STATE OF CONNECTICUT

FAMILY AND MEDICAL LEAVE
ENTITLEMENTS MANUAL

Prepared by the Connecticut Department of Administrative Services
September 2018
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.

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:

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**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.
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.
Part 1: FUNDAMENTALS

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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 state employees:
  - An eligible employee is entitled to a **maximum of 16 weeks of leave within a 2-year period** for "standard" leave reasons.
  - 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 his or her 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;
  - 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 child, spouse or parent in connection with:
  - Their disability period related to pregnancy and childbirth;
  - Their organ or bone marrow donation; or
  - Their other serious health condition.

  NOTE: The state FMLA also allows an employee to take caregiver leave to care for the employee’s parent-in-law.

• **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](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.](https://www.dol.gov/whd/fmla/fmlaAmended.htm)

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

**ARE 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.
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
- 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 six 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.

**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(a)(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 six 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 six 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.
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 he or she is 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.

  o 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 of 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 time off
- Worker’s Compensation absences

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

**BECOMING ELIGIBLE FOR FEDERAL OR STATE FMLA WHILE ON LEAVE**

An employee can become eligible for leave under federal FMLA or state FMLA while on non-FMLA leave.

**Example:**

- Steve started working for the State on January 2, 2015.
- Steve breaks his leg on December 1, 2015 and needs to be out of work for approximately 8 weeks, returning on February 1, 2016.
- As of December 1st, Steve has worked more than 1250 hours but he has not yet worked for the State for 12 months. 
  THEREFORE, Steve will be out on non-FMLA medical leave (using his sick leave accruals) from December 1, 2015 until January 1, 2016.

- On January 2, 2016, Steve will meet his 12-month requirement and will become eligible for federal FMLA leave. 
  THEREFORE, Steve will be out on FMLA medical leave from January 2, 2016 until his return to work on February 1, 2016.
CH. 4 FUNDAMENTALS: IS THE EMPLOYEE ELIGIBLE?

State FMLA: Eligibility Requirements

To be eligible for state 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 1,000 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!

The calculation method and rules are the same as used for federal FMLA leave described above.

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 he or she has successfully completed his or her initial working test period.

- A state employee holding a position in unclassified service is “permanent” once he or she holds 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 LAYOFFS 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 child, spouse or parent in connection with:
  - Their disability period related to pregnancy and childbirth;
  - Their organ or bone marrow donation; or
  - Their other serious health condition.

  **NOTE:** The state FMLA also allows an employee to take caregiver leave to care for the employee’s parent-in-law.

- **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.

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.

FMLA-DEFINED TERMS

“Child,” “Son” or “Daughter” means:

- 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 a disability may occur at any age for purposes of the definition of an adult “son or daughter” under the FMLA.

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 he or she has 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](#) from the federal DOL 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 marriage.
- 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 sixteen (16) weeks of leave within a 2-year period.

- **Military caregiver leave:**
  - An eligible employee is entitled to a maximum of 26 weeks of leave in a 2-year period.
  - An employee can take this leave only one time per service member, per injury.
  - During any single 24-month period, the employee’s total leave entitlement is limited to a combined total of 26 weeks
for all qualifying reasons under standard state 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
CH. 7  FUNDAMENTALS: HOW MUCH LEAVE IS AVAILABLE?

with respect to any other employee benefits provided under federal or state law.

### SUMMARY OF LEAVE AVAILABILITY BY ENTITLEMENT

<table>
<thead>
<tr>
<th>LEAVE ENTITLEMENT</th>
<th>STANDARD LEAVE</th>
<th>MILITARY FAMILY LEAVE - CAREGIVER</th>
<th>MILITARY FAMILY LEAVE - QUALIFYING EXIGENCY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal FMLA</td>
<td>Up to 12 workweeks within a 12-month period</td>
<td>Up to 26 workweeks in a single 12-month period</td>
<td>Up to 12 workweeks within a 12-month period</td>
</tr>
<tr>
<td>State FMLA</td>
<td>Up to 16 workweeks within a 2-year period</td>
<td>Up to 26 workweeks in a single 24-month period</td>
<td>Up to 16 workweeks within a 2-year period</td>
</tr>
<tr>
<td>SEBAC Supplemental</td>
<td>Up to 24 workweeks within a 2-year period</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Pregnancy Disability</td>
<td>A “reasonable amount of leave”</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Organ Donor Leave</td>
<td>Up to 15 days</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Bone Marrow Donor Leave</td>
<td>Up to 7 days</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
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**.
When an employee takes intermittent or reduced schedule leave, the shortest amount of leave that can be taken is 15 minutes.

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.

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

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.
WHEN 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.

<table>
<thead>
<tr>
<th></th>
<th>Federal FM LA</th>
<th>State FM LA</th>
<th>SEBAC Supplemental Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal Medical Leave</strong> (including pregnancy and organ/bone marrow donation)</td>
<td>Block leave</td>
<td>Block leave</td>
<td>Block leave only</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
<tr>
<td><strong>Caregiver Leave</strong></td>
<td>Block leave</td>
<td>Block leave</td>
<td>Block leave only</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
<tr>
<td><strong>Bonding Leave</strong></td>
<td>Block leave</td>
<td>Block leave</td>
<td>Block leave (with employer’s consent)</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave (with employer’s consent)</td>
</tr>
<tr>
<td></td>
<td>(with employer’s consent)</td>
<td>(with employer’s consent)</td>
<td></td>
</tr>
<tr>
<td>Leave to process an adoption (pre-adoption)</td>
<td>Block leave</td>
<td>Block leave</td>
<td>N/A</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>-----</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
<tr>
<td>Leave to process the placement of a foster child (pre-placement)</td>
<td>Block leave</td>
<td>Block leave</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
<tr>
<td>Military Caregiver Leave</td>
<td>Block leave</td>
<td>Block leave</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
<tr>
<td>Military Caregiver Leave - Veteran</td>
<td>Block leave</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Military Qualifying Exigency</td>
<td>Block leave</td>
<td>Block leave</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Reduced Schedule leave</td>
<td>Reduced Schedule leave</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermittent leave</td>
<td>Intermittent leave</td>
<td></td>
</tr>
</tbody>
</table>
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 over the 16 weeks prior to the beginning of the leave.

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. There number of days or hours within the workweek are not relevant because no calculations are required.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal FMLA</strong></td>
<td>12 workweeks in a 12 month period</td>
</tr>
<tr>
<td><strong>State FMLA</strong></td>
<td>16 workweeks in a 2-year period</td>
</tr>
<tr>
<td><strong>SEBAC Supplemental Leave</strong></td>
<td>24 workweeks in a 2-year period</td>
</tr>
</tbody>
</table>

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 12 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 12 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 FMLA

For purposes of intermittent leave and reduced schedule leave, the federal FMLA leave entitlement is calculated by multiplying the 12 weeks of federal FMLA leave by the number of hours worked by the employee.

<table>
<thead>
<tr>
<th>Sample Work Schedules</th>
<th>Work Weeks</th>
<th>Work Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 hours/week</td>
<td>12</td>
<td>480</td>
</tr>
<tr>
<td>38.75 hours/week</td>
<td>12</td>
<td>465</td>
</tr>
<tr>
<td>37.5 hours/week</td>
<td>12</td>
<td>450</td>
</tr>
<tr>
<td>36.25 hours/week</td>
<td>12</td>
<td>435</td>
</tr>
<tr>
<td>35 hours/week</td>
<td>12</td>
<td>420</td>
</tr>
<tr>
<td>24 hours/week</td>
<td>12</td>
<td>288</td>
</tr>
<tr>
<td>50 hours/week</td>
<td>12</td>
<td>600</td>
</tr>
</tbody>
</table>

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 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 leave available.
State FMLA

For purposes of intermittent leave and reduced schedule leave, the state FMLA leave entitlement is calculated by multiplying the 16 weeks of state FMLA leave by the number of hours worked by the employee.

