Agency
Department of Labor

Subject
The Family and Medical Leave Act

Inclusive Sections
§§ 31-51qq-1—31-51qq-52

CONTENTS

The Family and Medical Leave Act

Sec. 31-51qq-1. Definitions

For purposes of sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies:

(a) "Act," "Family and Medical Leave Act" or "FMLA" means sections 31-51kk to 31-51qq, inclusive, of the Connecticut General Statutes.

(b) "ADA" means the Americans with Disabilities Act, 42 USC sections 12101 to 12213, inclusive, as amended.

(c) "Armed Forces" has the same meaning as provided in section 27-103(a) of the Connecticut General Statutes.

(d) "Commissioner" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109, or his or her designee.

(e) "Eligible employee" means an employee who, immediately preceding the date the FMLA leave will commence pursuant to his or her request for leave, has been employed for a total of at least three (3) consecutive months, as defined in section 31-51qq-6(b) of the Regulations of Connecticut State Agencies, by the employer from whom FMLA leave is requested.

(f) "Employ" means to allow or permit to work.

(g) "Employee" means any person engaged in service to an employer in the State of Connecticut in the business of the employer.

(h) "Employer" means any person engaged in any activity, enterprise or business in the State of Connecticut who employs one (1) or more employees. An employer covered by the Act includes, from the first employee's date of hire:

(1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; or

(2) Any successor in interest of an employer.

(3) The term "employer" does not include a municipality, a local or regional board of education, or a nonpublic elementary or secondary school.

(i) "Employment benefits" means:

(1) All benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by practice or written policy of an employer or through an "employee benefit plan" as defined in the Employee Retirement Income Security Act of 1974, 29 USC 1002(3).

(2) The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage.

(j) "FEPA" means the Fair Employment Practices Act, sections 46a-51 to 46a-104, inclusive, of the Connecticut General Statutes.

(k) "Family member" means:

(1) A spouse, sibling, son or daughter, grandparent, grandchild or parent; or

(2) An individual related to the employee by blood or affinity whose close association the employee describes as equivalent to the family relationships of a spouse, sibling, son or daughter, grandparent, grandchild or parent, regardless of biological or legal relationship or lack thereof.

(*l*) "FLSA" means the Fair Labor Standards Act, 29 USC 201 to 219, inclusive.

(m) "Grandchild" means a grandchild related to a person by (1) blood, (2) marriage, (3) adoption by a child of the grandparent, or (4) foster care by a child of the grandparent.

(n) "Grandparent" means a grandparent related to a person by (1) blood, (2) marriage, (3) adoption of minor child by a child of the grandparent, or (4) foster care by a child of the grandparent.

(o) "Health care provider" means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;

(2) a podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performing within the scope of the authorized practice;

(3) an advanced practice registered nurse, nurse practitioner, nurse midwife, clinical social worker or physician's assistant authorized to practice by the state in which such person practices and performing within the scope of the authorized practice;

(4) a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts;

(5) any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;

(6) a health care provider as defined in subdivisions (1) to (5), inclusive, of this subsection who practices in a country other than the United States and who is licensed to practice in accordance with the laws and regulations of that country; or

(7) such other health care provider as the Commissioner determines, performing within the scope of the authorized practice.

(p) "In loco parentis" includes, but is not limited to, persons with day-to-day responsibilities to care for or financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(q) "Incapacity" means inability to work, attend school or perform other regular daily activities due to a serious health condition, treatment therefor, or recovery therefrom.

(r) "Intermittent leave" means family or medical leave taken in separate periods of time due to a single qualifying reason, rather than for one (1) continuous period of time. Intermittent leave may include periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

(s) "Labor Department" means the State of Connecticut Department of Labor .

(t) "Medical leave" means a leave of absence, which may be unpaid, due to a serious health condition of an eligible employee.

(u) "Parent" means a biological parent, foster parent, adoptive parent, stepparent, parent-in-law or legal guardian of an eligible employee or an eligible employee's spouse, an individual standing in loco parentis to an eligible employee, or an individual who stood in loco parentis to the eligible employee when the employee was a child.

(v) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or organized groups of persons.

(w) "Reduced schedule leave " means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(x) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, nursing home or residential medical care facility; or continuing treatment, including outpatient treatment, by a health care provider. For the purposes of this section:

(1) An illness, injury, impairment, or physical or mental condition involves:

(A) Inpatient care (i.e., an overnight stay) in a hospital, as defined in section 19a-490 of the Connecticut General Statutes, hospice licensed pursuant to the public health code or certified as a hospice pursuant to 42 USC 1395x, nursing home licensed pursuant to Chapter 368v of the Connecticut General Statutes, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(B) Continuing treatment by a health care provider, including outpatient treatment. A serious health condition involving continuing treatment by a health care provider includes:

(i) A period of incapacity of more than three (3) consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two (2) or more times, including outpatient treatment, not later than thirty (30) days after the first day of incapacity, unless extenuating circumstances exist, by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one (1) occasion, which results in a regimen of continuing treatment under the supervision of the health care provider, including outpatient treatment.

(III) The requirement in subparagraphs (B)(i)(I) and (B)(i)(II) of this subdivision for treatment by a health care provider means an in-person or telemedicine visit to a health care provider, provided that the first (or only) in-person or telemedicine treatment visit occurs not later than seven (7) days after the first day of incapacity.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, including telemedicine, of at least twice per year for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments, including any period of recovery therefrom, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of subdivision (1) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under subdivision (1)(B)(i)(II) of this subsection, a regimen of continuing treatment includes, for example, a course of prescription medication such as antibiotics or therapy requiring special equipment to resolve or alleviate the health condition such as oxygen. A regimen of continuing treatment that includes the taking of over-the-counter medications or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Any condition that meets one (1) of the definitions of “serious health condition” as defined in this subsection including a mental health condition, shall be a qualifying reason for leave under the Act.

(4) Substance abuse may be a serious health condition if the conditions of this subsection are met. However, FMLA leave may only be taken 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. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under subdivisions (1)(B)(ii), (1)(B)(iii) or (1)(B)(iv) of this subsection qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack

or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(y) "Serious injury or illness" shall have the meaning set forth in section 31-51qq-50(c) of the Regulations of Connecticut State Agencies.

(z) "Sibling" means the biological brother, biological sister, half-brother, half-sister, stepbrother, stepsister, adopted brother, adopted sister, foster brother, foster sister, brother-in-law or sister-in-law of the eligible employee or the eligible employee's spouse.

(aa) "Son or daughter" means, for purposes of FMLA leave taken for birth, adoption or foster-care placement, to care for a family member with a serious health condition or for a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, a biological, adopted or foster child, stepchild, legal ward, or, in the alternative, a child of a person standing in loco parentis, as defined in subsection (p) of this section, or an individual to whom the employee stood in loco parentis when the individual was a child. A son or daughter may be of any age. (For the purposes of military caregiver leave, "son or daughter" is defined in section 31-51qq-50(d)(1) of the Regulations of Connecticut State Agencies).

(bb) "Spouse" means a person to whom one is legally married.

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

Sec. 31-51qq-2. What employers are covered by the act?

(a) "Employer" is defined in section 31-51qq-1(h) of the Regulations of Connecticut State Agencies.

(b) Normally, the legal entity which employs the employee is the employer under FMLA. Applying this principle, a corporation is a single employer rather than its separate establishments or division.

(1) Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the "joint employment" test discussed in section 31-51qq-4 of the Regulations of Connecticut State Agencies or the "integrated employer" test contained in subdivision (2) of this subsection.

(2) Separate entities shall be deemed to be parts of a single employer for purposes of FMLA if they meet the "integrated employer" test. Where this test is met, the employees of all entities making up the integrated employer shall be counted in determining employer coverage and employee eligibility. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship shall be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(A) Common management;

(B) Interrelation between operations;

(C) Centralized control of labor relations; and

(D) Degree of common ownership/financial control.

(c) An "employer" includes any person who acts directly or indirectly in the interest of an employer to any of the employer's employees. The definition of "employer" in the FLSA, 29 USC 203(d), similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under the FLSA, individuals such as corporate officers "acting in the interest of an employer" are individually liable for any violations of the requirements of the FMLA.

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

Sec. 31-51qq-3. In determining whether an employer is covered by FMLA, what does it mean to employ 75 or more employees on October first annually? (Repealed)

Repealed August 3, 2022.

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

Sec. 31-51qq-4. How is "joint employment" treated under FMLA?

(a) Where two (2) or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under the FMLA. Joint employers may be separate and distinct entities with separate owners, managers and facilities. Where the employee performs work which simultaneously benefits two (2) or more employers, or works for two (2) or more employers at different times during the workweek, a joint employment relationship generally shall be considered to exist in situations such as:

(1) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(2) Where an employer acts directly or indirectly in the interest of the other employer in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one (1) employer controls, is controlled by, or is under common control with the other employer.

(b) Whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment shall ordinarily be found to exist when a temporary or leasing agency supplies employees to a second employer.

(c) In joint employment relationships, only the primary employer is responsible for giving required notices to its employees and providing FMLA leave. Factors considered in determining which is the "primary" employer include the authority or responsibility to hire and fire, assign or place the employee, make payroll, and provide employment benefits. For employees of temporary help or leasing agencies, for example, the placement agency most commonly would be the primary employer. Where a Professional Employer Organization (PEO), as defined in section 31-221a(10) of the Connecticut General Statutes, is a joint

employer, the client employer most commonly would be the primary employer.

(d) Employees jointly employed by two (2) employers shall be counted by both employers, whether or not maintained on one (1) of the employer's payroll, in determining employer coverage and employee eligibility. For example, an employer who jointly employs one (1) worker from a leasing or temporary help agency and has no permanent workers of its own is covered by the FMLA. An employee on leave who is working for a secondary employer is considered employed by the secondary employer, and shall be counted for coverage and eligibility purposes, as long as the employer has a reasonable expectation that that employee shall return to employment with that employer.

