must not request or accept medical documentation from an employee.
 - All medical documentation must be sent directly to Human Resources.
- Human Resources will provide managers and supervisors with the FMLA-HR2c Coding Form. This form provides the employee's leave timeframes and corresponding CORE-CT codes for the employee's timesheet. This information is confidential.
- An employee determines what to share with their co-workers concerning leave. The manager and supervisor cannot be the source of the information.
- The manager and supervisor must keep any and all medical information from or about an employee confidential.

BE PROACTIVE

Managers and supervisors need to inform their employees of the department or unit protocols for “calling-in” to work due to an absence.

- The “call-in” procedures, at a minimum, should include the following:
 - **When** the employee is to call in (i.e. one hour before the start of their shift).
 - **To whom** the employee is to report the absence to and whether voicemail or texting is acceptable or not.
 - **The specific reason** for the absence. If the employee is sick, a medical diagnosis is not required, just the medical facts.
 - **The expected return date** (or time, if less than a full day).
 - **A telephone number** where the employee may be reached for further information.
- Information obtained from the employee should be documented in a log book or supervisory file.

Managers and supervisors need to be alert to employee absences or reasons which may indicate a possible need for one or more of the Family and Medical Leave Entitlements.

Examples of the signs:

- An employee is absent for their own illness for more than three (3) consecutive days.
- An employee has been calling out of work intermittently for the same reason.
- An employee is being counseled for repeated absences, exhaustion of leave and other dependability issues.
- An employee is utilizing all their sick family accruals for a sick family member, and they have indicated to you the need for more time to take care of this person.
- An employee submits a request for time away for back surgery.
- An employee tells you they are pregnant, and baby is due in 8 months.

COMMUNICATE

When patterns of absence are identified or the employee provides a leave reason that may qualify for one or more of the Family and Medical Leave Entitlements, the manager or supervisor is on notice and must communicate.

- The manager or supervisor should inform the **employee** that they have family/medical leave rights and they should contact the Human Resources department.
- The manager or supervisor should notify **Human Resources** that the employee may need family/medical leave information.
- The manager or supervisor should document in the employee's supervisory file that they have informed the employee of their possible rights under one or more of the Family and Medical Leave Entitlements. These notes will demonstrate that the manager/supervisor was proactive in the family/medical leave process.

MAINTAIN GOOD DOCUMENTATION

When the employee is approved for a family/medical leave, the manager or supervisor has the following responsibilities concerning documentation. This includes the following:

- **Employee Calling Out**
- **Scheduling Planned Medical Treatment**
- **Timesheets**
- **Performance Appraisals**
- **Moonlighting and Dual Employment**

Employee Calling Out:

The manager or supervisor should maintain an attendance log noting the employee's reason for the call out.

- The employee on approved family/medical leave **must** specifically state that their absence is connected to an approved family and medical leave reason.
- If the employee fails to provide sufficient information for the manager or supervisor to know that the reason is family/medical leave, the time away is **not** protected leave. Calling in “sick” without providing more information is not sufficient notice.
- If a pattern of absence that is inconsistent with the FMLA-HR2c- Coding Form develops, the manager or supervisor should contact Human Resources.

Scheduling Planned Medical Treatment:

When planning medical treatment, the employee should consult with the manager or supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider.

Timesheets:

The manager or supervisor must verify the employee's usage of the leave entitlement using the FMLA-HR2c - Coding Form.

This form provides the employee with the appropriate TRC codes to use to designate family/medical leave absences.

- The employee must use the family/medical leave codes on their timesheet.
- If the employee is not using the codes, the manager or supervisor needs to address this issue with the employee and also notify Human Resources.

The manager or supervisor must continue to be aware of any patterns of absence that are inconsistent with the FMLA-HR2c.

Example:

The FMLA-HR2c -Coding Form indicates that the employee will be out of work two days per month. You notice on the timesheet that an FMLA absence is occurring every Monday of every week in the month which is different from the FMLA-HR2c. This information must be shared with Human Resources.

No attendance/timesheet should be approved or submitted to Payroll if the employee has been out sick for MORE THAN FIVE (5) CONSECUTIVE WORK DAYS, unless

the manager or supervisor has confirmed with Human Resources that the appropriate medical documentation has been submitted or a copy of an approved leave of absence is on file.

- In the case of an unexpected or emergency absence from work that may exceed five work days, the manager or supervisor should notify Human Resources immediately.
- The state medical certification form (**P-33A**) completed by a licensed physician is required for **any absence of more than 5 consecutive working days**.
- Under no circumstance, should the manager or supervisor clarify or obtain an employee's medical information. The employee must submit the medical certificate **directly** to Human Resources.

Performance Appraisal:

When a manager or supervisor conducts a performance review with the employee who is on an approved Family and Medical Leave Entitlement, the leave CANNOT be considered as an occasion of absence for progressive discipline purposes.

- The family/medical leave absence(s) should **NOT** be mentioned on the employee's performance evaluation.
- The employee needs to be rated on the work performed when not out on family/medical leave.

Employee Moonlighting and Dual Employment:

If the manager or supervisor learns an employee is working another job while on approved family/medical leave, human resources needs to be contacted.

- If the agency has a uniformly-applied policy governing outside or supplemental employment, that policy may continue to apply to an employee while on family/medical leave.
- If no policy exists, the relationship and duties between the two jobs will need to be compared in conjunction with any medical restrictions as outlined on the medical certification.

AVOID RETALIATION/INTERFERENCE CLAIMS

Managers and supervisors must avoid any comments or actions that may cause employees to avoid taking necessary family/medical leave or feel that they will be penalized if they take leave.

Managers and supervisors can be held personally liable for interfering with, restraining, or denying the exercise of, or the attempt to exercise any federal and or state FMLA right.

Examples:

- Harassing an employee for taking leave.
- Making negative comments about family/medical leave rights.
- Discouraging an employee from using family/medical leave.
- Denying a promotion due to the family/medical leave.
- Treating employees who take family/medical leave differently from similarly situated employees who have not taken family/medical leave.
- Failing to reinstate an employee who has taken family/medical leave to the same or similar position as held before the leave.

When an employee is approved for a family/medical leave, Human Resources needs to ensure that the employee understands their responsibilities regarding the leave.

This chapter describes the employee's responsibilities once their leave is approved.

The employee's responsibilities relate to the following issues:

- Calling In
- Completing Timesheet
- Maintaining Benefit Payments
- Moonlighting and Dual Employment
- Periodic Updates and Recertification
- Scheduling Medical Appointments and Treatments

CALLING IN

- The employee must follow the agency's standard call-in policies/procedures.
- When calling in, the employee must specifically state that the absence is connected with the approved family and medical leave.
 - If the employee has been approved to take leave on an intermittent basis, the employee must explicitly notify the agency each time the employee is absent for a family and medical leave reason.
- Calling in "sick" without providing more information will not be considered sufficient notice to trigger the employer's obligation under the Family and Medical Leave Entitlements.
 - Human Resources **must** instruct the employee about this obligation.
- The employee has an obligation to respond to the employer's questions designed to determine whether an absence qualifies for a potential Family and Medical Leave Entitlement.

COMPLETING TIMESHEET

- If the employee is responsible for completing their own timesheet, the employee must complete the timesheet in accordance with the Core CT Time Reporting

Codes provided on the FMLA-HR2c Core CT Coding Form from Human Resources.

- The employee cannot intersperse unpaid time with paid time for the purpose of avoiding benefits billing or for the purpose of earning additional accruals.

Example: The employee cannot code each Monday, Tuesday and Wednesday as vacation and each Thursday and Friday as unpaid.

Example: The employee cannot code 4 hours of each day as vacation time and the remaining 4 hours of the day as unpaid time.

- The employee may submit a request to Human Resources to change the usage of their accrual usage **prospectively**.

REMINDERS

State of Connecticut Policy: Sick Leave Usage

The state's policy **requires** the use of sick leave accruals for an employee's own serious illness; however, it does not require usage of sick leave or sick family for family leave and it does not require use of vacation, personal leave or comp time. An employee may use their sick leave accruals to serve as a caregiver or bonding leave (if eligible).

There are two exceptions to this policy requirement:

- (1) The State FMLA (as revised effective January 1, 2022) provides that an employer may not require an employee to exhaust **all** of their accruals while they are on state FMLA leave.
 - C.G.S. 31-511l(e) states an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, **provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. is able to retain not less than two weeks of such paid time off.**

- This means that if an employee has less than two weeks of accruals (in any combination), then the employee cannot be required to use their sick leave accruals while they are taking state FMLA leave, even if they are taking leave for their own serious health condition.
- (2) An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the **exception** of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a **volunteer firefighter**.

State of Connecticut Policy: Minimum Increment

When an employee takes intermittent or reduced schedule leave, the shortest amount of leave that can be taken is **15 minutes**.

This means that if an employee on an approved intermittent leave is absent for less than 15 minutes, 15 minutes will be deducted from the employee's FMLA allotment.

MAINTAINING BENEFIT PAYMENTS

- The employee must continue to pay whatever share of group health plan premiums that the employee paid prior to family/medical leave. If premiums are raised or lowered, the employee must be told of the changes and would be required to pay the new premium rates.

- The employee is responsible for maintaining payments for health/insurance policies or other programs (i.e. disability insurance, homeowner's insurance) which are not part of the employer's group health plan.
- The employee is responsible for reimbursing the employer for payment if the employer made payments for the employee.

MOONLIGHTING AND DUAL EMPLOYMENT

- The employee must comply with agency's policies about moonlighting and dual employment, including but not limited to the Code of Ethics.
- The employee cannot take family/medical leave in order to have the time to work at another job – whether with the State of Connecticut or an outside employer.
- The employee must notify the employer if they are working at another job while out on family/medical leave.
- The employee cannot use **sick leave accruals for the period during which such employee performs full-time employment for another employer.**
 - An employee's ability to work at a second job is not in itself a sufficient basis to deny family/medical leave in connection with the employee's primary state job.
 - Human Resources must assess the employee's medical certification and the duties of both jobs in order to determine if the employee's ability to work at a second job casts doubt on the employee's claim to be incapacitated from the employee's primary state job.

Example: An employee who works as a direct care provider for a state agency may need to take federal or state leave from their state job to recuperate from a broken leg but would still be able to work as a telemarketer.

- **The employee cannot use any accruals for any hours spent working at another job in which the State of Connecticut is the employer.**

Example: An employee who works as a direct care provider for a state agency and needs to take federal or state FMLA leave from that job to recuperate from a broken leg may take a second State job (in accordance with the Dual Employment laws and policies) provided that the hours of the second job do not conflict with the hours of the primary job.

- An employee cannot use sick leave accruals in order to recuperate from an **illness or injury which is directly traceable to employment by an employer other than the State of Connecticut** with the exception of state employees who receive workers' compensation benefits in connection with injuries incurred as a result of serving as a volunteer firefighter:

PERIODIC UPDATES AND RECERTIFICATION

- The employee may be asked to check-in with the agency periodically during the leave.
 - It is permissible for a manager or supervisor to contact the employee on leave to ask a quick work-related question.

Example: Where is the file located on the John Doe case?
 - It is **not** permissible for the employee on leave to perform their regular work duties.
- If the employee's need for leave changes, the employee needs to notify Human Resources as soon as possible and may be required to provide an updated medical certification (i.e., recertification) justifying the change.

Example: If the doctor determines the employee needs two additional weeks of leave, the employee must notify Human Resources immediately and provide Human Resources with an updated medical certification explaining the need for additional leave.

