



January 12, 2022

Senator James J. Maroney, Co-Chair
Representative Nicole Klarides-Ditria, Co-Chair
Legislative Regulation Review Committee
Room 011
Capitol Building
Hartford, CT 06106

Re: Department of Labor proposed regulations pertaining to **Paid Family and Medical Leave Insurance Appeal Procedures** (Tracking Number: PR2021-032)

Dear Senator Maroney and Representative Klarides-Ditria:

I am respectfully submitting substitute pages for the consideration and approval of the Legislative Regulation Review Committee. On January 3, 2022, the Labor Department submitted revised regulations that are responsive to the Legislative Commissioner's Office (LCO) report dated December 21, 2021. Labor Department staff had further discussion with LCO staff this week regarding substantive concerns and made further revisions, which are encompassed in the substitute pages.

In the substitute pages, the Labor Department clarifies that notice of any Connecticut paid family and medical leave (CTPL) appeal hearing may not be waived, but the notice period may be shortened with the parties' agreement. The revised regulations also contain a ninety (90) calendar day deadline to decide a CTPL appeal. The substitute pages provide that the ninety-day period begins on the due date for written argument or, if applicable, the date the commissioner supplements the record or concludes any hearing, whichever is latest. Finally, the motion to reopen provisions were modified to specify a deadline to submit written argument and to provide that a motion that is postmarked within the appeal period is considered timely even if received by the Labor Department after the appeal deadline.

Because these corrections affect several sections of the proposed regulations, I am submitting the regulations in their entirety for your review. If you have any further questions or need further information, please do not hesitate to contact Attorney Danielle Angliss, Counsel, E.S. Board of Review, at (860) 566-3045 or danielle.angliss@ct.gov.

Sincerely,

A handwritten signature in blue ink, which appears to read "Heidi Lane".

Heidi Lane
Legal Director

The Regulations of Connecticut State Agencies are amended by adding sections 31-49p-1 to 31-49p-10, inclusive, as follows:

(NEW) Section 31-49p-1. Definitions

As used in this section and sections 31-49p-2 to 31-49p-10, inclusive, of the Regulations of Connecticut State Agencies:

- (1) “Authority” has the same meaning as provided in section 31-49e of the Connecticut General Statutes.
- (2) “Address” means the United States Postal Service mailing address or the electronic mail address designated by a party for receipt of notices regarding the appellant’s appeal.
- (3) “Appellant” means a covered employee, person or health care provider, as those terms are defined in section 31-49e of the Connecticut General Statutes, who is authorized to file an appeal pursuant to section 31-49p of the Connecticut General Statutes.
- (4) “Commissioner” means the Labor Commissioner of the State of Connecticut or the commissioner’s designee.
- (5) “File record” has the same meaning as provided in section 31-49p of the Connecticut General Statutes.
- (6) “Party” means, with regard to an appeal, any of the following persons if aggrieved or potentially aggrieved by the determination of the appeal:
 - (A) an appellant;
 - (B) an employer with a private plan;
 - (C) a third-party administrator; or
 - (D) the authority.
- (7) “Private plan” means a private plan approved by the authority pursuant to section 31-49o of the Connecticut General Statutes to permit an employer to meet its obligations under sections 31-49e to 31-49t, inclusive, of the Connecticut General Statutes.
- (8) “Program” has the same meaning as provided in section 31-49e of the Connecticut General Statutes.
- (9) “Third-party administrator” means an individual or entity, other than an employer, who administers or assists in administering a private plan for an employer.