(e) Job restoration is the primary responsibility of the primary employer. The secondary employer is responsible for accepting the employee returning from FMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary or leasing agency, and the agency chooses to place the employee with the secondary employer. A secondary employer is also responsible for compliance with the prohibited acts provisions with respect to its jointly employed employees . The prohibited acts include prohibitions against interfering with an employee's attempt to exercise rights under the Act, or discharging or discriminating against an employee for opposing a practice which is unlawful under the FMLA. A covered secondary employer shall be responsible for compliance with all the provisions of the FMLA with respect to its regular, permanent workforce.

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

Sec. 31-51qq-5. What is meant by "successor in interest"?

(a) For purposes of FMLA, in determining whether an employer is covered because it is a "successor in interest" to a covered employer, the following factors shall be considered:

(1) Substantial continuity of the same business operations;
(2) Use of the same plant;
(3) Continuity of the work force;
(4) Similarity of jobs and working conditions;
(5) Similarity of supervisory personnel;
(6) Similarity in machinery, equipment, and production methods;
(7) Similarity of products or services; and
(8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a "successor in interest" exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality. Whether the successor has notice of the employee's claim is not a consideration. Notice may be relevant, however, in determining successor liability for violations of the predecessor.

(c) When an employer is a "successor in interest," employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. For example, the successor, whether or not it meets FMLA coverage

criteria, shall grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including job restoration at the conclusion of the leave. A successor which meets FMLA's coverage criteria shall count periods of employment and hours worked for the predecessor for purposes of determining employee eligibility for FMLA leave.

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

Sec. 31-51qq-6. Which employees are "eligible" to take a leave under FMLA?

(a) An "eligible employee" is defined in section 31-51qq-1(e) of the Regulations of Connecticut State Agencies.

(b) The employee shall have been employed by the employer for at least three (3) consecutive months immediately preceding the date the FMLA leave will commence pursuant to the employee's request. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation or group health plan benefits), the week counts as a week of employment. For purposes of determining whether employment qualifies as "at least three (3) consecutive months," thirteen (13) weeks is deemed to be equal to three (3) consecutive months.

(c) The determination of whether an employee has worked for the employer for at least three (3) consecutive months, as defined in section 31-51qq-6(b) of the Regulations of Connecticut State Agencies, immediately preceding his or her request for leave shall be made as of the date leave commences pursuant to the employee's request. If an employee notifies the employer of need for FMLA leave before the employee meets this eligibility criteria, the employer shall either confirm the employee's eligibility based upon a projection that the employee shall be eligible on the date leave would commence or shall advise the employee when the eligibility requirement is met. If the employer confirms eligibility at the time the notice for leave is received, the employer may not subsequently challenge the employee's eligibility. In the latter case, if the employer does not advise the employee whether the employee is eligible as soon as practicable, as defined in section 31-51qq-27(a) of the Regulations of Connecticut State Agencies, specifically not later than five (5) business days, absent extenuating circumstances, after the date employee eligibility is determined, the employee shall have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employer does advise.

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

Sec. 31-51qq-7. Under what kinds of circumstances are employers required to grant family or medical leave?

(a) Employers covered by the FMLA are required to grant leave to eligible employees for one (1) or more of the following reasons:

(1) Upon the birth of a son or daughter of the employee, and to care for the newborn child;

(2) Upon the placement of a son or daughter with the employee for adoption or foster care, and to care for the newly placed child;

(3) In order to care for a family member of the employee, if such family member has a serious health condition;

(4) Because of a serious health condition of the employee;

(5) In order to serve as an organ or bone marrow donor;

(6) Because of any qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, arising out of the fact that the employee's spouse, son, daughter or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces; or

(7) To care for a covered servicemember, as defined in section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.

(b) The right to take leave under the FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care, or care of a child.

(c) Circumstances may require that the FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to subsection (a)(4) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employers covered by the FMLA are required to grant FMLA leave pursuant to subsection (a)(2) of this section before the actual placement or adoption of a child if absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is twenty-four (24)-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family shall take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) FMLA leave is available for treatment for substance abuse provided the conditions of section 31-51qq-1(x) of the Regulations of Connecticut State Agencies are met. However, treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been

communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a family member receiving treatment for substance abuse.

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

Sec. 31-51qq-8. For purposes of an employee qualifying to take FMLA leave for a family member, what may an employer require to confirm a family relationship?

(a) For purposes of confirming that an individual is a spouse, sibling, son, daughter, grandparent, grandchild or parent of the employee, the employer may require the employee giving notice of the need for leave to provide a simple written statement, signed by the employee, verifying that the individual is the employee's spouse, sibling, son, daughter, grandparent, grandchild or parent.

(b) For purposes of confirming that a person is an individual related to the employee by blood or affinity whose close association is equivalent to the family relationships in subsection (a) of this section and covered as a "family member," the employer may require a simple written statement, signed by the employee, describing and verifying that (1) the employee considers his or her relationship to the individual to be equivalent to the relationship that one would have with either a spouse, sibling, son, daughter, grandparent, grandchild or parent, and (2) the relationship involves a significant personal bond. An employer determination based on such employee statement shall be situation specific and governed by the circumstances of the individuals involved.

(c) An employer may not require the employee to provide any more information or documentation to confirm a "family member" relationship beyond the signed, written statements permitted in subsections (a) and (b) of this section.

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

Sec. 31-51qq-9. What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is "needed to care for" a family member or a covered servicemember, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, encompasses both physical and psychological care. It includes situations where, for example, the family member with a serious health condition or covered servicemember is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a family member with a serious health condition or a covered servicemember who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for

others who are caring for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced schedule leave necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently - such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

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

Sec. 31-51qq-10. For an employee seeking intermittent leave or reduced schedule leave, what is meant by the "medical necessity for" such leave?

For intermittent leave or reduced schedule leave, there shall be a medical need for leave and it shall be that such medical need can best be accommodated through an intermittent or reduced schedule leave. The treatment regimen and other information described in the certification of a serious health condition in section 31-51qq-31 of the Regulations of Connecticut State Agencies and in the certification of a serious injury or illness for a covered servicemember, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, if required by the employer, meets the requirement for certification of the medical necessity of intermittent leave or reduced schedule leave. Employees needing intermittent FMLA leave or reduced schedule leave shall attempt to schedule leave so as not to disrupt the employer's operation.

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

Sec. 31-51qq-11. How much leave may an employee take?

(a) An eligible employee is limited to a total of twelve (12) workweeks of leave during any twelve (12)-month period for any one or more of the following reasons, except that the employee may take up to two (2) additional workweeks of leave during such twelve (12)-month period for a serious health condition resulting in incapacitation that occurs during pregnancy:

(1) Upon the birth of a son or daughter of the employee, and to care for the newborn child;

(2) Upon the placement of a son or daughter with the employee for adoption or foster care, and to care for the newly placed child;

(3) In order to care for a family member of the employee, if such family member has a serious health condition;

(4) Because of a serious health condition of the employee;

(5) In order to serve as an organ or bone marrow donor; or

(6) Because of any qualifying exigency, as described in section 31-51qq-49 of the

Regulations of Connecticut State Agencies, arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces.

However, an eligible employee may be entitled to a total of twenty-six (26) workweeks of leave during any twelve (12)-month period for leave to care for a covered servicemember's, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, serious injury or illness pursuant to section 31-51qq-50 of the Regulations of Connecticut State Agencies.

(b) An employee shall be entitled to take up to two (2) additional workweeks of leave during the applicable twelve (12)-month period, if the employee has a serious health condition while the employee is pregnant and that serious health condition results in a period of incapacity. These additional two (2) weeks are only available during pregnancy. If a pregnant employee uses the additional two (2) weeks during the pregnancy, the employee would still have the full twelve (12) weeks available for any qualifying reason for leave.

(1) In this situation, the employee's incapacity does not have to be due to the employee's pregnancy; rather, it can be due to any serious health condition that the employee experiences during her pregnancy. For example, an employee shall be entitled to take up to two (2) additional workweeks of leave where she is unable to work during her pregnancy due to her recovery from appendicitis.

(2) Should an employee require more than two (2) weeks of leave for a serious health condition during her pregnancy, the amount of available leave for other qualifying reasons would be reduced accordingly. For example, if an employee takes three (3) weeks of bed rest for preeclampsia prior to the birth of her child, she would have eleven (11) weeks available for any qualifying reason for leave remaining during the applicable twelve (12)-month period.

(3) If an employee has not yet notified her employer of her pregnancy and experiences any other serious health condition requiring leave during pregnancy, the employee is still entitled to the additional two (2) weeks of leave for a serious health condition during her pregnancy. However, if, for example, the employee experiences morning sickness, prior to notifying her employer as soon as practicable, as defined in section 31-51qq-27(a) of the Regulations of Connecticut State Agencies, after the absence that she was pregnant, the employer may, in its discretion, designate up to two (2) weeks of such leave as FMLA when notified of the pregnancy.

(c) The twelve (12)-month period during which the eligible employee is entitled to use FMLA leave shall be determined using any one of the following methods:

(1) A calendar year;

(2) Any fixed twelve (12)-month period, such as a fiscal year or a twelve (12)-month period measured forward from an employee's first date of employment;

(3) A twelve (12)-month period measured forward from an employee's first day of FMLA leave taken under Act; or

(4) A rolling twelve (12)-month period measured backward from an employee's first day

of FMLA leave taken under the Act.

(d) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one (1) week, the holiday will not count against the employee's FMLA leave entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one (1) or more weeks (*e.g.*, a Christmas or New Year holiday, the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.