- When the employer requests a **recertification**, the employee must provide the requested recertification to the employer no later than *15 calendar days* after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
 - The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification) in the recertification process as in the initial certification process.
 - Any recertification requested by the employer shall be at the **employee's expense**.

See **Chapter 41** for additional information about Recertifications

SCHEDULING MEDICAL APPOINTMENTS AND TREATMENTS

If the employee needs leave intermittently or is on a reduced leave schedule for planned medical treatment or appointments, then the employee **must** consult with the employer and **make a reasonable effort to schedule the treatment so as not to disrupt the employer's operations**, subject to the approval of the health care provider.

Human Resources may request medical recertification and/or annual medical certifications from an employee under certain conditions.

This chapter describes the recertification process and annual medical certifications.

DEFINITIONS

A *“recertification”* is an **updated** medical certification that is required when an employee’s condition and/or need for leave changes *within* the approved leave year.

- A medical recertification is done at the **employee’s expense**.
- Human Resources **cannot** obtain second or third opinions of a recertification.

An *“annual medical certification”* is a **new** medical certification that is required when an employee who has a chronic or long-standing condition makes a new request for leave for that condition in the *subsequent* leave year.

- An annual medical certification is done at the **employee’s expense**.
- Human Resources **may** obtain second or third opinions of an annual medical certification.

MEDICAL RECERTIFICATION

When Can Human Resources Require a “Medical Recertification”?

For leaves taken under any of the Family and Medical Leave Entitlements EXCEPT for state FMLA, a Medical Recertification may be required under each of the following circumstances:

- No more often than every 30 days and only in conjunction with an absence by the employee, unless:

- The employee requests an extension of the leave,
Example: Employee is out for 2 months. Recovery has not proceeded as planned and employee needs another month.
- The employee's circumstances have significantly changed, or
Example: Employee is out 1 day a month for asthma. The condition has worsened, and employee now needs to be out 8-10 days a month.
- Employer receives information that places doubt on the employee's request.
Example: Employee is out of work for 6 months due to major back surgery. The employee is seen skiing in Vermont.

- **If the minimum duration of incapacity is more than 30 days** (whether taken as a block or intermittently), **the employer must wait until the minimum period specified before requesting a recertification, unless:**

- The employee requests an extension of the leave,
- Circumstances have significantly changed, or
- Employer receives information that places doubt on the employee's request.

Example: If the employee's medical certificate indicates that the employee will need to be out for 4 months, recertification cannot occur until after 4 months have passed, unless one of the above reasons occur.

- **An employer may always request a recertification of a medical condition EVERY SIX (6) MONTHS in connection with an absence by the employee.**

The employer may provide the health care provider with a record of the **employee's absence pattern** and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

For a leave taken under state FMLA, a Medical Recertification may be required **ONLY** in the following circumstances:

- The employer may require a medical recertification on a reasonable basis but no more than every 30 days.

HR PRACTICE POINTS



The ability to request recertification at 6 months allows Human Resources to obtain an updated medical certification.

- It is **NOT** an opportunity to require the employee to re-apply for leave.
- Human Resources is **NOT** allowed to use the recertification as an opportunity to re-assess the employee's eligibility for leave for that medical condition.



The request for a medical recertification goes to the employee and **not** the doctor.

- Be sure to attach the employee's essential functions of the job and/or the employee's work schedule and attendance record.

What Happens If the Employee Fails to Provide a Complete and Sufficient Medical Recertification?

If the employee fails to provide a complete and sufficient medical recertification, the leave may be denied.

See **Chapter 26** for additional information about complete and sufficient medical certifications.

Who Pays for the Medical Recertification?

- For leaves taken under any of the Family and Medical Leave Entitlements **except** for state FMLA, the employee or the health insurance plan of the employee or the employee's parent, spouse or child (as applicable) is responsible for paying the costs of the medical recertification.
- For a leave taken under state FMLA only, the employer must pay for any medical recertification that is not covered by the applicable health insurance plan.

ANNUAL MEDICAL CERTIFICATION

When Can Human Resources Require an *"Annual Medical Certification"*?

An annual medical certification may be required when the need for leave extends beyond the leave year, the employer may require the employee to provide a **"new"** medical certification in each subsequent leave year.

HR PRACTICE POINT



The request for a new annual medical certification goes to the employee and **not** the doctor.

- Human Resources may want to attach the employee's essential functions of the job and/or the employee's work schedule and attendance record.

A fitness-for-duty certification is documentation from the employee's treating health care provider certifying that the employee is medically able to return to work. Like the medical certification that substantiated the need for leave, the fitness-for-duty certification must also be complete and sufficient.

See **Chapter 26** for more information about "complete and sufficient" medical certifications.

Because the federal FMLA and state FMLA have specific requirements to follow regarding a fitness-for-duty certification, this chapter addresses the following topics:

- When the fitness-for-duty notification must occur
- What information may be included in the fitness-for-duty certification
- When the fitness-for-duty certification must be presented
- What happens when the fitness-for-duty certification is complete and sufficient
- What happens when the fitness-for-duty certification is incomplete and insufficient
- Whether second and third opinions are allowed
- Who pays for the fitness-for-duty certification
- What happens when the employee does not provide the fitness-for-duty
- What the rules are for requesting a fitness-for-duty certification for intermittent leave and/or reduced schedule leave.

NOTE: *SEBAC Supplemental Leave follows the federal FMLA guidelines.*

WHEN DOES HUMAN RESOURCES NOTIFY THE EMPLOYEE THAT A FITNESS-FOR-DUTY CERTIFICATION WILL BE REQUIRED?

- Human Resources **must** notify the employee at the time it approves the leave, using the Designation Notice (HR2b), that a fitness-for-duty certification will be required.
- A fitness-for-duty certification can only be required when the employee is taking leave due to their own serious medical condition (including the pregnancy disability period).
 - It **cannot** be required if the employee is taking leave to act as a caregiver or to bond with a child.
 - Human Resources **must** require the employee to provide a fitness-for-duty certification whenever the employee takes leave in connection with their own illness.

WHAT INFORMATION CAN HUMAN RESOURCES REQUEST TO BE INCLUDED IN THE FITNESS-FOR-DUTY CERTIFICATION?

- The fitness-for-duty certification must only include information relating to the condition for which the employee took leave.
 - Human Resources **cannot** require the employee to provide information about medical conditions unrelated to the leave.
- Human Resources has the option of requiring the employee to provide a **simple statement** that the employee can return to work and whether the employee has any restrictions or a **more detailed statement** certifying that the employee can perform the essential functions of their job (with or without reasonable accommodations).
 - Human Resources **must** indicate on the Designation form (FMLA-HR2b) which type of fitness-for-duty certification -- simple or more detailed -- will be required.

If Federal FMLA and/or SEBAC Supplemental leave, the employer can require either a "simple statement" or a "more detailed statement.

If State FMLA leave, the employer can only require the "simple statement."

- If Human Resources requires only a simple statement, the employee can comply with this by having their medical provider complete page 4 of the P33A.
- If Human Resources requires the more detailed statement, Human Resources must attach a list of the **employee's essential job functions** to the Designation Notice.
 - The fitness-for-duty certification will not be complete unless the treating health care provider certifies that the employee can perform these functions (with or without reasonable accommodations).

WHEN MUST THE EMPLOYEE PROVIDE THE FITNESS-FOR-DUTY CERTIFICATION?

The employee must provide the fitness-for-duty certification to Human Resources **before** reporting for duty in their department or unit.

WHAT HAPPENS IF THE FITNESS-FOR-DUTY CERTIFICATION IS COMPLETE AND SUFFICIENT?

- If the fitness-for-duty certification is complete and sufficient, Human Resources (if federal FMLA and/or SEBAC Supplemental leave) or the employer's health care professional (if State FMLA leave) may contact the employee's health care provider for purposes of **clarifying and authenticating** the certification as it relates to the employee's ability to perform the essential functions of the job.
 - Human Resources may NOT delay the employee's return to work while contact with the health care provider is being made.
 - For more information about clarifying and authenticating medical certifications, see **Chapter 26**.

- When the fitness-for-duty certification is complete and sufficient and indicates that the employee **does not have any restrictions**, the employee returns to work immediately.

See **Chapter 43**: Employee's Return to Work

- When the complete and sufficient fitness-for-duty certification indicates that the employee is **able to return to work but not at 100%**, the employee may be eligible for an accommodation under the Americans with Disabilities Act (ADA) or Connecticut Fair Employment Practices Act (CFEPA).

See **Chapter 45** – Interaction with ADA and CFEPA

- When the complete and sufficient fitness-for-duty certification indicates that the employee is **unable to perform the essential functions of the job or cannot return to work**, Human Resources must determine if the employee has additional rights.

See **Chapter 44** – Employee's Inability to Return to Work

See **Chapter 45** – Interaction with ADA and CFEPA

WHAT HAPPENS IF THE FITNESS-FOR-DUTY CERTIFICATION IS INCOMPLETE OR INSUFFICIENT?

If the fitness-for-duty certification is **incomplete or insufficient**, the employee must be given an opportunity to cure the deficiencies.

- Human Resources must complete **Section 2 of the FMLA-HR2b**, Designation Notice describing what information needs to be provided. This form goes to the employee.
- The employee has **seven (7) calendar days** to cure the deficiencies, absent any extenuating circumstances.

CAN HUMAN RESOURCES REQUEST A SECOND OR THIRD OPINION ON A FITNESS-FOR-DUTY CERTIFICATION?

No. There are **no second and third opinions** on a fitness-for-duty certification.

WHO PAYS FOR A FITNESS-FOR-DUTY CERTIFICATION?

The employee bears the **cost** of the fitness-for-duty certification, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

WHAT HAPPENS IF THE EMPLOYEE DOES NOT PROVIDE A FITNESS-FOR-DUTY CERTIFICATION?

The employer **may delay** restoration to employment until an employee submits a required fitness-for-duty certification.

If the employee **does not** provide the required fitness-for-duty certification nor requests additional medical leave, the employee is no longer entitled to reinstatement under federal FMLA, state FMLA and/or SEBAC Supplemental leave and may be terminated, provided that the employer provided proper notice, and acted pursuant to uniformly applied policy for similarly-situated employees.

See **Chapter 44 - Employee's Inability to Return to Work**

WHAT ARE THE RULES FOR REQUIRING FITNESS-FOR-DUTY CERTIFICATIONS IN CONNECTION WITH INTERMITTENT AND REDUCED SCHEDULE LEAVES?

Federal FMLA and/or SEBAC Supplemental Leave:

- An employer is **not** entitled to a fitness-for-duty certification for each absence taken on an intermittent or reduced leave schedule under federal FMLA and/or SEBAC Supplemental leave.

- If “reasonable safety concerns” exist regarding the employee’s ability to perform their duties based on the serious health condition, then an employer is entitled to a fitness-for-duty certification for such absences **up to once every 30 days**.
 - “*Reasonable safety concerns*” means a reasonable belief of significant risk of harm to the individual employee or others.
 - **The employee must be told on the Designation Notice (FMLA-HR2b) that the fitness-for-duty certification will be required.**
 - The employer **may not** terminate the employment of the employee while awaiting a fitness-for-duty certification for intermittent or reduced schedule leaves.

State FMLA:

A fitness-for-duty certification is **not** allowed for intermittent or reduced schedule for safety concerns.

HR PRACTICE POINTS



Be sure the employee’s Designation Notice (FMLA-HR2b) form has a check mark next to the Fitness-for-Duty section.



