

Notes on CT PFML Legislation

Section 1 3
 Key definitions:.....3

Section 2 3
 The Quasi:3
 Establishes the Paid Family and Medical Leave Insurance Authority 3
 Board members: 4
 Employees of the Authority: 4
 Conflict of Interest..... 5

Section 3 6
 The Program6
 Overview of the Program: 6
 Withholdings: 6
 Contributions: 6
 Benefits:..... 7
 Weekly compensation: 9

Section 4 10

Section 5 13
 Trust Fund:13

Sections 6 & 7..... 13
 Role of the State Treasurer.....13

Section 8 14
 Conduct of the Board14

Section 9 14
 Self employment/Sole Proprietorship.....14

Section 10 14

Section 11 14
 Private Plans.....14

Section 12 15
 Appeals of Denied Claims.....15

Section 13 16
 Written Notice.....16

Section 14 16
 Fraud.....16
 Medical Certification.....16

Section 15 16
 Employee rights16

Section 16 17
 Reporting17

CT FMLA 17

Notes on CT PFML Legislation

Key definitions.....17

Length of Leave.....19

Covered Conditions.....19

Intermittent Leave19

Payment20

Notification20

Married Coworkers20

Armed Forces.....20

Certification.....21

Second Opinions21

Recertification22

Records and Documentation22

Employee Protections22

Public Act 19-25

<https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>

Public Act 19-117

<https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00117-R00HB-07424-PA.pdf>

Section 1

Key definitions:

- **Base period:** first four of the last five completed quarters (same as the base period used in UI)
- **Base weekly earnings:** 1/26 (rounded down) earned during the highest two quarters (so highest six months of earnings, divided by the 26 weeks in those six months)
- **Earnings:** covered employee's total wages, as defined in subsection (b) of section 31-222 of the general statutes, or self-employment income, as defined in 26 USC 1402(b)
- **Subject earnings:** total wages up to the Social Security cap
- **Covered employee:** Earned at least \$2,325 in the highest quarter of the base period, and
 - Is currently employed, OR
 - Has been employed within the last 12 weeks, OR
 - Is self-employed/sole proprietor/and CT resident enrolled in the program
- **Covered public employee:** (See Section 1(5))

Section 2

(Section 2 of public act 19-25 was repealed and replaced with Section 233 of public act 19-117)

The Quasi:

Establishes the Paid Family and Medical Leave Insurance Authority

Powers vested in and exercised by Board of Directions (13 voting members)

1. The Labor Commissioner, or designee
2. Secretary of the Office of Policy and Management, or designee
3. Commissioner of Administrative Services or designee
4. Commissioner of Economic and Community Development, or his or her designee
5. Appointee of Speaker of the House of Representatives
 - a. “shall have skill, knowledge and experience in the interests of employees”
6. Appointee of Majority Leader of the House of Representatives
 - a. “shall be an attorney advocating for the rights, benefits and opportunities of employees”
7. Appointee of Minority Leader of the House of Representatives
 - a. “shall have skill, knowledge and experience in the interests of disability insurance plans”
8. Appointee of President Pro Tempore of the Senate
 - a. “shall be an impacted individual who has personal knowledge and experience with economically distressed and underserved communities and is reflective of the ethnic and economic diversity of such communities”
9. Appointee of Majority Leader of the Senate

Notes on CT PFML Legislation

- a. “shall have skill, knowledge and experience in the interests of small business employees”
10. Appointee of Minority Leader of the Senate
 - a. “shall have skill, knowledge and experience in the interests of employees of large businesses”
11. Appointee of the Governor
 - a. “shall have skill, knowledge and experience in modern software practices”
12. Appointee of the Governor
 - a. “shall have skill, knowledge and experience in family and medical leave programs”
13. Appointee of the Governor
 - a. “shall have skill, knowledge and experience in family and medical leave programs” (duplicate of position # 12)

The State Treasurer, or his or her designee, and the State Comptroller, or his or her designee, shall serve as ex-officio nonvoting members

Board members:

- Serve an initial term of four (4) years
- Governor and Electeds will appoint successors, who will serve for three (3) years
 - Board members stay on until their successor has been appointed
 - If a member misses three consecutive meetings or fails to attend at least 50 percent of meetings held in a calendar year they will be assumed to have resigned from the Board.
 - Vacancies shall be filled within 30 days the office becomes vacant
 - Members may be reappointed
- The Governor will choose the chairperson of the board
 - Vice-chairperson and other officers (as deemed necessary) will be appointed by the board annually
- Executive Director:
 - Will be appointed by the board, but is not a member of the board
 - Will be an employee of the authority, and will be compensated as determined by the board