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

Sec. 31-51qq-12. If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the twelve (12)-month period beginning on the date of the birth or placement, unless the employer permits leave to be taken for a longer period. Any such FMLA leave shall be concluded within this twelve (12)-month period.

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

Sec. 31-51qq-13. How much leave may spouses take if they are employed by the same employer?

(a) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twelve (12) workweeks during any twelve (12)-month period if such leave is taken for the birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's family member with a serious health condition.

(b) The limitation on the total weeks of leave applies to leave taken for the reasons specified in subsection (a) of this section as long as the spouses are employed by the same employer.

(1) For example, it would apply even though the spouses are employed at two (2) different worksites of an employer or by two (2) different operating divisions of the same company.

(2) If one (1) spouse is ineligible for FMLA leave, the other spouse would be entitled to a full twelve (12)-week entitlement for the reasons specified in subsection (a) of this section.

(c) Where spouses both use a portion of the total applicable FMLA leave entitlement for one of the purposes specified in subsection (a) of this section, each would be entitled to the difference between the amount he or she has taken individually and his or her total FMLA leave entitlement during the applicable twelve (12)-month period for FMLA leave for a

purpose other than those contained in subsection (a) of this section.

(1) For example, if each spouse took six (6) weeks of leave to care for a healthy, newborn child, each could use an additional six (6) weeks due to his or her own serious health condition.

(2) Any period of pregnancy disability or period for a serious health condition resulting in incapacitation that occurs during pregnancy would be considered FMLA for a serious health condition of the mother and would not be subject to the combined limit.

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

Sec. 31-51qq-14. Does FMLA leave have to be taken all at once, or can it be taken in parts (intermittently or on a reduced schedule)?

(a) An eligible employee may take FMLA leave intermittently or on a reduced schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced schedule leave is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take a leave intermittently or on a reduced schedule only if the employer agrees. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) An eligible employee may take leave intermittently or on a reduced schedule when medically necessary for planned or unanticipated medical treatment of a serious health condition or of a covered servicemember's, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. An eligible employee may also take leave to provide care or psychological comfort to a family member with a serious health condition or a covered servicemember.

(1) An eligible employee may take intermittent leave for the serious health condition of a family member, for the employee's own serious health condition, or for a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and the leave may include periods from an hour or more to several weeks.

(2) Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of several months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced schedule is an employee

who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(3) An eligible employee may take intermittent or reduced schedule leave for absences where the employee or family member is incapacitated.

(d) Leave due to the employee serving as an organ or bone marrow donor may be taken on an intermittent or reduced schedule basis.

(e) Leave due to a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, may be taken on an intermittent or reduced schedule basis.

(f) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one (1) hour or less. For example, an employee might take two (2) hours off for a medical appointment, or might work a reduced day of four (4) hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave.

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

Sec. 31-51qq-15. May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced schedule leave?

(a) If an employee needs intermittent leave or leave on a reduced schedule that is foreseeable based on planned medical treatment, including recovery therefrom, for the employee's serious health condition, for a family member's serious health condition, for the employee to serve as an organ or bone marrow donor or for a covered servicemember's, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, serious injury or illness, or if the employer agrees to permit intermittent leave or reduced schedule leave for the birth of a child or the placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(b) The exercise of the authority to transfer an employee to an alternative position, taken pursuant to this section, shall not conflict with any provision of a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the employee is a part. In addition, transfer to an alternative position may require compliance with federal and state law, including the ADA and FEPA. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

(c) The alternative position shall have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the

pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four (4) hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(d) An employer may not transfer the employee to an alternative position to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, an employer may not transfer a white collar employee to a position performing manual job duties; an employee working the day shift to a position on the graveyard shift; an employee working in the headquarters facility to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer shall be a prohibited act under the FMLA.

(e) An employer shall return an employee who has been transferred to an alternative position as a result of taking leave intermittently or on a reduced schedule and who no longer needs to continue on leave and is able to return to full-time work, to the same or equivalent job the employee left when the leave commenced.

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

Sec. 31-51qq-16. How does one determine the amount of leave used where an employee takes intermittent leave or reduced schedule leave?

(a) If an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. For example, if an employee who normally works five (5) days a week takes off one (1) day, the employee would use one-fifth (1/5) of a week of FMLA leave. Similarly, if a full-time employee who normally works eight (8)-hour days works four (4)-hour days under a reduced schedule leave, the employee would use one-half (1/2) of a week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works thirty (30) hours per week, works only twenty (20) hours per week under a reduced schedule leave, the employee's ten (10) hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced schedule.

(c) If an employer has made a permanent or long-term change in the employee's schedule

for reasons other than FMLA, and prior to the notice of need for FMLA leave, the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked but for the taking of FMLA leave, a weekly average of the hours scheduled over the twelve (12) months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement. However, where the employee has been employed by an employer for less than twelve (12) months prior to the beginning of the leave period, a weekly average of the hours scheduled over the employee's entire period of employment with the employer (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(e) If an employee would normally be required to work overtime, but is unable to do so because of an qualifying reason that limits the employee's ability to work overtime, the employer may count the hours which the employee would have been required to work against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for forty-eight (48) hours in a particular week, but due to a serious health condition the employee is unable to work more than forty (40) hours that week, the employee would utilize eight (8) hours of FMLA-protected leave out of the forty-eight (48)-hour workweek, or one-sixth (1/6) of a week of FMLA leave.

(f) An employer may not count voluntary overtime hours that an employee does not work due to an qualifying reason against the employee's FMLA leave entitlement.

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

Sec. 31-51qq-17. May an employer deduct hourly amounts from an employee's salary when providing unpaid leave under FMLA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee?

Leave taken under FMLA may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements set forth in Chapter 558 of the Connecticut General Statutes and sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies as a salaried executive, administrative, or professional employee, providing unpaid qualifying leave to such an employee will not cause the employee to lose the exemption. This means that where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies, the employer may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employer provides FMLA leave, whether paid or unpaid, and maintains records required by this part regarding FMLA leave, shall not be relevant to

the determination whether an employee is exempt within the meaning of sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies and Chapter 558 of the Connecticut General Statutes.

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

Sec. 31-51qq-18. Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute accrued paid leave provided by the employer for unpaid FMLA leave. If the employee does not choose to substitute accrued paid leave for unpaid FMLA leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave, except that the employee may choose to retain up to two (2) weeks of accrued paid leave. The term substitute means that the paid leave provided by the employer and accrued pursuant to established policies of the employer will run concurrently with the unpaid FMLA leave.

(b) For purposes of this subsection, "sick leave" means an absence from work for which compensation is provided through an employer's bona fide written policy providing compensation for loss of wages occasioned by illness, but does not include absences from work for which compensation is provided through an employer's plan, including, but not limited to, a short or long-term disability plan, whether or not such plan is self-insured. Where an employee has earned or accrued paid vacation, personal or sick or medical leave with the employer, the employee may substitute that paid leave for all or part of any unpaid FMLA leave needed to care for the employee's own serious health condition, to care for a family member who has a serious health condition, to care for a covered servicemember, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, or for the employee to serve as an organ or bone marrow donor, except that the employee may choose to retain up to two (2) weeks of such leave. Substitution of paid sick or medical leave under this subsection may be elected only to the extent the circumstances meet the employer's usual requirements for the use of paid sick or medical leave. Except that, if the employer has a bone fide written sick leave policy, it shall allow the employee to use up to two (2) weeks of accumulated sick leave to care for a family member with a serious health condition or for the birth or adoption of a son or daughter.

(c) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted toward the employee's leave entitlement under FMLA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, where the employee is eligible for disability leave under the employer's temporary disability benefit plan, the employer may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefits plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employer's temporary disability benefit plan are more stringent than those of FMLA, the employee shall meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments

from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(d) A serious health condition may result from injury to the employee "on or off" the job. Either the employer or the employee may choose to have the employee's FMLA leave entitlement run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job". As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted.

(e) If neither the employee nor the employer elects to substitute paid leave earned or accrued with the employer for unpaid FMLA leave under the above conditions and circumstances, the employee shall remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(f) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave shall not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the FMLA leave entitlement.

(g) Where an employee's earned or accrued paid leave is not substituted for the entire period of unpaid leave to which the employee is entitled under the FMLA, the employee may apply for and be provided with compensation through the Paid Family and Medical Leave Insurance Program, 31-49e to 31-49t, inclusive, of the Connecticut General Statutes, for all or part of any unpaid FMLA leave, provided the employee qualifies for payments under the program.

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

Sec. 31-51qq-19. Under what circumstances may an employer designate leave, paid or unpaid, as FMLA leave and, as a result count it against the employee's total FMLA leave entitlement? (Repealed)

Repealed August 3, 2022.

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

Sec. 31-51qq-20. Is an employee entitled to benefits while using FMLA leave?

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave, such as paid or unpaid leave, as appropriate.

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

Sec. 31-51qq-21. What are an employee's rights on returning to work from FMLA leave?

(a) For purposes of this section and section 31-51qq-22 of the Regulations of Connecticut State Agencies, "physical condition" means any health condition relating to body and mind.

(b) Except as provided in subsection (c) of this section, upon return from FMLA leave, an employee is entitled to be returned to the original position the employee held when leave commenced, or if the original position is not available, to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee is entitled to such reinstatement to the original position even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.

(c) If the employee is medically unable to perform the employee's original job upon the expiration of such leave entitlement, the employer shall transfer the employee to work suitable to such employee's physical condition if such work is available. In addition, the employer's obligations may also be governed by federal and state law, including the ADA and FEPA.

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

Sec. 31-51qq-22. When is the employer obligated to transfer an employee to work suitable to an employee's physical condition?

