• Employers should have written FMLA and PSL policies circulated to all employees at time of hire
  • Should be in handbook if have one
  • Have employees sign off
• Posters required for federal FMLA and PSL
  • No poster needed for PSL if have policy, but recommended to post
  • DOL has PSL posters on website in English and Spanish
  • USDOL has poster for federal FMLA
COMMUNICATION FROM MANAGERS

- Managers often fail to notify HR in timely manner when employee calls out
- Managers need to know that failing to notify HR immediately can put the employer at risk
  - Notices will not be provided to employee in required timeframe
  - Absences that should be protected could be held against an employee
  - Should not be handling medical info
TRAIN SUPERVISORS

• Training supervisors on FMLA and PSL helps employer and HR
• Prevents supervisors from retaliating against employees whose absences are protected
• Prevents supervisors from dissuading workers from taking leave
• Prevents supervisors for asking for prohibited medical info
RECORD KEEPING

- Both HR and managers/supervisors should keep detailed and accurate records of FMLA and PSL
- When employee calls out, document the reason the employee gives for calling out
- Communicate with the employee in writing
- Be responsive if employee has questions
- Be specific about what the employee is entitled to and what is required of the employee
- Maintain the records in accordance with record retention laws
OVERLAP WITH OTHER LAWS

• FMLA and PSL can run at the same time
  • Must provide both if qualified – FMLA is job protection, PSL is pay and job protection
• Workers’ Compensation – can run at same time
• Pregnancy Disability – provides job protection when employee is disabled due to pregnancy or birth, can run at same time
• ADA – employee may need additional leave as a reasonable accommodation even after FMLA or PSL ends
FAMILY AND MEDICAL LEAVE ACT
WHAT IS THE CT FMLA?

• Allows eligible employees to take a total of 16 weeks of job-protected leave during a 24-month period any of these reasons:
  • Upon the birth, adoption or foster-care placement of a son or daughter
  • Because of the employee’s own serious health condition
  • To care for a family member with a serious health condition
  • To serve as an organ or bone marrow donor
WHICH EMPLOYERS ARE COVERED?

- 75 or more employees in the State of Connecticut
  - Look to employer’s payroll for week containing October 1 annually
  - Theories of joint employment (e.g., temporary or leasing agency and second employer) and integrated employment (e.g., parent and subsidiary arrangement) apply

- The following employers are exempt:
  - State and municipalities
  - Local or regional board of education
  - Private or parochial elementary or secondary school
WHO IS AN ELIGIBLE EMPLOYEE?

(1) Worked for the employer for at least 12 months prior to commencing FMLA leave, and
   • Does not have to be consecutive
   • Do not have to go back more than 7 years

(2) Worked at least 1,000 hours in the 12 months immediately prior to commencing FMLA leave
   • Must be hours actually worked
WHAT FAMILY MEMBERS ARE COVERED?

- **Parent**
  - Includes stepparents and in-laws

- **Son or daughter**
  - Under 18 years of age; or
  - 18 years or older **and** incapable of self-care because of a disability

- **Spouse**

- “**In loco parentis**” - may result in other relatives or non-relatives being covered
  - Must provide either daily care **or** financial support
## WHAT IS A SERIOUS HEALTH CONDITION?

### 7 Categories:

1. **Inpatient** - requires an overnight stay in a medical facility

2. **Incapacitated more than 3 consecutive calendar days plus two health care provider (HCP) visits**

3. **Incapacitated more than 3 consecutive calendar days plus one HCP visit and regimen of treatment (e.g., prescription medicine, physical therapy, etc.)**

4. **Chronic**

5. **Pregnancy** - morning sickness and prenatal visits are covered

6. **Restorative surgery/illness left untreated**

7. **Long-term condition**
**Special Conditions**

**Mental Health Issues**
- Stress, anxiety, depression or a panic attack may be a serious health condition if it falls within one of the 7 categories.

**Substance Abuse**
- FMLA leave may only be taken for treatment of substance abuse by a health care provider.
- An absence due to the employee’s use of a substance is not covered.
DOs AND DON’Ts FOR SERIOUS HEALTH CONDITIONS

(1) Analyze employee’s illness or injury under all 7 categories to determine if it’s a serious health condition.
   • Example: An employee’s condition that has not incapacitated him for more than 3 consecutive calendar days may still qualify as a chronic condition (e.g., asthma, diabetes, etc.)

