

The New Year Brings New Leave Entitlements and Benefits to Employees

By Erin O'Brien Choquette

JANUARY 1, 2022 MARKED THE BEGINNING of new leave rights and responsibilities for Connecticut employees and employers, as well as for the lawyers who advise them. As of that day, changes to the Connecticut Family and Medical Leave Act (CT FMLA) took effect, expanding both the pool of employees eligible to take job-protected leave under CT FMLA and the qualifying reasons for leave. In addition, income-replacement benefits under the Connecticut Paid Leave (CT PL) program became available. The CT Paid Leave program, which is administered by the CT Paid Leave Authority, creates a mechanism for eligible employees who cannot work due to a qualifying reason to receive income-replacement benefits.

Both the CT FMLA changes and the creation of the CT PL program resulted from Public Act 19-25, *An Act Concerning Paid Family and Medical Leave*, as amended by Public Act 19-117. The revisions to the CT FMLA can be found in sections 31-51kk *et seq* of the Connecticut General Statutes. The legislation creating the CT Paid Leave Authority as a quasi-public agency and establishing the CT PL program was engrossed in sections 31-49e *et seq* of the Connecticut General Statutes.

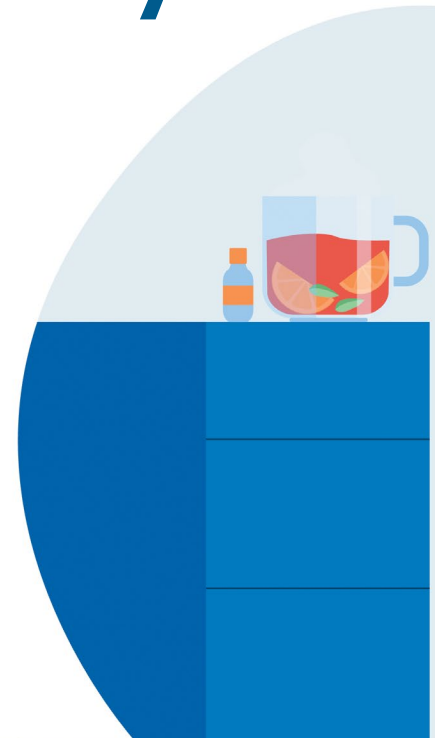
Under CT FMLA, an eligible employee who cannot work for a qualifying reason has the right to take leave from work and the right to return to their same job, under the same terms and conditions, at the end of the leave. One of the most sig-

nificant changes to this law related to the definition of a covered employer. Prior to January 1, CT FMLA applied only to businesses with 75 or more employees. As of January 1, however, almost all Connecticut employers with **one or more** employees are covered by the CT FMLA. Notably, domestic employers are now considered covered employers. The only employers that are excluded from CT FMLA are the federal government, municipalities, boards of education, non-public elementary and secondary schools, and sovereign entities.

The eligibility requirements under CT FMLA were similarly expanded. Previously, an employee was required to work for an employer for at least one year and had

worked at least 1,050 hours in the previous 12 months. Now, an employee is eligible for job-protected leave if they have worked for the employer for at least the three months immediately preceding the leave.

The maximum length of CT FMLA leave was changed from 16 weeks in a 24-month period for most leave reasons to 12 weeks in a 12-month period. Under the new CT FMLA, an employee can still take up to 26 weeks of leave to care for a family member injured in the line of duty on active duty in the Armed Forces. Additionally, the new CT FMLA allows an employee who is pregnant the ability to take two additional weeks of leave during their pregnancy if they need the time to go to doctor appointments or are experiencing compli-





cations or otherwise become incapacitated during their pregnancy.

Lastly, CT FMLA now has an expanded definition of the familial relationships for which a worker can apply for caregiver leave. The recognized family relationships include a spouse, child of any age, parent, grandparent, grandchild, sibling, or any individual related to the worker by blood or affinity whose close association the employee shows to be the equivalent of those family relationships.

Unchanged with the CT FMLA is the fact that the employee must apply to the employer for the FMLA leave and the employer is responsible for determining the employee's leave entitlements. The

Connecticut Department of Labor (CT DOL) has created a dedicated page on its website for CT FMLA and CT PL issues: <https://portal.ct.gov/DOLUI/newfmlaguidance>. On this webpage, CT DOL has provided sample forms, FAQs, and other resources. The webpage is also the hub for employees who wish to file complaints alleging wrongful denial of FMLA leave and FMLA interference and retaliation claims and for employers to respond to such claims.