Employees of the Authority:

- Jan. 1, 2022 – will be considered state employees
- Those who whose jobs would normally be within an executive branch collective bargaining unit will be become part of those units.
- Managers and other employees not covered by a collective bargaining unit will be exempt from classified service.
 - Unclassified positions do not have to comply with personnel policies/procedures of DAS or OPM regarding:
 - Creation of new positions,

Notes on CT PFML Legislation

- Number of those positions,
 - Decisions of how to fill those positions, or
 - Time for filling those positions
- The Authority will determine the qualifications, pay scale, incentives, etc. for unclassified positions and will have hiring and firing authority
- Executive branch can negotiate with the collective bargaining unit(s) on behalf of the Authority, and the Authority has the right to have a representative present at such bargaining
- Officers and all other employees of the Authority will be considered state employees for the purposes of:
 - Group welfare benefits, and
 - Retirement
 - The authority will reimburse the state for all costs associated with this designation
- Members of the Board will not be compensated, but can be reimbursed for their expenses (in accordance with the standard travel regulations)
- Each Board member:
 - Shall take and subscribe the oath of affirmation no later than 10 calendar days after his or her appointment
 - If authorized by the Board to handle funds or sign checks: within 10 calendar days shall:
 - Execute a surety bond in the penal sum of \$50,000 or procure an equivalent insurance product, OR
 - The chairperson shall obtain a blanket position bond covering the executive director and each member of the board and other employee or authorized officer of the authority in the penal sum of \$50,000
- Authorized officer or the Executive Director will supervise the administrative affairs and technical activities of the program in accordance with the directives of the Board. This person shall:
 - Keep a record of the proceedings of the program and be custodian of all books, documents and papers filed with the program, the minute book or journal of the program and its official seal
 - Make copies of all minutes and other records and documents of the program (with certification that they are official copies)
- Majority of the voting members of the Board will constitute a quorum for any business or the exercise of any power of the Authority
 - Except as specified in section 1-121 of the general statutes and subdivision (14) of subsection (b) of section 4 of public act 19-25, the affirmative vote of a majority of voting members present at a meeting of the board shall be sufficient for action taken by the board.

Conflict of Interest

- No member of the Board, or officer, agent, or employee of the Authority shall have any direct or indirect financial interest in any entity contracting with the Authority
 - "financial interest" does not include an interest of a de minimis nature or an interest that is not distinct from that of a substantial segment of the general public

Notes on CT PFML Legislation

- It shall not be considered a conflict of interest for a trustee, director, officer or employee of a bank, insurance company, investment advisor, investment company or investment banking firm, to serve as a member of the board, *provided*, in each applicable case such trustee, director, officer or employee of such a firm abstains from discussion, deliberation, action and vote by the board in respect to act in which such firm has a direct interest separate from the interests of all similar firms generally.

The Board will exist as long as the program is in effect and until its existence is terminated by law – at which point all rights and properties shall be passed on to and vested in the state of CT

Section 3

The Program

Overview of the Program:

- The Paid Family and Medical Leave Insurance Authority will establish and administer the Paid Family and Medical Leave Insurance Program to:
 - Provide up to 12 weeks of PFML compensation (2 additional weeks for covered employees with a serious health condition resulting in incapacitation that occurs during a pregnancy) within a 12 month period

Withholdings:

- Begin on January 1, 2021, but not later than February 1, 2021
- Covers each employee and each self-employed individual or sole proprietor who has enrolled in the program
- Taxes on wages up to the Social Security cap
- Exact tax rate determined by the Authority, but cannot exceed 0.5 percent
- Beginning on September 1, 2022, and on each September first thereafter, the authority shall publish:
 - Total contributions collected and benefits paid during the previous fiscal year,
 - Total administrative costs in the previous fiscal year,
 - Total amount remaining in the trust fund at the close of the previous fiscal year,
 - Target fund balance sufficient to ensure the solvency of the program while limiting the need for withholding increases or benefit reductions,
 - Difference between the remaining balance in the trust fund and the target fund balance

Contributions:

- Beginning on November 1, 2022, and on each November first thereafter the Authority may announce a change to the contribution rate, which may not exceed 0.5 percent.
 - Revisions must allow the trust fund to meet and maintain the target fund balance.
 - The revised contribution rate will go into effect January 1 of the following year after revisions are announced.

