

## LAW &amp; POLICY GROUP

**GRIST****CONNECTICUT ENACTS PAID FAMILY AND MEDICAL LEAVE**

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Connecticut has enacted a paid family and medical leave law (2019 Pub. Act 25, [SSB 1](#)) that will be 100% employee funded, with contributions starting Jan. 1, 2021. Beginning in 2022, covered employees will be able to take up to 12 weeks of paid leave to deal with their own or a family member's serious health condition, donate an organ or bone marrow, bond with a new child, or handle a military exigency. Additional leave will be available for employees experiencing domestic violence or pregnancy-related complications. The state-run program will provide wage replacement of up to 95% of base period earnings (to an annually adjusted maximum), but employers will have the option to establish private plans. This GRIST reviews the new paid family and medical leave (PFML) program.

**PFL PROGRAM TO EXPAND CURRENT LAW**

The new PFML program will expand the existing [Connecticut Family and Medical Leave Act](#) (CTFMLA) (Conn. Gen. Stat. §§ [31-51kk](#) to [31-51rr](#)), which currently is similar to the federal [Family and Medical Leave Act](#) (FMLA). Coinciding with the start of benefits in 2022, the PFML law broadens current CTFMLA definitions for eligible employees, family members and serious health conditions, among other amendments.

The new law contains no details about applying for benefits or the nuts and bolts of collecting and remitting contributions, processing claims, or designing and building a website and database. Instead, a newly established Paid Family and Medical Leave Insurance Authority, led by a board of directors, will administer and oversee the PFML program, coordinating as needed with the state Revenue and Labor departments. The authority will develop written policies and procedures for program administration, develop and maintain a program website, and determine the requirements for employer-sponsored private plans, among other things.

## COVERED EMPLOYERS AND EMPLOYEES

While the CTFMLA currently applies only to employers with 75 or more employees, the PFML program will apply to any employer with one or more employees working in Connecticut, with the exception of private primary and secondary schools. The law's definition of employer generally excludes state and local governments, but covered public employees include any not subject to a collective-bargaining agreement (CBA). Public employees subject to a CBA can participate in the program if the CBA allows for it.

All employees working in Connecticut — and self-employed individuals and sole proprietors who opt in — will have to contribute to the PFML program beginning in January 2021. Employees will be eligible for paid leave beginning in January 2022 if they have earned Connecticut wages of at least \$2,325 in the highest quarter during the base period and are employed or have been employed in the 12 weeks just prior to the leave. (For details on the base period and other eligibility criteria, see Wage Replacement Benefits below.)

## FUNDING

Beginning in January 2021, each employee and participating self-employed individual must contribute a percentage of annual earnings up to the [Social Security Administration wage limit](#) to the PFML program. The authority will annually set the contribution rate on Nov. 1 for the next calendar year, but the rate won't exceed 0.5% of an employee's wages. Employers won't have to contribute to the program.

## LEAVE USES

CTFMLA provides job-protected leave for the following reasons:

- To bond with a new child after birth, adoption or foster-care placement
- To care for the employee's own or a family member's serious health condition
- To serve as an organ or bone marrow donor
- To handle any qualifying military exigency, [as defined under FMLA](#), arising from active-duty service — or a call to activity-duty service — by the employee's spouse, son, daughter or parent

The CTFMLA currently provides up to 16 weeks of job-protected unpaid leave in a 24-month period for any of these reasons. Beginning in January 2022, this changes to up to 12 weeks of paid leave in a 12-month period for these purposes. At the same time, two additional weeks of job-protected leave will become available for an employee with a serious health condition "resulting in incapacitation during pregnancy."

### **Military Caregiver Leave**

The CTFMLA provides military caregivers a one-time benefit of 26 weeks of job-protected leave in a 12-month period. Military caregiver leave is available for an employee to care for a spouse, son, daughter, parent or next of kin with a serious illness or injury incurred in the line of duty as a member of the armed forces. In 2022, this leave will also allow caring for anyone seriously ill or injured from military service whose close association with the employee is the equivalent of a family member.

### **Serious Health Condition**

The CTFMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care in a hospital, hospice, nursing home or residential medical care facility
- Continuing treatment, including outpatient treatment, by a healthcare provider.

This definition will remain unchanged when partial wage-replacement benefits become available for PFML.

### **Family Member**

Under the current CTFMLA, a family member is limited to spouse, son, daughter or parent. Beginning in January 2022, this definition expands significantly to include a sibling, grandparent, grandchild, or "an individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships." These terms — except spouse — are broadly defined to encompass family members by blood, marriage, adoption or foster care or *in loco parentis* (in place of a parent) relationships. Labor Commissioner regulations outlining factors to consider when determining an individual's "close association" with an employee are due by Jan. 1, 2022.

### **Intermittent Leave**

The CTFMLA lets employees take intermittent leave when medically necessary for a serious health condition or military caregiving but not for child bonding, unless the employee and the employer both agree. Employees requesting intermittent leave for a planned medical treatment may be temporarily transferred to another position with equivalent pay and benefits that better suits the intermittent scheduling. This provision remains unchanged by the PFML program's introduction.