(NEW) Section 31-49p-2. Appeal processing

- (a) An appeal to the commissioner shall be filed pursuant to section 31-49p of the Connecticut General Statutes in writing through a mechanism prescribed by the commissioner including, but not limited to: (1) electronically through the Connecticut Department of Labor Leave Complaint and Appeal Portal , (2) by United States Postal Service to the Connecticut Department of Labor Appeals Division at its mailing address, (3) by fax, or (4) in person.
- (b) To be acceptable as timely filed, an appeal shall be received by the commissioner no later than the twenty-first (21) calendar day following the issuance of the denial or penalty decision pursuant to section 31-49p of the Connecticut General Statutes, or shall bear a legible United States Postal Service postmark which indicates that within such twenty-one (21) calendar day period the appeal was placed in the possession of the United States Postal Service for delivery to the Connecticut Department of Labor Appeals Division at its mailing address. If such twenty-first (21) calendar day falls on a day when the office in which the appeal was filed is not open for business, the last day of the twenty-one (21) calendar day period day shall be extended to the next business day of such office.
- (c) Upon receipt of an appeal to the commissioner, the commissioner shall:
 - (1) notate the date such appeal was received by the commissioner and the date of any United States Postal Service postmark;
 - (2)(A) request the file record from the authority for any penalty decision or denial decision issued by the authority; or
 - (2)(B) request the file record from an employer with a private plan or its third-party administrator for any denial decision issued by such employer or a third-party administrator pursuant to a private plan; and
 - (3) promptly send or make available a copy of such file record to the appellant.
- (d) The authority, an employer with a private plan or a third-party administrator shall provide to the commissioner the file record, not later than the fifteenth (15) calendar day following the commissioner's request to obtain such file record pursuant to subsection (c) of this section, electronically through the commissioner's leave complaint appeal portal or other mechanism specified by the commissioner.

(NEW) Section 31-49p-3. Request for hearing; supplementing the record

- (a) The commissioner may decide an appeal based solely on the file record obtained from the authority, employer with a private plan, or third-party administrator.
- (b) If the commissioner determines that the ends of justice so require, the commissioner may order a hearing for such purposes as the commissioner may direct. Each appeal may include a

statement requesting the commissioner to order a hearing. Each such request should:

- (1) describe any evidence or testimony that the requesting party desires to introduce at such hearing, explain the importance of such evidence or testimony for review of the case and state how such evidence is likely to affect the outcome of the case;
- (2) if the opportunity for oral argument is alleged as a reason for such request, explain why such oral argument is alleged to be necessary for review of the case; and
- (3) describe each other reason, if any, to support the party's request for the scheduling of a hearing.

(c) If the commissioner orders a hearing, advance notice of hearing and an announcement of the attendant rights and responsibilities of the parties concerning such hearing shall be sent to the parties. If the commissioner denies such request, the decision on the appeal shall indicate the specific basis for the denial of a hearing.

(d) The commissioner may supplement the record in any case in which the commissioner deems the file record on review to be incomplete or deficient, or in which the Commissioner determines that further evidence would be relevant to the commissioner's decision. An appeal may include a statement requesting the commissioner to supplement the record. Each such request shall describe or include the evidence with which such request seeks to supplement the record, explain the importance of such evidence and state how such evidence is likely to affect the outcome of the case. The commissioner may, on the commissioner's own motion, request any party to provide such evidence or argument as the commissioner may direct. In any case in which the commissioner supplements the record, all parties shall be allowed a reasonable opportunity to object to the filing of additional evidence or argument, offer evidence or argument in rebuttal, or request a hearing.

(NEW) Section 31-49p-4. Untimely appeal; lack of aggrievement; moot appeal; dismissal

(a) Upon receipt of any appeal over which the commissioner determines that no jurisdiction exists for any reason including (1) the untimely filing of the appeal; (2) lack of aggrievement on the part of the appellant; (3) mootness of the appeal; or (4) lack of standing, the commissioner shall assign such appeal a case number and, unless the commissioner determines that a hearing is necessary, thereafter issue a decision dismissing such appeal. The commissioner's determination of such jurisdictional issues may be based solely upon review and consideration of the evidence in the file record concerning such jurisdictional issues. Such dismissal decisions shall contain findings of fact and conclusions of law concerning the jurisdictional issues involved.

(b) If an appellant alleges good cause for the untimely filing of an appeal, the commissioner may conduct a hearing on the issue of good cause. For purposes of this section, an appellant has good cause for filing an appeal more than twenty-one (21) calendar days after the issuance of the denial or penalty decision pursuant to section 31-49p of the Connecticut General Statutes if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the commissioner

shall consider all relevant factors, including, but not limited to:

- (1) Whether the appellant was represented by an attorney;
- (2) Whether the appellant received timely and adequate notice of the need to act;
- (3) Administrative error;
- (4) Factors outside the control of the appellant which prevented a timely action;
- (5) The appellant's physical or mental impairment;
- (6) Whether the appellant acted diligently in filing an appeal once the reason for the late filing no longer existed;
- (7) The total length of time that the action was untimely; and
- (8) Good faith error, provided, in determining whether good faith error constitutes good cause, the commissioner shall consider any prior history of late filing due to such error, whether the appeal is excessively late, and whether the appellant otherwise acted with due diligence.

