

Sec. 31-51qq-37. Under what circumstances may a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable with no reasonable excuse for the delay, the employer may delay the taking of FMLA leave until thirty (30) days after the date the employee provides notice to the employer of the need for FMLA leave.

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may deny continuation of FMLA leave protection until an employee submits the certificate.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certificate.

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave and restoration cease under FMLA if and when the employment relationship terminates (*e.g.*, layoff). When an employee requests to return to work, the employer may deny the employee's return to work only if it is able to show that the employee would not otherwise have been employed if he or she had not taken FMLA leave.

(e) An employer may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. If an employee unequivocally advises the employer either before or during the leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave and restoration ceases. The employer may not require an employee to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employer two (2) business days' notice where feasible; the employer is required to restore the employee once such notice is given, or where such prior notice was not feasible. The employer shall return the employee to work within two (2) business days after such notice is provided, unless it is physically impossible to do so, in which case it shall be as soon as practicable, as defined in section 31-51qq-27(a) of the Regulations of Connecticut State Agencies. For example, if it would be physically impossible to return a flight attendant scheduled to work a specific flight or to return a laboratory employee to a sealed "clean room" during a certain period of time, then the employer shall return the employee as soon as practicable, as defined in section 31-51qq-27(a) of the Regulations of Connecticut State Agencies.

(f) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration provision.

(g) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer that does not have such a policy may not deny benefits to an employee under FMLA on this basis, unless the FMLA leave was fraudulently obtained as in subsection (f) of this section.

(Adopted effective March 9, 1999; Amended August 3, 2022)