### **Spouses With Same Employer**

If two spouses working for the same employer qualify for family leave, the aggregate number of weeks of leave for both may be limited. Under current CTFMLA law, the limitation for both spouses is 16 weeks in a 24-month period to bond with a child or care for a seriously ill parent, or 26 weeks in a 12-month period for military caregiver leave. Starting in 2022, the aggregate an employer must allow spouses taking any type of family leave — except military caregiving — is 12 weeks in a 12-month period.

If current CTFMLA regulations continue to apply in 2022, when both spouses use a portion of their aggregate leave entitlement for the same family leave purpose, each would be entitled to the difference between the amount taken individually (not jointly) and 12 weeks of leave for their own serious health condition or organ or bone marrow donation.

### **Family Violence Leave**

Connecticut also provides up to 12 days of job-protected leave for employees experiencing family violence (Conn. Gen. Stat. § [31-51ss](#)). In 2022, covered employees taking this leave can receive wage replacement through the PFML program. If PFML is exhausted, covered employees will still be able to take up to 12 days of unpaid family violence leave.

## WAGE REPLACEMENT BENEFITS

Beginning in January 2022, covered employees can receive compensation for up to 12 weeks of CTFMLA leave under the PFML program. The statute suggests compensation for child-bonding leave may become available before compensation for other qualified leaves. Whether this means paid child-bonding leave could begin before January 2022 or PFML for other purposes could begin after February 2022 isn't clear. This may be clarified in regulations.

**Base period.** The base period for determining eligibility and benefits will be for the first four of the last five completed calendar quarters. An employee is eligible for wage replacement during leave if he or she has earned at least \$2,325 in Connecticut wages in the highest quarter during the base period.

**Base weekly earnings.** The base weekly earnings used to determine compensation during leave are equivalent to 1/26 of an employee's covered unemployment insurance wages during the two highest-earning quarters in the base period.

*Example.* In the second quarter of 2022, Fred needs to take Connecticut PFML. Fred earned covered wages of \$14,000 in the first quarter of 2021, \$10,000 in the second quarter, \$12,000 in the third quarter and \$11,000 in the fourth quarter. These are his base-period earnings. Fred's two quarters with the highest earnings (\$14,000 plus \$12,000) in the base period are added together (\$26,000) and divided by 26 to arrive at his base weekly earnings (\$1,000).

**Benefit amount.** The actual benefit amount is calculated using a multistep process. The first step is to calculate 95% of the base weekly earnings, capped at 40 times the state's minimum wage. The second step is to calculate 60% of the base weekly earnings above 40 times the state's minimum wage, if any. The third step is to add together the two amounts to determine the weekly benefit. But the weekly benefit can't exceed 60 times the minimum wage. Regulations may clarify how benefits are calculated and prorated in different scenarios.

Here are some key figures for calculating PFML benefits using a minimum wage of \$13.00 per hour (effective Aug. 1, 2021):

- 40 x minimum wage = \$520
- 60 x minimum wage = the maximum benefit of \$780

*Example.* Fred has a base weekly earnings of \$1,000. Step one in determining his weekly PFML benefit is to calculate 95% of his base weekly earnings (\$950), capped at 40 times the minimum wage: \$520. Step two is to determine 60% of Fred's base weekly earnings above the weekly minimum wage (\$1,000 – \$520 = \$480): 60% of \$480 = \$288. Step three is to add the figures together for the weekly benefit: \$520 + \$288 = \$808. Since Fred's benefit (\$808) would exceed the state's maximum (\$780), he qualifies only for \$780 per week.

*Example.* Marissa's weekly wage base is \$600. Her earnings above \$520 = \$80, multiplied by 60% = \$48, plus \$520 = \$568. Since this amount doesn't exceed the state maximum benefit of \$780, her weekly PFML benefit is \$568.

## NOTICE TO EMPLOYER

Employees planning to take PFML in 2022 or later must provide notice to their employer. Similar to current CTFMLA requirements, employees must give their employer 30 days' advance notice of leave for a child's birth, adoption or foster placement, whenever foreseeable. Employees likewise must give 30 days' advance notice of foreseeable leave to undergo medical treatment for a serious health condition or to donate an organ or bone marrow. Employees also must try to schedule a planned medical treatment to minimize disruptions to the employer's operations. If the need for leave is not foreseeable, employees must give notice as soon as practicable.

For family violence leave, employers can require seven days' advance notice when the leave is foreseeable.

Besides imposing notice obligations, an employer may require a health care provider's certification of an employee's need for leave related to a serious health condition. For family violence leave, employers may require employee certification along with additional documentation of the need.

## EMPLOYMENT RIGHTS

Current CTFMLA reinstatement rights will continue to apply, but beginning Jan. 1, 2022, employees will receive job protections under CTFMLA if they have worked for the same employer for at least three months immediately before the leave request. This significantly reduces the 12 months' tenure currently required for job-protected leave under the CTFMLA or FMLA. Under the revised law, an employee with fewer than three months' service for the same employer could qualify for PFML but not for job protection.