(NEW) Section 31-49p-5. Timely appeal; notice of appeal

- (a) Upon receipt of a timely filed appeal, the commissioner shall promptly issue to each party at its address a written notice of appeal which shall acknowledge the receipt of such appeal and contain an announcement of the rights of each party pursuant to subsection (b) of this section.
- (b) Any party may, not later than ten (10) calendar days after the date of issuance of the notice of appeal, file with the commissioner written argument, a request to supplement the written record, or a request for a hearing pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies. Before a decision upon such appeal or request is issued, the commissioner, on the commissioner's own initiative, or upon request from a party to such appeal or the attorney for such party, may grant an extension of no more than fifteen (15) calendar days in which to file further written argument on such appeal or request except that an extension of more than fifteen (15) calendar days may be granted for good cause shown. Such requests need not be in writing, but shall explain all reasons alleged for the request for extension of time and shall state the proposed limit for the time extension requested.
- (c) Any party to an appeal may be represented by an attorney, provided that the cost of representation shall be at the expense of the party obtaining such representation.

(NEW) Section 31-49p-6. Withdrawals; dismissal

- (a) The appellant may request that the commissioner withdraw the appellant's appeal and the commissioner may issue a decision dismissing such appeal pursuant to such withdrawal request, provided (1) the request is in writing, (2) the request is voluntary and signed by the appellant or the attorney for such party, and (3) the request is received prior to the issuance of a decision on such appeal. A withdrawal request received after the issuance of a decision on the appeal shall be treated by the commissioner as a motion to reopen the decision.
- (b) The commissioner shall reopen a decision dismissing an appeal pursuant to a withdrawal request and reinstate the withdrawn appeal, without the requirement of finding good cause under section 31-49p-9(d) of the Regulations of Connecticut State Agencies, if the appellant files a motion to reopen the decision before the decision is final pursuant to section 31-49p-9 of the Regulations of Connecticut State Agencies.

(NEW) Section 31-49p-7. Stipulations; official notice

- (a) The parties to an appeal before the commissioner may stipulate to facts.
- (b) The commissioner may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts. Any facts officially noticed by the commissioner shall be specifically identified as such in the decision. Any party who (1) is aggrieved by a decision issued on the appeal that incorporates an officially-noticed

fact that was not specifically addressed at a hearing ordered pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies, and (2) disputes such officially-noticed fact, may file a motion to reopen such decision for purposes of scheduling an evidentiary hearing on such officially-noticed fact.

(NEW) Section 31-49p-8. Hearing

- (a) Hearings may be ordered for such limited purposes as the commissioner may direct pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies and may be limited exclusively to oral argument. Any such hearing shall be conducted by telephone or other electronic means, except that the commissioner may order an in-person hearing.
- (b) Written notice of a hearing shall be sent to each party's address, and to any attorney of record for such party, not less than fifteen (15) calendar days prior to the date of the hearing, except that the parties may agree to a shorter notice period. A hearing may be rescheduled at the initiative of the commissioner or upon the request of a party or the party's attorney, provided there is good cause for such request. Such a request need not be in writing but shall be promptly made as far as possible in advance of the hearing and shall describe the good cause alleged for the request.
- (c) Subject to the commissioner's right to determine the scope of any hearing ordered and to control the admission of testimony and evidence, it is the responsibility of each party to present all witnesses, testimony, evidence, and argument that are material to such party's contentions concerning the appeal. The commissioner may order the parties to provide, in advance of any hearing, a list of any witnesses that the party intends to produce at such hearing and a copy of any documentary evidence that the party intends to submit at such hearing. The commissioner may refuse to provide a subsequent hearing for purposes of presenting testimony, evidence or oral argument not presented at a hearing ordered by the commissioner, if the commissioner determines that, through the exercise of due diligence by the party involved, such testimony, evidence or argument could have been presented at such hearing ordered by the commissioner and there was no good cause for such party's failure to do so.
- (d) The commissioner shall prepare or arrange to have prepared a recording capable of being transcribed of all proceedings at any hearing.
- (e) The commissioner shall conduct and control any hearing the commissioner orders. Except as provided in subsection (m) of this section, the commissioner shall not be bound by the ordinary common law or statutory rules of evidence or procedure. Subject to the purposes of the hearing, the commissioner shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of duties, as is best calculated to ascertain the relevant facts and the substantive rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete decision. The commissioner may, at any time, examine or cross-examine any party or witness, and compel the attendance of witnesses, or the production of documents or such other evidence as the commissioner determines necessary to render a proper and complete decision. The commissioner shall determine the order for presentation of evidence and may exclude testimony and evidence which the commissioner determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper.