If requesting a detailed Fitness-for-Duty certificate, be sure a list of the “essential functions” of the job IS included with the FMLA-HR2b form.



Human Resources must accept:

- A fax or copy of the fitness-for-duty certification,
- A certification that is not completed on the employer’s form, or
- Any other record of the medical documentation, such as a communication on the letterhead of the health care provider.

In most situations, an employee who is able to return to work from a family/medical leave is entitled to be returned to:

- **the same position, or**
- **an" equivalent position" with "equivalent pay," "equivalent benefits" and "equivalent term and conditions."**

In the majority of cases, employees will be returned to the position they occupied prior to the leave.

This chapter describes the employee's return to work entitlements.

See **Chapter 44** for information regarding employees who are unable or unwilling to return to work upon the expiration of their Family and Medical Leave Entitlements.

See **Chapter 45** for information regarding employees who need reasonable accommodations in order to return to work.

DEFINITIONS

"Equivalent Position"

- An equivalent position is one that is virtually identical to the employee's original position in terms of pay, benefits, and working conditions, and involves the same or substantially the same duties and responsibilities.
- If the employee is no longer qualified for the position because of the employee's inability to attend a mandatory course, renew a license, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

"Equivalent Pay"

- An employee is entitled to any unconditional pay increases which may have occurred during the leave period, such as cost of living increases.
- An employee would be entitled to any pay increase based on the employee's seniority, length of service or work performed if it is in the employer's policy or practice to provide such pay to other employees on paid or unpaid leave, as appropriate. In such cases, the employer may exclude the period of unpaid FMLA leave in determining the increase.

- "Unpaid FMLA leave" refers to FMLA leave during which the employee does not receive payment from the employing agency.
- Whether or not an employee who had taken FMLA leave is entitled to a bonus depends upon whether or not the bonus is based on the employee's performance.

"Equivalent Benefits"

- "Benefits" include all the benefits provided or made available to employees including:
 - group life insurance,
 - health insurance,
 - disability insurance,
 - sick leave
 - annual leave,
 - educational benefits and
 - pensions.
- Upon return from family/medical leave, an employee **cannot** be required to requalify for any benefits the employee enjoyed before the leave began (including family or dependent coverage).
- The federal FMLA and state FMLA state that an employer may determine whether and to what extent an employee may accrue additional benefits or seniority during **unpaid** federal and/or state FMLA leave.
 - Refer to the applicable collective bargaining agreement or management personnel policy for specific information.
- For pension and other retirement plans, the following rules apply:
 - Unpaid federal FMLA and state FMLA **cannot be treated as a break in service** for vesting and eligibility.
 - The federal FMLA and state FMLA allow an employer to determine whether and to what extent an unpaid leave may be treated as credited service for purposes of benefit accrual, vesting and eligibility.
 - Refer to the applicable pension agreement and collective bargaining agreement or management personnel policy for specific information.

"Equivalent Terms and Conditions"

An "equivalent position" must have substantially similar duties, conditions, responsibilities, privileges, and status as the employee's original position.

- **Same or geographically proximate worksite.**

Example: Employee works in Norwich.

Employee cannot be returned to work in Hartford (unless the employee wants to).

- **Same shift or same/equivalent work schedule.**

Example: Employee works first shift.

Employee cannot be returned to third shift (unless the employee wants to).

- **Same/equivalent opportunity for bonuses, profit-sharing, etc.**

NOTE: The employer may accommodate the employee's request to be restored to a different shift, schedule or position.

HR PRACTICE POINTS



Always consult the employee's collective bargaining agreement and/or pension plan.



Pension and retirement questions should be directed to the Office of the State Comptroller.

LIMITATIONS ON THE EMPLOYEE'S RIGHT TO RETURN TO WORK

- An employee **has no greater right** to reinstatement or other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

Example: Layoff

If the employee would otherwise be subject to layoff, the fact that the employee is out on a family/medical leave does not prevent the employee from being laid off.

Example: Shift Eliminated

If a shift has been eliminated while an employee is on family/medical leave, the employee would not be entitled to return to work that shift.

- An employee who is **unable** to perform one or more essential functions of the job at the conclusion of their family/medical leave has no additional rights but **may** have rights under ADA and/or CFEPA.
 - Under state FMLA, “if an employee is medically unable to perform the employee’s original job at the expiration of the leave but is still able to perform work of some type, the employer shall transfer such employee to work suitable to such employer’s physical condition, if such work is suitable.”
See **Chapter 45** – Interaction with ADA and CFEPA
- An employee who **fraudulently** obtains family/medical leave is not protected by federal FMLA and/or state FMLA job restoration or maintenance of health benefits provisions.
See **Chapter 46** – Handling Suspected Fraud or Abuse
- Under **federal FMLA**, an employer **may deny** job restoration to a “*key employee*” if necessary to prevent substantial and grievous economic injury to its operations.
 - Federal FMLA defines a “*key employee*” as a salaried, federal FMLA-eligible employee who is among the highest paid 10% of all employees, both eligible and not eligible, within 75 miles of the worksite.
- None of the other Family and Medical Leave Entitlements, including the State FMLA, include this provision.

State of Connecticut Policy: Key Employee

The State of Connecticut does **not** designate any employees as “*key employees*” under federal FMLA.

The circumstances under which an employee **DOES NOT** return to work upon the exhaustion of a Family and Medical Leave Entitlement(s) determine Human Resources' responsibilities to that employee.

This chapter describes the four common scenarios in detail, the responsibilities of Human Resources in each scenario, and the handling of healthcare premiums.

COMMON SCENARIOS

SCENARIO	CATEGORY
Scenario 1	The employee fails to return to work and does not communicate with anyone at the agency.
Scenario 2	The employee notifies the agency that they have voluntarily chosen not to return work - voluntary resignation or retirement.
Scenario 3	The employee notifies the agency that they would like to return to work but is not yet able to do so or is not able to perform the duties of the job held prior to the leave.
Scenario 4	The employee is medically unable to return to work and has no other legal entitlement to extend the leave ; and, therefore, must be separated from state service.

HR PRACTICE POINT



Each employee's situation must be analyzed on a case-by-case basis.

SCENARIO 1

The employee fails to return to work and does not communicate with anyone at the agency.

An employee who does not return to work at the conclusion of the family/medical leave entitlement and who **does not** communicate with their agency is considered to have resigned.

- This resignation will be recorded as a “**resignation not in good standing.**”

Human Resources must:

- Determine whether to require the employee to reimburse the State for the State's share of health care premiums (see the end of this chapter); and
- Provide the employee with all notices required upon separation (e.g., separation letter, COBRA notice, etc.).

SCENARIO 2

The employee notifies the agency that they have “voluntarily” chosen not to return work - voluntary resignation/retirement.

Examples:

- While on leave, the employee accepts a job with another employer.
- While the employee is on leave, their spouse is transferred to another state and the employee decides to relocate.
- While on leave, the employee decides to retire.

If an employee gives unequivocal notice of **intent not to return to work:**

- The employer's obligation to maintain the employee on a job-protected leave and/or to return the employee to the same or equivalent position **terminates.**
- The employer's obligations under federal FMLA, state FMLA and SEBAC Supplemental Leave to maintain health benefits (subject to COBRA requirements) cease.

Human Resources must:

- Determine how to characterize the employee's separation from service depending upon whether the employee provided the required notice;

- Determine whether to require the employee to reimburse the State for the State's share of health care premiums (see the end of this chapter); and
- Provide the employee with all notices required upon separation (e.g., separation letter, COBRA notice, etc.).

SCENARIO 3

The employee notifies the agency that they would like to return to work but is not yet able to do so or is not able to perform the duties of the job held prior to the leave.

An employee who is unable to return to work after their Family and Medical Leave Entitlement is exhausted has no additional Family and Medical Leave rights, but may have rights under **other laws**, such as Workers' Compensation, ADA and CFEPA, and/or C.G.S. §5-244.

Human Resources must:

- Communicate with the employee to understand the employee's situation, including anticipated time frame for returning to work and restrictions on ability to work.
- Review each of the following laws (in consultation with agency legal counsel if necessary) to determine if it is applicable to the employee's situation.

Workers' Compensation

If the serious health condition or illness is also covered by **workers' compensation**, the employee may have continued job-protected leave under workers' compensation law.

NOTE: Remember federal FMLA and state FMLA run concurrent with workers' compensation leave. SEBAC Supplemental leave for the employee's own serious health condition **does not** start until workers' compensation wage replacement benefits have stopped.

Americans with Disabilities Act (ADA) / Connecticut Fair Employment Practices Act (CFEPA)

If an employee is unable to perform one or more of the essential functions of the job, the employee may have rights to reasonable accommodations under ADA or CFEPA.

Through an interactive process, Human Resources, the manager/supervisor and the employee shall work cooperatively to identify possible reasonable accommodations, including additional leave as an accommodation. The analysis must include the following:

- Whether one or more reasonable accommodations, including additional leave, would allow the employee to perform the essential function of **their existing job**;
or
- If not, whether it would be a reasonable accommodation to **reassign the employee to a vacant position for which they are qualified within the agency.**

See **Chapter 45** for more information about the interaction of Family and Medical Leave Entitlements and the ADA/CFEPA.

C.G.S. §5-244 – Less Arduous Duty Search

This state law provides the employee who is physically or mentally incapable of performing the duties of their position to be **transferred to a position with less arduous duties, if available**, or to be separated from state service in good standing.

- The employing agency, upon completion of the ADA/CFEPA accommodation analysis, will submit a Less Arduous Duty (LAD) search request to the Department of Administrative Services/Statewide Human Resources.
- The request includes the employee's medical documentation (P33a), an updated state employment job application and/or a resume.
- The process takes approximately 4 weeks.
- If the LAD search is successful, DAS will coordinate the placement with the new agency.
- If the LAD search is unsuccessful, DAS will notify the agency to separate the employee pursuant to C.G.S. §5-244. (See Scenario 4).
- For employees with filed workers' compensation claims, for whom medical documentation permanently disables the employee from ever returning to their job classification in state government, the workers' compensation third party claim administrator (TPA) will provide notice of such determination to the employing state agency.

If the employee is separated from state service, Human Resources has the following responsibilities:

- Determine how to characterize the employee's separation from service;
- Determine whether they require the employee to reimburse the State for the State's share of health care premiums (see the end of this chapter);

- Provide the employee with all notices required upon separation (e.g., separation letter, COBRA notice, etc.).

SCENARIO 4

The employee is medically unable to return to work and has no other legal entitlement to extend the leave and therefore must be separated from state service.

If, after assessing all of the employee's legal entitlements (including all applicable Family and Medical Leave Entitlements, Workers' Compensation rights, ADA/CFEPA reasonable accommodation analysis, and the less arduous duty search), it is determined that the employee cannot return to work and is not entitled to additional leave, the employee must be separated from state service.

Human Resources must:

- Communicate with the employee about the separation options that may be available to the employee (i.e., regular retirement, disability retirement, separation due to medical infirmity, or voluntary resignation);
- Determine how to characterize the employee's separation from service depending upon the employee's decision and whether the employee provided the required notice;
- Determine whether to require the employee to reimburse the State for the State's share of health care premiums (see the end of this chapter); and
- Provide the employee with all notices required upon separation (e.g., separation letter, COBRA notice, etc.)

C.G.S. §5-244 – Separations Due to Medical Infirmities

This state law provides the employee who is physically or mentally incapable of performing the duties of their position to be transferred to a position with less arduous duties, if available, **or separated from state service in good standing.**

- If the LAD search described in Scenario 3 is unsuccessful, DAS will notify the agency to separate under C.G.S. §5-244.