(a) In the case of a medical leave, if the employee is medically unable to perform the employee's original job at the expiration of the leave, but is still able to perform work of some type, the employer shall transfer such employee to work suitable to such employee's physical condition, as defined in section 31-51qq-21(c) of the Regulations of Connecticut State Agencies, if such work is available.

(b) Other work suitable to an employee's physical condition, as defined in section 31-51qq-21(c) of the Regulations of Connecticut State Agencies, may include part-time work, or other work at a lesser pay scale, even if the employee's original was a full-time position.

(c) An employer may request certification from the employee's health care provider that the employee is physically unable to resume work in the employee's original position but may perform other work. The certification itself need only be a simple statement of an employee's inability to perform the original job and employee's present medical limitations with regard to other suitable work.

(d) If after the expiration of the employee's full FMLA leave entitlement, the employee is unable to resume work in the employee's original job and is transferred to other suitable work, but at some later time is again able to perform the employee's original job, the employer is no longer obligated to reinstate the employee to his or her original job, except for example, if required as a reasonable accommodation pursuant to the ADA or FEPA.

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

Sec. 31-51qq-23. What is an equivalent position?

(a) An equivalent position is one that is virtually identical to the employee's former

position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It shall involve the same or substantially similar duties and responsibilities, which shall entail substantially equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to, for example, attend a necessary course, renew a license, or fly a minimum number of hours, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) **Equivalent pay.**

(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. The employer shall grant pay increases conditioned upon seniority, length of service, or work performed in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten (10) hours of overtime and corresponding overtime pay each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary, made to employees consistent with the provisions of subdivision (1) of this subsection. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also shall receive the payment.

(d) **Equivalent Benefits.** "Benefits" include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, 29 USC 1002(3).

(1) At the end of an employee's FMLA leave, an employer shall resume providing benefits in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. An employer shall not require an employee upon return from FMLA leave to requalify for any benefits the employee enjoyed before FMLA leave began, including family or dependent coverages. For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical

examination, in order to requalify for life insurance upon return from leave. Accordingly, some employers may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave.

(2) An employee is entitled to accrue any additional benefits or seniority during unpaid FMLA leave if the employer's policy provides that other employees on unpaid leave are entitled to such accrual of benefits or seniority. Benefits accrued at the time leave began (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) shall be available to an employee upon return from leave.

(e) **Equivalent Terms and Conditions of Employment.** An equivalent position shall have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employer shall reinstate the employee to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite to a worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee shall have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employer may not induce an employee to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to *de minimis* or intangible, unmeasurable aspects of the job. However, restoration to a job slated for layoff when the employee's original position is not, would not meet the requirements of an equivalent position.

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

Sec. 31-51qq-24. Are there any limitations on an employer's obligation to reinstate an employee?

(a) 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. An employer shall be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave and restore the employee ceases at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer.

(c) An employer may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in section 31-51qq-35 of the Regulations of Connecticut State Agencies.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after the employee's FMLA leave entitlement in a twelve (12)-month period is exhausted, the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to workers' compensation statutes, ADA and FEPA for any relief or protections.

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

Sec. 31-51qq-25. How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) No employer shall interfere with, restrain or deny the exercise of, or attempts to exercise, any rights provided by the Act.

(2) No employer shall discharge or cause to be discharged or in any other manner discriminate against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the Act or because such employee has exercised the rights afforded to such employee under the Act.

(3) No person, whether or not an employer, shall discharge or cause to be discharged or in any other way discriminate against any person, whether or not an employee, because that person has:

(A) Filed any charge, or has instituted, or caused to be instituted, any proceeding under or related to the Act;

(B) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the Act; or

(C) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include attempts by a covered employer to avoid responsibilities under the FMLA.

(c) No employer shall discriminate or retaliate against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits, the same benefits shall be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) For purposes of this subsection, "sick leave" means an absence from work for which compensation is provided through an employer's bona fide written policy providing compensation for loss of wages occasioned by illness, but does not include absences from work for which compensation is provided through an employer's plan, including, but not limited to, a short or long-term disability plan, whether or not such plan is self-insured. No employer shall deny an employee the right to use up to two (2) weeks of accumulated sick leave or discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, up to two (2) weeks of accumulated sick leave to attend to serious health condition of the employee's family member, or for the birth or adoption of the employee's son or daughter.

(e) Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA. For example, employees or their collective bargaining representatives cannot "trade off" the right to take FMLA leave against some other benefit offered by the employer. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Labor Department or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a "light duty" assignment while recovering from a serious health condition. In such a circumstance, the employee's right to restoration to the same or an equivalent position is available until the applicable FMLA leave entitlement has passed within the twelve (12)-month period, including all FMLA leave taken

and the period of "light duty."

(f) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.*, filing a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies.

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

Sec. 31-51qq-26. What notices to employees are required of employers under the FMLA?

(a) **General notice.** An FMLA-covered employer shall provide a notice or policy to each employee explaining the Act's provisions and providing information concerning FMLA entitlements and employee obligations, including procedures for filing complaints of alleged violations of the Act with the Labor Department, by

(1) including the notice or policy in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or

(2) distributing a copy of such notice or policy to each new employee upon hiring. In either case, distribution of this notice or policy may be accomplished electronically.

(b) **Eligibility notice.**

(1) When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason, the employer shall notify the employee of the employee's eligibility to take FMLA leave not later than five (5) business days after learning of such need for leave, absent extenuating circumstances. Employee eligibility is determined and notice shall be provided at the commencement of the first instance of leave for each qualifying reason in the applicable twelve (12)-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable twelve (12)-month period.

(2) The eligibility notice shall state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA leave, the notice shall state at least one (1) reason why the employee is not eligible, including the number of months the employee has been employed by the employer. Notification of eligibility shall be in writing.

(3) An optional prototype combined notice of eligibility and rights and responsibilities, which employers may adapt for their use to meet these specific notice requirements, is posted on the Labor Department's website.

(c) **Rights and responsibilities notice.** The employer shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. Such specific notice shall include, as appropriate:

(1) That the leave shall be designated and counted against the employee's annual FMLA leave entitlement, if qualifying, and the applicable twelve (12)-month period for FMLA

entitlement;

(2) Any requirements for the employee to furnish certification of a serious health condition, certification for military caregiver leave or certification of leave for a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, and the consequences of failing to do so;

(3) The employee's right to substitute paid leave, whether the employer shall require the substitution of paid leave, the conditions relating to any substitution, the employee's right to choose to retain up to two (2) weeks of accrued paid leave, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave; and

(4) The employee's right to restoration to the same or, if not available, an equivalent job upon return from leave.

(d) The notice of rights and responsibilities required by subsection (c) of this section may include other information, for example, whether the employer shall require periodic reports of the employee's status and intent to return to work, but is not required to do so. An optional prototype combined notice of eligibility and rights and responsibilities, which employers may adapt for their use to meet the specific notice of rights and responsibilities requirements is posted on the Labor Department's website.

(e) The employer shall give the notices of eligibility and rights and responsibilities within a reasonable time after notice of the need for leave is given by the employee, but not later than five (5) business days if feasible. The employer may distribute the notices of eligibility and rights and responsibilities electronically.

(f) If the specific information provided by the notices of eligibility and rights and responsibilities changes with respect to a subsequent period of FMLA leave during the twelve (12)-month period, the employer shall, not later than five (5) business days after receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subsection (c) which has changed.

(g) **Designation notice.**

(1) The employer is responsible in all circumstances for designating paid or unpaid leave as qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a qualifying reason after receiving a certification or otherwise, the employer shall notify the employee whether the leave will be approved and will be counted as FMLA leave within five (5) business days absent extenuating circumstances. Only one (1) notice of designation is required for each qualifying reason per applicable twelve (12)-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be approved as qualifying, the employer shall notify the employee of that determination and state the reason for that determination. If the employer requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer shall inform the employee of this

requirement at the time of designating the FMLA leave.

(2) If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer may request additional information from the employee, or the employee's spokesperson if the employee is incapacitated, to ascertain whether leave is potentially qualifying. Once the employer has sufficient information that the leave is being taken for a qualifying reason, the employer shall notify the employee that the leave is being approved as FMLA leave.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer shall provide notice of such requirement with the designation notice. If the employer will require the health care provider to consider whether the employee is able to perform the employee's essential job functions in making the fitness-for-duty determination, the employer shall state this requirement in the designation notice and provide the employee a list of the essential functions of the employee's position.

(4) The designation notice shall be in writing. An optional prototype designation notice is posted on the Labor Department's website.

(5) The employer shall notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employer designates the leave as qualifying, the employer shall notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement such as in the case of unforeseeable intermittent leave, then the employer shall provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement shall be in writing.

(6) If an employer does not designate the leave, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by this subsection. However, the employer may only retroactively designate the leave as FMLA leave provided that its failure to timely designate leave does not cause harm or injury to the employee. If an employer's failure to timely designate leave in accordance with this subsection causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. For example, if an employer that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that he or she suffered harm as a result of the employer's actions. However, if an employee took

leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employer's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the son or daughter if the leave had been designated timely.

(h) Employers shall responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(i) If ten (10) percent or more of an employer's workforce is not literate in English, the employer shall provide the notices required by subsections (a), (b) and (c) of this section in a language in which the employees are literate. Employers furnishing FMLA-required notices to sensory impaired individuals shall also comply with all applicable requirements under federal or State law.

(j) If an employer fails to provide notice in accordance with the provisions of this section, the employer may not take action against an employee for failure to comply with any provisions required to be set forth in the notice.

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

Sec. 31-51qq-27. What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?

(a) **Timing of notice.** For purposes of sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies, "as soon as practicable" means notice as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as thirty (30) days' notice, as soon as practicable ordinarily would mean at least verbal notification to the employer within one (1) or two (2) business days of when the need for leave becomes known to the employee. An employer shall take into account the individual facts and circumstances of an employee's notice when determining whether the notice was given as soon as practicable.