- (f) The commissioner has authority to administer oaths and affirmations. All testimony at any hearing shall be under oath or affirmation. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters.
- (g) Individuals with limited English proficiency, or who are deaf or hearing impaired, shall have the right to request an interpreter provided by the Connecticut Department of Labor. The commissioner may require the use of an interpreter for any person who cannot adequately speak or understand spoken English and for whom a capable interpreter has not been requested.
- (h) Any document entered into the record that is written in a language other than English shall be interpreted at the hearing by a competent interpreter or accompanied by a correct English translation with proof satisfactory to the commissioner that such translation is a correct translation of the original document.
- (i) Any party or witness may request a reasonable accommodation that is necessary to allow that individual to participate in any hearing that may be ordered by the commissioner.
- (j) The hearing shall be confined to the purposes and issues listed on the notice of hearing issued pursuant to subsection (b) of this section. The hearing may also cover any separate issue concerning the appeal which the parties are prepared and willing to go forward on and on which they expressly waive right to notice of at the hearing.
- (k) If any party seeks to introduce at such hearing any documentary evidence or material that the appellant or any other party has not, at the time of the hearing, yet received a copy of, the commissioner shall require a specific identification of such documentary evidence or material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. The commissioner may exclude such documentary evidence or material unless the commissioner determines that such material is critical to the determination of the appeal. The commissioner may: (1) if practicable, permit such documentary evidence or material to be read into the record, provided that such documentary evidence or material shall thereafter be filed with the commissioner and all other parties in accordance with the time limitation that the commissioner may reasonably direct; (2) if the commissioner deems it necessary and appropriate, reschedule the hearing; or (3) take such other action as the commissioner deems appropriate.
- (l) The commissioner shall not permit improper behavior or tactics that are disruptive to the fair, orderly or effective conduct of the hearing. Any person other than a party who engages in such improper behavior or tactics shall be warned against continuing such behavior or tactics and if such person thereafter persists in such proscribed such behavior or tactics the commissioner may expel such person from the hearing. Any party that engages in such improper such behavior or tactics shall be warned against continuing such behavior or tactics and if such party thereafter persists in such proscribed behavior or tactics the commissioner may (1) proceed with the hearing under such instructions and conditions as the commissioner deems fair and appropriate; (2) recess or reschedule the hearing; or (3) close the hearing and issue a decision based upon the testimony and

evidence received.

- (m) The commissioner may, sua sponte or upon the request of a party, issue subpoenas to compel the attendance of witnesses at any hearing for the purpose of providing testimony or physical evidence, or both, if the commissioner determines that the issuance of such subpoena is necessary to fairly adjudicate the appeal. Service of such subpoenas shall be made in accordance with Connecticut law and, unless otherwise arranged with the requesting party, the commissioner shall take responsibility for service of each subpoena.

