

**Comparison of the Connecticut Family and Leave Act Regulations with the federal Family
and Medical Leave Act Regulations
(Sections 31-51qq-1 through 31-51qq-48)**

Pursuant to Public Act 96-140, codified at Section 31-51kk *et seq.* of the Connecticut General Statutes, the Department of Labor was charged with promulgating regulations. The statute required the commissioner to make reasonable efforts to ensure compatibility of state regulatory provisions with similar provisions of the federal FMLA and the regulations promulgated thereunder. The purpose of this annotation is to provide guidance to readers explaining reasons for any departures from the federal FMLA regulations. The regulations at Sections 31-51qq-42 through 31-51qq-48 are not part of this annotation inasmuch as those regulations are amendments of existing regulations and do not emanate from the federal FMLA.

29 CFR §§825.101 through 825.103 (introductory provisions) and §825.108 (public agency), §825.109 (federal agencies), §825.111 (determination of 50 employees within 75 mile radius), §825.115 (essential functions of the position of the employee), §§825.209 through 825.213 (health insurance benefits and payment of premiums), §§825.217 through 825.219 (key employees), §825.300 (posting requirement), §§825.400 through 825.404 (enforcement mechanisms of the federal FMLA), and §§825.600 through 604 (special rules for employees of schools) of the federal regulations have not been included in or adapted to the Connecticut regulations because they deal with issues that are not covered by or applicable to the Connecticut law. 29 CFR §825.100, §825.114 and §825.118 are not repeated as separate sections in the Connecticut regulations because they are referenced elsewhere in the regulations. Throughout the regulations, words have been changed to reflect the technical requirements for the promulgation of regulations in Connecticut (*e.g.*, “must”, “will”, and “will need to” have been changed to “shall”.)

Section 31-51qq-1 Definitions

This section incorporates 29 CFR §825.305 with numerous language changes and additions to track the Connecticut FMLA language. Examples of additions to the definition section include such terms as “Commissioner” and “Department”. Examples of language changes to the federal FMLA to track the Connecticut FMLA include:

- (e) The definition of employ was changed from “to suffer or permit” of the federal FMLA to “to allow or permit” of the Connecticut FMLA.
- (f) The required number of hours for which an employee must be employed during the 12-month period prior to commencement of leave in order to be considered an “employee” for purposes of the Connecticut FMLA was changed from 1,250 required by the federal FMLA to 1,000. For purposes of the Connecticut FMLA, municipal, state and federal employees are not eligible employees.
- (i) The number of persons that must be employed by an “employer” was changed from 50 to 75 to reflect the Connecticut FMLA. The Connecticut FMLA provides that “employer”

does not include the state, municipality, a local or regional board of education, or a private or parochial elementary or secondary school and that the number of employees of an employer shall be determined on October first annually.

(l) The definition of “health care provider” includes the provision that the term “health care provider” may include such other health care provider as the Commissioner determines and that he may utilize any determinations made pursuant to Chapter 568 of the General Statutes.

(u) The definition of “serious health condition” repeats the statutory definition and then incorporates the federal definition. The definition includes nursing home under inpatient care and includes outpatient treatment under continuing treatment by a health care provider.

Also, the concept of “medical leave,” not defined in the federal FMLA, was articulated for sake of clarity in subsection (q).

Section 31-51qq-2 What employers are covered by the Act?

This section incorporates 29 CFR §825.104 with the elimination of reference to public agencies which are not covered employers under the Connecticut FMLA. The terms “commerce” and “industry affecting commerce” are eliminated because they are not referenced in the Connecticut FMLA.

Section 31-51qq-3 In determining whether an employer is covered by FMLA, what does it mean to employ 75 or more employees on October first annually?

This section incorporates 29 CFR §825.105 with the elimination of the discussion of “to suffer or permit” within the definition of “employ” inasmuch as the definition of “employ” in the Connecticut FMLA is “to allow or permit”. References to the federal provision discussing what it means to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year have been eliminated. Those provisions have been replaced with references to the Connecticut provision concerning employers with 75 or more employees determined on October first annually.

Section 31-51qq-4 How is “joint employment” treated under FMLA?