(b) An employee shall provide the employer at least thirty (30) days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies. If thirty (30) days' notice is not practicable, such as because of a lack of knowledge of approximately when leave shall be required to begin, a change in circumstances, or a medical emergency, the employee shall give notice as soon as practicable.

(1) For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be

given before placement for adoption.

(2) For foreseeable leave due to a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, the employee shall give notice as soon as practicable, regardless of how far in advance such leave is foreseeable.

(3) Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, the employee need only give notice one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(4) In those cases where the employee is required to provide at least thirty (30) days' notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon request from the employer.

(c) **Content of notice.** An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to work, attend school, or perform other regular daily activities due to the serious health condition; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), that the requested leave is for one of the reasons listed in section 31-51qq-49 of the Regulations of Connecticut State Agencies; if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA, but may state only that leave is needed. When an employee seeks leave due to a qualifying reason, for which the employer has previously provided FMLA-protected leave, the employee shall specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employer shall request additional information from the employee if it needs more information about whether FMLA leave is being sought by the employee and to obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to request additional information from the employee to determine whether the leave is because of a serious health condition and whether it may request medical certification to support the need for such leave. An employer may also request certification to support the need for leave for a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, or for military caregiver leave. When an employee has been previously certified for leave due to more than one (1) qualifying reason, the employer may need to request additional information from the employee to determine for which qualifying reason the leave is needed. An employee has an obligation to respond

to an employer's questions designed to determine whether an absence is potentially qualifying. Failure to respond by the employee to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is qualifying.

(d) **Complying with the employer policy.** An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, an employer shall not deny or delay an employee's taking FMLA leave if the employee fails to follow internal employer procedures, and instead gives timely verbal or other notice.

(e) **Scheduling planned medical treatment.** When planning medical treatment, the employee shall consult with the employer and make a reasonable effort not to disrupt unduly the employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. If an employee neglects to consult with the employer to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate such discussions and require the employee to try to make such arrangements, subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced schedule which is medically necessary due to a serious health condition or a serious injury or illness, an employee shall advise the employer, upon request, why the intermittent leave or reduced schedule leave is necessary and the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employee FMLA notice obligations or the employer's own internal rules on leave notice requirements. In addition, an employer may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement allow less advance notice to the employer.

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

Sec. 31-51qq-28. What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?

(a) **Timing of notice.** When the approximate timing of the need for leave is not foreseeable, an employee shall give such notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. An employee shall give notice to the employer not later than one (1) or two (2) business days of learning of the need for leave, except in extraordinary circumstances of the particular case where such notice is not feasible. In the case of a medical emergency requiring leave because of

an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employer's internal procedures may not be required when FMLA leave is involved.

(b) The employee shall provide notice to the employer either in person or by telephone, email, facsimile machine ("fax"), text message or other electronic means. If the employee is unable to give notice personally, the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) may give notice. When an employee seeks leave for the first time for a qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA but may only state that leave is needed. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer shall seek additional information from the employee or the spokesperson to determine whether the leave is potentially qualifying. When an employee seeks leave due to an qualifying reason, for which the employer has previously provided FMLA-protected leave, the employee shall specifically reference the qualifying reason for leave or the need for FMLA leave. The employer shall obtain any additional required information through informal means. The employee or spokesperson shall provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee shall not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee shall be expected to call the employer promptly after ensuring the child has used the inhaler.

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

Sec. 31-51qq-29. What recourse do employers have if employees fail to provide the required notice?

(a) An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements.

(b) If an employee fails to give thirty (30) days' notice for foreseeable leave 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.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it shall be clear that the employee had actual notice of the FMLA notice requirements. The need for leave and the approximate date leave would be taken shall have been clearly foreseeable to the employee thirty (30) days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

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

Sec. 31-51qq-30. When shall an employee provide medical certification to support FMLA leave?

(a) **General.** An employer may require that an employee's leave for his or her own serious health condition or to care for the employee's family member with a serious health condition, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employer may also require that an employee's leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, or for military caregiver leave be supported by a certification, as described in sections 31-51qq-51 and 31-51qq-52 of the Regulations of Connecticut State Agencies, respectively. An employer shall give written notice of a requirement for medical certification each time a certification is required.

(b) **Timing.** The employer shall allow the employee at least fifteen (15) calendar days after the employee's receipt of the request for certification to provide such certification to the employer, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts and the employee has notified the employer of the need for additional time.

(c) In most cases, the employer shall request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or not later than five (5) business days thereafter, or, in the case of unforeseen leave, not later than five (5) business days after the leave commences. The employer may request certification or recertification at some later date if the employer has reason to question the appropriateness of the leave or its duration.

(d) **Complete and sufficient certification.** The employee shall provide a complete and sufficient certification to the employer if required by the employer in accordance with this section and sections 31-51qq-51 and 31-51qq-52 of the Regulations of Connecticut State Agencies. The employer shall advise an employee whenever the employer finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employer receives a certification, but one (1) or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employer shall provide the employee with seven (7) calendar days, unless not practicable under the particular circumstances despite the employee's diligent good faith efforts, to cure any such deficiency and the employee has notified the employer of the need for additional time. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave. A certification that is not returned to the employer is not considered incomplete or insufficient but rather constitutes a failure to provide certification.

(e) **Consequences.** At the time the employer requests certification, the employer shall also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employer with a complete and

sufficient certification, despite the opportunity to cure the certification as provided in subsection (d) of this section, or fails to provide any certification, the employer may deny the taking of FMLA leave.

(f) **Annual medical certification.** Where the employee's need for leave due to the employee's own serious health condition or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for clarification and authentication set forth in section 31-51qq-32 of the Regulations of Connecticut State Agencies, including second and third opinions.

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

Sec. 31-51qq-31. How much information may be required in a medical certification for an employee's own serious health condition or the serious health condition of a family member?

(a) Required information. When an employee requests leave because of the employee's own serious health condition or the serious health condition of a family member, an employer may require an employee to obtain a medical certification from a health care provider that, in addition to identifying the health care provider and type of medical practice (including pertinent specialization), sets forth the following information;

(1) A certification as to which part of the definition of "serious health condition," if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity, if different.

(3) Whether it shall be necessary for the employee to take leave intermittently or to work a reduced schedule as a result of the serious health condition, and if so, the probable duration of such schedule.

(4) If the condition is pregnancy or a chronic condition, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(5) If additional treatments shall be required for the condition, an estimate of the probable number of such treatments. If the patient's incapacity shall be intermittent, or shall require a reduced schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(6) If any of the treatments referred to in subdivision (5) of this subsection shall be provided by another provider of health services, such as a physical therapist, the nature of the treatments.

(7) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen.

(8) If medical leave is required for the employee's absence from work because of the

employee's own condition, including absences due to pregnancy or a chronic condition, whether the employee:

(A) Is unable to perform work of any kind; or

(B) Shall be absent from work for treatment.

(9) If leave is required to care for an employee's family member with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee shall indicate on the form the care he or she will provide and an estimate of the time period.

(10) If the employee's family member will need care only intermittently or on a reduced schedule basis, the probable duration of the need.

(b) **Optional medical certification form.** For purposes of compliance with FMLA, the Labor Department has developed optional Form DOL-FME for employees' and optional Form DOL-FMF for their family members' use in obtaining medical certification, including second and third opinions, from a health care provider that meets the FMLA's certification requirements. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge. Copies of the forms are posted on the Labor Department's website. Employers may use Form DOL-FME and Form DOL-FMF, or another form containing the same basic information; however, no additional information beyond that specified in subsection (a) of this section may be required. In all instances, the information on the forms shall relate only to the serious health condition for which the current need for leave exists.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employer from following the workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employer may request additional information in accordance with a disability plan that requires greater information to qualify for payments or benefits, provided that the employer informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. The employer may consider any information received pursuant to such plan in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave.

(d) If an employee's serious health condition may also be a disability within the meaning of the ADA or FEPA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA or FEPA. The employer may consider any information received pursuant to these procedures in determining the

employee's entitlement to FMLA-protected leave.

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

Sec. 31-51qq-32. What may an employer do if it questions the adequacy of a medical certificate for leave taken because of an employee's own serious health condition or the serious health condition of a family member?

(a) **Clarification and authentication.**

(1) For purposes of sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies, "authentication" means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed or authorized by the health care provider who signed the document; no additional medical information may be requested.

(2) For purposes of sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies, "clarification" means contacting the health care provider, with the employee's permission, to understand the handwriting on the medical certification or to understand the meaning of a response.

(3) If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the employee's health care provider. However, the employer may contact the employee's health care provider for purposes of clarification or authentication of the medical certification (whether it is an initial certification or a recertification) after the employer has given the employee an opportunity to cure any deficiencies. The employer shall use a health care provider, a human resources professional, a leave administrator, or a management official to make such contact. The employee's direct supervisor shall not contact the employee's health care provider under any circumstances. If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the employee's health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear. It is the employee's responsibility to provide the employer with a complete and sufficient certification and to clarify the certification if necessary. The FMLA does not prevent the employer or a representative of the employer from having direct contact with the employee's health care provider in order to follow the procedures for requesting medical information under the ADA, FEPA, workers' compensation law or disability plan, subject to the provisions of subsections (c) and (d) of section 31-51qq-31 of the Regulations of Connecticut State Agencies.

(b) **Second opinion.** An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies. The employer may designate the health care provider to furnish the second opinion, but the

selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with or otherwise regularly use the services of the health care provider providing the second opinion, unless the employer is located in an area where access to health care is extremely limited, for example, a rural area where no more than one (1) or two (2) doctors practice in the relevant specialty in the vicinity.

