

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.

Regulations of Connecticut State Agencies

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