This section incorporates 29 CFR §825.106 in its entirety with the exception to the reference in subsection (c) regarding maintenance of group health benefits during leave. Since the Connecticut FMLA does not mandate continuance of group health benefits during a FMLA leave, this language was omitted. Also, in subsection (d), the numbers in the example were increased to 20 and 60 from 15 and 40 respectively to account for the difference in numbers of employees necessary for coverage under the Connecticut FMLA (75 rather than 50).

Section 31-51qq-5 What is meant by “successor in interest”?

This section incorporates 29 CFR §825.107 in its entirety with the exception of the reference in subsection (c) regarding maintenance of group health benefits during leave. Since the Connecticut FMLA does not mandate continuance of group health benefits during a FMLA leave, this language was omitted.

Section 31-51qq-6 Which employees are “eligible” to take a leave under FMLA?

This section incorporates 29 CFR §825.110 with changes made to reflect the Connecticut requirement that an “eligible employee” work 1000 hours of service (rather than the federal requirement of 1250 hours) during the 12-month period immediately preceding the commencement of the leave. The federal provision in 29 CFR §110(d) discussing the ramification of the employer’s failure to advise the employee of his or her eligibility prior to the date the requested leave is to commence has been omitted based on Wolke v. Dreadnought Marine, Inc. 3 WH Cases 2d 1377 (Eastern District of Virginia, 1997) . This case, although not binding on the Connecticut Department of Labor, provides that a portion of the federal regulation at 29 CFR §825.110(d) purports to transform employees who are ineligible under the FMLA into eligible employees. The court found that, applying the regulation literally, an employee could work for one day and then tell her employer she is sick and is leaving. If the employer fails to tell her she is not an eligible employee, the regulation at issue would make her an eligible employee. Accordingly, the applicable portion of the federal regulation has not been incorporated into the Connecticut regulations.

Section 31-51qq-7 Under what kinds of circumstances are employers required to grant family or medical leave?

This section incorporates 29 CFR §825.112 in its entirety with the exception in subsection (a) that the language of this subsection uses the term *upon* instead of *for* and does not include the federal requirement that the serious health condition of the employee must make the employee unable to perform one or more of the essential functions of his or her job.

Section 31-51qq-8 For purposes of an employee qualifying to take FMLA leave for a spouse, parent of the employee, parent of the employee’s spouse, son or daughter, what may an employer require to confirm a family relationship?

This section incorporates 29 CFR §825.113(d) in its entirety with the addition of “parent of the employee’s spouse”.

Section 31-51qq-9 What does it mean that an employee is “needed to care for” a family member?

This section incorporates 29 CFR §825.116 in its entirety.

Section 31-51qq-10 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by the “medical necessity for” such leave?

This section incorporates 29 CFR §825.117 in its entirety.

Section 31-51qq-11 How much leave may an employee take?

This section incorporates 29 CFR §825.200 with the exception that the entitlement is for 16 weeks in any 24-month period instead of the federal entitlement of 12 weeks in a 12-month period and in subsection (a) the regulation uses the term *upon* instead of *for* and does not include the federal requirement that the serious health condition of the employee must make the employee unable to perform one or more of the essential functions of his or her job. Further, the four methods of determining the 12 month period in the federal regulations have been eliminated and the subsection providing that the 24-month period shall begin with the first day of leave taken, pursuant to the Connecticut statute, has been included.

Section 31-51qq-12 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

This section incorporates 29 CFR §825.201 in its entirety with references to applicable state law removed.

Section 31-51qq-13 How much leave may a husband and wife take if they are employed by the same employer?

This section incorporates 29 CFR §825.202 in its entirety with changes made to the amount and length of entitlement to reflect the Connecticut law.

Section 31-51qq-14 Does FMLA have to be taken all at once, or can it be taken in parts?

This section incorporates 29 CFR §825.203 in its entirety with the exception of the reference to teachers who are not covered by the Connecticut FMLA and with the elimination of the reference to the essential function of the job which does not appear in the Connecticut law.

Section 31-51qq-15 May an employer transfer an employee to an “alternative position” in order to accommodate intermittent leave or reduced leave schedule?

This section incorporates 29 CFR §825.204 in its entirety with the exception of the reference to teachers and includes the provision from the Connecticut FMLA that any such transfer shall not conflict with any provision of an applicable collective bargaining agreement.

Section 31-51qq-16 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

This section incorporates 29 CFR §825.205 in its entirety with changes made to the length of entitlement to reflect the entitlement in the Connecticut FMLA.