(NEW) Section 31-49p-9. Decision

- (a) Each appeal to the commissioner shall be decided no later than ninety (90) calendar days following the due date for written argument or, if applicable, the date the commissioner supplements the record or concludes any hearing, whichever is latest. Except for a decision dismissing an appeal pursuant to section 31-49p-4 of the Regulations of Connecticut State Agencies, the commissioner's decision shall affirm, reverse, or modify the decision of the authority, employer with a private plan or third-party administrator, as applicable, denying compensation under the program or under a private plan, or imposing a penalty pursuant to section 31-49r of the Connecticut General Statutes.
- (b) The commissioner's decision shall include findings of fact, a citation to the law involved and a case history summarizing the proceedings, including whether a hearing was conducted.
- (c) The commissioner's decision on an appeal shall become final on the thirty-first (31) calendar day after the date on which such decision was issued unless, prior to such thirty-first (31) day:
 - (1) a party aggrieved by such decision files (A) an appeal to the Superior Court on such decision, or (B) a motion to the commissioner to reopen such decision in writing (i) electronically through the Connecticut Department of Labor Leave Complaint and Appeal Portal, (ii) by United States Postal Service to the Connecticut Department of Labor Appeals Division at its mailing address, (iii) by fax, or (iv) in person; or
 - (2) the commissioner, on the commissioner's own motion, reopens such decision in accordance with the terms of section 31-49p-10 of the Regulations of Connecticut State Agencies.
- (d) To be acceptable as timely filed, a motion to reopen shall be received by the commissioner no later than the thirtieth (30) calendar day following the issuance of the commissioner's decision, or shall bear a legible United States Postal Service postmark which indicates that within such thirty (30) calendar day period such motion to reopen was placed in the possession of the United States Postal Service for delivery to the Connecticut Department of Labor Appeals Division at its mailing address. If the last day for filing a motion to reopen falls on a day when the Connecticut Department of Labor is not open for business, such

last day shall be extended to the next business day of such office. A party has good cause for filing a motion to reopen after the commissioner's decision becomes final if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely motion to reopen. In determining whether good cause has been shown, the commissioner shall consider all relevant factors, including the factors listed in section 31-49-4 of the Regulations of Connecticut State Agencies.

(NEW) Section 31-49p-10. Motion to reopen

- (a) Except for a dismissal decision that shall be reopened pursuant to subsection (b) of section 31-49p-6 of the Regulations of Connecticut State Agencies, the commissioner may reopen a decision on an appeal if the commissioner determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen, whether filed by the commissioner or a party, should:
 - (1) describe all reasons and good cause for such motion and, if new evidence is alleged as such a reason, the following should be further specified:
 - (A) the identity and nature of such alleged new evidence;
 - (B) the reason such alleged new evidence was not presented previously; and
 - (C) the reason such alleged new evidence is material to the case.
- (b) Upon receipt of a timely filed motion to reopen, the commissioner shall promptly issue to each party at its address a written notice which shall acknowledge the receipt of such motion. Such notice shall inform each party of the ability to file with the commissioner, not later than ten (10) calendar days after the date of issuance of the notice, written argument, a request to supplement the written record, or a request for a hearing pursuant to section 31-49p-8 of the Regulations of Connecticut State Agencies.
- (c) The commissioner shall, without undue delay, review each such motion and issue a written decision thereon no later than ninety (90) calendar days following the date the motion was filed or, if applicable, the due date for written argument or the date the commissioner supplements the record or concludes any hearing on such motion, whichever is latest.
- (d) The commissioner may deny any such motion based upon the allegations of new evidence if the commissioner determines that the new evidence is unnecessarily duplicative or is not likely to affect the outcome of the case, or that the exercise of reasonable diligence by the moving party would have resulted in the presentation of such evidence prior to the issuance of the commissioner's decision and the moving party does not otherwise show good cause for such party's failure to present such evidence.

Statement of Purpose:

- (A) Statement of purpose: The State of Connecticut Labor Department is required to adjudicate

Paid Family and Medical Leave appeals from denials or penalties imposed pursuant to General Statutes § 31-49r. The Labor Department is required to adopt rules of procedure for the disposition of appeals filed under General Statutes § 31-49p.

(B) Summary of the main provisions of the regulation: The regulations provide for: (a) the method of filing a PFML appeal, calculating the appeal deadline, establishing a definition of good cause for filing a late appeal; (b) the procedure for submitting written argument or additional documentary evidence and for requesting a hearing, the procedure for notifying parties that a hearing has been ordered and/or the determination that a hearing is not required; (c) the procedures for dismissing an appeal for lack of jurisdiction or withdrawal of an appeal; and (d) hearing procedures, issuance of a decision and motion to reopen procedures.