<table>
<thead>
<tr>
<th>Sample Work Schedules</th>
<th>Work Weeks</th>
<th>Work Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 hours/week</td>
<td>16</td>
<td>640</td>
</tr>
<tr>
<td>38.75 hours/week</td>
<td>16</td>
<td>620</td>
</tr>
<tr>
<td>37.5 hours/week</td>
<td>16</td>
<td>600</td>
</tr>
<tr>
<td>36.25 hours/week</td>
<td>16</td>
<td>580</td>
</tr>
<tr>
<td>35 hours/week</td>
<td>16</td>
<td>560</td>
</tr>
<tr>
<td>24 hours/week</td>
<td>16</td>
<td>384</td>
</tr>
<tr>
<td>50 hours/week</td>
<td>16</td>
<td>800</td>
</tr>
</tbody>
</table>

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 or two-year 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 his/her 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, 2016. Her federal FMLA leave year will run until September 4, 2017. Her next federal FMLA leave year will begin the first day she uses federal FMLA after September 4, 2017.

\[
\begin{align*}
9/5/2016 & \quad 9/4/2017 \quad 10/1/2017 \quad 9/30/2018 \\
X \quad X & \quad X \quad \quad X \quad \quad X \\
\text{Start federal} & \quad \text{End federal} \quad \text{Start new federal} \quad \text{End federal}
\end{align*}
\]

Example: State FMLA Leave  
(16 workweeks in a 2-year period)

Jane Doe took her first state FMLA leave on September 5, 2016. Her state FMLA leave year will run until September 4, 2018. Her next state FMLA leave year will begin the first day she uses state FMLA leave after September 4, 2018.

\[
\begin{align*}
9/5/2016 & \quad 9/4/2018 \quad 12/1/2018 \quad 11/30/2020 \\
X \quad X & \quad X \quad \quad X \quad \quad X \\
\text{Start State} & \quad \text{End State} \quad \text{Start new State} \quad \text{End State}
\end{align*}
\]
Example: SEBAC Supplemental Leave  
(24 workweeks in a 2-year period)

Joe Rogers took his first SEBAC Supplemental leave on September 5, 2016. His SEBAC Supplemental leave year will run until September 4, 2018. His next SEBAC Supplemental leave year will begin the first day he uses SEBAC Supplemental leave after September 4, 2018.

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 **“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 he/she has one or more of the following conditions summarized in the chart on the next page.
### CH. 11  FUNDAMENTALS: WHAT IS A SERIOUS HEALTH CONDITION?

#### Inpatient Care
- 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.

(Note: If surgery is elective, and an overnight stay in the hospital is required, leave is covered.)

#### OR

### Continuing Treatment by a Health Care Provider
(Any one or more of the following)

1. **Incacity 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:
   - 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.

   Examples: the health provider might prescribe a course of prescription medication or therapy requiring special equipment.

2. **Pregnancy:** Any period of incapacity due to pregnancy. *(See Chapter 14)*

3. **Chronic Conditions Requiring Treatments:**
   Any period of incapacity due to or treatment for a chronic serious health condition which:
   - Requires periodic visits for treatment 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.

   Examples: asthma, migraine headaches, diabetes, epilepsy

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. Example: 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
- 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:** 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 to 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 standard leave, “immediate family members” are defined as:

- Spouse
- Parent
- Parent-in-law (state FMLA only)
- 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 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:

Brothers, sisters, aunts, uncles, grandparents or other relatives are not covered, 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.

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 16 weeks of 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 his/her 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 HIS/HER 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 or 16 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 parent-in-law (state only) with a serious health condition.

Example:
If Lee needs to take 8 weeks to care for his/her seriously ill parent, then Pat would only have 4 weeks left to care for his/her 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 or 16 weeks of leave if leave is taken for one of the following reasons:

- For one’s own serious health condition, such as with the recovery period following the birth of a child;
- To care for a spouse, son or daughter with a serious health condition; or
- For 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.
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,
- Childbirth and delivery, and
- The period of time after the delivery during which the biological mother is certified by her doctor to be unable to perform the requirements for her job.

**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, including helpful charts and an example.

**OVERVIEW OF THE ENTITLEMENTS**

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

- **Biological Mother** - whose spouse does not work for the State or who is not married to the other parent

- **Married Parents** - both work for the State

- **Other Parent Married to Biological Mother** - biological mother does not work for the State

- **Other Parent Not Married to Biological Mother** (It does not matter if the mother works for the State.)


**WHAT IS COVERED UNDER PREGNANCY-RELATED LEAVE AND BONDING WITH A NEWBORN CHILD**

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

The following charts describe the rules based on each of the categories described above.
### CH. 14 FUNDAMENTALS: WHAT IS COVERED UNDER PREGNANCY AND BONDING?

**Biological Mother**
Whose spouse does not work for the State or who is not married to the other parent

<table>
<thead>
<tr>
<th>IF ELIGIBLE REASON</th>
<th>C.G.S. 46a-60(b)(7)</th>
<th>Federal FMLA and/or State FM LA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prenatal care and appointments</td>
<td>May be taken as intermittent or reduced schedule leave.</td>
<td>May be taken as intermittent or reduced schedule leave.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Pregnancy complications, bed rest and severe morning sickness</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Birth and disability period</td>
<td>Must be taken as block leave.</td>
<td>Must be taken as block leave.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Bond with newborn child</td>
<td>Not Applicable</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave. No requirement to share federal or state FMLA leave entitlement with other parent.</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave. No requirement to share leave entitlement with other parent.</td>
</tr>
<tr>
<td>Marital Status</td>
<td>Both work for State of CT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>IF ELIGIBLE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>REASON</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pregnant spouse’s prenatal care and appointments (including providing transportation)</td>
<td>Not Applicable</td>
<td>May be taken as intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
</tr>
<tr>
<td>Care for spouse on bed rest or otherwise meets definition of serious illness before the birth</td>
<td>Not Applicable</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
</tr>
<tr>
<td>Care for spouse in connection with birth and disability period</td>
<td>Not Applicable</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
</tr>
<tr>
<td>Bond with newborn child</td>
<td></td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
</tr>
<tr>
<td>Married parents who both work for the State of CT must share the federal or state FMLA leave entitlement.</td>
<td></td>
<td></td>
<td>Parents are not required to share leave entitlement.</td>
</tr>
</tbody>
</table>
## CH. 14 FUNDAMENTALS: WHAT IS COVERED UNDER PREGNANCY AND BONDING?

### Other Parent Married to Biological Mother
Biological mother does not work for the State of CT

<table>
<thead>
<tr>
<th>IF ELIGIBLE</th>
<th>REASON</th>
<th>C.G.S. 46a-60(b)(7)</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pregnant spouse's prenatal care and appointments (including providing transportation)</td>
<td>Not Applicable</td>
<td>May be taken as intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
<td></td>
</tr>
<tr>
<td>Care for spouse on bed rest or otherwise meets definition of serious illness before the birth</td>
<td>Not Applicable</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
<td></td>
</tr>
<tr>
<td>Care for spouse in connection with birth and disability period</td>
<td>Not Applicable</td>
<td>May be taken as block, intermittent or reduced schedule leave.</td>
<td>Must be taken as block leave.</td>
<td></td>
</tr>
<tr>
<td>Bond with newborn child</td>
<td>Not Applicable</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>No requirement to share federal or state FMLA leave entitlement.</td>
<td>No requirement to share leave entitlement.</td>
<td></td>
</tr>
</tbody>
</table>
### CH. 14 FUNDAMENTALS: WHAT IS COVERED UNDER PREGNANCY AND BONDING?