The Connecticut Department of Labor has posted proposed CT FMLA regulations on the state's regulations portal, regulations.ct.gov. The comment period for these proposed regulations closed on February 28, 2022.

Unlike CT FMLA, the CT PL program does not provide employees with rights to job-protected leave. Instead, the CT PL program creates a mechanism for eligible employees who cannot work due to a qualifying reason to receive income-replacement benefits.

The CT PL program is entirely worker-funded. Starting in January 2021, Connecticut employers were required to deduct 0.5 percent from their workers' wages and remit those contributions to the CT Paid Leave Authority each quarter. Contributions are calculated based on the employees' FICA wages and are capped at the Social Security contribution maximum.



Unlike many other states, Connecticut does not require employers to pay into the program. If an employer fails to fulfill its obligation to remit the employees' contributions, however, it can be held financially responsible for the shortfall. To assist employers that did not begin processing the employee contributions promptly, the CT Department of Labor has authorized a temporary "catch up period" from January 1 – March 31, 2022. During this time, employers may deduct an additional 1 percent from employees' wages to help recoup contributions they may have missed in 2021. However, once this period ends on March 31, employer will need to obtain express permission from the CT Department of Labor to take any deductions for paid leave contributions above the statutory 0.5 percent.

Sole proprietors and self-employed individuals are not required to participate; however, they may choose to opt-in to the program. If they do so, they must remain in the program for a minimum of three years. A sole-proprietor who has workers on their payroll must withhold 0.5 percent from those workers' wages and remit them quarterly, even if the sole-proprietor has chosen not to opt-in to the program.

CT PL benefits became available for eligible workers as of January 1, 2022. To be eligible for these income-replacement benefits, a worker must be working for a covered employer, or must have been working for a covered employer within the 12 weeks immediately preceding the leave and must have earned at least \$2,325

in the highest earning quarter of the first four of the five most recently completed quarters.

A covered employer, for purposes of the CT PL, is any person or entity who employs one or more employees in Connecticut, excluding the federal government, the State of Connecticut as to its union-



ized workforce, municipalities, boards of education, nonpublic elementary and secondary schools, railroads, and sovereign entities. Unionized employees of the state can collectively bargain to participate in CT PL. Similarly, if the unionized employees of a municipality or board of education collectively bargain to participate in CT PL, the non-unionized employees of that municipality or board will be covered as well.

Employers who wish to offer their employees an equivalent or better paid-leave program may apply to the CT Paid Leave

Authority for permission to provide paid leave benefits to their employees through a private plan. Such private plan may be self-insured or fully insured by a Connecticut Insurance Department-approved insurer. Information about the private plan option, including the information about required plan elements and the application process, can be found at www.ctpaidleave.org. Notably, one required element is the obligation for the proposed plan to be approved by a majority of the employer's employees.

CT PL income-replacement benefits are available to employees for the same qualifying reasons as are available under the CT FMLA, specifically:

- ◆ to receive treatment for or recover from their own serious health condition;
- ◆ to care for a family member experiencing a serious health condition;

- ◆ to bond with a new child that has entered the worker's home through birth, adoption, or foster care;
- ◆ to care for a family member injured in the line of duty on active duty in the Armed Forces; and
- ◆ to attend to qualifying exigencies arising out of a parent, spouse, or child's call to active duty in the Armed Forces.

Additionally, CT PL benefits are available to a worker who takes leave pursuant to the CT Family Violence Leave Act (C.G.S.



§31-51ss), which allows an individual experiencing family violence to take up to 12 days in a calendar year to attend court proceedings, seek housing or temporary shelter, or attend medical or counseling appointments.