- For employees with filed workers' compensation claims, for whom medical documentation permanently disables the employee from ever returning to their job classification in state government, the workers' compensation third party claim administration (TPA) company will provide notice of such to the employing state agency.

C.G.S. §5-248 - Disability Retirement

Employees may be eligible for disability retirement depending upon their specific circumstances.

- Refer to General Letter Number 301 – Procedures While Pending Determination of Disability Retirement, which outlines Core-CT processing and health insurance coverage.

HR PRACTICE POINT



Human Resources must make the employee aware of their retirement options, including disability retirement, but **cannot pressure the employee to apply** and **cannot make any promises about the employee's eligibility**.

HOW TO HANDLE HEALTH CARE PREMIUMS WHEN THE EMPLOYEE DOES NOT RETURN FROM LEAVE

The handling of health care premiums is based on whether the family/medical leave is paid (meaning the employee receives payments during leave **from the employing agency**) or unpaid (meaning the employee does not receive payments during leave **from the employing agency**).

Paid Leave

When an **employee receives payments from the employing agency** while the employee is utilizing a Family and Medical Leave Entitlement, the employer **may not**

recover its share of health insurance premiums or other non-health benefit premiums for the period covered by paid leave.

Unpaid Leave

When an employee does not receive any payments from the employing agency while the employee is on leave, the employer **may recover** from an employee its share of health plan premiums paid during the employee's unpaid Family and Medical Leave Entitlement, **unless the reason the employee does not return is due to:**

- The **continuation, recurrence, or onset of a serious health condition** of the employee or the employee's family member, or a serious injury or illness of a covered servicemember that would otherwise entitle the employee to leave under federal and/or CT FMLA, or
- **"Other circumstances beyond the employee's control"**

An employee who has a serious health condition for purposes of the Family and Medical Leave Entitlements may also be a person with a disability under the **Americans with Disabilities Act (ADA)** and the **Connecticut Fair Employment Practices Act (CFEPA)**. Therefore, Human Resources must understand how these laws interact with the Family and Medical Leave Entitlements.

This chapter contains the following topics:

- **Common terminology**
- **How the laws interact**

NOTE: This chapter is **not** intended to provide a comprehensive overview of employers' obligations under the ADA and CFEPA.

COMMON TERMINOLOGY

Under the ADA, "*disability*" is defined as:

- A physical or mental impairment that substantially limits one or more major life activity; or
- A record of such an impairment; or
- Being regarded as having such an impairment.

Under CFEPA, "*disability*" is defined as follows:

- "Intellectual disability" means intellectual disability as defined in C.G.S. §1-1g.
- "Physically disabled" refers to any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.
- "Learning disability" refers to an individual who exhibits a severe discrepancy between educational performance and measured intellectual ability and who exhibits a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest

itself in a diminished ability to listen, speak, read, write, spell or to do mathematical calculations.

- “Mental disability” refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's “Diagnostic and Statistical Manual of Mental Disorders.”

“Incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs).

- *“Activities of daily living”* include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating.
- *“Instrumental activities of daily living”* include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

“Reasonable Accommodation” means any change in the work environment or in the way things are customarily done, barring “undue hardship” to the employer, that enables the individual with a disability to perform the essential functions of the job.

- Reasonable accommodations must be provided to a qualified employee regardless of whether they work part-time or full-time, or whether they are a durational, temporary, probationary, or “permanent” state employee.
- Generally, the individual with a disability must inform the employer that an accommodation is needed.
- In the context of job performance, this means that a reasonable accommodation enables the individual to perform the “essential functions” of the position.
- An employer **does not** have to provide personal use items needed in accomplishing daily activities both on and off the job, such as a prosthetic limb, wheelchair, eyeglasses, or hearing aids.

- An employer is **not** required to provide personal use amenities, such as a hot pot or refrigerator if those items are not provided to employees without disabilities.
- *Examples of potentially reasonable accommodations:*
 - Making facilities accessible
 - Job restructuring
 - Modified work schedules
 - Reassigning employee to vacant position
 - Obtaining/modifying equipment
 - Providing qualified readers/interpreters
 - Modifying exams, training materials, policies
 - Granting time off/leave

“Essential Functions of the Job” means job tasks that are fundamental to the job and are not marginal.

- In determining the “essential functions”, the employer should focus on **the purpose** and **desired outcome** of the function, **not the manner** in which it is performed.
- Factors to consider in this determination include:
 - The employer’s judgment;
 - Written job descriptions;
 - The amount of time spent on the job performing the function;
 - The consequences of not requiring the incumbent to perform the function;
 - The terms of the collective bargaining agreement;
 - The work experiences of past incumbents in the job;
 - The current work experiences of incumbents in similar jobs.

HR PRACTICE POINT



The DAS Class Specification is **not** intended to be – and should not be used as – the only tool for determining a particular position’s essential functions.

“Undue Hardship” means a significant difficulty or expense.

- Undue hardship refers not only to financial difficulty, but also to accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.
- The determination of “undue hardship” should focus on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.
- An employer must assess on a case-by-case basis whether a particular accommodation would cause undue hardship.

“Direct Threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodations.

HOW THE LAWS INTERACT

- ADA/CFEPA is only available to an employee with a “**disability**” as defined above.
- ADA/CFEPA is **not limited** to a pre-determined number of weeks. The analysis must be whether the accommodation is necessary, effective, and does not cause an undue hardship to the employer.
- The ADA/CFEPA analysis involves **the interactive process** between the employee, human resources and the employee’s manager/supervisor.
- If necessary in order to determine a reasonable and effective accommodation under ADA and/or CFEPa, Human Resources can ask for information (in addition to the medical certificate provided for family and medical leave purposes) from the employee’s health care provider.

- If necessary, Human Resources may provide the employee with a list of questions pertaining to the employee's need for accommodation to be answered by the health care provider.
- With the employee's consent, Human Resources may contact the health care provider directly.
- If the employee is a qualified individual with a disability within the meaning of the ADA/CFEPA, then the employer must make reasonable accommodations barring undue hardship in accordance with the ADA/CFEPA.
- If the employee requests leave as an accommodation and is also eligible for one or more of the Family and Medical Leave Entitlements, the employee must utilize the Family and Medical Leave Entitlements.
 - The employee cannot take leave as an accommodation under the ADA/CFEPA **instead of** utilizing one or more of the Family and Medical Leave Entitlements.
 - Leave provided under the Family and Medical Leave Entitlements **is** a reasonable accommodation, as required under the ADA/CFEPA.
- An employee who is eligible to take leave under one or more of the Family and Medical Leave Entitlements cannot be denied leave because it would cause an undue hardship to the employer.
- If an employee would be able to work with one or more reasonable accommodation(s), then the employer cannot force the employee to take a family/medical leave instead of providing the accommodation(s).
- An employee may need to (and be eligible to) take leave under one or more of the Family and Medical Leave entitlements at the same time that the employee needs additional accommodations under the ADA/CFEPA to enable them to perform the essential functions of the job when the employee is at work.
- Under ADA/CFEPA, there is no obligation to create a new position or bump an employee out of a filled position as an accommodation to an individual with a

disability. Reassignment to a vacant position in the agency for which the individual is qualified **may** be considered as a possible accommodation if:

- There are no reasonable accommodations that would allow the employee to perform the essential functions of the **existing job**; or
 - The proposed accommodation(s) would cause the employer undue hardship or would create a direct threat to others or self.
- Under the ADA/CFEPA, an employer is not required to provide an employee with time off to care for a family member with a disability.
 - If the employer violates the federal and/or state FMLA as well as the ADA and/or CFEPA, the employee may be able to recover under any of the statutes.

Human Resources plays a critical role in handling employee suspected fraud or abuse of family and/or medical leave entitlement(s).

Whether the information comes from a supervisor's observations, a co-employee, a third party, or even social media, Human Resources has the right to investigate instances in which it suspects that the leave entitlement is being abused or used fraudulently.

This chapter describes the following:

- **Common types of fraud or abuse**
- **Red flags of potential fraud or abuse**
- **What to do if fraud or abuse is suspected**
- **Tips for preventing fraud and abuse**
- **Penalties associated with employee fraud and abuse**

COMMON TYPES OF FRAUD OR ABUSE

- **Altering the medical documentation.**

Examples:

- An employee who whites-out or alters words or numbers on the medical certification.
- An employee who forges the doctor's signature or the entire medical certification.

- **Using approved family/medical leave for non-family/medical leave purposes.**

Examples:

- An employee who works a full-time job while taking block leave from their state job on the ground of needing to serve as a caregiver for their mother.
- An employee who regularly calls out on FMLA on days that their requests for vacation leave were denied.

- **Misrepresenting the medical condition in question.**

Examples:

- An employee who claims to need leave to care for a father who had a stroke when, in fact, the father is perfectly well and the employee just wanted to take a vacation.
- An employee who claims to need additional time to recuperate from a knee surgery actually uses the time off to go skiing.

RED FLAGS OF POTENTIAL FRAUD OR ABUSE

- Frequent leave requests for time off immediately preceding or following a weekend or holiday;
- FMLA leave requests after denial of vacation on the same or similar days;
- Numerous sudden or abrupt leave requests;
- Complaints from other employees that an individual is abusing leave;
- Reports from other employees that an individual talks or posts about using leave to avoid work responsibilities;
- Pictures of an employee on leave engaged in strenuous activities, or activities indicating the employee is capable of performing normal job responsibilities.

WHAT TO DO IF FRAUD OR ABUSE IS SUSPECTED

If Human Resources suspects that fraud or abuse is occurring, it must take prompt, appropriate action to determine if the suspicion is warranted and, if so, how to address the employee's conduct.

- Human Resources must not rush to judgement without having the facts.
 - **Do not unilaterally deny leave or take disciplinary action.**
- Human Resources must ensure that the suspicion is reasonable.
 - Be able to explain the objective facts that gave rise to the suspicion of abuse or fraud.
- Human Resources must investigate.
 - Review attendance records.
 - Review the medical certification and, if appropriate, require a recertification or second opinion.

- Attach a copy of the employee's attendance log to the medical certification and require that the employee have the doctor certify that the absences are consistent with the individual's medical condition and need for leave.
- Authenticate the medical documentation.
 - Review other relevant documentation.
 - Interview witnesses.
 - Interview the employee in question.
- If justified by the results of the investigation, Human Resources must take appropriate disciplinary action, in accordance with state law, policies, and collective bargaining agreements.

TIPS FOR PREVENTING FRAUD OR ABUSE

- Insist upon complete and sufficient medical certifications.
- Obtain recertifications or second opinions if necessary.
- Require employees to provide notice of the need for leave as soon as possible.
- Require employees to comply with standard call-in procedures.
- Pay attention to absence patterns.

PENALTIES ASSOCIATED WITH EMPLOYEE FRAUD OR ABUSE

Federal FMLA and state FMLA explicitly provide that an employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

Moreover, absences that are not authorized under one or more of the Family and Medical Leave Entitlements (federal FMLA, state FMLA, Pregnancy Disability Leave, SEBAC Supplemental Leave and Organ and Bone Marrow Donor Leave) are not protected and may lead to disciplinary action. They may constitute "**just cause**" for disciplinary action, as defined in Section 5-240-1a of the Regulations of Connecticut State Agencies.

There are special rules for “*instructional*” employees of local educational agencies, including **public school boards and elementary and secondary schools**. These rules **do not** apply to colleges and universities, trade schools, and preschools.