Notes on CT PFML Legislation

- Employers paying wages are responsible to deduct and withhold the appropriate contributions for each payroll period.
 - NOTE: Because contributions are only based on earnings up to the Social Security cap, this will require estimations in some instances. A procedure will need to be developed to assess whether high-earning individuals have over-contributed, and to refund excess contributions. This adjustment could logically become part of state income tax processing, or other options could be developed based on the experiences of other states, which also cap taxable earnings.
- If an employee, employer, self-employed individual or sole proprietor covered by the program fails to make contributions, a state collection agency will collect the contributions and any interest.
 - NOTE: There is no mechanism for submitting withholdings to the trust fund written into the statute, and this process will need to be developed by the Authority as part of the official Policies and Procedures.

Benefits:

- Beginning on January 1, 2022, but not later than February 1, 2022 covered employees will be eligible to begin receiving compensation for qualifying paid family and medical leaves. Compensations will be allowed for:
 - Up to 12 weeks of leave in a 12 months period, with two additional weeks available for a serious health condition resulting in incapacitation that occurs during a pregnancy
 - NOTE: This total amount of leave does not need to be consecutive, nor all taken for the same reason
 - Leaves may be taken for the same covered conditions in the CT FMLA, including:
 - The birth, adoption, or foster placement of a child
 - To care for a family member with a serious health condition
 - To address the individual's own serious health condition
 - To serve as an organ or bone marrow donor
 - Because of any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces
 - In addition, leave may be taken for reasons set forth in the CT Family Violence leave law pursuant to C.G.S. 31-51ss.
- In order to receive compensation, the covered individual must:
 - Provide notice to the Authority and to their employer (if applicable) of the need for compensation
 - NOTE: the form and manner of notice has yet to be determined by the Authority
 - Provide certification to the Authority and to their employer (if applicable) of the need for leave/compensation, similar to the certification required in the CT FMLA, including the following:
 - Must be issued by the health care provider of the leave-taker, or the leave-taker's family member in the case of family caregiving leaves

Notes on CT PFML Legislation

- Must include the following information:
 - The date the serious health condition commenced
 - The likely duration of the health condition
 - The “appropriate medical facts within the knowledge of the health care provider regarding the condition”
 - NOTE: Generally speaking, employees are not required to waive HIPPA when applying to their employer for FMLA leave. However, in this instance the Authority will likely want to follow the example of other state programs and require a HIPPA waiver and the submission of more detailed medical information than should be provided to employers.
 - A statement that the individual is unable to perform the functions of their position (NOTE: the Authority should clarify what this means for covered workers who are not currently employed but still eligible for compensation while experiencing a qualifying condition), or a statement that they are needed to care for a family member and an estimate of the length of time such care will be required.
 - In the case of intermittent leave or leave on a reduced leave schedule for planned medical treatment:
 - The dates on which such treatment is expected to be given and the duration of such treatment
 - A statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule
 - A statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule
 - A statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the spouse, son or daughter, parent or next of kin who is a current member of the armed forces, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty, and the expected duration and schedule of the intermittent leave or reduced leave schedule
 - Workers do not have to be currently employed to receive compensation, provided they meet other eligibility requirements
 - If the Authority deems it possible, there is an option to begin providing compensation to individuals after the birth/adoption/foster placement of a child before offering compensation for other qualifying conditions

Notes on CT PFML Legislation

- However, this does not impact the overall timeline, wherein compensation for all covered conditions must begin no later than February 1, 2022.

Weekly compensation:

- Equal to 95 percent of the covered employee's base weekly earnings, for the amount of earnings up to 40 times the minimum fair wage
 - NOTE: Base weekly earnings are equal to 1/26 (rounded down) earned during the highest two quarters (so highest six months of earnings, divided by the 26 weeks in those six months)
 - NOTE: 40 times the minimum fair wage will be equal to \$520 weekly in January 2022 when benefits begin being paid, increasing to \$560 on July 1, 2022, and \$600 on June 1, 2023.
- Additional earnings over 40 times the minimum fair wage will be replaced at 60 percent, up to a cap of 60 times the minimum fair wage
 - NOTE: 60 times the minimum fair wage will be equal to \$780 weekly in January 2022 when benefits begin being paid, increasing to \$840 on July 1, 2022, and \$900 on June 1, 2023.
 - NOTE: By way of example, a full-time worker earning \$20 per hour and working 40 hours per week would have base weekly earnings of \$800. In June 2023, once the fair minimum wage is fully phased in, they would be eligible to receive 95% of their first \$600 in earnings (\$570), plus 60 percent of their next \$200 in earnings (\$120), for a total of \$690.
- Compensation will be available on a prorated basis for workers taking leave in increments of less than 1 full week.
- The Authority may reduce the rate of wage replacement if it is determined that employee contributions are at their maximum level and not sufficient to maintain the solvency of the trust fund
- If a covered worker chooses to have income tax deducted from their paid leave benefit compensation, the amount specified will be deducted and withheld in accordance with state law
- Individuals may receive compensation for non-consecutive hours of leave
- Individuals may receive compensation through the state program at the same time as receiving benefits from their employer, although the total amount of combined compensation cannot exceed 100 percent of their regular rate of compensation
- Workers may not receive PFML compensation at the same time they are receiving compensation through Unemployment Insurance, or Worker's Compensation, or any other state or federal benefit that provides wage replacement
- Any moneys expended from the General Fund for the purpose of administering the Family and Medical Leave Insurance Program, or providing compensation to covered employees, shall be reimbursed to the General Fund on or before October 1, 2022