**Other Parent Is Not Married to Biological Mother**  
(\text{It does not matter if the mother works for the State})

<table>
<thead>
<tr>
<th>IF ELIGIBLE</th>
<th>REASON</th>
<th>C.G.S. 46a-60(b)(7)</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prenatal care and appointments</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Pregnancy complications, bed rest and severe morning sickness</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Birth and disability period</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Bond with newborn child</td>
<td>Not Applicable</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
<td>May be taken as block leave, or, with employer’s consent, reduced schedule leave.</td>
<td></td>
</tr>
</tbody>
</table>
SEQUENCING PREGNANCY-RELATED LEAVE ENTITLEMENTS

The order in which the leave entitlements are taken depends upon the employee’s category, reason for leave and the employee’s eligibility.

Biological Mother:

The woman who is giving birth to the child is always entitled to Pregnancy Disability leave under C.G.S. §46a-60(b)(7), regardless of whether she is also eligible for any other Family and Medical Leave Entitlements (i.e. federal FMLA, state FMLA, and/or SEBAC Supplemental leave).

Pregnancy Disability leave provides a reasonable period of leave for the “disability resulting from her pregnancy,” usually 6 to 8 weeks. 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. It does not include bonding.

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

If the pregnant employee IS eligible for Federal FMLA and/or state FMLA, she has the following entitlements:

Federal FMLA Leave (12-week entitlement)

- Pregnant employee 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 severe 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 Leave (16-week entitlement)

- Pregnant employee 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 severe morning sickness.
- 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.

Married Parent:

If the employee is married to the pregnant woman (“the married parent”), he or she is entitled to take caregiver leave to care for her during her pregnancy. This includes taking time away from work for the following reasons:

- Taking the pregnant spouse to her prenatal appointments (federal FMLA and state FMLA only);
- Providing care and comfort to the pregnant spouse on bedrest or otherwise experiencing severe complications prior to the birth;
- Providing care and comfort to the pregnant spouse during the childbirth and delivery; and
- Providing care and comfort to the spouse during her disability period following the birth of the child.

If the married parent is eligible for Federal FMLA, state FMLA, and/or SEBAC Supplemental leave, he or she has the following entitlements:

Federal FMLA Leave (12-week entitlement)

- Married 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 severe morning sickness.
- Married parent can use federal FMLA leave on an intermittent, reduced schedule and/or block basis as medically necessary 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 Leave (16-week entitlement)
- Married 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 severe morning sickness.
- Married parent can use state FMLA leave on an intermittent, reduced schedule and/or block basis as medically necessary during the disability period.
- If the employee is also eligible for federal FMLA, state FMLA leave runs concurrent with the federal FMLA leave.

SEBAC Supplemental Leave (24-week entitlement)
- 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 his or her pregnant spouse.

Unmarried Parent:
If the other parent is not married to the pregnant woman, he or she cannot use any of the Family and Medical Leave Entitlements to care for her.
BONDING WITH A NEWBORN CHILD

Federal FMLA, state FMLA and SEBAC Supplemental leave permit an eligible employee to 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.

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, he or she has the following entitlements for bonding with a newborn child:

Federal FMLA Leave (12-week entitlement)

- The parent can use federal FMLA leave on a block basis or, with the employer’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 (16-week entitlement)

- The parent can use state FMLA leave on a block basis or, with the employer’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 (Only 4 months of the 24-week entitlement is available for bonding)

- 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 His or Her 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 (of 12 or 16 weeks) 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 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.

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.
- SEBAC Supplemental leave is in addition to the leave entitlements provided by federal FMLA, state FMLA and C.G.S. §46a-60(b)(7). Therefore, the start date of the SEBAC Supplemental leave depends upon the employee’s role and the employee’s eligibility for the leave entitlements:
<table>
<thead>
<tr>
<th><strong>Eligible for Federal FMLA and/or State FMLA and SEBAC Supplemental</strong></th>
<th><strong>Eligible for SEBAC Supplemental Only - Not Eligible for Federal FMLA and/or State FMLA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Biological Mother</strong></td>
<td>SEBAC Supplemental leave can only begin <strong>after</strong> the exhaustion of her federal FMLA and/or state FMLA leave and the exhaustion of her pregnancy disability leave under C.G.S. §46a-60(b)(7), whichever ends later.</td>
</tr>
<tr>
<td></td>
<td>SEBAC Supplemental leave can only begin <strong>after</strong> the exhaustion of her pregnancy disability leave under C.G.S. §46a-60(b)(7).</td>
</tr>
<tr>
<td><strong>Other Parent (Married or Unmarried to the biological mother)</strong></td>
<td>SEBAC Supplemental leave can only begin <strong>after</strong> the exhaustion of federal FMLA and/or state FMLA leave.</td>
</tr>
<tr>
<td></td>
<td>SEBAC Supplemental leave can begin any time within the 12 months after the birth.</td>
</tr>
</tbody>
</table>

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

Refer to **Chapter 32** for information about accrual usage in connection with leave for pregnancy and bonding.
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
- Pregnancy Complications start on 5/3/2018
- Due date is 6/25/2018
- Bonding starts on 8/20/2018
- Both parents want to bond with the newborn child

Step 1 - Start with the Biological Mother’s entitlements:

The Biological Mother will use up her entire federal FMLA entitlement due to her own serious health condition (5/3/18-7/25/18: almost 8 weeks pre-birth and just over 4 weeks into her post-birth pregnancy disability period.) Therefore, there is no requirement for the parents to share their federal FMLA leave entitlements.

The Biological Mother’s state FMLA will also start on 5/3/18 and will continue until 8/22/18. She will use up almost all of her state FMLA entitlement due to her serious health condition (5/3/18 – 8/19/18).

The Biological Mother’s bonding will start on 8/20/18. Because her state FMLA entitlement ends on 8/22/18, she will only use 3 days of the state FMLA entitlement for bonding.

Only 4 months of SEBAC Supplemental leave is available to her for bonding. If she uses all of it on a block basis starting on 8/23/18, she will be out on SEBAC Supplemental leave from 8/23/18 until 12/23/18.

In this scenario, the Biological Mother has used all of her federal and state FMLA entitlements and 4 months of her 24-week SEBAC Supplemental entitlement. Looking at the number of weeks in the 4 months between 8/23 and 12/23, she will have used 17 weeks and 2 days of SEBAC, so she will have 6 weeks and 3 days of SEBAC.
Supplemental leave entitlement available to her to be used for other qualifying reasons before her 2-year SEBAC Supplement leave period ends on 8/23/20.

**Step 2: Determine the Married Parent’s entitlements:**

The first step is to make sure the Married Parent knows he or she has a right to take leave on the block, reduced schedule or intermittent basis to care for the wife during her absence due to her own serious health condition. Assuming that the Married Parent knows this and still does not want or need to take any time off to care for the wife before the birth, the Married Parent’s federal FMLA will start on the date of birth, presumably 6/25/18.