The special rules are designed to assist in maintaining continuity in the classroom for school children. Specifically, these special rules relate to:

- Block leave taken near the end of the “*academic term*”, and
- Scheduling of intermittent and reduced schedule leaves.

This chapter provides definitions and describes the special rules for leaves taken in a school setting.

These special rules apply to **federal FMLA leave**.

SEBAC Supplemental leave adopts the federal FMLA guidelines with regard to **block leaves** taken by instructional employees of local educational agencies.

Under **state FMLA**, the rules for instructional employees of elementary and secondary schools are **not different** from the rules for other types of employees, except as specifically indicated below.

DEFINITIONS

“*Instructional*” employees are those whose principal function is to teach and instruct students in a class, a small group or an individual setting.

Includes:	Does NOT Include:
Teachers	Teacher assistants or aides who do not have as their principal job actual teaching or instructing
Athletic coaches	Auxiliary personnel (e.g. counselors, psychologists, curriculum specialists)
Driving instructors	Non-teaching staff members, including cafeteria workers, maintenance workers,

	bus drivers
Special education assistants (e.g. signers for hearing impaired)	

An “*academic term*” is the school semester. For purposes of federal FMLA leave, a school may have no more than two academic terms or semesters per year.

RULES FOR BLOCK LEAVE TAKEN NEAR THE END OF THE ACADEMIC TERM (2 Situations)

When Employee’s Leave Begins at the End of the Semester and Continues into the Beginning of the Next Semester:

These rules apply when employees are taking federal FMLA leave, state FMLA, and/or SEBAC Supplemental leave.

- A family/medical leave that begins at the end of one semester and continues into the beginning of the next semester is considered a single block leave, not two separate leaves and not intermittent leave.
- The employee’s eligibility for leave is determined at the time the employee begins the leave.
- The period during summer vacation or winter break when the employee would not have been required to report for duty is **not** counted against any of the employee’s family and Medical Leave entitlements (federal FMLA, state FMLA or SEBAC Supplemental leave).
 - A teacher’s decision to be paid over the course of 12 months, rather than 10 months, is irrelevant.
 - The key question is whether the teacher is expected to report for duty, not how the teacher’s salary payments are structured.
- An employee on leave at the end of the school year must receive any benefits over the summer vacation that they would normally receive if working at the end of the year.

Example:

A teacher must take leave to undergo surgery and follow-up treatments. The medical certificate indicates that the entire course of treatment, including the surgery, is expected to start on May 1st and last until November 1st. The teacher's school year ends on June 16th and the teacher is expected to report for duty again on the new school year starts again on August 28th.

Human Resources determines that the teacher meets the eligibility criteria for federal FMLA, state FMLA and/or SEBAC Supplemental leave as of May 1st.

The teacher uses 7 weeks of federal and state FMLA from May 1st until June 16th.

Because the teacher does not ordinarily work during the summer vacation period, **the time period between June 17th and August 27th does not count against their leave entitlements.**

The teacher's federal and state leave entitlements resume on August 28th.

Because the leave is considered to be one, single, continuous leave, **Human Resources does not re-determine eligibility at this time.**

The teacher will use 5 more weeks of federal and state family/medical leave. The 12 week entitlement under federal FMLA and state FMLA will be exhausted as of September 29th.

When the federal and state leave are exhausted, the teacher will still have 24 weeks of SEBAC Supplemental leave, which is more than enough to cover the period of time until the return to work on November 1st.

When an Instructional Employee Is Ready to Return to Work Close to the End of an Academic Term:

- *These rules apply only in situations where the employee is taking federal FMLA leave only or SEBAC Supplemental leave only.*
- *These rules do not apply to employees who are taking state FMLA only or taking state FMLA concurrently with federal FMLA.*

When an instructional employee who has taken family/medical leave is ready to return to work close to the end of an academic term, **the employer may delay the employee's reinstatement until the academic term actually ends** in the following three scenarios listed below.

This exception to the general rule that an employee must be reinstated to their position as soon as the need for leave ends gives the school the flexibility it needs to ensure continuity in the classroom and to avoid disruption at the end of the term.

GUIDELINES:

- **If the school chooses to exercise the delayed reinstatement option, the period of time between when the employee could have returned to work and the end of the academic term cannot be charged against the employee's federal FMLA, state FMLA and/or SEBAC supplemental leave entitlements.**
- The school must maintain the employee's group health insurance and other benefits during this period, just as if the employee remained on FMLA leave.
- The employee is entitled to be restored to their same or equivalent job at the end of the academic term, just as if they had been returned to work as soon as their federal FMLA, state FMLA, and/or SEBAC Supplemental leave ended.

Scenario #1:

- The employee takes leave for their own serious health condition;
- The leave begins **more than 5 weeks** before the end of the academic term;
- The leave will last **at least 3 weeks**;
- The employee is medically ready to return to work **during the 3-week period before the end of the academic term.**

Scenario #2:

- The employee takes **caregiver or bonding leave**;
- The leave begins **during the 5-week period** before the end of the academic term;
- The leave will last **more than 2 weeks**; and

- Employee would return to work **during the 2-week period before the end of the academic term.**

Scenario #3:

- The employee takes **caregiver or bonding leave;**
- The leave begins **during the 3-week period** before the end of the academic term; and
- The leave will last **more than 5 working days.**

RULES FOR SCHEDULING INTERMITTENT AND REDUCED SCHEDULE LEAVE

These rules apply only in situations where the employee is taking federal FMLA leave only or federal FMLA concurrently with state FMLA.

These rules do *not* apply to employees who are taking state FMLA only or SEBAC Supplemental leave only.

If the employee needs intermittent or reduced schedule leave to:

- Care for self or family member with a serious health condition,
and
- Medical treatment is *foreseeable*,
and
- The employee would be on leave *more than 20 percent* of the total number of working days over the period the leave would extend, THEN:

The employer **may** require the employee to choose either to:

- Take leave for “**period(s) of a particular duration**,” not greater than the duration of the planned treatment; or
- **Transfer temporarily** to an available alternative position for which the employee is qualified, which has equivalent pay and benefits.

"Periods of a particular duration" = block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

Human Resources must be aware that an employee who is utilizing the Family and Medical Leave Entitlements continues to be covered by other state policies, procedures, etc.

This chapter describes the various policies and procedures that may intersect with Family and Medical Leave Entitlements.

Although not an exhaustive list, the most common areas of intersection are as follows:

- General Letter No. 34: Family Violence Leave Policy
- Disciplinary Action
- Layoffs
- Voluntary Schedule Reduction Program

Human Resources must understand these policies and procedures and how they interact with the Family and Medical Leave Entitlements in order to insure compliance.

In addition, Human Resources should review **Chapter 45**, for information on Leave Interaction with ADA and CFEPA and **Chapter 46** for information on Handling Suspected Employee Fraud and Abuse.

GENERAL LETTER NO. 34: FAMILY VIOLENCE LEAVE POLICY

An employee who is eligible for one or more of the Family and Medical Leave Entitlements may also be eligible for leave under [General Letter 34, Family Violence Leave](#). This General Letter describes the leave rights available to employees who are victims of family violence and establishes the procedures relating to such leave. It also describes how Family Violence leave interacts with the Family and Medical Leave Entitlements.

DISCIPLINARY ACTION

An employee cannot be disciplined for exercising their rights under the Family and Medical Leave Entitlements.

On the other hand, an employee cannot avoid the consequences of misconduct simply by taking a Family and Medical Leave Entitlement. The specific procedure for coordinating such leave with disciplinary action depends upon whether the employee is out on administrative leave or is being terminated.

Administrative Leave (Paid or Unpaid)

Family Medical Leave Entitlements **cannot** run concurrent with paid or unpaid administrative leave.

If an employee who is on a paid administrative leave pending investigation or an unpaid administrative leave (i.e., disciplinary suspension) requests and qualifies for one or more Family and Medical Leave Entitlement, the administrative leave will be temporarily suspended while the employee is on such leave.

Process for Administrative Leave:

- Upon receipt of the employee's request for leave, Human Resources must determine the employee's eligibility for purposes of the Family and Medical Leave Entitlements.
- If the reason qualifies and the employee is eligible, Human Resources must suspend the employee's administrative leave and allow the employee to use the Family and Medical Leave Entitlement(s).
- Human Resources must reinstate the employee's administrative leave as soon as the Family and Medical Leave Entitlement is completed.

Documentation for Administrative Leave:

Human Resources must notify the employee in writing that:

- The employee's administrative leave is being suspended while the employee is on the Family and Medical Leave Entitlement, and
- The employee's administrative leave will resume when the Family and Medical Leave Entitlement is completed, and
- If applicable, the investigation will continue during the Family and Medical Leave Entitlement and any "Loudermill" hearing will occur after completion of such leave.

Termination

If an employee is subject to termination, there is no legal obligation to postpone the termination until the Family and Medical Leave Entitlement has concluded.

LAYOFFS

- If the employee is **on an approved** leave under the Family and Medical Leave Entitlements when the employee is terminated, through layoff or other reasons, the Family and Medical Leave Entitlement(s) ends as of the employee's last day of employment.
- If an employee who is **on an approved** leave under the Family and Medical Leave Entitlements is laid off and is later recalled to work or is otherwise re-employed by the State, that employee is immediately eligible for Family and Medical Leave Entitlements upon return to employment.

VOLUNTARY SCHEDULE REDUCTION PROGRAM (VSRP)

C.G.S. §5-248c gives employees the opportunity to request unpaid days off or a reduction in work schedule for a limited period of time (*no more than three months*) with agency approval, while maintaining health insurance benefits. **Use of this program must be reviewed on a case-by-case basis.** Refer to **CT-HR-7c** form.

- Employees are **not allowed** to use VSRP instead of or to avoid using any Family and Medical Leave Entitlements.
- When an employee who is on a reduced schedule under VSRP needs a **block leave** under one or more Family and Medical Leave Entitlements, the VSRP arrangement **must** be suspended. The employee will revert to their regular schedule for the duration of the Family and Medical Leave Entitlement(s).
- An employee who is on an approved intermittent or reduced schedule family/medical leave may request time off under VSRP only for reasons **unrelated** to the family/medical leave.

Example: Employee eligible for federal and state FMLA. An employee who takes federal and state FMLA intermittent leave on Mondays to care for a seriously ill parent may request VSRP on Fridays for a non-medical reason. The employee cannot, however, take VSRP instead of intermittent leave to care for the parent.

Leave Options	Federal FMLA	State FMLA	SEBAC Supplemental	Voluntary Schedule Reduction Program (VSRP)
Block Leave	Yes	Yes	Yes	No, VSRP must be suspended during a block leave.
Intermittent Leave	Yes	Yes	Not Available	Yes, if unrelated to family/medical leave and with agency consent.
Reduced Schedule Leave	Yes	Yes	For bonding with newborn or adoption only, with agency consent.	Yes, if unrelated to family/medical leave and with agency consent.

Both the Federal FMLA and the State FMLA provide eligible employees with job-protected leave for military family leave. SEBAC Supplemental leave does not apply to military family leave.

This chapter provides an overview of Military Family Leave including the similarities and differences from “standard” family/medical leave.

REASONS FOR LEAVE

Under Military Family Leave, the reasons for leave are as follows:

- **Military Caregiver Leave** is leave to care for a covered servicemember (who has a serious injury or illness while on covered active duty) or, under federal FMLA only, leave to care for a covered veteran (who incurred a serious injury or illness while on covered active duty), if the employee is the servicemember’s spouse, son, daughter, parent, or next of kin.