(2) When in doubt about whether an employee or family member has a serious health condition:
   • Inquire further to determine if the absence is for a serious health condition
   • Request a medical certification to support the need for FMLA leave
   • Rely on the information in the medical certification to determine whether a serious health condition exists, not your own judgment
Verbal notice is sufficient
- Employee request need not mention FMLA specifically, only that leave is needed for an FMLA qualifying reason

If employee calling in absent - must give adequate information to indicate illness/injury may be FMLA qualifying
- “I am sick” is not enough
- If employee mentions specific medical condition – give FMLA paperwork
- If employee does not mention medical condition - when counseling for absenteeism, even though not required, a best practice to give FMLA paperwork
**DOs AND DON’Ts FOR EMPLOYER NOTICES**

- Employer is responsible for providing notices in a timely manner
  - Employer typically has 2 business days in which to comply
  - It is imperative that supervisors inform HR immediately of any possible FMLA issues

- If an employer fails to provide notice to an employee of his rights and responsibilities under the FMLA, the employer may not take action against the employee for failing to comply with any provision required to be included in such notice
  - Example: If you do not notify employee of the consequences of failing to submit a medical certification, you cannot take action against him for failing to submit it.
• Employee must be given at least 15 calendar days after receipt of the medical certification to return it to employer
  • Employer should give employee additional time where 15 days is not practicable and employee is making a good faith effort.

• If the medical certification is incomplete, employer must specify what information is missing and provide the employee a reasonable opportunity to cure
DOs AND DON’Ts FOR MEDICAL CERTIFICATION

1) If the employee does not timely submit his medical certification form, employer can deny FMLA leave request
   • As long as employer gave notice of the consequences for failing to timely submit form
2) Employer cannot ask for more information than that allowed in medical certification
3) Employer cannot contact the employee’s HCP directly
4) Employer cannot ask for a doctor’s note for each intermittent FMLA absence.
   • Employer must rely on medical certification or recertification forms
Employer can request a recertification of the serious health condition on a reasonable basis.

- No more than once every 30 days.
- Employer must pay for any recertification that is not covered by the employee’s health insurer.
Employer can require an employee to provide a “fitness-for-duty” certification prior to returning from a continuous leave due to the employee’s own serious health condition.

- Employer must notify employee of this requirement at the beginning of the leave
- Only a simple statement releasing the employee to return to work is allowed under the CT FMLA
  - However, the employer may seek a fitness-for-duty certification addressing whether the employee can perform essential functions under the Americans with Disabilities Act, if applicable.
General Rule: An employee must be reinstated to the same or, if not available, an equivalent position upon returning from FMLA leave.

- Equivalent means virtually identical in terms of pay, benefits, working conditions (e.g., duties, responsibilities, privileges, perquisites and status)

- If an employee is medically unable to perform his or her original job at the expiration of CT FMLA, the employer must transfer the employee to work suitable to the employee’s condition if such work is available.

- Suitable work may include part-time work or work at a lesser pay scale.
Employees can file complaint with DOL if employer interferes, discriminates or retaliates with leave

**Interference:**
- Failing to give notice
- Improperly denying request
- Failing to reinstate
- Discouraging use

**Discrimination/retaliation:**
- Termination or discipline
- Heightened scrutiny
- Negative factor in employment decision
COMPLAINT

- Will attempt to mediate
- If no resolution, may dismiss or take complaint if we believe there is a violation
- If dismiss – complainant can still go to administrative hearing
- If take complaint – we will take case to administrative hearing with complainant
- Hearing officer can award reinstatement, back wages, front pay, and any other lost monetary compensation
PAID SICK LEAVE
COUNTING EMPLOYEES

• 50 or more employees:
  • On the employer’s payroll for the week containing October 1 annually.
  • Unlike FMLA, there is no provision for combining employees for this act under the theories of joint or integrated employment.
"Service worker" - means an employee primarily engaged in one of 69 occupations listed in the law, and
- paid on an hourly basis, or
- not exempt from minimum wage and overtime requirements

Occupations – look at the broad or detailed occupation code numbers and titles that are listed in the law
- Look at duties, not job titles
- More than one job, look at primary duties
EXEMPT EMPLOYEES

- **Per diem** - is the individual being treated and acting like a per diem?
  - Can s/he accept or refuse work at will?
  - May be longer term assignment

- **Temporary worker** – will look at facts and circumstances of each case
  - An occasional or irregular basis for only the time required to complete such work
  - What is the assignment, length, duties, etc.?
ACCRUAL