Thus, the federal FMLA will start on 6/25/18 and will continue until 9/16/18 (12 weeks). The time between 6/25/18 and 8/19/18 will be caregiver leave and the time between 8/20/18 and 9/16/18 will be bonding. (Because the wife did not use any federal FMLA for bonding, there is no obligation to share.)

The Married Parent’s state FMLA also starts on 6/25/18. Because the wife used 3 days of state leave for bonding, the Married Parent would have the ability to use up to 15 weeks and 2 days of the 16-week entitlement for bonding. In practice, however, the time from 6/25/18 to 8/19/18 (8 weeks) will actually be caregiver leave.

If the Married Parent wants to return to work upon the exhaustion of the 16-week state FMLA entitlement, he or she will return to work on 10/15/18, having used only 8 weeks of the state FMLA entitlement for bonding purposes.

In this scenario, the Married Parent will have used **all** of the federal FMLA and state FMLA. The Married Parent will have chosen to use **none** of his/her SEBAC Supplemental leave.
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 his or her birth 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, including helpful charts.

**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**

**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”. The bonding leave may be taken on a block basis, as intermittent leave or as reduced schedule leave.

<table>
<thead>
<tr>
<th>Married Parents</th>
<th>Both Work for State of CT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IF ELIGIBLE</strong></td>
<td><strong>Federal FMLA and/or State FMLA</strong></td>
</tr>
<tr>
<td><strong>REASON</strong></td>
<td>Bonding leave may be taken on an intermittent, reduced schedule leave or block basis.</td>
</tr>
<tr>
<td>Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption</td>
<td>Married parents who both work for the State of CT must share the federal FMLA and/or state FMLA entitlement.</td>
</tr>
<tr>
<td>Bonding with child upon legal adoption</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis.</td>
</tr>
<tr>
<td></td>
<td>Married parents who both work for the State of CT must share the federal FMLA and/or state FMLA entitlement.</td>
</tr>
</tbody>
</table>
## Unmarried Parents
### Both Work for State of CT

<table>
<thead>
<tr>
<th>IF ELIGIBLE REASON</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption</td>
<td>Bonding leave may be taken on an intermittent, reduced schedule leave or block basis. There is no requirement to share the federal FMLA or state FMLA leave entitlement.</td>
<td>Bonding leave must be taken on a block basis only. There is no requirement to share the leave entitlement.</td>
</tr>
<tr>
<td>Bonding with child upon legal adoption</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis. There is no requirement to share the federal FMLA or state FMLA leave entitlement.</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis. There is no requirement to share the leave entitlement.</td>
</tr>
</tbody>
</table>
**Only One Parent Working for the State**

<table>
<thead>
<tr>
<th>IF ELIGIBLE REASON</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-adoptive activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption</td>
<td>Bonding leave may be taken on an intermittent, reduced schedule leave or block basis. There is no requirement to share the federal FMLA or state FMLA leave entitlement.</td>
<td>Bonding leave must be taken on a block basis only. There is no requirement to share the leave entitlement.</td>
</tr>
<tr>
<td>Bonding with child upon legal adoption</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis. There is no requirement to share the federal FMLA or state FMLA leave entitlement.</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis. There is no requirement to share the leave entitlement.</td>
</tr>
</tbody>
</table>

**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.
Federal FMLA Leave (12-week entitlement)

- 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 employer’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 (16-week entitlement)

- 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 employer’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 employer’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 His or Her 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 (of 12 or 16 weeks) 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 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 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:

<table>
<thead>
<tr>
<th>Marital Status or Parent Status</th>
<th>Eligible for Federal FMLA and/or State FMLA and SEBAC Supplemental</th>
<th>Eligible for SEBAC Supplemental Only - Not Eligible for Federal FMLA and/or State FMLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married Parent or Unmarried Parent or Only Parent Working for State</td>
<td>SEBAC Supplemental leave can only begin after the exhaustion of federal FMLA and/or state FMLA leave.</td>
<td>SEBAC Supplemental leave for bonding can begin any time within the 12-month period beginning with the date of adoption.</td>
</tr>
</tbody>
</table>

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 and the sequencing of the entitlements, including helpful charts.

### 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**

**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 is considered “bonding leave”. The bonding leave may be taken on a block basis, as intermittent leave or as reduced schedule leave.

### Married Parents
Both Work For The State

<table>
<thead>
<tr>
<th>IF ELIGIBLE</th>
<th>If Eligible</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>REASON</td>
<td></td>
<td>Bonding leave may be taken on an intermittent, reduced schedule leave or block basis.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement</td>
<td>Married parents who both work for the State of CT <strong>must share the federal FMLA and/or state FMLA entitlement.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonding with child upon placement</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis.</td>
<td>Married parents who both work for the State of CT <strong>must share the federal FMLA and/or state FMLA entitlement.</strong></td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>
**Unmarried Parents**  
Both Work for the State

<table>
<thead>
<tr>
<th>IF ELIGIBLE</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REASON</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement. | Bonding leave may be taken on an intermittent, reduced schedule leave or block basis.  
Unmarried Parents are not required to share the leave entitlements. | Not Applicable |
| Bonding with child upon placement | Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis  
Unmarried Parents are not required to share the leave entitlements. | Not Applicable |
**Only One Parent Works for the State**

<table>
<thead>
<tr>
<th>IF ELIGIBLE REASON</th>
<th>Federal FMLA and / or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement</td>
<td>Bonding leave may be taken on an intermittent, reduced schedule leave or block basis. Not required to share leave entitlements with other parent.</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Bonding with child upon placement</td>
<td>Bonding leave may be taken on a block basis, or, with employer’s consent, on a reduced schedule basis. Not required to share leave entitlements with other parent</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

**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, he or she has the following entitlements for bonding with a foster child:
Federal FMLA Leave (12-week entitlement)

- 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 employer’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 (16-week entitlement)

- 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 employer’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 His or Her 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 (of 12 or 16 weeks) if the reason for the leave is to bond with a foster 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 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.
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.
For all of the examples below, assume the following scenario:

- Employee gives birth on February 21, 2018 via Caesarian-section.
- According to her medical documentation, her disability period ends on April 17, 2018.
- She is not eligible for federal FMLA or state FMLA but is a permanent state employee, so she is eligible for SEBAC Supplemental leave.
- She 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:

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

*Example:* April 18, 2018

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

*Example:* April 18, 2018 through August 17, 2018 equals four calendar months. There are 17 weeks and 3 days in that time frame, i.e. 17.6 weeks. \(
\frac{3 \text{ days}}{5 \text{ days in the workweek}} = .6\)

This gives you the total number of work weeks 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.
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.
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, 2018

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

   *Example:* April 18, 2018 through August 17, 2018 equals four calendar months. There are 17 weeks and 3 days in that time frame, i.e. 17.6 weeks. \( \frac{3}{5} \text{ days in the workweek} = .6 \)

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 be working because *time spent working cannot be counted against the SEBAC Supplemental entitlement.*

   *Example:* the employee wants to work only 3 days /week, i.e., 60% \( \frac{3}{5} = .6 \)

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

   *Example:* \( 17.6 \div 60\% = 29.3 \) \( \frac{3}{10} \text{ of a week equals 1.5 days} \)

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 3 days/week reduced schedule basis from April 18, 2018 through November 7, 2018 -- provided the employer consents.
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, 2018 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, 2018 through December 19, 2018.

**EXAMPLE:** Employee wants to take 2 months of bonding on a block basis and then work a reduced schedule of 3 days/week (i.e. 60%) for as long as she is allowed to.
- The first day of bonding will be April 18, 2018 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, 2018 until June 19, 2018, using 9 weeks of the 17.6 weeks of SEBAC Supplemental leave available.

