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

(See 29 CFR § 825.220)

(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) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or causing to be discharged or in any other way discriminating 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) All persons (whether or not employers) are prohibited from discharging or causing to be discharged or in any other way discriminating 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 manipulation by a covered employer to avoid responsibilities under FMLA, for example:

(1) Keeping worksites below the 75-employee threshold for employee eligibility under the Act;

(2) Reducing hours available to work in order to avoid employee eligibility.

(c) An employer is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits, the same benefits would be required to 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) Employees cannot waive, nor may employers induce employees to waive, their 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 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 (see section 31-51qq-41(b) of the Regulations of Connecticut State Agencies). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 16 weeks have passed within the 2 year period,

including all FMLA leave taken and the period of "light duty."

(e) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.*, file 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-48, inclusive of the Regulations of Connecticut State Agencies.

(Adopted effective March 9, 1999)