Section 4

(Section 4 of public act 19-25 was repealed and replaced with Section 234 of public act 19-117)

Procedures:

The Board shall adopt written procedures for the purposes of:

- Adopting an annual budget and plan of operations, including a requirement of board approval before such budget or plan may take effect;
- Adopting bylaws for the regulation of the affairs of the board and the conduct of its business;
- Hiring, dismissing, promoting and compensating employees of the authority and instituting an affirmative action policy;
- Acquiring real and personal property and personal services, including requiring board approval for any non-budgeted expenditure in excess of five thousand dollars;
- Contracting for financial, legal and other professional services, and requiring that the authority solicit proposals not less than every three years for each such service used by the board;
- Using surplus funds to the extent authorized under sections 2 to 16, inclusive, of this act or any other provisions of the general statutes;
- Establishing an administrative process by which grievances, complaints and appeals regarding employment at the authority are reviewed and addressed by the board; and
- Implementing the provisions of this act or other provisions of the general statutes, as appropriate.

The Authority has the ability to:

- Adopt an official seal and alter the same at the pleasure of the board;
- Maintain an office at such place or places in the state as the board may designate;
- Sue and be sued, and plea and be impleaded, in its own name;
- Establish criteria and guidelines for the Paid Family and Medical Leave Insurance Program to be offered pursuant to this section, sections 2 and 3 and sections 5 to 16, inclusive, of this act;
- Employ staff, agents and contractors as may be necessary or desirable and fix the compensation of such persons;
- Design, establish and operate the program to ensure transparency in the management of the program through oversight and ethics review of plan fiduciaries;
- Design and establish a process by which employees and self-employed individuals or sole proprietors who have enrolled in the program shall contribute a portion of their subject earnings to the trust;
- Evaluate and establish a process by which employers may credit employee contributions to the trust through payroll deposit;
- Ensure that contributions to the trust collected from employees and self-employed individuals or sole proprietors who have enrolled in the program pursuant to section 9 of this act shall not be used for any purpose other than providing compensation to covered employees, educating and informing persons about the program and paying the operational, administrative and investment costs of the program;
- Establish and maintain a secure Internet web site that displays all public notices issued by the authority and such other information as the authority deems relevant and necessary

Notes on CT PFML Legislation

for the implementation of the program and for the education of the public regarding the program;

- Establish policies, or written procedures in accordance with the provisions of the general statutes, as appropriate

Policies and Procedures:

The written policies and procedures of the Authority shall include, but not be limited to:

- Establishing a process to determine whether an individual meets the program eligibility requirements, including the certification required
- Establishing methods for obtaining and reviewing information (books, records, documents, contracts or other papers) relevant to individual's eligibility
- Establishing methods for summoning and examining under oath witnesses who may hold relevant information pertaining to an individual's eligibility and claim for compensation
- Ensuring the confidentiality of records and documents
- Establishing the contribution rate, provided it does not exceed 0.5 percent
- Ensuring the solvency of the trust fund and adjusting the compensation rate if necessary
- Determining whether an employer meets the conditions to remove their employees from the state fund through a voluntary plan, including:
 - Approval,
 - Oversight,
 - Termination of private plans, and
 - Developing any potential alternate measure of subject earnings for the purposes of calculating compensation under such plans
 - NOTE: Because the state has the ability to pool wages across employers, alternate measures of earnings may be necessary for the calculation of compensation through private plans. Other issues include: multiple job-holders who are simultaneously covered through private plans and the state program, ensuring coverage for employees who transition on and off the state plan to private plans when changing employment, the appropriate transfer of funds between the private and public plans for leave-takers who have recently transitioned between jobs, et cetera.
- The use of state administrative data to implement the program, including the administration of:
 - Eligibility determination,
 - Benefit calculation,
 - Program planning,
 - Recipient outreach, and
 - Continuous improvement and program evaluation, including assessment of longitudinal impact
- The sharing user data and other data collected through program administration with other state agencies for purposes, including, but not limited to:
 - Improving delivery of benefits and services to program participants and other persons,
 - Streamlining eligibility determination for programs administered by other agencies,
 - Recipient outreach and continuous improvement and program evaluation, including assessment of longitudinal impact