- **Qualifying Exigency Leave** is leave for reasons arising from the foreign deployment of the employee’s spouse, son, daughter, or parent on covered active duty with the Armed Forces:
 - 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.

SIMILARITIES

Most of the information contained in this manual about “standard” family/medical leave applies to Military Family Leave as well, such as:

- The criteria for eligibility,
- The timeline for Eligibility and Designation,
- The use of the most of the FMLA forms (Forms HR1, HR2a, HR2b, HR2c, HR3),
- The amount of leave available for Qualifying Exigency leave (*12 weeks for federal FMLA and state FMLA*),
- The rules regarding accrual usage,
- The responsibilities of Human Resources, managers/supervisors and employees,
- Recordkeeping requirements, and
- Penalties and enforcement.

DIFFERENCES

Military Family Leave differs from “standard” family/medical leave in the following areas:

- Definitions
- Reasons for leave
- Amount of leave available for caregiver leave (*and when it can run concurrent with federal FMLA and state FMLA*)
- Certification forms (*types and content*)
- Second or third opinions (*permitted only in limited circumstances, depending upon who is the health care provider*)
- Recertification (*not permitted*)

For more detailed information on Military Family Leave, refer to the following chapters:

Military Family Leave - Definitions	<i>See Chapter 50</i>
Military Caregiver Leave - Overview	<i>See Chapter 51</i>
Military Caregiver Leave - Certification Form	<i>See Chapter 52</i>
Qualifying Exigency Leave - Overview	<i>See Chapter 53</i>
Qualifying Exigency Leave - Certification Form	<i>See Chapter 54</i>

Military Family Leave under federal FMLA and state FMLA has definitions that are different from the “standard” family/medical leave.

This chapter provides the definitions of the terms that are DIFFERENT from standard FMLA.

“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 federal and/or state 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 service member” (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. This is federal duty only.
- State military family leave **does not** cover veterans.

“Covered service member” (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 only)

- A veteran who is undergoing medical treatment, recuperation, or therapy, for a “serious injury or illness” 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.
- The period between the enactment of the FY 2010 National Defense Authorization Act on October 28, 2009 and the effective date of the 2013 Final Rule (March 8, 2013) is excluded in the determination of the five-year period for covered veteran status.

“Health Care Provider” (federal and state military caregiver leave)

- Same definition as “standard” FMLA leave, **OR**
 - Department of Defense (DOD) health care provider;
 - Veterans Affairs (VA) health care provider;
 - DOD TRICARE network authorized private HCP; or
 - DOD non-network TRICARE authorized private HCP.

NOTE: *TRICARE is the DOD’s military health system and includes network and non-network health care providers.)*

- Every injured/ill servicemember has an assigned DOD representative (such as a Federal Recovery Coordinator or Recovery Care Coordinator in case of injuries classified by DOD as catastrophic or severe) who serves as a point of contact for the servicemember’s authorized health care provider.
- If the authorized health care provider is unable to make “a serious injury or illness” determination, he/she may rely on information from an authorized DOD representative.
- **For a “Covered Veteran” (federal military family leave only)**
 - An employee may submit documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers as sufficient certification of the covered veteran’s serious injury or illness.
 - The documentation is sufficient even if the employee is not the named caregiver on the document.

“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 their nearest blood relative for purposes of military caregiver leave; or (State FMLA only) any other individual whose close association with the employee is the equivalent of a family member,
- Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions,
- Brothers and sisters,
- Grandparents,
- Aunts and uncles, and
- First cousins.

“Outpatient Status” (federal military caregiver leave)

The status of a covered servicemember who is assigned to:

- A military medical treatment facility as an outpatient; or
- A unit established for the purpose of providing command and control of members of the military receiving medical care as outpatients.

“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 only)

- 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 service member unable to perform the duties of the service member’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.

CH.51 MILITARY FAMILY LEAVE – MILITARY CAREGIVER LEAVE - OVERVIEW

Military Caregiver Leave is available to eligible employees under both Federal FMLA and State FMLA. SEBAC Supplemental leave CANNOT be used for military caregiver reasons.

This chapter describes the military caregiver leave entitlements and key points.

LEAVE ENTITLEMENTS	Federal FMLA	State FMLA
<p>Amount of Leave</p>	<p>Up to 26 workweeks of unpaid leave in a single 12-month period.</p> <p>An employee can take this leave only one time per covered servicemember or covered veteran, per injury.</p> <p>Leave is measured forward from the date an employee first takes the military caregiver leave.</p> <p>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 federal FMLA leave and military family leave.</p> <p>Any unused amount of leave is forfeited.</p>	<p>Up to 26 workweeks of unpaid leave in a single 12-month period.</p> <p>An employee can take this leave only one time per covered servicemember (no veteran), per injury.</p> <p>Leave is measured forward from the date an employee first takes any state family/medical leave, including but not limited to military caregiver leave.</p> <p>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 state FMLA leave and military family leave.</p> <p>Any unused amount of leave is forfeited.</p>

CH.51 MILITARY FAMILY LEAVE – MILITARY CAREGIVER LEAVE - OVERVIEW

Reason for Leave	To care for a covered servicemember or a covered veteran with a serious injury or illness while on active duty in the U.S. Armed Forces, if the employee is the spouse, son, daughter, parent or next of kin of the covered servicemember.	To care for a covered servicemember (not a veteran) with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered servicemember.
How Leave Is Taken	Block Leave Reduced Schedule Leave Intermittent Leave	Block Leave Reduced Schedule Leave Intermittent Leave

KEY POINTS

- If the employee is eligible for **both** federal FMLA and state FMLA, the leave entitlements will run concurrently.
- If the leave qualifies as *both* military caregiver leave and standard caregiver leave (for example, if the covered servicemember is the employee's spouse), it must be coded as standard caregiver leave. In this situation, if the employee exhausts the standard caregiver leave entitlement and still needs time off to care for the covered servicemember, the military caregiver leave entitlement begins, and the time should be coded accordingly.

When an employee requests Military Caregiver Leave, there are specific certification forms that must be used.

This chapter describes the Military Caregiver certification forms, when they are used and how they differ from standard FMLA forms.

CERTIFICATION FORMS

The State of Connecticut has adopted the sample certification forms created by the U.S. Department of Labor for both Federal FMLA and State FMLA:

- **DOL - WH385** Certification for Serious Injury or Illness of Current Service member for Military Family Leave, and
- **DOL - WH385V** Certification for Serious Injury or Illness of Veteran for Military Caregiver Leave (*federal military family leave only*).

In addition, an employee may also be required to produce documentation demonstrating the required relationship between the employee and the covered service member.

DOL - WH385:

This form is available on ct.gov and consists of two sections. When completed, the form is returned to Human Resources.

- **SECTION 1** is completed by the employee or covered service member, before having Section 2 completed. This section consists of:
 - Part A: Employee Information**
 - Part B: Servicemember Information**
 - Part C: Care to be Provided to the Servicemember**
- **SECTION 2** is completed by the DOD Health Care Provider or a Health Care Provider who is either (1) a United States Department of Veterans Affairs health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non -network TRICARE authorized private health care provider; or (4) health care provider as defined in 29 CFR 825.125. This section consists of:
 - Part A: Healthcare Provider Information**

Part B: Medical Status**Part C: Servicemember's Need for Care by Family Member****DOL – WH385V:** *(Veteran – federal military family leave only)*

This form is available on ct.gov and consists of two sections. When completed, the form is returned to Human Resources.

- **SECTION 1** is completed by the employee and/or the veteran for whom the employee is requesting leave, before having Section 2 completed. This section consists of:
 - Part A: Employee Information**
 - Part B: Veteran Information**
 - Part C: Care to be Provided to the Veteran**
- **SECTION 2** is completed by the DOD Health Care Provider or a Health Care Provider who is either (1) a United States Department of Veterans Affairs health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non -network TRICARE authorized private health care provider; or (4) health care provider as defined in 29 CFR 825.125. This section consists of:
 - Part A: Healthcare Provider Information**
 - Part B: Medical Status**
 - Part C: Veteran's Need for Care by Family Member**

ALTERNATE FORMS OF CERTIFICATION

There are special circumstances when an employee is allowed to provide an alternate form of certification:

- An employee may provide Human Resources with an **ITO (Invitational Travel Order)**, or **ITA (Invitational Travel Authorization)** issued by the Department of Defense to any family member to join an injured or ill service member at his or her bedside.

- The employer must accept the ITO or ITA as complete and sufficient certification of the need for leave, even if the employee’s own name is not on it.
- Both the ITO and ITA constitute **automatic** certification of military status and serious illness/injury.
- The employer may require proof of a covered family relationship between the employee and servicemember.
- If the employee needs leave beyond the expiration date of the ITO or ITA, an employer may require certification of status via normal procedures.

CERTIFICATION RULES THAT DIFFER FROM STANDARD FMLA

Second and third opinions may be required by an employer **ONLY** for military caregiver leave certifications that are completed by health care providers who are **NOT** affiliated with the DOD, VA, or TRICARE.

The employer may, however, seek “authentication” and “clarification” of the WH-385, the WH 385V, the ITO and the ITA provided by the employee in support of the leave request.

See **Chapter 26** for more information on “authentication” and “clarification.”

HR PRACTICE POINTS



Use the forms on ct.gov. Do not create your own forms.



Be sure the form is complete and sufficient.



Be sure to give the employee at least 15 calendar days to return the form.

Military Qualifying Exigency Leave is available to eligible employees under both Federal FMLA and State FMLA. SEBAC Supplemental leave CANNOT be used for military qualifying exigencies.

This chapter describes the military qualifying exigency leave entitlements and defines what constitutes a “qualifying exigency.”

LEAVE ENTITLEMENTS

LEAVE ENTITLEMENTS	Federal FMLA	State FMLA
Amount of Leave	Up to 12 workweeks of unpaid leave in a single 12-month period .	Up to 12 workweeks of unpaid leave in a single 12-month period .
Reason for Leave	Leave for any “qualifying exigency” arising out of the fact the employee’s spouse, son, daughter, or parent is a covered servicemember on covered active duty in the Armed Forces.	Leave for any “qualifying exigency” arising out of the fact the employee’s spouse, son, daughter, or parent is a covered servicemember on covered active duty in the Armed Forces.
How Leave Is Taken	Block Leave Reduced Schedule Leave Intermittent Leave	Block Leave Reduced Schedule Leave Intermittent Leave

NOTE: An eligible employee has 12 weeks of federal FMLA and state FMLA leave. The employee can use this time for any of the reasons allowed under “standard” family/medical leave or for a “qualifying exigency.” The employee does **not** get a separate leave entitlement for qualifying exigency leave.

QUALIFYING EXIGENCY ACTIVITIES

“Qualifying Exigency” is leave for one or more of the following activities:

1. Short notice deployment

- To address any issue that arises from a covered servicemember being notified of an impending call or order to active duty, **7 or less calendar days** prior to date of deployment.
- An employee can take leave for **up to 7 calendar days** beginning on the date a covered servicemember is notified of an impending call or order to active duty.

2. Military events and related activities

- To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty of a covered servicemember; and/or
- To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty call of a covered military member.

3. Childcare and school activities (non-routine)

- To arrange for alternative childcare arrangements for the child of a covered servicemember’s child when existing arrangements need to be changed due to the covered active duty;
- To provide childcare on an urgent, immediate need basis when the care is necessitated by the disruption caused by covered active duty (but **not** on a routine, regular, or every day basis);
- To enroll or transfer a covered servicemember’s child in a new school or day care facility when existing arrangements need to be changed due to the covered active duty; and/or

- To attend meetings with staff at school or daycare facility to address issues arising out of the covered active duty (but not to attend routine meetings/functions).