(c) **Third opinion.** If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The employer and employee shall designate or jointly approve the third health care provider. The employer and the employee shall each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer shall be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee shall 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. On the other hand, 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.

(d) **Copies of opinions.** The employer shall provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. The employer shall provide the requested copies not later than five (5) business days after such request, unless extenuating circumstances prevent such action.

(e) **Travel expenses.** If the employer requires the employee to obtain either a second or third opinion, the employer shall reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) **Medical certification abroad.** In circumstances when the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee shall provide the employer with a written translation of the certification upon request.

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

Sec. 31-51qq-33. Under what circumstances may an employer request subsequent recertifications of a medical condition?

(a) **Thirty (30)-day rule.** An employer may request recertification no more often than every thirty (30) days and only in connection with an absence by the employee, unless

subsections (b) or (c) of this section apply.

(b) **More than thirty (30) days.** If the medical certification indicates that the minimum duration of the condition is more than thirty (30) days, an employer shall wait until that minimum duration expires before requesting a recertification, unless subsection (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for forty (40) days, the employer shall wait forty (40) days before requesting a recertification. However, the employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis, provided the standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement. In all cases, an employer may request a recertification of a medical condition every six (6) months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six (6) months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six (6) months in connection with an absence.

(c) **Less than thirty (30) days.** Unless otherwise required by the employee's health care provider, an employer may request one (1) recertification in less than thirty (30) days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly, such as the duration or frequency of the absence, the nature or severity of the illness, or complications. For example, if a medical certification states that an employee needs leave for one (1) to two (2) days when the employee suffers a migraine headache and the employee's absences for his or her last two (2) migraines lasted four (4) days each, then the increased duration of the absences might constitute a significant change in circumstances allowing the employer to request a recertification in less than thirty (30) days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every thirty (30) days; or

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four (4) weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employer to request a recertification in less than thirty (30) days.

(d) **Timing.** The employee shall provide the requested recertification to the employer within the time frame requested by the employer (at least fifteen (15) calendar days after the employee's receipt of the employer's request), unless it is not practicable to do so under the particular circumstances and despite the employee's diligent, good faith efforts and the employee notifies the employer of the need for additional time.

(e) **Content.** The employer may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in section 31-51qq-31 of the Regulations of Connecticut State Agencies. The employee has the same obligations to participate and cooperate in the recertification process as in the initial certification process, including providing a complete and sufficient certification. On recertification, the employer is allowed to provide the health care provider with a record of the employee's absence pattern and ask if the serious health condition and the need for leave is consistent with such a pattern.

(f) The employer shall pay for any recertification that is not covered by the employee's health insurance. No second or third opinion on recertification may be required.

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

Sec. 31-51qq-34. What notice may an employer require regarding an employee's intent to return to work?

(a) An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employer's obligation under FMLA to restore the employee ceases. However, this obligation continues if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the employee no longer needs the amount of leave originally anticipated. An employee may not be required to take more FMLA leave than necessary. In both of these situations, the employer may require that the employee provide the employer reasonable notice, specifically not later than two (2) business days after the change in circumstances, where foreseeable. In the case of an employee providing notice of the intent to return to work, the employer shall return the employee to work not later than two (2) business days after such notice is provided, unless it is physically impossible, as described in section 31-51qq-37(e). The employer may also obtain information on such changed circumstances through requested status reports.

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

Sec. 31-51qq-35. Under what circumstances may an employer require that an employee submit a "fitness-for-duty" certification that the employee is able to return to work?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires

all similarly-situated employees, such as employees with the same occupation or same serious health condition, who take FMLA leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If other provisions of State or local law, or the terms of a collective bargaining agreement, govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the ADA that any return-to-work physical be job-related and consistent with business necessity apply.

(c) An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work; however, the employer may provide the employee a list of the employee's essential job functions and may require the employee to provide the list to the health care provider in making the fitness-for-duty determination. The employer may contact the employee's health care provider, for purposes of seeking authentication, as defined in section 31-51qq-32(a)(1) of the Regulations of Connecticut State Agencies, the employee's fitness-for-duty certification. The employer shall use a health care provider, a human resources professional, a leave administrator, or a management official to make such contact. The employee's direct supervisor shall not contact the employee's health care provider under any circumstances. The employer may also contact the employee's health care provider, with the employee's permission, for purposes of seeking clarification, as defined in section 31-51qq-32(a)(2) of the Regulations of Connecticut State Agencies, of the fitness-for-duty certification. No additional information may be acquired, and clarification, as defined in section 31-51qq-32(a)(2) of the Regulations of Connecticut State Agencies, may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made.

(d) The employee shall pay any costs associated with obtaining the fitness-for-duty certification, and the employee is not entitled to be paid for the time or travel costs involved.

(e) The designation notice required in section 31-51qq-26 of the Regulations of Connecticut State Agencies shall advise the employee if the employer will require a fitness-for-duty certification to return to work. If the employer has a handbook explaining employment policies and benefits, the handbook shall explain the employer's general policy regarding any requirement for fitness-for-duty certification to return to work. No second or third opinions on a fitness-for-duty certification may be required.

(f) An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the designation notice required in section 31-51qq-26 of the Regulations of Connecticut State Agencies.

(g) An employer is not entitled to a fitness-for-duty certification when the employee takes intermittent leave or reduced schedule leave.

(h) If State or local law or the terms of a collective bargaining agreement govern an

employee's return to work, those provisions shall be applied. If an employee's serious health condition may also be a disability within the meaning of the ADA or FEPA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA or FEPA.

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

Sec. 31-51qq-36. What happens if an employee fails to satisfy the medical certification or recertification requirements?

(a) **Foreseeable leave.** In the case of foreseeable leave, an employer may deny FMLA protection to an employee who fails to provide certification within the timeframe requested by the employer to furnish such certification (at least fifteen (15) calendar days after receipt of the employer's request for certification, if practicable), until the required certification is provided.

(b) **Unforeseeable leave and recertification.** When the need for leave is **not** foreseeable, or in the case of recertification, an employee shall provide certification or recertification within the time frame requested by the employer (at least fifteen (15) calendar days after the employee's receipt of the employer's request for certification), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within fifteen (15) calendar days. If an employee fails to provide the initial medical certification or the recertification within a reasonable time under the particular facts and circumstances, then the employer may:

(1) In the case of an initial medical certification, deny FMLA leave protection until a sufficient certification is provided, and

(2) In the case of a recertification, deny FMLA leave continuation until the employee produces a sufficient recertification.

If the employee never produces the medical certification, the leave is not FMLA leave, and, if the employee never produces the recertification, the continued leave is not FMLA leave.

(c) **Fitness-for-duty certification.** When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee shall provide a fitness-for-duty certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition that the employee is fit for duty and able to return to work if the employer has provided the required notice. The employer may delay restoration until the fitness-for-duty certification is provided. If an employer provides the required notice, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA.

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

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)

Sec. 31-51qq-38. How should records and documents relating to medical certifications, recertifications or medical histories be maintained?

(a) Employers shall maintain records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of the Act, as medical records pursuant to chapter 563a of the Connecticut General Statutes, and, if the ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, 29 CFR 1630.14(c)(1). However, employers may inform

(1) supervisors and managers regarding necessary restrictions on the work or duties of an employee and any necessary accommodations;

(2) first aid and safety personnel, when appropriate, if the employee's physical or medical condition might require emergency treatment; and

(3) government officials investigating compliance with the Act, the Paid Family and Medical Leave Insurance Program, sections 31-49e through 31-49t, inclusive, of the Connecticut General Statutes or other pertinent law, regarding any relevant information upon request. If the Genetic Information Nondiscrimination Act of 2008 (GINA), 29 CFR Part 1635, is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA, 29 CFR 1635.9, which permit such information to be disclosed consistent with the requirements of FMLA.

(b) The employer shall provide to an eligible employee, upon request, the dates the employee took FMLA leave, the hours the employee took FMLA leave if taken in increments of less than one (1) full day, and copies of all employee and employer notices as required by the Act.

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

Sec. 31-51qq-39. What if an employer provides more generous benefits than required by FMLA?

(a) An employer shall observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement which provides for reinstatement to a position that is not equivalent because of seniority (*e.g.*, provides lesser pay) is superseded by FMLA. If an employer provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA to the additional leave period not covered by FMLA.

(b) Nothing in the Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is

intended to discourage employers from adopting or retaining more generous leave policies.

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

Sec. 31-51qq-40. Do federal laws providing family and medical leave still apply?

(a) Nothing in FMLA supersedes any provision of federal or local law that provides greater family or medical leave rights than those provided by FMLA. Employees are not required to designate whether the leave they are taking is State FMLA leave or federal FMLA leave, and an employer shall comply with the applicable provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law shall receive benefits in accordance with that law. If the employee is eligible for leave under State FMLA leave and the leave qualifies for both State and federal FMLA, the leave used counts against the employee's entitlement under both laws. Examples of the interaction between State and federal FMLA laws include:

(1) An employee is entitled to have health benefits maintained while on federal FMLA leave for up to twelve (12) weeks each leave year. Although there is no requirement under State FMLA to maintain an employee's health benefits during the State FMLA leave period, the obligation under federal FMLA to maintain an employee's health benefits may arise where State FMLA leave and federal FMLA leave run concurrently. An employee is also entitled to be restored to the same or, if not available, equivalent job with the same or equivalent health benefits at the conclusion of the applicable FMLA leave period.

(2) If an employee uses twelve (12) weeks of State FMLA leave to care for a grandparent with a serious health condition, the employee would still be entitled to his or her full federal FMLA leave entitlement during the leave year, as the leave used was provided for a purpose not covered by federal FMLA.