Notes on CT PFML Legislation

(All expenses related to these activities, including compensation to other state agencies for associated costs, shall be considered appropriate administrative costs to the program)

- Enter into agreements with any department, agency, office or instrumentality of the United States or this state to carry out the program, including:
 - Memoranda of understanding with the Labor Department and other state agencies regarding:
 - The gathering or dissemination of information necessary for the operations of the program, subject to such obligations of confidentiality as may be agreed or required by law,
 - The sharing of costs incurred pursuant to the gathering and dissemination of such information, and
 - The reimbursement of costs for any enforcement activities conducted pursuant to this act.
 - Memoranda of understanding with the Department of Revenue Services and the Labor Department for:
 - The collection of employee contributions, and
 - The reimbursement of costs by the authority for any costs incurred related to the collection of employee contributions.
 - Memoranda of understanding with the Labor Department for:
 - The adjudication of claims by covered employees denied compensation under the program, and
 - The reimbursement of costs by the authority for any costs incurred by the Labor Department related to the adjudication of contested claims or penalties
 - Any contract or agreement necessary or incidental to the performance of its duties and execution of its powers, subject to the provisions of this section
 - The contracts and agreements entered into by the authority shall not be subject to the approval of any other state department, office or agency,
 - Copies of all such contracts shall be maintained by the authority as public records, subject to the proprietary rights of any party to such contracts.
 - No contract shall contain any provision in which any contractor derives any direct or indirect economic benefit from denying or otherwise influencing the outcome of any claim for benefits;
 - The standard criteria for the evaluation of proposals from outside contractors (for potential tasks such as claims processing, web site development, database development, marketing and advertising, or any of proposals relating to all other contracts in amounts equal to or exceeding \$250,000) shall include, but need not be limited to:
 - Transparency,
 - Cost,
 - Efficiency of operations,
 - Quality of work related to the contracts issued,
 - User experience,
 - Accountability, and

- A cost-benefit analysis documenting the direct and indirect costs, including qualitative and quantitative benefits that will result from the implementation of such contracts.
- The establishment of additional standard criteria shall be approved by a two-thirds vote of the board after such criteria have been posted on a public Internet web site maintained by the authority for notice and comment for at least one week prior to such vote.

Section 5

Trust Fund:

- The "Family and Medical Leave Insurance Trust Fund" is established for the purpose of providing family and medical leave compensation to covered employees
 - It shall be a non-lapsing fund held by the State Treasurer separate and apart from all other moneys, funds and accounts
 - Investment earnings credited to the trust shall become part of the trust
 - The fund shall constitute an instrumentality of the state and shall perform essential governmental functions
 - Deposits in the trust shall not constitute property of the state and shall not be construed to be a department, institution or agency of the state
 - Deposits in the trust shall not be commingled with state funds and the state shall have no claim to or against, or interest in, such funds

Sections 6 & 7

Role of the State Treasurer

- The State Treasurer shall be responsible for the receipt and investment of moneys held by the trust
- The trust shall be used for:
 - Distributing family and medical leave compensation to covered employees,
 - Paying the operational and administrative costs of the authority,
 - Educating and informing persons about the program, and
 - Paying the operational, administrative and investment costs of the trust

The State Treasurer, on behalf of the Family and Medical Leave Insurance Trust Fund and for purposes of the trust, shall:

- Receive and invest moneys in the trust
- Procure insurance as the State Treasurer deems necessary to protect the trust's property, assets, activities or deposits or contributions to the trust
- Apply for, accept and expend gifts, grants or donations from public or private sources to carry out the objectives of the trust

Section 8

Conduct of the Board

The Paid Family and Medical Leave Insurance Authority board of directors, in conducting the business of the authority, including its oversight functions, shall act with care and in accordance with the statute

Section 9

Self employment/Sole Proprietorship

- Self-employed or sole proprietors may enroll in the program (at the discretion and under the application guidelines determined by the Authority), provided that:
 - They must be enrolled for a minimum of three years
 - After the initial three years, they will be automatically reenrolled for at least one year at a time
 - They may withdraw by submitting a request in writing at least 30 days before the expiration of their initial (3 year) enrollment or subsequent reenrollment, or at any other time determined by the Authority

Section 10

Public Education:

- The authority shall conduct a public education campaign to inform individuals and employers regarding the Family and Medical Leave Insurance Program
 - Money contributed to the trust fund may be used for the public education campaign
 - Materials shall be published in Spanish and English and any other language determined by the Authority
- Any web site, web-based form, application or digital service must:
 - Be accessible to people with disabilities
 - Have a consistent appearance
 - Contain an easily usable search function
 - Be provided through an industry standard secure connection
 - Be designed around user needs
 - Allow users to complete digital transactions in an efficient and accurate manner
 - Be fully functional and usable on common mobile devices
 - Use free and open-source tools when possible

Section 11

Private Plans

Employers may apply to exempt their employees from the state program by offering a private plan, which must:

Notes on CT PFML Legislation

- Confer all of the same rights, protections and benefits provided to employees under said sections, including by providing
 - at least the same number of weeks of benefits;
 - at least the same level of wage replacement for each of those weeks; and
 - benefits for the same covered conditions (parental, family caregiving, temporary disability, or military leaves)
- Impose no additional conditions or restriction on the use of family or medical leave
- Cost employees no more than the premium charged to employees under the state program
- Provide coverage for all employees throughout their period of employment
- Provide for the inclusion of future employees
- Not result in a substantial selection of risks adverse to the Family and Medical Leave Insurance Trust or otherwise significantly endanger the solvency of the fund
- Have been approved by a majority vote of the employer's employees, and
- Meet any additional requirements established by the authority

Private plans must also:

- Furnish a bond to the state (if self-insured)
- Be approved by the Insurance Commissioner and be issued by an approved insurer (if offered through private insurance)

Approval for private plans may be rescinded due to

- Failure to pay benefits;
- Failure to pay benefits timely and in a manner consistent with the public plan;
- Failure to maintain an adequate security deposit
- Misuse of private plan funds;
- Failure to submit reports as required; or
- Failure to comply with other sections of this act

Employees enrolled in an approved private plan:

- Shall not contribute to the trust fund
- May contribute an equal amount to the purposes of the private plan
 - These contributions may not be increased other than on the anniversary of the effective date of the private plan or within thirty days after the state adjusts the contribution rate
- Shall retain all other rights under this act
- Shall be subject to administrative appeal and appeal to the Superior Court for denied claims, as are all workers in the state program

Section 12

Appeals of Denied Claims

- Complaints may be filed with the Labor Commissioner
- Upon receipt of the claims, the Commissioner shall hold a hearing
- After the hearing, the Commissioner shall send each party a written copy of the commissioner's decision
- The commissioner may:

Notes on CT PFML Legislation

- Award the covered employee or person all appropriate relief, including any compensation or benefits to which the employee otherwise would have been eligible if such denial had not occurred.
- Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court

Section 13

Written Notice

- Employers shall provide written notice at the timing of hiring and annually thereafter regarding:
 - The entitlement to paid family and medical leave
 - The opportunity file a claim for compensation
 - That retaliation is prohibited
 - That the employee has the right to file a complaint if aggrieved

Section 14

Fraud

- Potential leave-takers who willfully make a false statement or misrepresentation regarding a material fact, or willfully fail to report a material fact, to obtain family and medical leave compensation shall be disqualified from receiving any compensation under the program for two years
- If compensation is provided when it should not have been (whether due to fraud or other issues) the Authority may seek repayment, with a penalty of 50% in cases of willful misrepresentation
- If compensation is inappropriately provided due to the willful misrepresentation by a medical provider, the Authority shall notify the Labor Commissioner and may seek payment of a penalty from the provider for 300 percent of the benefits paid
- Any person who aids in the fraudulent claim of benefits shall be liable for the same financial penalty as the person making or attempting to make the claim

Medical Certification

- Health care providers shall complete the required/requested documentation in a timely manner, and may not require payment for doing so

Section 15

Employee rights

Nothing shall:

- Prevent employers from providing any benefits that are more generous than those provided by the Authority

Notes on CT PFML Legislation

- Diminish any rights provided to any covered employee under the terms of the covered employee's employment or a collective bargaining agreement
- Interfere with, impede or in any way diminish the right of an employee to bargain collectively with his or her employer through a representative of his or her choosing

Section 16

Reporting

No later than July 1, 2022, and annually thereafter, the authority shall report on:

- The projected and actual participation in the program
- The balance of the trust
- The reasons claimants are receiving family and medical leave compensation
- The success of outreach and education efforts
- Demographic information of claimants, including gender, age, town of residence and income level, and
- The total number of claims made and claims denied

