

Sec. 31-51rr-31. Employer notice requirements (29 CFR § 825.300)

(a) General notice.

(1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of alleged violations of section 31-51rr of the Connecticut General Statutes with the Labor Department. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. Employers can comply with this requirement by posting the notice provided in Appendix B.

(2) Covered employers must post this general notice even if no employees are eligible for FMLA leave.

(3) If an FMLA-covered employer has any eligible employees, it shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

(4) To meet the requirements of subsection (a)(3) of this section, employers may duplicate the text of the notice contained in Appendix B or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under Federal or State law.

(b) Eligibility notice.

(1) When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. Employee eligibility is determined and notice must be provided at the commencement of the first instance of leave for each FMLA-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 an eligible employee, as described in section 31-51rr-2(a) of the Regulations of Connecticut State Agencies. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, and the number of hours of service worked for the employer during the twelve (12)-month period. Notification of eligibility may be oral or in writing; employers may use the form referenced in Appendix A to provide such notification to employees. The employer is obligated to translate this notice in any situation in which it

is obligated to do so.

(3) If an employee provides notice of a subsequent need for FMLA leave during the applicable twelve (12)-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed, such as if the employee has worked less than nine hundred fifty (950) hours of service for the employer in the twelve (12) months preceding the commencement of leave for the subsequent qualifying reason, the employer must notify the employee of the change in eligibility status within five (5) business days, absent extenuating circumstances.

(c) Rights and responsibilities notice.

(1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employer may use the form referenced in Appendix A. The employer is obligated to translate this notice in any situation in which it is obligated to do so. This notice shall be provided to the employee each time the eligibility notice is provided pursuant to subsection (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

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

(B) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so;

(C) The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;

(D) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences, such as the circumstances under which coverage may lapse, of failure to make such payments on a timely basis;

(E) The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and

(F) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

(2) The notice of rights and responsibilities may include other information, such as whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the

prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(5) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(6) A prototype notice of rights and responsibilities is referenced in Appendix A; the prototype may be obtained from the U.S. Department of Labor's website. Employers may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) Designation notice.

(1) The employer is responsible in all circumstances for designating leave as FMLA-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 FMLA-qualifying reason, such as after receiving a certification, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five (5) business days absent extenuating circumstances. The employer may use the form referenced in Appendix A. Only one notice of designation is required for each FMLA-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 designated as FMLA-qualifying, such as if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted, the employer must notify the employee of 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 must inform the employee of this designation 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.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. If the employer handbook or other written documents, if any, describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances, such as by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation, the employer is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is

referenced in Appendix A; the prototype designation notice may be obtained from the U.S. Department of Labor's website. If the leave is not designated as FMLA leave because it does not meet the requirements of section 31-51rr of the Connecticut General Statutes, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employer to the employee in the designation notice changes, such as when the employee exhausts the FMLA leave entitlement, the employer shall provide, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must 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 FMLA-qualifying, the employer must 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 must 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 thirty (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 may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. Such written notice may be in any form, including a notation on the employee's pay stub.

(e) **Consequences of failing to provide notice.** Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

(Effective May 12, 2014)