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

Sec. 31-51qq-41. How does FMLA affect federal and State anti-discrimination laws?

(a) Nothing in FMLA modifies or affects any federal or State law prohibiting discrimination on the basis of a protected class as enumerated in Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, 42 USC sections 2000e to 2000e-17, inclusive, the ADA and FEPA.

(b) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under the FMLA. The workers' compensation absence and FMLA leave may run concurrently, subject to proper notice and designation by the employer. At some point, the health care provider providing medical care pursuant to the workers' compensation injury or illness may certify the employee is able to return to work in a "light duty" position. If the employer offers such a position, the employee is permitted but not required to accept the position. As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to

return to work or until the employee's FMLA leave entitlement is exhausted. If the employee returning from the workers' compensation injury is a qualified individual with a disability, the employer's obligations may be governed by the ADA and FEPA.

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

Sec. 31-51qq-42. What employers are covered by the FMLA? (Repealed)

Repealed August 3, 2022.

(Transferred and Amended March 9, 1999; Repealed August 3, 2022)

Sec. 31-51qq-43. What can employees do who believe that their rights under FMLA have been violated?

(a) Any employee aggrieved by a violation of the provisions of the Act and sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies may bring a civil action in a court of competent jurisdiction against the employer not later than one hundred eighty (180) calendar days after the employer action alleged to be in violation of this section. The employee may bring such action without filing an administrative complaint. However, if the aggrieved employee opts to file an administrative complaint with the Labor Department pursuant to subsection (b) of this section, the employee shall have ninety (90) calendar days after the date of the dismissal decision and release of jurisdiction issued by the Commissioner in accordance with section 31-51qq-44 of the Regulations of Connecticut State Agencies to file a civil action in a court of competent jurisdiction.

(b) If an employee aggrieved by a violation of this section does not bring a civil action in a court of competent jurisdiction, the employee, or his or her authorized representative, may file a complaint with the Labor Department if the employee believes that:

(1) His or her employer has interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) His or her employer discharged or caused to be discharged, or in any manner discriminated against, any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) His or her employer has violated any provision of the Act with respect to such employee; or

(4) Any person has discharged or caused to be discharged, or in any manner discriminated against, an individual because such individual:

(A) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act.

(c) Complaints shall be filed with the Labor Department in such manner and on such form(s) as are prescribed and furnished by the Labor Department. The Labor Department may seek any additional information it deems necessary to initiate an investigation.

(d) In order to be considered timely filed, all complaints shall be received by the Labor Department or postmarked not later than one hundred and eighty days (180) after the date of the employer action which prompted the complaint, described in subsection (b) of this section. Any complaint received or postmarked after such one hundred and eighty day (180) period shall be considered late and shall be dismissed for lack of jurisdiction, except that such complaint may be considered timely filed if the complainant can establish good cause, as defined in subsection (d) of this section, for the late filing.

(e) "Good cause" means any circumstances which, in the opinion of the Commissioner, would prevent a reasonably prudent individual in the exercise of due diligence from timely filing his or her complaint.

(Transferred and Amended March 9, 1999; Amended August 3, 2022)

Sec. 31-51qq-44. What is the complaint process?

(a) The Labor Department shall make a finding regarding jurisdiction and, if it has jurisdiction, investigate complaints filed in accordance with section 31-51qq-43 of the Regulations of Connecticut State Agencies as expeditiously as possible. The Labor Department may, at its discretion, investigate separate complaints in a consolidated manner.

(b) For purposes of this section, "respondent" means any employer or person, who is the subject of a complaint. The Labor Department shall provide to a respondent timely notice that a complaint has been filed and that an investigation has been initiated. Such notice shall contain:

(1) A copy of the complaint;

(2) The right of either party to representation; and

(3) Instructions regarding the need to respond to the complaint.

Any respondent furnished with a notice pursuant to this subsection may respond in writing to the Labor Department not later than twenty-one (21) calendar days of the mailing date of such notice. The Labor Department may, in its sole discretion, afford the respondent additional time to respond. Such response may include any information, evidence or argument the respondent deems relevant or necessary to the Labor Department's investigation and hearing of the complaint. The continuation and completion of the Labor Department's investigation shall not be contingent upon such response.

(c) At any point during the pendency of an investigation, the Labor Department may effect an informal resolution of the complaint which is mutually acceptable to the complainant and the respondent.

(d) Where the Labor Department, as the result of an investigation conducted pursuant to this section, has reason to believe that a respondent has:

(1) Interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) Discharged or caused to be discharged, or in any manner discriminated against, any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) Violated any provision of the Act with respect to an eligible employee, or

(4) Discharged or caused to be discharged, or in any manner discriminated against, an individual because such individual:

(A) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act, the Labor Department may require the parties to participate in a mandatory settlement conference and, in the absence of a settlement, a hearing officer designated by the Commissioner shall hold a hearing and render a final decision.

(e) Where the Labor Department determines that it has no jurisdiction or, as the result of an investigation conducted pursuant to this section, finds that there is no reason to believe that a respondent has:

(1) Interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) Discharged or caused to be discharged, or in any manner discriminated against, any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) Violated any provision of the Act with respect to an eligible employee, or

(4) Discharged or caused to be discharged, or in any manner discriminated against an individual because such individual:

(A) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act, the Labor Department shall dismiss the complaint and issue a release of jurisdiction in writing allowing the complainant to bring a civil action in the Superior Court. Any action brought by the complainant in accordance with this subsection shall be brought not later than ninety (90) calendar days after the date of the dismissal decision and release of jurisdiction from the Commissioner. A court of competent jurisdiction may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if a violation of this subsection had not occurred.

(Transferred and Amended March 9, 1999; Amended August 3, 2022)

Sec. 31-51qq-45. What are the provisions for resolution and reconsideration prior to a contested case hearing? (Repealed)

Repealed August 3, 2022.

(Transferred and Amended March 9, 1999; Repealed August 3, 2022)

Sec. 31-51qq-46. What procedures govern the contested case hearings?

The Rules of Procedure for Hearings in Contested Cases to be Conducted by the Labor Commissioner, sections 31-1-1 to 31-1-9, inclusive, of the Regulations of Connecticut State Agencies, shall apply to any hearing scheduled pursuant to section 31-51qq-44 of the Regulations of Connecticut State Agencies.

(Transferred and Amended March 9, 1999; Amended August 3, 2022)

Sec. 31-51qq-47. What types of redress may the Commissioner order?

(a) If the Commissioner concludes in the final decision that a respondent has:

(1) Interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) Discharged or caused to be discharged, or in any manner discriminated against, any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) Violated any provision of the Act with respect to an eligible employee, or

(4) Discharged, or caused to be discharged, or in any manner discriminated against, an individual because such individual:

(A) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act, the Commissioner may order the respondent to comply with the applicable requirements of the Act and to provide such relief as the Commissioner determines will remedy the harm incurred by the complainant as a result of the respondent's violation, discharge or discrimination. Such relief may include, but is not limited to, restoration of any rights, benefits, entitlements or protections afforded to the employee by the Act, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the respondent's violation, discharge or discrimination had not occurred and any other monetary compensation for any loss which was the direct result of the respondent's violation, discharge or discrimination.

(Transferred and Amended March 9, 1999; Amended August 3, 2022)

Sec. 31-51qq-48. What are employers required to report to the labor department concerning their experience with the FMLA? (Repealed) Subtitle 31-51qq Appendix A and Appendix B (Repealed)

Repealed August 3, 2022.

(Transferred and Amended March 9, 1999; Repealed August 3, 2022)

Sec. 31-51qq-49. What is qualifying exigency leave?

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the "military member" or "member") is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces. A call to active duty for purposes of leave taken because of a qualifying exigency refers to a call to active duty under Titles 10 or 32 of the United States Code, as amended from time to time.

(b) An eligible employee may take FMLA leave for one (1) or more of the following qualifying exigencies:

(1) **Short-notice deployment.**

(A) To address any issue that arises from the fact that the military member is notified of an impending call or order to active duty seven (7) or less calendar days prior to the date of deployment; and

(B) Leave taken for this purpose can be used for a period of seven (7) calendar days beginning on the date the military member is notified of an impending call or order to active duty;

(2) **Military events and related activities.**

(A) To attend any official ceremony, program, or event sponsored by the military that is related to active duty or the impending call or order to active duty of the military member; and

(B) 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 active duty or the impending call or order to active duty of the military member;

(3) **Childcare and school activities.** For the purposes of leave for childcare and school activities listed in subparagraphs (A) through (D), inclusive, of this subdivision, a child of the military member shall be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under eighteen (18) years of age or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. For purposes of this subsection, "incapable of self-care" and "mental or physical disability" have the meanings set forth in regulations adopted by the United States Secretary of Labor. As with all instances of qualifying exigency leave, the military member shall be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(A) To arrange for alternative childcare for a child of the military member when the

active duty status, or notification of the impending call or order to active duty status, of the military member necessitates a change in the existing childcare arrangement;

(B) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty, or the notification of an impending call or order to active duty, of the military member;

(C) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the active duty, or the notification of an impending call or order to active duty, of the military member; and

(D) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the active duty, or the notification of an impending call or order to active duty, of the military member;

(4) **Financial and legal arrangements.**

(A) To make or update financial or legal arrangements to address the military member's absence while on active duty, or where notified of an impending call or order to active duty, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(B) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on active duty, or where notified of an impending call or order to active duty, and for a period of ninety (90) days following the termination of the military member's active duty status;

(5) **Counseling.** To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age eighteen (18), or age eighteen (18) or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the active duty, or notification of an impending call or order to active duty, of the military member. For purposes of this subsection, “incapable of self-care” and “mental or physical disability” have the meanings set forth in regulations adopted by the United States Secretary of Labor;

(6) **Rest and Recuperation.**

(A) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(B) Leave taken for this purpose can be used for a period of fifteen (15) calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) **Post-deployment activities.**

(A) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the military member's active duty status; and

(B) To address issues that arise from the death of the military member while on active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) **Parental care.** For purposes of leave for parental care listed in subparagraphs (A) through (D), inclusive of this subdivision, the parent of the military member shall be incapable of self-care and shall be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under eighteen (18) years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three (3) or more of the activities of daily living or instrumental activities of daily living. 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. As with all instances of qualifying exigency leave, the military member shall be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(A) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the active duty status, or notification of impending call or order to active duty status, of the military member necessitates a change in the existing care arrangement for the parent;

(B) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the active duty status, or notification of impending call or order to active duty status, of the military member;

(C) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the active duty status, or notification of impending call or order to active duty status, of the military member; and

(D) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the active duty status, or notification of impending call or order to active duty status, of the military member but not for routine or regular meetings;

(9) **Additional activities.** To address other events which arise out of the military member's active duty status, or notification of impending call or order to active duty status, provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

(Effective August 3, 2022)

Sec. 31-51qq-50. What is leave to care for a covered servicemember with a serious injury or illness (military caregiver leave)?