NOTE: The child in question must be the child of the servicemember, not necessarily the child of the employee. The employee must be the spouse, parent, or child of the servicemember.

4. Parental leave care (non-routine)

- To provide care for a servicemember's parent who is incapable of self-care on an urgent, immediate need basis when the care is necessitated by the disruption caused by the servicemember's covered active duty (but not on a routine, regular or every day basis).
- Such care may include:
 - Arranging for alternative care for a parent;
 - Providing care on an immediate basis;
 - Admitting or transferring the parent to a care facility; or
 - Attending meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent.

NOTE: The parent who needs care must be the parent of the servicemember. The employee must be the spouse, parent or child of the servicemember.

5. Financial and legal arrangements (Before, during or after deployment)

- To act as the covered servicemember's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered servicemember is on a covered active duty and for a period of **90 days** following termination of covered servicemember's covered active duty.

- To make or update financial or legal arrangements to address the covered servicemember's absence while on covered active duty; and/or

Examples:

- Preparing and executing financial and healthcare powers of attorney.
- Transferring bank account signature authority.
- Enrolling in Defense Enrollment Eligibility Reporting System (DEERS).
- Obtaining military identification card
- Preparing or updating a will or living trust.

6. Counseling

- The need to attend counseling arises from the covered active duty of a covered servicemember;
- Counseling is for the employee, covered servicemember and/or the covered servicemember's child.
- The counseling must be provided by someone other than a healthcare provider.

Examples:

Military Chaplain

Pastor/minister

A non-HCP offered by the military or a military service organization

7. Rest and recuperation

- To spend time with a covered servicemember who is on short-term, temporary, rest and recuperation leave during the period of deployment.
- An employee may take **up to 15 days** of leave to spend with the servicemember during each instance of the servicemember's rest and recuperation.

NOTE: The employee's leave **cannot** be longer than the servicemember's rest and recuperation. If the servicemember only gets 10 days of rest and recuperation, then the employee can use only 10 days.

8. Post-deployment activities

- To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of **90 days** following the termination of covered servicemember's covered active duty; and
- To address issues that arise from the death of a covered servicemember while on covered active duty.

Examples:

Meeting and recovering the body.

Making funeral arrangements.

9. Additional activities

- Activities that arise out of the covered servicemember's covered active duty.
- The employer and employee **mutually** agree that such leave shall be considered a qualifying exigency and agree to both the timing and duration of such leave.

When an employee requests Qualifying Exigency Leave, a certification form must be completed.

This chapter describes the Qualifying Exigency certification form and how it differs from standard FMLA.

CERTIFICATION FORM

The State of Connecticut has adopted the sample certification form created by the U.S. Department of Labor for both Federal FMLA and State FMLA:

- **DOL-WH384** Certification of Qualifying Exigency for Military Family Leave.

DOL - WH384:

This form is available on ct.gov and consists of two sections. When completed, the form is returned to Human Resources.

- **SECTION I** is completed by the employer before the form is given to the employee.
 - Employer name
 - Contact information
- **SECTION II** is completed by the employee. It consists of general information and four (4) parts.

General Information:

- Employee's name
- Name of military member
- Relationship of military member
- Period of military member's covered active duty
- Written documentation confirming the military member's covered active duty or call to covered active duty status

PART A: Qualifying Reason for Leave

- A description of the reason for qualifying exigency.
- Any available written documentation which supports the need for leave (e.g., a document confirming the servicemember's Rest and Recuperation leave; a document confirming an

appointment with a third party, copy of a bill for services for handling legal or financial affairs, etc.).

PART B: Amount of Leave Needed

- Beginning and end dates
- Frequency and duration of the leave

PART C: If leave is needed to meet with a third party (e.g., childcare, financial advisor, military event, etc.)

- Name of the individual/organization
- Address, telephone number, fax number, email
- Description of the meeting

PART D: Employee's signature and date

An employer may require proof of the servicemember's covered active duty orders as follows:

- **For the first request for qualifying exigency leave** related to a particular servicemember and a particular covered active duty (but the employer may not request the same information again for the same covered active duty for same servicemember).
- **For subsequent requests for leave** arising out of a **different** covered active duty or for a different servicemember.

**CERTIFICATION RULE THAT DIFFERS
FROM STANDARD FMLA -****Verification -- Not Authentication and Clarification**

If the certification is complete and sufficient, the employer **may not** request additional information from the employee. Specifically, unlike standard FMLA, the employer is not allowed to ask for information in order to **authenticate or clarify** the information in the certification.

However, the employer (Human Resources, leave administrator, management official) may **verify the certification** by:

- Contacting the DOD unit to verify that the servicemember is on covered active duty;
- If the exigency involves meeting with a third party, contacting the individual to verify the meeting or appointment schedule and nature of the meeting.

NOTE: Human Resources does not need to obtain the employee's permission in order to verify the information on the certification form.

HR PRACTICE POINTS

Use the form on ct.gov. Do not create your own form.



Be sure the form is complete and sufficient.



Be sure to give the employee at least 15 calendar days to return the form.

Maintaining complete and accurate records of employees' usage of the Family and Medical Leave Entitlements is a critical responsibility of Human Resources.

These records are necessary to ensure that:

- **Employees receive the correct leave entitlements;**
- **Employees' benefits and pension calculations are administered properly;**
- **State and federal auditors can review agencies' leave practices; and**
- **Agencies can demonstrate compliance with the applicable laws.**

This chapter describes the recordkeeping requirements for Family and Medical Leave Entitlements, including the contents of the employee's Family/Medical Leave file and the confidentiality requirements associated with that file.

Under Federal FMLA, there are specific requirements for FMLA-related documents. The State FMLA follows these requirements. The other Family and Medical Leave Entitlements do **not** include any recordkeeping requirements; however, to ensure consistency, the State of Connecticut adheres to the federal requirements for recordkeeping for all Family and Medical Leaves.

State agencies must also comply with [the records retention schedules established by the State Library](#) as well as laws intended to maintain the confidentiality of personnel and medical records.

- **Although federal law requires employers to keep FMLA records for at least three (3) years, the state records retention requirement for employee medical records, which includes the family/medical leave file, is the duration of employment plus 30 years.**

FAMILY/MEDICAL LEAVE FILE

An employee's family/medical leave file includes the following documents (as applicable). **These documents must be kept separate from the personnel file.**

- FMLA-HR1: Employee Request Form
- FMLA-HR2a: Notice of Eligibility and Rights and Responsibilities
- FMLA-HR2b: Designation Notice
- FMLA-HR2c: Core-CT Coding Form
- FMLA-HR3: Statement of Intent to Return to Work
- FMLA-HR4: Statement of Qualifying Family Relationship
- P-33A: Employee Medical Certification Form
- P-33B: Caregiver Medical Certification Form
- DOL-WH384: Certification for Qualifying Exigency for Military Family Leave
- DOL-WH385: Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave
- DOL-WH385-V: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (*federal FMLA only*)

Additional records that Human Resources must maintain include the following:

- Basic payroll and identifying data, including: employee name; address; classification; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- Copies of all leave-related policies and other notices given to employees.
- Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.
- Premium payments of employee benefits.
- Records of any dispute between the employer and an eligible employee regarding designation of leave.

HR PRACTICE POINT



When an employee transfers to another state agency, the employee's personnel files are transferred, including the family/medical leave file.

CONFIDENTIALITY REQUIREMENTS

Family/medical leave records are confidential and access to them must be limited to the following:

- The employee;
- The employee's authorized representative;
 - Human Resources should request *written* authorization from the employee.
- Supervisors and managers may receive **only** the following information:
 - The dates and the estimated frequency and duration of anticipated absences (i.e., the FMLA coding form, HR-2c); and
 - On a need-to-know basis: information about any restriction placed on the employee and/or accommodations granted to the employee under the ADA/CFEPA.
- First aid and safety personnel as necessary; and
- Government officials, including state auditors, who are investigating compliance with FMLA or other pertinent laws.
 - Employers must make the family/medical leave file available for inspection, copying, and transcription by the U.S. Department of Labor and State of Connecticut Department of Labor upon request.

Individuals who request to use any of the Family and Medical Leave Entitlements and eligible employees who use such entitlements have legal protections.

The agency as a whole, the Human Resources Office, managers, supervisors, and individual employees must be aware that certain activities are prohibited and may lead to liability.

Human Resources must take active steps to ensure that agency personnel understand their obligations and that the agency is in compliance with the Family and Medical Leave Entitlements.

This chapter describes the activities prohibited by the Family and Medical Leave laws.

See **Chapter 57: The Complaint Process**

See **Chapter 58: Liability and Penalties**

PROHIBITED ACTIVITIES

FEDERAL FMLA AND STATE FMLA

The Federal FMLA and the State FMLA have explicit language describing the prohibited activities:

- 1. Interfering with, restraining, or denying the exercise of any right provided under federal or state FMLA;**

Examples:

- Refusing to authorize federal or state FMLA,
- Discouraging an employee from using federal or state FMLA,

- Manipulating an employee's work hours to avoid employee eligibility under the federal or state FMLA, or
- Changing the essential functions of the job in order to preclude the taking of federal or state FMLA.

2. Discriminating or retaliating against an employee or prospective employee for having exercised or attempting to exercise any federal or state FMLA right;

Examples:

- Using the taking of federal or state FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary action, or
- Documenting federal or state FMLA leave absences on an employee's performance evaluation form.

3. Discharging or discriminating against any person for opposing any practice made unlawful by federal or state FMLA or for involvement in any proceeding under or relating to federal or state FMLA;

Examples:

- Employee has filed any charge, has instituted, or caused to be instituted, any proceeding under or related to the federal or state FMLA,
- Employee has given or is about to give any information in connection with an inquiry or proceeding relating to any right under the federal or state FMLA, or
- Employee has testified, or is about to testify, in an inquiry or proceeding relating to a right under the federal or state FMLA.

4. Failing to post a notice for employees that explains the Act's provisions and failing to provide a written general notice to employees.

Posting Requirement (US DOL-WH1420 Poster) (*Federal FMLA only*)

- Every employer covered by the federal FMLA must display or post an informative general notice about federal FMLA.
- The poster must be displayed in plain view where all employees and applicants can readily see it, and must have large enough text so it can be easily read.
- The information displayed on the poster must explain the federal FMLA provisions and provide information on how to file a complaint with the Wage and Hour Division.
- If a significant portion of an employer's employees do not read and write English, the employer must provide the General Notice in a language in which they can read and write.

Written General Notice (*Federal and State FMLA*)

- Every employer covered by the federal or state FMLA must provide each employee with a general notice about the federal and state FMLA entitlements in the employer's employee handbook or other written materials about leave and benefits.
- If no handbook or written leave materials exist, the employer must distribute this general notice to each new employee upon hire.
- The general notice must include, at a minimum, all the information contained in the US DOL FMLA poster.
- The general notice may be distributed electronically provided all the requirements are met.

PREGNANCY DISABILITY LEAVE

The Connecticut Fair Employment Practices Act which encompasses the Pregnancy Disability Leave requirement states:

It is a discriminatory practice in violation of this section: ...