- The employee has 8.6 weeks of SEBAC Supplemental 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, 2018 until June 19, 2018 and then 3 days/weeks from June 30, 2018 through September 27, 2018.
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 in order 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 in order 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.**

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
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.
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.

<table>
<thead>
<tr>
<th><strong>Organ and Bone Marrow Donor Leave</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IF ELIGIBLE</strong></td>
</tr>
<tr>
<td><strong>REASON</strong></td>
</tr>
<tr>
<td>Pre-donation Medical Appointments (i.e. testing, examinations, counseling)</td>
</tr>
<tr>
<td>Surgery and Recovery Period:</td>
</tr>
<tr>
<td>15 work days for organ donor</td>
</tr>
<tr>
<td>7 work days for bone marrow donor</td>
</tr>
<tr>
<td>Additional Recovery Period Beyond 15 or 7 Work Days</td>
</tr>
</tbody>
</table>
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 his or her sick leave accruals (if any) for required pre-donation medical appointments.
  - If the employee does not have sick leave accruals, he or she 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 his/her 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 his or her sick leave accruals (if any).
  - If the employee does not have sick leave accruals, he or she may request to use other earned accruals or may request to take unpaid leave in connection with this absence.
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 his or her sick leave accruals (if any) for required pre-donation medical appointments.
  - If the employee does not have sick leave accruals, he or she 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 his/her 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 his or her sick leave accruals (if any).
  - If the employee does not have sick leave accruals, he or she 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 his or her sick leave accruals (if any) for required pre-donation medical appointments.
  - If the employee does not have sick leave accruals, he or she 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 his/her 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 his or her sick leave accruals (if any).
  - If the employee does not have sick leave accruals, he or she 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 his or her 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.

<table>
<thead>
<tr>
<th>REASON FOR LEAVE</th>
<th>DOCUMENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee’s own serious health condition</td>
<td>Medical certification establishing that condition meets state and/or federal definitions.</td>
</tr>
<tr>
<td>Caring for parent (including parent-in-law for state FMLA only), spouse, or child with a serious health condition</td>
<td>Medical certification establishing that condition meets state and/or federal definitions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DOCUMENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>P-33A or equivalent document that provides all of the information that would be contained in the P-33A</td>
</tr>
<tr>
<td>P-33B or equivalent document that provides all of the information that would be contained in the P-33B</td>
</tr>
<tr>
<td>A written statement asserting that the requisite family relationship exists, or other documentation such as a child’s birth certificate or a court document.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must be completed by employee’s treating “health care provider” (defined in Chapter 20).</td>
</tr>
<tr>
<td>Must be completed by the family member’s treating “health care provider” (defined in Chapter 20).</td>
</tr>
<tr>
<td>The employee can choose what kind of documentation to provide.</td>
</tr>
<tr>
<td>The employer cannot require an affidavit or court document.</td>
</tr>
<tr>
<td>Bonding with newborn child</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Bonding with a child placed for adoption</td>
</tr>
<tr>
<td>Bonding with a child placed for foster care (federal and state FMLA only)</td>
</tr>
</tbody>
</table>
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 his or her practice;
- A chiropractor authorized to practice in the state and performing within the scope of his or her practice:
  - **Federal FMLA**: A chiropractor may certify a serious health condition only when he or she is 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 his or her 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 his or her 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 of 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 his/her 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.

<table>
<thead>
<tr>
<th>ACTION</th>
<th>TIMETABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Employee: Request for Leave</strong>&lt;br&gt;Employee notifies employer that she/he needs Family or Medical leave (either explicitly referencing FMLA or giving HR enough information that HR can reasonably infer that FMLA applies).</td>
<td>All Family and Medical Leave Entitlements:&lt;br&gt;30 calendar days before start date of leave, or as soon as practicable, under the specific facts and circumstances.</td>
</tr>
<tr>
<td><strong>2. HR Response: Eligibility Notice</strong>&lt;br&gt;HR gives the employee the Notice of</td>
<td>All Family and Medical Leave Entitlements EXCEPT for State</td>
</tr>
</tbody>
</table>
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, P33A, P33B, DOL-WH384, DOL-WH385 or DOL-WH385V) if employee has not already done so.

<table>
<thead>
<tr>
<th>Eligibility and Rights and Responsibilities (FMLA-HR2a)</th>
<th>FMLA: 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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>and notifies the employee that s/he must complete and return a FMLA-HR1 and the necessary certification form (FMLA-HR3, P33A, P33B, DOL-WH384, DOL-WH385 or DOL-WH385V) if employee has not already done so.</td>
<td>State FMLA: Within 2 business days of the employee requesting leave or the employer learning that an employee’s leave may be for a FMLA-qualifying reason.</td>
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</tbody>
</table>

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<thead>
<tr>
<th>3. Employee Response: Certification</th>
<th>All Family and Medical Leave Entitlements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee returns the completed FMLA-HR1 and the appropriate certification form with any required supporting documentation. (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.)</td>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. HR Response: Designation Notice</th>
<th>All Family and Medical Leave Entitlements EXCEPT for State FMLA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR reviews the certification (FMLA-HR3, 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.</td>
<td>Within 5 business days of receipt of the certification.</td>
</tr>
<tr>
<td></td>
<td>State FMLA: Within 2 business days of receipt of the certification.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4a. Incomplete Certification:</th>
<th></th>
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<tbody>
<tr>
<td>If certification is incomplete, HR must notify the employee in writing what</td>
<td></td>
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</table>
additional information is necessary and must give the employee the opportunity 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.

All Family and Medical Leave Entitlements:

Completion of Certification: Within 7 Calendar days
5. HR Response: Designation Notice

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

- 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)

HR should also notify employee of CORE CT Coding (FMLA-HR2c)

All Family and Medical Leave Entitlements EXCEPT for State FMLA:

Within 5 business days of receipt of the complete and sufficient certification.

State FMLA:

Within 2 business days of receipt of the complete and sufficient certification.

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 he or she needs 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 he or she needs 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 his or her 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
LEAVE PROCESS: HOW DOES IT START? FMLA-HR1 FORM

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, these leave entitlements follow the federal guidelines.

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
LEAVE PROCESS: WHEN SHOULD AN EMPLOYEE PROVIDE NOTICE?

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 and state FMLA allow 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 do so, 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 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 the notice provision of the law or to follow our 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 his/her leave rights.
An employee has an obligation to inform his/her employer that he or she plans 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 his/her 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 his/her intent to return to his/her 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 his/her 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:

<table>
<thead>
<tr>
<th>REASON FOR LEAVE</th>
<th>FORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>The employee’s own serious health condition including organ and bone marrow donation and the disability period related to pregnancy.</td>
<td>Form P-33A</td>
</tr>
<tr>
<td>The serious health condition of the employee’s spouse, son or daughter, parent, or (State FM LA only) parent-in-law.</td>
<td>Form P-33B</td>
</tr>
<tr>
<td>Military Caregiver Leave</td>
<td>Form WH-385</td>
</tr>
<tr>
<td></td>
<td>Form WH-385V</td>
</tr>
</tbody>
</table>

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** of 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” 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.”
- 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 his or her 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.
• 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, 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.

  o 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 the right to maintain his/her 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 his/her 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.

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.

  o 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.

  o 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 employee’s or his/her family member’s health care provider, 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 his/her 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.
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.