CT FMLA

Changes effective January 1, 2022

Key definitions

- **Eligible employee:** an employee who has been employed for at least 3 months immediately preceding the request for leave
- **Employ:** to allow or permit to work
- **Employee:** any person engaged in service to an employer in this state in the business of the employer
- **Employer:** a person engaged in any activity, enterprise or business who employs one or more employees, and includes any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer and any successor in interest of an employer
 - "Employer" does not include the state, or a municipality, a local or regional board of education, or a nonpublic elementary or secondary school
- **Employment benefits:** all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions
- **Family member:** spouse, sibling, son or daughter, grandparent, grandchild or parent, 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;
- **Grandchild:** grandchild related to a person by
 - Blood,
 - Marriage,
 - Adoption by a child of the grandparent, or
 - Foster care by a child of the grandparent;

Notes on CT PFML Legislation

- **Grandparent:** grandparent related to a person by
 - Blood,
 - Marriage,
 - Adoption of a minor child by a child of the grandparent, or
 - Foster care by a child of the grandparent;
- **Health care provider:**
 - Doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;
 - Podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performs within the scope of the authorized practice;
 - Advanced practice registered nurse, nurse practitioner, nurse midwife or clinical social worker authorized to practice by the state in which such person practices and performs within the scope of the authorized practice;
 - Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
 - Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
 - Health care provider as defined here who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country; or
 - Such other health care provider as the Labor Commissioner determines, performing within the scope of the authorized practice
- **Parent:** biological parent, foster parent, adoptive parent, stepparent, parent-in-law or legal guardian of an eligible employee or an eligible employee's spouse, an individual standing in loco parentis to an eligible employee, or an individual who stood in loco parentis to the eligible employee when the employee was a child
- **Person:** one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or organized groups of persons
- **Reduced Leave Schedule:** leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee
- **Serious Health Condition:** illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care in a hospital, hospice, nursing home or residential medical care facility; or
 - Continuing treatment, including outpatient treatment, by a health care provider
- **Sibling:** brother or sister related to a person by
 - Blood,
 - Marriage,
 - Adoption by a parent of the person, or
 - Foster care placement
- **Son or Daughter:** biological, adopted or foster child, stepchild, legal ward, or, in the alternative, a child of a person standing in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a child
- **Spouse:** person to whom one is legally married

Length of Leave

- Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period
 - Employees may take up to 2 additional weeks of leave during this 12-month period for a serious health condition resulting in incapacitation that occurs during a pregnancy.
- A year can be determined by any of the following methods:
 - A calendar year,
 - Any fixed 12-month period, such as a fiscal year, or a 12-month period measured forward from an employee's first date of employment,
 - A 12-month period measured forward from an employee's first day of leave, or
 - A rolling 12-month period measured backward from an employee's first day of leave.

Covered Conditions

- Leave may be taken for the following reasons:
 - Upon the birth of a son or daughter of the employee;
 - Upon the placement of a son or daughter with the employee for adoption or foster care;
 - In order to care for a family member of the employee, if such family member has a serious health condition;
 - Because of a serious health condition of the employee;
 - In order to serve as an organ or bone marrow donor; or
 - Because of any qualifying exigency, as determined in regulations adopted by the United States Secretary of Labor, arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in the armed forces
- Entitlement to leave may accrue prior to the birth or placement of a son or daughter when such leave is required because of such impending birth or placement

Intermittent Leave

- Leave taken for the birth or placement of a son or daughter may not be taken intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise
- Leave taken for a serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary.
- The use of intermittent leave or reduced leave schedules shall not result in a reduction of the total amount of leave to which the employee is entitled beyond the amount of leave actually taken.
- If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that
 - has equivalent pay and benefits, and

Notes on CT PFML Legislation

- better accommodates recurring periods of leave than the regular employment position of the employee,
- provided that this shall not conflict with any provision of a collective bargaining agreement

Payment

- Leave taken under the CT FMLA may consist of unpaid leave
- If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required may be provided without compensation or with compensation through the Family and Medical Leave Insurance Program
- An employee may elect, or an employer may require the employee, to substitute any accrued paid vacation leave, personal leave or family leave of the employee for leave provided under the CT FMLA for any part of the 12-week period of such leave provided the employee may retain not less than two weeks of such leave
- Nothing here will require an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide paid leave

Notification

- If new child leave is foreseeable, the employee shall provide their employer with not less than 30 days' notice before the leave is to begin, and if the date of birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- If the need for medical or caregiving leave is foreseeable based on planned medical treatment, the employee shall
 - Make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of their employer, subject to the approval of the relevant health care provider,
 - Provide the employer with no less than 30 days' notice before the leave is to begin, and if the date of treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable

Married Coworkers

- If two spouses entitled to leave are employed by the same employer, the total number of workweeks of leave to which both may be entitled to may be limited to 12 workweeks during any 12-month period (with the exception of personal medical leave)

Armed Forces

- An eligible employee who is the spouse, son or daughter, parent or next of kin of a current member of the armed forces who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty shall be entitled to a one-time benefit of 26 workweeks of leave during any 12-month period for each armed forces member per serious injury or illness incurred in the line of duty.