For an employer, by the employer or the employer's agent: (A) To terminate a woman's employment because of her pregnancy; (B) to refuse to grant to that employee a reasonable leave of absence for disability resulting from her pregnancy; (C) to deny to that employee, who is

disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer; (D) to fail or refuse to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits upon her signifying her intent to return unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so; (E) to fail or refuse to make a reasonable effort to transfer a pregnant employee to any suitable temporary position which may be available in any case in which an employee gives written notice of her pregnancy to her employer and the employer or pregnant employee reasonably believes that continued employment in the position held by the pregnant employee may cause injury to the employee or fetus; (F) to fail or refuse to inform the pregnant employee that a transfer pursuant to subparagraph (E) of this subdivision may be appealed under the provisions of this chapter; or (G) to fail or refuse to inform employees of the employer, by any reasonable means, that they must give written notice of their pregnancy in order to be eligible for transfer to a temporary position. [C.G.S. §46a-60(b)(7)]

The Connecticut Fair Employment Practices Act also states that it is a violation of the law to aid and abet in discrimination and to retaliate against an individual who opposes any discrimination. [C.G.S. §46a-60(b)(4) and C.G.S. §46a-60(b)(5)]

SEBAC SUPPLEMENTAL LEAVE AND ORGAN AND BONE MARROW DONOR LEAVE

SEBAC Supplemental Leave and Organ and Bone Marrow Donor Leave do not explicitly address prohibited activities; however, the denial of the benefits provided under these Family and Medical Leave Entitlements may result in a grievance pursuant to the employee's collective bargaining agreement ("CBA") or the regulations of the Employee Review Board.

HR PRACTICE POINTS

Maintain complete and accurate employee family/medical leave files, separate from the employee's personnel file.



Check to be sure all posters, handbooks, orientation materials, Intranet, etc. are up-to-date. Link to DAS General Letter 39 - State of Connecticut Family and Medical Leave Entitlements Policy. Do NOT create your own agency policy.



Distribute the DOL-WH1420 poster to all existing employees and new hires (electronic or hard copy).



Adhere to the "Timeline for Eligibility and Designation".



Be sure to use the FMLA forms on the ct.gov website. Do NOT create your own forms.



Use existing family/medical leave CORE-CT codes.



Train your managers and supervisors on their roles and responsibilities with family/medical leave entitlements.

Complaints regarding any of the Family and Medical Leave Entitlements may be directed to the Human Resources Director/designee of the employee's state agency.

In addition, an employee who believes that his or her rights under one or more of the Family and Medical Leave Entitlements have been violated can file a complaint in other venues, depending upon the entitlement.

This chapter describes the venues available to employees to file a complaint.

LEAVE ENTITLEMENT	WHERE TO FILE COMPLAINT	FORMAT OF COMPLAINT	TIMEFRAME FOR FILING COMPLAINT
FEDERAL FMLA (including military family leave)	Local office of the Wage & Hour Division, Employment Standards Administration, U.S. Dept. of Labor	Initial contact may be in person, by mail or telephone but the complaint must later be reduced to writing	No more than 2 years after the alleged violation or 3 years in the case of an allegedly willful violation
	Federal Court	Private lawsuit	No more than 2 years after the alleged violation or 3 years in the case of an allegedly willful violation

STATE FMLA (including military family leave)	Wage & Hour Division of the State of Connecticut Dept. of Labor	Initial contact may be in person or by mail.	Generally, no more than 180 days after the alleged violation.
SEBAC SUPPLEMENTAL LEAVE	Follow the standard grievance process under the employee's collective bargaining agreement ("CBA") or the regulations of the Employee Review Board ("ERB")	Refer to the applicable CBA or the ERB statute and regulations	Refer to the applicable CBA or the ERB statute and regulations
PREGNANCY DISABILITY LEAVE	Connecticut Commission on Human Rights and Opportunities	Refer to the CHRO website for instructions on "How to File a Discrimination Complaint"	Generally, no more than 180 days after the alleged violation
ORGAN/BONE MARROW DONOR LEAVE	Follow the standard grievance process under the employee's collective bargaining agreement ("CBA") or the regulations of the Employee Review Board ("ERB")	Refer to the applicable CBA or the ERB statute and regulations	Refer to the applicable CBA or the ERB statute and regulations

An agency's failure to comply with the requirements of the Family and Medical Leave Entitlements may lead to liability to the agency as well as to individuals. The penalties for such noncompliance may be significant.

Human Resources must take active steps to ensure that agency personnel understand their obligations and that the agency is in compliance with the Family and Medical Leave Entitlements.

This chapter describes the liability and penalties that may arise with an employer's non-compliance with the requirements of the Family and Medical Leave Entitlements.

WHO CAN BE HELD LIABLE?

Depending upon the circumstances, one or more of the following could be held liable for non-compliance with the requirements of the Family and Medical Leave Entitlements:

- Agency
- Human Resources
- Managers/Supervisors
 - Supervisors exercising sufficient control over the decision to terminate an employee may be held individually liable for violations of federal and state FMLA.
 - "Employer" includes managers who act with some degree of control over the employee or who discuss or have responsibility to discuss leave with the employee.

NOTE: See **Chapter 46** for information on Employee Fraud and Abuse.

WHAT ARE THE PENALTIES?

FEDERAL FMLA

If an employer violates one or more of the “provisions of federal FMLA”, and if justified by the facts of a particular case, an employee may receive one or more of the following:

- Wages, employment benefits, or other compensation denied or lost to the employee by reason of the violation; or
- Where no such tangible loss has occurred, such as when federal FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation.
- When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion.
- A reasonable attorney’s fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

If the employer willfully violates the “employer notice requirements”, the employer may be assessed a civil money penalty for each separate offense.

STATE FMLA

If the State Department of Labor (“DOL”) Commissioner concludes that the employer has violated the State FMLA, the Commissioner may order the employer to comply with the applicable requirements of the law and provide such relief as the Commissioner determines will remedy the harm, including but not limited to:

- Restoration of any rights, benefits, entitlements or protections afforded to the employee by the state FMLA;
- Reinstatement to employment, back pay, and any other monetary compensation for any loss which was the direct result of the employer’s violation, discharge, or discrimination.

PREGNANCY DISABILITY LEAVE

If the complaint is heard by a Commission on Human Rights and Opportunities (“CHRO”) Human Rights Referee presiding over a Public Hearing, the penalties include the following:

- Cease & desist order
- Reinstatement of lost job benefits
- Back pay

If the complaint is filed in Superior Court instead of with the Office of Public Hearing, the court has the authority to award additional remedies, including compensatory damages.

**SEBAC SUPPLEMENTAL LEAVE AND ORGAN AND BONE MARROW
DONOR LEAVE**

SEBAC Supplemental Leave and Organ and Bone Marrow Donor Leave do not explicitly address penalties; however, the denial of the benefits provided under these Family and Medical Leave Entitlements may result in a grievance pursuant to the employee’s collective bargaining agreement (“CBA”) or the regulations of the Employee Review Board.

This chapter contains three sample letters to use in the administration of the Family and Medical Leave Entitlements.

- **Notice of Rights – Family and Medical Leave Entitlements**

This sample letter is to be used when the employee is absent from work without a medical certification. This letter covers federal FMLA and state FMLA obligations and collective bargaining notification issues.

- **Workers Compensation Leave**

This sample letter is to be used when an employee is absent from work due to a workers' compensation injury and the leave qualifies as a "serious health condition" under federal FMLA and/or state FMLA.

- **Workers Compensation Denial/Contested**

This sample letter is to be used when an employee's workers' compensation claim has been denied and/or contested and Human Resources must inform the employee of his/her rights under the Family and Medical Leave Entitlements.

SAMPLE LETTER**Notice of Rights – Family and Medical Leave Entitlements**

(date)

(Employee Name)

(Employee Address)

Dear _____:

Due to your absence from work, we want to make you aware of your rights under the Family and Medical Leave Entitlements. Should your illness be considered a “serious health condition” or “serious illness” you may be eligible for leave under these laws.

Attached is the DAS General Letter 39 - State of Connecticut Family and Medical Leave Entitlements Policy. This policy outlines the provisions and eligibility requirements for Federal FMLA, State FMLA, SEBAC Supplemental Leave, Pregnancy Disability Leave, Organ Donor Leave and Bone Marrow Donor Leave. You must complete and return to me the attached **FMLA-HR1** form and the medical certificate, **Form P33A**, within 15 days, or no later than (date) _____.

If the information provided by your physician certifies that you do have a qualifying illness and you meet the guidelines for eligibility for a family and medical leave entitlement, your absence will be coded accordingly and counted against your entitlement under the applicable law(s).

Whether or not you are eligible for the Family and Medical Leave Entitlements, failure to submit an acceptable medical certificate covering your absence from (date) _____ through the present may result in your time coded as unauthorized leave.

Please be advised that under Section 5-243-1(b) of the Regulations of State Agencies, an unauthorized leave for five or more working days may be deemed to be a resignation not in good standing. If we do not receive the required medical documentation by (date) _____, the department will proceed accordingly. If you have any questions, please feel free to contact me at _____ (insert telephone number).

Sincerely,

Human Resources Professional

cc

SAMPLE LETTER**Workers Compensation Leave***(date)**(Employee Name)**(Employee Address)*

Dear _____:

We regret the unfortunate circumstances resulting in your work-related injury on

(date) _____ and hope for your speedy recovery. As your injury resulted in your absence from work for a period of more than three consecutive full calendar days, this may qualify your leave as a “serious health condition” or “serious illness” under the Family and Medical Leave Entitlements. Attached is the DAS General Letter 39 – State of Connecticut Family and Medical Leave Entitlements Policy.

Under the Federal and State FMLA, employees are entitled to take up to 12 weeks of leave in a 12-month period provided they meet the eligibility and reason for leave requirements. Federal FMLA leave and State FMLA leave run concurrently with Workers’ Compensation leave. If the absence related to a work injury is longer than 12 weeks, you will continue to be covered under Workers’ Compensation as governed by applicable state statutes.

Enclosed are the following documents relating to your federal and state FMLA entitlement:

HR2a – Notice of Eligibility and Rights and Responsibilities

HR2b – Designation Notice

If you have any questions regarding your federal and/or state FMLA/Workers Compensation leave, please contact:

(Agency HR Representative) _____

(Address) _____

(Telephone Number) _____

SAMPLE LETTER**Workers Compensation Denial/Contested**

(date)

(Employee Name)

(Employee Address)

Dear _____:

As you know, the State has denied or is contesting your claim for workers' compensation benefits; however, we want to make you aware of your rights under the Family and Medical Leave Entitlements. Should your illness be considered a "serious health condition" or "serious illness", you may be eligible for leave under these laws.

Attached is the DAS General Letter 39 – State of Connecticut Family and Medical Leave Entitlements Policy. This policy outlines the provisions and eligibility requirements for Federal FMLA, State FMLA, SEBAC Supplemental Leave, Pregnancy Disability Leave, Organ Donor Leave and Bone Marrow Donor Leave. You must complete and return to me the attached **FMLA-HR1** form and the medical certificate, **Form P33A**, within 15 days, or no later than (date) _____.

If the information provided by your physician certifies that you do have a qualifying illness and you meet the guidelines for eligibility for federal and/or state family medical leave, your absence will be coded accordingly and counted against your entitlement under the applicable law(s).

Whether or not you are eligible for the Family and Medical Leave Entitlements, failure to submit a medical certificate covering your absence from (date) _____ through the present may result in your time coded as unauthorized leave.

Please be advised that under Section 5-243-1(b) of the Regulations of State Agencies, an unauthorized leave for five or more working days may be deemed to be a resignation not in good standing. If we do not receive the required medical documentation by (date) _____, the department will proceed accordingly. If you have any questions, please feel free to contact me at _____ (insert telephone number).

Sincerely,

Human Resources Professional

cc