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 CERTIFICATE 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 his/her 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 he or she:

- 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 he or she does not want FMLA or wants 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. 2-3) 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** (p. 4) 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. 5-7) provides the rules for accrual usage, and is used to designate which accruals will be used for the employee’s approved leave.
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. one year for federal FMLA and two years for state FMLA).

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.

If necessary during the leave year, Human Resources may request a medical recertification. See Chapter 41.

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.
- 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 on 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 his or her 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 his/her 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 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 his/her 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.
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 left and 10 weeks of 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 his/her 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 he or she 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: In 2017, Thanksgiving Day occurred on November 23, 2017.

An employee takes a block family/medical leave on November 13, 2017 and return to work on November 27th. That employee has used 10 days - i.e., 2 full weeks – of his or her 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 13, 2017 and returns to work on November 24th. That employee has used 8 days of his or her 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 his or her 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.

<table>
<thead>
<tr>
<th>Leave Options</th>
<th>Federal FMLA</th>
<th>State FMLA</th>
<th>SEBAC Supplemental</th>
<th>Voluntary Schedule Reduction Program (VSRP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No, VSRP must be suspended during a block leave.</td>
</tr>
<tr>
<td>Intermittent Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>Not Available</td>
<td>Yes, only if unrelated to family/medical leave and with agency consent.</td>
</tr>
<tr>
<td>Reduced Schedule Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>For bonding with newborn or adoption only, with agency consent.</td>
<td>Yes, only if unrelated to family/medical leave and with agency consent.</td>
</tr>
</tbody>
</table>
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 he or she is 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 he or she 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 his or her 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).

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, and
- The employee’s accrual selection.

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.
EXCEPTION: 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 his or her 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 his or her 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:

<table>
<thead>
<tr>
<th>Reason for Leave</th>
<th>Refer to Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee’s Own Serious Health Condition or Illness</td>
<td>30</td>
</tr>
<tr>
<td>Organ or Bone Marrow Donor</td>
<td>18</td>
</tr>
<tr>
<td>Employee as a Caregiver</td>
<td>31</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>32</td>
</tr>
<tr>
<td>Adoption</td>
<td>33</td>
</tr>
</tbody>
</table>
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 his/her accrual designation based upon changes in his/her circumstances.

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

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

Principle #4: When an employee is out for the employee’s own serious health condition/illness, he/she must use all of his/her 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**

- 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.
When an employee needs to take leave for his or her 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 (including 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 his or her 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
Sick leave accruals must be exhausted first, before going on unpaid leave or using accrued vacation time, personal leave, or compensatory time.

EXCEPTION: 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.

It does not matter what order the employee uses vacation, personal leave or compensatory leave.

Once the employee has made his or her 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 after the sick leave accruals are exhausted.

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.

- Sick time 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.

- **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 his or her 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 his or her
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 his or her 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 his or her “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 his or her 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 his or her 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 he or she wants to use the sick family entitlement, Human Resources must explain that the State allows the employee to use his or her 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 she or she wants to use his or her 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** starts on the first day the employee takes leave to care for a parent, spouse, or child with a serious health condition.

- **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.
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.


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.

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

- Biological Mother
- Other Parent Married to Biological Mother
- Other Parent Not Married to Biological Mother
## Accrual Usage by Biological Mother

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>C.G.S. §46a-60(b)(7)</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prenatal care and appointments</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, or compensatory time</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, or compensatory time</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Pregnancy complications, bed rest and severe morning sickness</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Birth and disability period</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</td>
<td><strong>Mandatory:</strong> Sick leave if available&lt;br&gt;<strong>Optional:</strong> Vacation, personal leave, compensatory time, donated leave, sick leave bank, advanced sick leave or extended sick</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Bond with child</td>
<td>Not Applicable</td>
<td><strong>Optional:</strong> Vacation, personal leave, or compensatory time&lt;br&gt;&lt;br&gt;<strong>In addition:</strong> because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td><strong>Optional:</strong> Vacation, personal leave, or compensatory time&lt;br&gt;&lt;br&gt;<strong>In addition:</strong> If eligible for</td>
</tr>
<tr>
<td>federal FMLA or state FMLA: sick leave.</td>
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<tr>
<td>----------------------------------------</td>
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<tr>
<td>If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IF ELIGIBLE FOR ACCRUALS</td>
<td>C.G.S. §46a-60(b)(7)</td>
<td>Federal FMLA and/or State FMLA</td>
<td>SEBAC Supplemental</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------</td>
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<td>-------------------</td>
</tr>
</tbody>
</table>
| Pregnant spouse’s pre-natal care and appointments (including providing transportation) | Not Applicable | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: because the employee is eligible for federal FMLA or state FMLA: sick leave | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: If eligible for federal FMLA or state FMLA: FMLA: sick leave  
If not eligible for federal or state FMLA: Sick Family leave in accordance with the applicable collective bargaining agreement or policy. |
| Care for spouse on bed rest or otherwise meets definition of serious illness before the birth | Not Applicable | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: because the employee is eligible for federal FMLA or state FMLA: sick leave | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: If eligible for federal FMLA or state FMLA: FMLA: sick leave  
If not eligible for federal or state FMLA: Sick Family leave in accordance with the applicable collective bargaining agreement or policy. |
| Care for spouse in connection with birth and disability period | Not Applicable | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: because | **Optional**: Vacation, personal leave, or compensatory time  
*In addition*: |

<table>
<thead>
<tr>
<th>Bond with child</th>
<th>Not Applicable</th>
<th><strong>Optional:</strong> Vacation, personal leave, or compensatory time</th>
<th><strong>Optional:</strong> Vacation, personal leave, or compensatory time</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>In addition:</strong> because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td><strong>In addition:</strong> If eligible for federal FMLA or state FMLA: sick leave.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>If not eligible for federal or state FMLA: parental leave in accordance with the applicable collective bargaining agreement or policy.</td>
</tr>
</tbody>
</table>
## Accrual Usage by Other Parent Not Married to Biological Mother

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>C.G.S. §46a-60(b)(7)</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prenatal care and appointments</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Pregnancy complications, bed rest and severe morning sickness</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Birth and disability period</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>
| Bond with child | Not Applicable | **Optional**: Vacation, personal leave, or compensatory time  
**In addition**: because the employee is eligible for federal FMLA or state FMLA: sick leave | **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 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**
## CH. 33 LEAVE PROCESS: ADOPTION & BONDING WITH A NEW CHILD – ACCRUAL USAGE

### Accrual Usage

by

Married Parents – Both Work for State of CT

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
</table>
| 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:** because the employee is eligible for federal FMLA or state FMLA: sick leave | **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:** because the employee is eligible for federal FMLA or state FMLA: sick leave | **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. |
### CH. 33 LEAVE PROCESS: ADOPTION & BONDING WITH A NEW CHILD – ACCRUAL USAGE

#### Accrual Usage

<table>
<thead>
<tr>
<th>Unmarried Parents – Both Work for State of CT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IF ELIGIBLE FOR ACCRUALS</strong></td>
</tr>
<tr>
<td>Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Bonding with child upon legal adoption</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
## CH. 33 LEAVE PROCESS: ADOPTION & BONDING WITH A NEW CHILD – ACCRUAL USAGE