• Accrual provided on a yearly basis - any 365 day period used to calculate employee benefits
• Must first work 680 hours before entitled to use
• Accrue 1 hour for every 40 hours worked
• Accrue maximum of 40 hours per year
• Allowed to use in 1 hour increments
• Can carry over up to 40 hours unused time accrued in the current benefit year

➢ Can provide 40 hours in bucket at beginning of benefit year – will not have to track accruals or carry over
• If employer offers other paid leave, may be in compliance
  • Can accrue at a rate ≥ PSL law
  • May be used in same way

• Q: If an employer’s PTO policy exceeds the requirements of the law with respect to accrual rates and permitted reasons for leave, does it have to permit use of time in hourly increments, or is a half-day basis, pursuant to its policy sufficient?
An employer shall permit a service worker to use paid sick leave for:

1) illness, injury or health condition of a service worker or service worker’s child or spouse

2) the medical diagnosis, care or treatment of mental illness or physical illness, injury or health condition of a service worker or service worker’s child or spouse, or

3) preventative medical care for a service worker or service worker’s child or spouse
REASONS FOR LEAVE

• Where a service worker is a victim of family violence or sexual assault
  1) for medical care or psychological or other counseling for physical or psychological injury or disability,
  2) to obtain services from a victim services organization,
  3) to relocate due to such family violence or sexual assault, or
  4) to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.
May only request reasonable documentation for 3 or more consecutive work day absences

- Does not need to be full days
- A scheduled work week of Monday, Wednesday, Friday constitutes 3 or more consecutive days
- Documentation must indicate the need for the number of days of such leave

- There is no provision for clarification of the health care provider’s note or for a second opinion
• **Shift change** – to make up missed shift, but only if employer and employee agree

• **Pay out at end of benefit year** – employer may pay out unused accrued time instead of carry over
  • Employer not required to pay out and employee must agree to pay out in lieu of carry over

• **Pay out upon termination** – only if provided for in policy

• **Donation** – may donate time to other employees, but only if employer and employee agree
COMPLAINT

- Employees can file complaint with DOL if employer violates law or retaliates for using PSL
- We will try to mediate the claim and come to a resolution with the parties
- If goes to hearing, can assess civil penalty and reinstatement/back wages
SCENARIOS
SCENARIO 1

• If an employee has 2 hours of paid sick leave remaining (they have already used 38 hours) and they call out for an 8 hour shift, can the employer give points and discipline for the remaining 6 hours?
SCENARIO 2

• Employee is approved for “intermittent” FMLA due to her spouse’s serious health condition. Employee calls of work to take her spouse to the doctor but co-workers begin complaining after seeing Facebook pictures of her attending her son’s concert that same day.

• Q: Does the employer have the right to discipline under the FMLA?

• Q: Does the employer have the right to request medical documentation to substantiate that the leave was for an FMLA purpose?
SCENARIO 3

• Employee is tardy 5 times during the first 3 months of the year. Under the employer’s attendance policy, employees receive points if they are late more than 3 times during any 3-month period. When the supervisor met with the employee to counsel her, she says she has been having trouble getting to work on time due to “medical” issues.

• Q: Does the employer have the right to discipline under the FMLA?

• Q: Should employee be allowed to use PSL for those absences?
SCENARIO 4

- John takes FMLA leave for surgery.
- While on leave, John’s supervisor discovers work that John failed to process.
- John states that he did not finish those claims because of his medical condition, which is protected by the FMLA.

Q: Can the employer discipline John?
SCENARIO 5

- Employee missed 3 days of work without calling in. She calls in on day #4 stating that she had been in an car accident and was in the hospital for the last 3 days, and will be able to return to work in 30 days. Employer’s policy provides for termination for 3 days of no call/no show.

- Q: Does the employer have the right to discipline under the FMLA?
- Q: Does the employer have the right to discipline under the ADA?
Link to Paid Sick Leave page
http://www.ctdol.state.ct.us/wgwkstnd/SickLeave.htm

CTDOL Wage and Workplace Standards Division
Ph: (860) 263-6791
Fax: (860) 263-6541
Attorney Jennifer Devine
jennifer.devine@ct.gov
(860) 263-6766

Attorney Erika Foster
erika.foster@ct.gov
(860) 263-6758

Attorney Heidi Lane
heidi.lane@ct.gov
(860) 263-6765