Employees returning from CTFMLA leave must be restored to their prior or an equivalent position with the same pay, benefits, and other terms and conditions. If a serious health condition prevents an employee from performing the current job, the employer must arrange a transfer to available work suitable to the employee's physical condition. The leave can't result in the loss of any employment benefit accrued before the absence began. However, additional benefits needn't accrue during the leave.

The CTFMLA also prohibits employers from interfering with or denying any rights under the law, including by terminating or otherwise discriminating against an employee for exercising those rights.

In 2022, these employment rights provisions will apply to any employer with at least one Connecticut employee. The law currently exempts employers with fewer than 75 employees.

## COORDINATION WITH OTHER LEAVE

Under the current CTFMLA, employers can choose to provide wage replacement for some or all of the protected leave. If an employer provides paid leave for fewer than twelve weeks once PFML benefits begin in 2022, the additional weeks of protected leave "may be provided without compensation or with

compensation through the [state PFML program]." This language may allow employer-provided paid leave to run concurrently with the PFML program, with an offset for state-paid benefits. This provision may also prevent an employee from consecutively using employer-paid FMLA-type leave and then receiving the full duration of PFML benefits. Clarification may be provided via regulations.

Either the employee or the employer currently can choose to substitute accrued paid leave for any portion of CTFMLA leave, but not family violence leave. Beginning January 2022, substitution of accrued paid leave is permitted only if the employee retains at least two weeks of accrued paid leave. How this will work in practice is unclear, but regulations or other guidance may clarify.

Employer-paid leave combined with the state PFML benefits can't exceed an employee's regular compensation rate. Employees can't receive PFML benefits concurrently with Connecticut unemployment or workers' compensation, or any other state or federal compensation program.

#### **FMLA**

The Connecticut law is silent on whether PFML must run concurrently with FMLA. However, a recent US Department of Labor (DOL) [opinion letter](#) says that an employer may not delay designating FMLA-qualifying leave until after employees exhaust employer-paid leave. To the extent employees qualify for leave under both the Connecticut law and federal FMLA, employers should consider notifying employees of the FMLA designation and running the leave concurrently. Given the state law's expanded reasons for protected leave, definition of family members and earlier employee eligibility, some employees ineligible for FMLA-protected leave will qualify under the revised CTFMLA beginning in 2022.

#### **EMPLOYER NOTICE REQUIREMENTS**

Effective July 1, 2022, covered employers must provide written notice about the law to each employee at hire and annually thereafter. The notice must inform employees about their job-protected leave rights, the availability of wage replacement under the PFML program, the ban on employer retaliation and their right to file a complaint with the Labor Commissioner. Labor regulators may provide additional guidance on the notice's content and delivery methods before this requirement takes effect.

The statute doesn't require employers to provide the notice until long after contributions begin and benefits become available. Lawmakers might amend this requirement to take effect earlier, or regulators might require another notice before employee contributions begin.

#### **PRIVATE PLANS**

Employers may apply for approval of a private plan that provides all the same rights and benefits as the state plan at no greater cost to employees. A private plan must cover *all employees* "throughout their period of employment." As written, the statute doesn't appear to require a private plan to cover terminated employees in the first 12 weeks after separation. This could change with regulations.

A private plan must receive employee approval through a majority vote and cannot result in adverse risk selection to the state program. Self-insured employers would need to post a surety bond running to the state. Insurance regulators would need to approve any insurance policies supporting insured private plans.

Either way, the private plan would be subject to the administrative appeals by the state. The authority may set additional requirements for private plans.

### EMPLOYER NEXT STEPS

Connecticut businesses should review the new law to determine how it aligns with other states' PFML laws and the employer's own leave policies. Many of the law's provisions need clarification from regulators in the coming year. Employers should be on the lookout for a state website providing public information, FAQs, regulatory developments, model notices and database updates.

### RELATED RESOURCES

#### Non-Mercer Resources

- 2019 Pub. Act 25, [SB 1](#) (CT General Assembly, June 25, 2019)
- [FMLA 2019-1-A](#) (DOL, March 14, 2019)
- [CTFMLA Resources](#) (CT Dep't of Labor)

#### Mercer Law & Policy Resources

- [Employers Need to Prepare Now for Washington, DC's Universal Paid Leave](#) (June 11, 2019)
- [Family and Medical Leave Designations Can't Be Delayed, DOL Says](#) (May 31, 2019)
- [Massachusetts Updates Draft PFML Rules, Posts Model Notice](#) (April 23, 2019)
- [New Jersey Updates, Expands Family and Disability Benefits](#) (March 26, 2019)
- [Colorado Proposes Paid Family and Medical Leave Insurance Program](#) (March 15, 2019)
- [2019 State-Mandated Short-Term Disability Contributions and Benefits](#) (Jan. 31, 2019)

#### Other Mercer Resources

- [Life, Absence & Disability](#)
- [US Health News: Disability and Absence](#)
- [Think Globally, Comply Locally: How Employers Navigate Leave Laws](#) (Nov. 15, 2018)

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