Section 31-51qq-17 May an employer deduct hourly amounts from an employee's salary when providing unpaid leave under FMLA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee?

This section incorporates 29 CFR §825.206 but removes reference to the FLSA and fluctuating workweek and includes reference to Chapter 558 of the general statutes.

Section 31-51qq-18 Is FMLA leave paid or unpaid?

This section incorporates 29 CFR §825.207 with changes made to the length of the entitlement. Reference to public employers and compensatory time has been omitted.

Section 31-51qq-19 Under what circumstances may an employer designate leave, paid or unpaid, as FMLA leave and, as a result count it against the employee's total FMLA leave entitlement?

This section incorporates 29 CFR §825.208 in its entirety with changes made to the length of the entitlement to reflect the Connecticut FMLA entitlement of 16 weeks in a 24-month period.

Section 31-51qq-20 Is an employee entitled to benefits while using FMLA leave?

This section incorporates the provision of 29 CFR §825.209 which discusses an employee's entitlement to benefits other than group health benefits during a period of FMLA leave. All other references in the federal regulation to group health benefits and key employees has been eliminated.

Section 31-51qq-21 What are an employee's rights on returning to work from FMLA leave?

This section incorporates 29 CFR §825.214, but has changed language in subsection (a) to accommodate the statutory difference in the Connecticut FMLA which provides that an employee is only returned to an equivalent position if their original position is not available upon return from the leave. Federal law allows an employee to be returned to either the “same” position or an equivalent position.

In subsection (b), language is added to accommodate the statutory difference in the Connecticut FMLA which provides that if an employee is unable to perform his or her own original job, upon the expiration of leave the employer shall transfer the employee to work suitable to such employee’s physical condition if such work is available. Federal FMLA has no such explicit requirement.

Section 31-51qq-22 When is the employer obligated to transfer an employee to work suitable to an employee’s physical condition?

Unlike the Federal FMLA, the Connecticut’s FMLA requires the employer to transfer an employee who upon the expiration of leave is unable to perform his or her original job to work suitable to such employee’s physical condition if such work is available. This section outlines the extent of the employer’s obligation to transfer an employee in such circumstances. Also, subsection (b) makes clear that this is different from the obligation to transfer an employee to an equivalent position. A transfer under this section may be to a job which is at a lesser pay scale and part-time instead of full time. Notwithstanding any obligations imposed upon the employer by the American’s with Disabilities Act (ADA), if at some later point, (after expiration of the 16 week leave period) the employee is physically able to again perform his or her original job, the employer is no longer obligated by the FMLA to reinstate the employee to his original job.

Section 31-51qq-23 What is an equivalent position?

This section incorporates 29 CFR §825.215 in its entirety with the exception of certain federal law requirements pertaining to “equivalent benefits”. Such requirements relate to employee welfare benefit plans and as such is governed by the Employee Retirement Income Security Act (ERISA).

Section 31-51qq-24 Are there any limitations on an employer’s obligation to reinstate an employee?

This section incorporates 29 CFR §825.216 in its entirety with the exception of subsection (d) which substitutes 12 weeks of FMLA with the Connecticut FMLA requirement of 16 weeks in a two year period.

Section 31-51qq-25 How are employees protected who request leave or otherwise assert

FMLA rights?

This section incorporates 29 CFR §825.220 in its entirety with the exception of the reference to the essential functions of the job which has been eliminated as Connecticut FMLA does not include that criteria. This section includes additional language contained in the Connecticut FMLA. This language adds to the already broad protection provided to employees under the FMLA. In subsection (2) the phrase “or causing to be discharged” is added along with “or because such employee has exercised the rights afforded to such employee under this Act”. In subsection (3) the phrase “or causing to be discharged” is added.

In subsection (b)(1) “75” employee threshold is substituted for “50” employee threshold. In subsection (d) “16 weeks have passed within the 2 year period” is substituted for the “12 weeks within a one year period”.

Section 31-51qq-26 What notices to employees are required of employers under FMLA?

This section incorporates 29 CFR §825.301 with certain language omitted. Reference to the federal informational publications and fact sheets has been removed. A Connecticut FMLA prototype notice is attached as DOL-FM2. This notice and section omits reference to payments to maintain health benefits, key employees and potential liability for payment of health insurance.

Section 31-51qq-27 What notice does an employee have to give an employer when the need for FMLA is foreseeable?