### Accrual Usage

by

**Only One Parent Working for the State**

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-adoption activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the adoption</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
</tr>
<tr>
<td></td>
<td><strong>In addition</strong>: because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td><strong>In addition</strong>: 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.</td>
</tr>
<tr>
<td>Bonding with child upon legal adoption</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
</tr>
<tr>
<td></td>
<td><strong>In addition</strong>: because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td><strong>In addition</strong>: 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.</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
</table>
| 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**: because the employee is eligible for federal FMLA or state FMLA: sick leave | Not applicable |
| Bonding with child upon placement | Optional: Vacation, personal leave, or compensatory time  
**In addition**: because the employee is eligible for federal FMLA or state FMLA: sick leave | Not applicable |
### Accrual Usage by Unmarried Parents - Both Work for State of CT

<table>
<thead>
<tr>
<th>IF ELIGIBLE FOR ACCRUALS</th>
<th>Federal FMLA and/or State FMLA</th>
<th>SEBAC Supplemental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-placement activities: pre-placement counseling sessions, court appearances or travel to another locality to complete the placement</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Bonding with child upon placement</td>
<td><strong>Optional</strong>: Vacation, personal leave, or compensatory time</td>
<td>Not applicable</td>
</tr>
<tr>
<td>In addition: because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In addition: because the employee is eligible for federal FMLA or state FMLA: sick leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IF ELIGIBLE FOR ACCRUALS</td>
<td>Federal FMLA and/or State FMLA</td>
<td>SEBAC Supplemental</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Pre-placement activities: pre-adoptive counseling sessions, court appearances or travel to another locality to complete the placement</td>
<td>Optional: Vacation, personal leave, or compensatory time</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Bonding with child upon placement</td>
<td>Optional: Vacation, personal leave, or compensatory time</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

In addition: because the employee is eligible for federal FMLA or state FMLA: sick leave
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 16 weeks of 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 and/or 16-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 Aides**
- **Time & Labor Job Aides**

**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.

**EXCEPTION:** 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.

- 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 his/her 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 his/her 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 his/her 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 his/her 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.
  
  o 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.

  o 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:

  o May require compliance with the Collective Bargaining Unit contract, federal law, and state law.

  o 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 CFEPA

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.
  
  o If applicable, Human Resources shall notify the employee that the investigation will continue during the federal and or state family/medical leave absence.
  
  o 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.

  o 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.

  o If an agency’s policy prohibits an employee from taking a second job if he or she is not on leave, then that policy applies even when the employee is utilizing one or more of the Family and Medical Leave Entitlements.

  o 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 his or her 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 he or she is 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:
  
  o The employee cannot use sick leave accruals for the period during which such employee performs full-time employment for another employer.
  
  o 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.

  o 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 he or she was not on leave.

  Example: If an entire work unit is being laid off and one of the employees is out on family/medical leave, he/she would also be included in the layoff.

- An employee cannot be chosen for layoff because he or she is utilizing one or more of the Family and Medical Leave Entitlements.

- An employee who is on leave when he or she is 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 his or her 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’s 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 his/her 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 he/she calls 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 he/she calls in to report an absence.
Examples:
  o The specific reason for the absence (If the employee is sick, you don’t need a medical diagnosis, just the medical facts);
  o Whether the absence is connected with an approved family and medical leave;
  o The expected return date (or time, if less than a day);
  o A telephone number where the employee may be reached for further information;
  o What duties of the job he/she cannot perform;
  o Whether he/she 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.
  o 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.
  o The FMLA-HR2a is used to notify the employee how often he or she is required to provide periodic updates on his/her 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 his sick family accruals for a sick family member, and he has 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 his co-workers shows you the employee’s social media posts, complete with pictures of him 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 he/she may be eligible for leave under one or more of
the Family and Medical Leave Entitlements and that he/she should contact the Human Resources Department.

- 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 his/her 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 his/her 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 his/her 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:
  o **When** the employee is to call in (i.e. one hour before the start of his/her shift).
  o **To whom** the employee is to report the absence to and whether voicemail or texting is acceptable or not.
  o **The specific reason** for the absence. If the employee is sick, a medical diagnosis is not required, just the medical facts.
  o **The expected return date** (or time, if less than a full day).
  o **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:
  o An employee is absent for their own illness for more than three (3) consecutive days.
  o An employee has been calling out of work intermittently for the same reason.
  o An employee is being counseled for repeated absences, exhaustion of leave and other dependability issues.
  o 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.
  o An employee submits a request for time away for back surgery.
  o An employee tells you she is 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 he/she has family/medical leave rights and he/she 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 he/she has 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 his/her 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 his/her 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 his/her responsibilities regarding the leave.

This chapter describes the employee’s responsibilities once his/her 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 Entitlement.
  
  - 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.
LEAVE PROCESS: EMPLOYEE’S RESPONSIBILITIES ONCE LEAVE IS APPROVED

COMPLETING TIMESHEET

- If the employee is responsible for completing his/her 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 his/her 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 his/her sick leave accruals to serve as a caregiver or bonding leave (if eligible).

EXCEPTION: 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**.

**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 he or she is 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 his or her 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 his or her 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:
CH. 41 LEAVE PROCESS: RECERTIFICATION AND ANNUAL MEDICAL CERTIFICATIONS

- 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 (i.e. 12 months for federal FMLA and 24 months for state FMLA and SEBAC Supplemental leave), the employer may require the employee to provide a “new” medical certification in each subsequent leave year. That means, the employer may request a new medical certification with the first absence in the new 12-month or 24-month 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 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 his or her 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 his/her 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 his or her 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 his or her 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 his/her 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 his or her 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.

  o “Reasonable safety concerns” means a reasonable belief of significant risk of harm to the individual employee or others.

  o The employee must be told on the Designation Notice (FMLA-HR2b) that the fitness-for-duty certification will be required.

  o 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 communications 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 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.

“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 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 his or her family/medical leave has no additional rights but **may** have rights under ADA and/or CFEP.
  See **Chapter 45** - Interaction with ADA and CFEP.

- 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’s 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**

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<th>SCENARIO</th>
<th>CATEGORY</th>
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<td>Scenario 1</td>
<td>The employee <strong>fails to return to work</strong> and <strong>does not communicate</strong> with anyone at the agency.</td>
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<td>Scenario 2</td>
<td>The employee notifies the agency that he or she has <strong>voluntarily chosen not to return work</strong> – voluntary resignation or retirement.</td>
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<tr>
<td>Scenario 3</td>
<td>The employee notifies the agency that he or she <strong>would like to return to work but is not yet able to do so</strong> or is not able to perform the duties of the job held prior to the leave.</td>
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<tr>
<td>Scenario 4</td>
<td>The employee is <strong>medically unable to return to work</strong> and has <strong>no other legal entitlement to extend the leave</strong>; and, therefore, must be separated from state service.</td>
</tr>
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**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 his/her 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 he or she has “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, his or her 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 he or she 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 his/her 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 his or her existing job; or
- If not, whether it would be a reasonable accommodation to reassign the employee to a vacant position 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 his or her 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 up to date CT-HR12 and 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 the 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 Infirmitities

This state law provides the employee who is physically or mentally incapable of performing the duties of his or her 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 his or her 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 or unpaid.

Paid Leave

When paid leave is substituted for 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

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 state 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 he or she works part-time or full-time, or are considered “probationary”.

- 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 12, 16, or 24 weeks. It can be an indeterminate amount of leave barring 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 him or her 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 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
o 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 his state job on the ground of needing to serve as a caregiver for his mother.
    - An employee who regularly calls out on FMLA on days that her 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;
- 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.

β 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.