(a) **Definitions.**

The following definitions shall apply to sections 31-51qq-1 to 31-51qq-52, inclusive, of the Regulations of Connecticut State Agencies.

(1) "Covered servicemember" means a current member of the Armed Forces who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty.

(2) "Next of kin of a covered servicemember" means the covered servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative or any other individual whose close association with the employee is the equivalent of a family member for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

(3) "Serious injury or illness" means an injury or illness that was incurred by the covered servicemember 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 servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

(4) "Son or daughter of a covered servicemember" means the covered servicemember's biological, adopted or foster child, stepchild, legal ward or child for whom the eligible employee or Armed Forces member stood in loco parentis and who is any age.

(b) Eligible employees are entitled to FMLA leave to care for a covered servicemember.

(c) In order to care for a covered servicemember, an eligible employee shall be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(d) An employer is permitted to require an employee to provide a simple written statement, signed by the employee, verifying that the individual is the spouse, son, daughter, parent or next of kin of the covered servicemember.

(e) An eligible employee is entitled to twenty-six (26) workweeks of leave to care for a covered servicemember during a single twelve (12)-month period.

(1) The single twelve (12)-month period described in subsection (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends on the date twelve (12) months after such first day of leave, regardless of the method used by the employer to determine the employee's twelve (12)

workweeks of leave entitlement for other qualifying reasons. If an eligible employee does not take all of his or her twenty-six (26) workweeks of leave entitlement to care for a covered servicemember during this single twelve (12)-month period, the remaining part of his or her twenty-six (26) workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in subsection (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than twenty-six (26) workweeks of leave may be taken within any single twelve (12)-month period. An eligible employee may take more than one period of twenty-six (26) workweeks of leave to care for a covered servicemember with more than one (1) serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one (1) covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single twelve (12)-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than twenty-six (26) workweeks of leave in each single twelve (12)-month period.

(3) An eligible employee is entitled to a combined total of twenty-six (26) workweeks of leave for any qualifying reason during the single twelve (12)-month period described in subsection (e) of this section, provided that the employee is entitled to no more than twelve (12) workweeks of leave for one or more of the following: Because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for a family member of the employee, if such family member has a serious health condition; because of the employee's own serious health condition; in order to serve as an organ or bone marrow donor; or because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, except that an employee may take up to two (2) additional workweeks of leave for a serious health condition resulting in incapacitation that occurs during a pregnancy. Thus, for example, an eligible employee may, during the single twelve (12)-month period, take sixteen (16) workweeks of FMLA leave to care for a covered servicemember and ten (10) workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than twelve (12) weeks of FMLA leave to care for the newborn child during the single twelve (12)-month period, even if the employee takes fewer than fourteen (14) workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as qualifying, and for giving notice of the designation to the employee as provided in section 31-51qq-26 of the Regulations of Connecticut State Agencies. In the case of leave that qualifies as both leave

to care for a covered servicemember and leave to care for a family member with a serious health condition during the single twelve (12)-month period described in subsection (e) of this section, the employer shall designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single twelve (12)-month period described in subsection (e) of this section shall not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember.

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twenty-six (26) workweeks of leave during any twelve (12)-month period if the leave is taken to care for a covered servicemember. The limitation on the total weeks of leave applies to leave taken for the reason specified in subsection (e) of this section as long as the spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two (2) different worksites of an employer or by two (2) different operating divisions of the same company. On the other hand, if one (1) spouse is ineligible for FMLA leave, the other spouse would be entitled to a full twenty-six (26)-week entitlement.

(Effective August 3, 2022)

Sec. 31-51qq-51. What certification is required for leave taken because of a qualifying exigency?

(a) **Active Duty Orders.** The first time an employee requests leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, arising out of the active duty, or notification of an impending call or order to active duty, of a military member in the Armed Forces, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on active duty status, or has been notified of an impending call to active duty status, and the dates of the military member's active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, arises out of a different active duty status or notification of an impending call to active duty status, of the same or a different military member.

(b) **Required information.** An employer may require that leave for any qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding

the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, for which FMLA leave is requested. The facts shall be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies;

(5) If the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) The Labor Department has developed an optional prototype form for employees' use in obtaining a certification that meets FMLA's certification requirements, which may be obtained on the Labor Department’s website. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies. The optional certification form, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section.

(d) **Verification.** If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, the employer may not request additional information from the employee. However, if the qualifying exigency, as described in section 31-51qq-49 of the Regulations of Connecticut State Agencies, involves meeting

with a third party, the employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. An employer also may contact an appropriate unit of the Armed Forces to request verification that a military member is on active duty or has been notified of an impending call to active duty; no additional information may be requested and the employee's permission is not required.

(Effective August 3, 2022)

Sec. 31-51qq-52. What certification is required for leave taken to care for a covered servicemember (military caregiver leave)?

(a) **Required information from health care provider.** For purposes of subsections (a) and (b) of this section, "TRICARE" means the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide. When leave is taken to care for a covered servicemember, as defined by section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (DOD) health care provider;

(2) A United States Department of Veterans Affairs (VA) health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider; or

(5) Any health care provider as defined in section 31-51qq-1(o) of the Regulations of Connecticut State Agencies.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined in this section, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD Recovery Care Coordinator) or an authorized VA representative. An employer may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(A) A DOD health care provider;

(B) A VA health care provider;

(C) A DOD TRICARE network authorized private health care provider;

(D) A DOD non-network TRICARE authorized private health care provider; or

(E) A health care provider as defined in section 31-51qq-1(o) of the Regulations of Connecticut State Agencies.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts shall be sufficient to support the need for leave. Such medical facts shall include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment or therapy or is recuperating.

(5) Information sufficient to establish that the covered servicemember is in need of care and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) **Required information from employee and/or covered servicemember.** An employer may also request that such certification set forth the following information provided by an employee or covered servicemember:

(1) The name and address of the employer of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) The covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list; and

(6) A description of the care to be provided to the covered servicemember and an estimate

of the leave needed to provide the care.

(d) The Labor Department has developed optional prototype forms for employees' use in obtaining certification that meets FMLA's certification requirements, which may be obtained from the Labor Department's website. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember. These optional forms, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section. In all instances the information on the certification shall relate only to the serious injury or illness for which the current need for leave exists. An employer may seek authentication or clarification of the certification as set forth in section 31-51qq-32 of the Regulations of Connecticut State Agencies. Second and third opinions are not permitted for leave to care for a covered servicemember when the certification has been completed by one (1) of the types of health care providers in subsection (a)(1) to subsection (a)(4), inclusive, of this section. However, second and third opinions as set forth in section 31-51qq-32 of the Regulations of Connecticut State Agencies are permitted when the certification has been completed by a health care provider as defined in section 31-51qq-1(o) of the Regulations of Connecticut State Agencies. Additionally, recertifications set forth in 31-51qq-33 of the Regulations of Connecticut State Agencies are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember as set forth in section 31-51qq-50(a)(1) of the Regulations of Connecticut State Agencies.

(e) An employer requiring an employee to submit a certification for leave to care for a covered servicemember shall accept as sufficient certification, in lieu of the Labor Department's optional certification forms or an employer's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employer may request that the employee have one (1) of the authorized health care providers set forth in subsection (a) of this section complete the Labor Department's optional certification form or an employer's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employer may seek authentication and clarification of the ITO or ITA as set forth

in section 31-51qq-32 of the Regulations of Connecticut State Agencies. An employer may not utilize the second or third opinion process as set forth in section 31-51qq-32 of the Regulations of Connecticut State Agencies or the recertification process as set forth in section 31-51qq-33 of the Regulations of Connecticut State Agencies during the period of time in which leave is supported by an ITO or ITA.

(3) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember as set forth in sections 31-51-50(a)(2) and 31-51-50(a)(3) of the Regulations of Connecticut State Agencies when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employer requiring an employee to submit a certification for leave to care for a covered servicemember shall accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employer may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers pursuant to section 31-51qq-32 of the Regulations of Connecticut State Agencies. An employer may not utilize the second or third opinion process set forth in section 31-51qq-32 of the Regulations of Connecticut State Agencies or the recertification process as set forth in section 31-51qq-33 of the Regulations of Connecticut State Agencies when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember as set forth in section 31-51qq-50(d)(3) of the Regulations of Connecticut State Agencies when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employer may also require an employee to provide documentation, such as a veteran's Form DD-214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents as set forth in section 31-51qq-30 of the Regulations of Connecticut State Agencies. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave as set forth in section 31-51qq-30 of the Regulations of Connecticut State Agencies.

(Effective August 3, 2022)