This section incorporates 29 CFR §825.302 in its entirety with some minor language changes that track the Connecticut FMLA language, such as “such notice as is practicable must be given” instead of “notice must be given as soon as practicable.”

Section 31-51qq-28 What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?

This section incorporates 29 CFR §825.303 in its entirety with some minor language changes that track the Connecticut FMLA language, such as “such notice...as is practicable” instead of “notice as soon as practicable.”

Section 31-51qq-29 What recourse do employers have if employees fail to provide the required notice?

This section incorporates 29 CFR §825.304 in its entirety with the exception of the elimination of the reference to the employer’s proper posting of the required notice at the worksite. The posting

requirement is not contained in the Connecticut FMLA.

Section 31-51qq-30 When must an employee provide medical certification to support State FMLA leave?

This section incorporates 29 CFR §825.305 in its entirety with minor language changes that track the Connecticut FMLA language.

Section 31-51qq-31 How much information may be required in medical certification of a serious health condition?

This section incorporates 29 CFR §825.306 in its entirety with minor language changes that track the Connecticut FMLA language as well as the following changes. Subsection (a) references the DOL developed Form DOL-FM1, attached to the regulations, instead of federal Form WH-380. In addition, the federal provisions concerning a statement of essential functions the employee is unable to perform, which are not required by the Connecticut FMLA, have been eliminated.

Section 31-51qq-32 What may an employer do if it questions the adequacy of a medical certificate?

This section incorporates 29 CFR §825.307 in its entirety with minor language changes that track the Connecticut FMLA language.

Section 31-51qq-33 Under what circumstances may an employer request subsequent recertification of a medical condition?

This section reflects changes between the State FMLA requirements and 29 CFR §825.308. New subsection (a) tracks the Connecticut FMLA statutory requirement. In addition, the federal provisions have been replaced at new subsection (b), which articulates the state statutory requirement that the employer must pay for any recertification that is not covered by the employee's health insurance.

Section 31-51qq-34 What notice may an employer require regarding an employee's intent to return to work?

This section incorporates 29 CFR §825.309 in its entirety with the exception of minor language changes as well as the elimination of the reference to maintenance of health benefits not required by the Connecticut FMLA.

Section 31-51qq-35 Under what circumstances may an employer require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a “fitness for duty” report)?

This section incorporates 29 CFR §825.310 with minor languages and with the elimination, as statutorily required by the state FMLA, of federal subsection (h) concerning certain aspects of certification standards and payment obligations. Unlike the federal Act, the Connecticut FMLA does not require that the employee bear the cost of certification arising from the continuation, recurrence, or onset of the serious health condition’s preventing an employee’s return to work after approved leave in certain situations when the employer is prevented from recovering its share of health benefit premiums payments made on the employee’s behalf during a period of unpaid FMLA leave. References to the essential functions of the job have been eliminated inasmuch as such language does not appear in the Connecticut law.

Section 31-51qq-36 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?

This section incorporates 29 CFR §825.311 in its entirety with minor language changes made to track the Connecticut FMLA.

Section 31-51qq-37 Under what circumstances may a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?

This section incorporates 29 CFR §825.312 in its entirety with the exception of the elimination of references to maintenance of health benefits which are not contained in the Connecticut FMLA.

Section 31-51qq-38 How should records and documents relating to medical certifications, recertification or medical histories be maintained?

This section incorporates 29 CFR §825.500(g) in its entirety with additional language referring to Chapter 563a of the general statutes concerning personnel files.

Section 31-51qq-39 What if an employer provides more generous benefits than required by FMLA?

This section incorporates 29 CFR §825.700. References to effective dates of collective bargaining agreements and the Act have been eliminated.

Section 31-51qq-40 Do federal laws providing family and medical leave still apply?

This section incorporates 29 CFR §825.701. Language referring to U.S. DOL has been eliminated. The examples have been changed to reflect the leave entitlement of 16 weeks under Connecticut FMLA rather than the 12 week entitlement of the federal FMLA and examples that are not applicable have been omitted.

Section 31-51qq-41 How does FMLA affect federal and State anti-discrimination laws?

This section incorporates 29 CFR §825.702. Additions include reference to the protected classes under state law. A discussion of the federal FMLA's legislative history and the ADA has been eliminated.

**Connecticut Department of Labor
Office of Program Policy
March 1999**