Notes on CT PFML Legislation

- The 12-month period shall commence on an employee's first day of leave taken to care for a covered armed forces member and end on the date twelve months after such first day of leave.
- For the purposes of this subsection, "next of kin" means the armed forces member's nearest blood relative, other than the covered armed forces member's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the armed forces member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered armed forces member has specifically designated in writing another blood relative as his or her nearest blood relative or any other individual whose close association with the employee is the equivalent of a family member for purposes of military caregiver leave, in which case the designated individual shall be deemed to be the covered armed forces member's next of kin; and "son or daughter" means a biological, adopted or foster child, stepchild, legal ward or child for whom the eligible employee or armed forces member stood in loco parentis and who is any age.

Certification

- Employers may require that requests for leave are accompanied by a certification issued by the health care provider of the eligible employee or of the next of kin or family member of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.
- Certification shall be sufficient if it contains:
 - The date on which the serious health condition commenced;
 - The probable duration of the condition;
 - The appropriate medical facts within the knowledge of the health care provider regarding the condition;
 - In cases of caregiving leave, a statement that the eligible employee is needed to care for the family member and an estimate of the amount of time that such employee needs to care for the family member;
 - In cases of personal medical leave, a statement that the employee is unable to perform the functions of the position of the employee;
 - In cases of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;
 - In cases of certification for intermittent leave or leave on a reduced leave schedule, a statement of the medical necessity of the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule

Second Opinions

- If the employer doubts the validity of the certification they may require, at the employer's expense, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified for such leave
 - This health care provider shall not be employed on a regular basis by the employer

Notes on CT PFML Legislation

- If this second opinion differs from the original certification, the employer may require, at the employer's expense, that the eligible employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning any information certified for such leave
- The third opinion shall be considered final and binding

Recertification

- The employer may require that the eligible employee obtain subsequent recertification on a reasonable basis, provided the standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement if such a collective bargaining agreement is in effect.
- Unless otherwise required by the employee's health care provider, the employer may not require recertification more than once during a thirty-day period and may not unreasonably require recertification.
- The employer shall pay for any recertification that is not covered by the employee's health insurance.

Records and Documentation

- Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members shall be maintained as medical records pursuant to all relevant laws, except that:
 - Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations
 - First aid and safety personnel may be informed, when appropriate, if the employee's physical or medical condition might require emergency treatment; and
 - Government officials investigating compliance with the CT FMLA and the PFMLI program or other pertinent law shall be provided relevant information upon request

Employee Protections

- Employers will be in violation if they:
 - Interfere with, restrain or deny the exercise of, or the attempt to exercise, any right provided under this act;
 - Discharge or cause to be discharged, or in any other manner discriminate, against any individual for opposing any practice made unlawful by said sections or because such employee has exercised the rights afforded to such employee under this act;
 - Discharge or cause to be discharged, or in any other manner discriminate, against any individual because such individual:
 - Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this act;
 - Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this act; or
 - Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this act

Notes on CT PFML Legislation

- Deny an employee the right to use up to two weeks of accumulated sick leave or to discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, up to two weeks of accumulated sick leave to attend to a serious health condition of a family member of the employee, or for the birth or adoption of a son or daughter of the employee.
 - “Sick leave” means an absence from work for which compensation is provided through an employer's written policy providing compensation for loss of wages occasioned by illness, but does not include absences from work for which compensation is provided through an employer's plan, including, but not limited to, a short or long-term disability plan, whether or not such plan is self-insured
- Any employee aggrieved by a violation may file a complaint with the Labor Commissioner.
 - Upon receipt of any such complaint, the commissioner shall hold a hearing.
 - After the hearing, the commissioner shall send each party a written copy of the commissioner's decision.
 - The commissioner may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if a violation of this subsection had not occurred.
 - Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court.
- Not later than January 1, 2022 the Labor Commissioner shall adopt the necessary procedures and guidelines, including:
 - Guidelines regarding factors to be considered when determining whether an individual's close association with an employee is the equivalent of a family member's, and
 - Procedures for hearings and redress, including restoration and restitution, for an employee who believes that there is a violation by the employer