

Employment Practices Liability

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Changes are Coming! Connecticut State Legislature Passes Paid Family and Medical Leave and Lamont is Expected to Sign

By Robin Kallor, Partner, Rose Kallor, LLP

Last week, the Connecticut General Assembly passed the most generous paid family and medical leave in the United States.

This bill creates the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain employees taking leave for reasons allowed under the state's Family and Medical Leave Act (FMLA), which the bill also amends, or the family violence leave law. It provides eligible employees with up to 12 weeks of FMLI benefits over a 12-month period. The program also provides two additional weeks of benefits for a serious health condition that results in incapacitation during pregnancy.

Under the bill, individuals eligible for benefits are those who earned at least \$2,325 during their highest earning quarter within their base period (the first four of the five most recently completed quarters) and (1) are private-sector employees or certain "covered public employees," (2) were employed in the previous 12 weeks, or (3) are sole proprietors or self-employed people who voluntarily enroll in the program. Covered public employees are those who are (1) employed in state service (i.e., state employees), but are not in a collective bargaining unit and (2) state, municipal, or local or regional board of education (BOE) employees whose exclusive collective bargaining agent negotiates inclusion in the program. Once a municipal employer or BOE negotiates inclusion in the program for the members of one of its bargaining units, any of the municipality's or BOE's employees who are not part of a collective bargaining unit also become covered public employees.

The program is funded by employee contributions, with collections beginning in January 2021. The Paid Family and Medical Leave Insurance Authority (i.e., "authority"), which the bill creates, must annually determine the employee contribution rate, which cannot exceed 0.5%. The bill also caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes.

A covered employee's weekly benefits under the program are generally calculated as 95% of his or her average weekly wage, up to 40 times the state minimum wage, plus 60% of his or her average weekly wage that exceeds 40 times the minimum wage, with total benefits capped at 60 times the minimum wage. If employee contributions are at the maximum rate allowed and the authority determines that they are not sufficient to ensure the program's solvency, the bill requires it to reduce the benefit by the minimum amount needed to ensure the program's solvency. The bill allows employers to alternatively provide benefits through a private plan, which must provide their employees with at least the same level of benefits, under the same conditions and employee costs, as the FMLI program. Private plans must meet certain requirements for approval, and employees covered by an employer's private plan do not have to contribute to the FMLI program.

The bill establishes the authority as a quasi-public agency to develop and administer the program. It creates a 15-member board of directors for the authority and requires it to, among other things, develop written procedures to implement the program in accordance with the law governing the adoption of procedures by quasi-public agencies.

Starting on January 1, 2022, the bill also changes various provisions of the state's FMLA, which generally requires certain private-sector employers to provide job-protected unpaid leave to employees for various reasons related to their health or their family members' health. Among other things, the bill:

1. Extends the FMLA to cover private-sector employers with at least one, rather than 75, employees;
2. Lowers the employee work threshold to qualify for job-protected leave from (a) 12 months of employment and 1,000 work-hours with the employer to (b) three months of employment with the employer, with no minimum requirement for hours worked;
3. Changes the maximum FMLA leave allowed from 16 weeks over a 24-month period to 12 weeks over a 12-month period and allows an additional two weeks of leave due to a serious health condition that results in incapacitation during pregnancy;
4. Limits the extent to which an employer may require an employee taking FMLA leave to use his or her employer-provided paid leave;
5. Adds to the family members for whom an employee can take FMLA leave to include the employee's siblings, grandparents, grandchildren, and anyone else related by blood or affinity whose close association the employee shows to be the equivalent of a spouse, sibling, son or daughter, grandparent, grandchild, or parent;
6. Similarly expands the family members for which employers must allow their employees to use up to two weeks of any employer-provided paid sick leave; and
7. Creates a "non-charge" against an employer's unemployment tax experience rate when an employee's separation from employment with the employer is due to the return of someone who was on bona fide FMLA leave. In effect, this allows an employer to lay off an employee who was temporarily filling the job of an employee on FMLA leave without increasing the employer's unemployment taxes.

NOTE: Employers who are subject to the State's FMLA and the federal FMLA may be required to provide 24 weeks of leave (although federal FMLA is unpaid) in the event there is a need for leave that qualifies under the State's law but not under federal law or where the employee was not yet eligible for leave under the federal law.

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Once the Governor signs, employers should start reviewing their FMLA policies (or promulgating to the extent they had not been subject to the FMLA in the past) to ensure compliance with this new law.

Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, CIRMA Communications Associate at jsmith@ccm-ct.org.

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