<table>
<thead>
<tr>
<th>Includes:</th>
<th>Does NOT Include:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers</td>
<td>Teacher assistants or aides who do not have as their principal job actual teaching or instructing</td>
</tr>
<tr>
<td>Athletic coaches</td>
<td>Auxiliary personnel (e.g. counselors, psychologists, curriculum specialists)</td>
</tr>
</tbody>
</table>
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 he/she 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 1\textsuperscript{st} and last until November 1\textsuperscript{st}. The teacher’s school year ends on June 16\textsuperscript{th} and the teacher is expected to report for duty again on the new school year starts again on August 28\textsuperscript{th}.

Human Resources determines that the teacher meets the eligibility criteria for federal FMLA, state FMLA and/or SEBAC Supplemental leave as of May 1\textsuperscript{st}.

The teacher uses 7 weeks of federal and state FMLA from May 1\textsuperscript{st} until June 16\textsuperscript{th}.

Because the teacher does not ordinarily work during the summer vacation period, the time period between June 17\textsuperscript{th} and August 27\textsuperscript{th} does not count against her leave entitlements.

The teacher’s federal and state leave entitlements resume on August 28\textsuperscript{th}.

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 will be exhausted as of September 29\textsuperscript{th}.

When the federal leave is exhausted, the teacher will still have 4 weeks of state FMLA leave remaining, as well as 24 weeks of SEBAC Supplemental leave, which is more than enough to cover the period of time until the return to work on November 1\textsuperscript{st}. 
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 his or her position as soon as his or her need for leave end 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 his or her same or equivalent job at the end of the academic term, just as if he or she had been returned to work as soon as his or her federal FMLA, state FMLA, and/or SEBAC Supplemental leave ended.
Scenario #1:

- The employee takes leave for his or her 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. 38: 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 his or her 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 his or her 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.

<table>
<thead>
<tr>
<th>Leave Options</th>
<th>Federal FMLA</th>
<th>State FMLA</th>
<th>SEBAC Supplemental</th>
<th>Voluntary Schedule Reduction Program (VSRP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No, VSRP must be suspended during a block leave.</td>
</tr>
<tr>
<td>Intermittent Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>Not Available</td>
<td>Yes, only if unrelated to family/medical leave and with agency consent.</td>
</tr>
<tr>
<td>Reduced Schedule Leave</td>
<td>Yes</td>
<td>Yes</td>
<td>For bonding with newborn or adoption only, with agency consent.</td>
<td>Yes, only if unrelated to family/medical leave and with agency consent.</td>
</tr>
</tbody>
</table>
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/16 weeks under 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:

<table>
<thead>
<tr>
<th>Military Family Leave - Definitions</th>
<th>See Chapter 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military Caregiver Leave - Overview</td>
<td>See Chapter 51</td>
</tr>
<tr>
<td>Military Caregiver Leave - Certification Form</td>
<td>See Chapter 52</td>
</tr>
<tr>
<td>Qualifying Exigency Leave - Overview</td>
<td>See Chapter 53</td>
</tr>
<tr>
<td>Qualifying Exigency Leave - Certification Form</td>
<td>See Chapter 54</td>
</tr>
</tbody>
</table>
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 his or her nearest blood relative for purposes of military caregiver leave,
- 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.
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.

<table>
<thead>
<tr>
<th>LEAVE ENTITLEMENTS</th>
<th>Federal FMLA</th>
<th>State FMLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of Leave</td>
<td>Up to 26 workweeks of unpaid leave in a single 12-month period. An employee can take this leave only one time per covered servicemember or covered veteran, per injury. Leave is measured forward from the date an employee first takes the military caregiver leave. 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. Any unused amount of leave is forfeited.</td>
<td>Up to 26 workweeks of unpaid leave in a single 2-year period. An employee can take this leave only one time per covered servicemember (no veteran), per injury. Leave is measured forward from the date an employee first takes any state family/medical leave, including but not limited to military caregiver leave. During any single 24-month period, the employee’s total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under standard state FMLA leave and military family leave. Any unused amount of leave is forfeited.</td>
</tr>
</tbody>
</table>
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

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**

<table>
<thead>
<tr>
<th>LEAVE ENTITLEMENTS</th>
<th>Federal FMLA</th>
<th>State FMLA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amount of Leave</strong></td>
<td>Up to 12 <strong>workweeks</strong> of unpaid leave in a single <strong>12-month period</strong>.</td>
<td>Up to 16 <strong>workweeks</strong> of unpaid leave within a <strong>two-year period</strong>.</td>
</tr>
<tr>
<td><strong>Reason for Leave</strong></td>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>
| **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 leave and 16 weeks of 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:
     o Arranging for alternative care for a parent;
     o Providing care on an immediate basis;
     o Admitting or transferring the parent to a care facility; or
     o 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.
CH. 53    MILITARY FAMILY LEAVE: QUALIFYING
EXIGENCY LEAVE – OVERVIEW

• To make or update financial or legal arrangements to address the covered
servicemember’s absence while on covered active duty; and/or

Examples:
  o Preparing and executing financial and healthcare powers of attorney.
  o Transferring bank account signature authority.
  o Enrolling in Defense Enrollment Eligibility Reporting System (DEERS).
  o Obtaining military identification card
  o 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
- 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,
CH. 56        COMPLIANCE: PROHIBITED ACTIVITIES

- 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.

<table>
<thead>
<tr>
<th>LEAVE ENTITLEMENT</th>
<th>WHERE TO FILE COMPLAINT</th>
<th>FORMAT OF COMPLAINT</th>
<th>TIMEFRAME FOR FILING COMPLAINT</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEDERAL FMLA (including military family leave)</td>
<td>Local office of the Wage &amp; Hour Division, Employment Standards Administration, U.S. Dept. of Labor</td>
<td>Initial contact may be in person, by mail or telephone but the complaint must later be reduced to writing</td>
<td>No more than 2 years after the alleged violation or 3 years in the case of an allegedly willful violation</td>
</tr>
<tr>
<td></td>
<td>Federal Court</td>
<td>Private lawsuit</td>
<td>No more than 2 years after the alleged violation or 3 years in the case of an allegedly willful violation</td>
</tr>
<tr>
<td>CH. 57</td>
<td>COMPLIANCE: THE COMPLAINT PROCESS</td>
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<tr>
<td><strong>STATE FMLA</strong>&lt;br&gt;(including military family leave)</td>
<td>Wage &amp; Hour Division of the State of Connecticut Dept. of Labor</td>
<td>Initial contact may be in person or by mail.</td>
<td>Generally, no more than 180 days after the alleged violation.</td>
</tr>
<tr>
<td><strong>SEBAC SUPPLEMENTAL LEAVE</strong></td>
<td>Follow the standard grievance process under the employee’s collective bargaining agreement (“CBA”) or the regulations of the Employee Review Board (“ERB”)</td>
<td>Refer to the applicable CBA or the ERB statute and regulations</td>
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<td><strong>PREGNANCY DISABILITY LEAVE</strong></td>
<td>Connecticut Commission on Human Rights and Opportunities</td>
<td>Refer to the CHRO website for instructions on “How to File a Discrimination Complaint”</td>
<td>Generally, no more than 180 days after the alleged violation</td>
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<td><strong>ORGAN/BONE MARROW DONOR LEAVE</strong></td>
<td>Follow the standard grievance process under the employee’s collective bargaining agreement (“CBA”) or the regulations of the Employee Review Board (“ERB”)</td>
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</table>
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.
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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). You must utilize all of your sick accruals for your personal illness before utilizing personal leave or vacation accruals.

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 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. Under the State FMLA, employees are entitled to take up to 16 weeks of leave in a two-year 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 and/or 16 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). You must utilize all of your sick accruals for your personal illness before utilizing personal leave or vacation accruals.

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).

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