The CT Paid Leave Authority has received many inquiries as to whether exposure to COVID-19 is a qualifying reason for CT PL benefits. Under the CT Paid Leave Act, the definition of serious health condition is based on the definition of serious health condition under the CT FMLA. To summarize this multi-part definition, the individual must not simply be sick or injured but instead must be receiving medical treatment for the condition or otherwise be under the direct care and supervision of a health care provider. Accordingly, to receive CT Paid Leave benefits in connection with an exposure to or diagnosis with COVID-19, the employee must provide medical documentation from their health care provider demonstrating that the COVID-19 exposure/diagnosis results in the person having a condition that:

- ◆ requires an overnight stay in a hospital or other medical care facility; or
- ◆ causes the individual to be incapacitated for more than three consecutive days and for which the individual is required to receive ongoing medical treatment (either multiple appoint-

ments with a health care provider, or a single appointment and follow-up care, such as prescription medication); or

- ◆ results in or exacerbates a chronic condition that causes occasional periods when the employee is incapacitated, and which require treatment by a health care provider at least twice a year.

Similarly, an eligible employee may receive CT Paid Leave benefits because they need to serve as a caregiver to a family member who was exposed to or diagnosed with COVID-19 only if the family member's health care provider certifies that the family member's exposure/diagnosis results in the family member having a condition that falls into one of those three categories.

An eligible employee who is unable to work for a qualifying reason can receive up to 12 weeks of income-replacement benefits in a 12-month period, measured on a rolling-back basis, for most leave reasons. Benefits taken in connection with leave under the Family Violence Leave Act are restricted to the 12 days available under that act. Like CT FMLA, an employee who is pregnant may receive up to two additional weeks of income-replacement benefits for incapacity during pregnancy.

The amount of income-replacement benefits available to an eligible employee depends upon their base weekly earnings, defined as amount equal to one twenty-sixth, rounded to the next lower dollar, of a covered employee's wages earned during the two highest-earning quarters of the first four of the five most recently completed quarters. An employee whose base weekly earnings are less than or equal to 40 times the CT minimum wage will receive CT PL benefits equal to 95 percent of such base weekly earnings. Employees who earn a greater amount will receive benefits equal to 95 percent of the CT minimum wage times forty plus 60 percent of the difference between their base weekly earnings and forty times the CT minimum wage, provided, however, that in all instances, the CT PL benefits are capped at 60 times the CT minimum wage. To assist employees in estimating their potential benefits, the CT Paid Leave Authority created a benefits estimator on the "For Claims" page of www.ctpaid-leave.org.

The CT Paid Leave Authority has contracted with a third-party administrator, Aflac, to handle claims administration. Employees who wish to apply for income-replacement benefits from the CT Paid Leave Authority can do so either by accessing the "For Claims" page or by calling Aflac at (877)499-8606. The "For Claims" page includes a step-by-

step guide to the CT Paid Leave claims process, as well as a video guide on how to submit a claim; detailed information about the definitions and documents required for each of the qualifying reasons, and other helpful information.

Because the CT Paid Leave program is entirely employee-funded, the employer's involvement in the claim process is limited. By statute, the employee is required to notify their employer if they apply for CT Paid Leave benefits. In addition, as part of the claim process, the employee will give the employer an Employment Verification Form to complete and submit to Aflac within 10 days of receipt. The Employment Verification form is a two-sided document in which the employer must provide information about the employee's work schedule and sources of other income-replacement benefits. Employers can also expect to receive an email notification from Aflac advising them if their

employees' claims for benefits have been approved or denied.

The CT Paid Leave Authority requests information about other income-replacement benefits for two reasons. First, the statute states that an employee cannot receive CT PL benefits concurrently with unemployment insurance benefits, workers' compensation benefits (which is broadly defined in the statute to include medical-only benefits), or other state or federal income-replacement benefits.

Additionally, the CT Paid Leave Act states that an employee may receive CT PL benefits and employer-provided income-replacement benefits at the same time provided the total amount does not exceed the employee's regular wages. The CT FMLA states that an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while

on approved leave, provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. can retain not less than two weeks of such paid time off, as required by Conn. Gen. Stat. § 31-51ll(e).

As a result of the intersection of these two laws, the employee's CT PL benefits may be affected in one of the following ways:

- ◆ If an employee does not receive **any** employer-provided income-replacement benefits (through accruals, an employer-provided short-term disability policy, or otherwise), the employee will start receiving the full amount of CT PL benefits, with no offsets, as of the first day of the leave.
- ◆ If the employee receives employer-provided income-replacement benefits equal to the employee's regular pay for the full amount of time the employee is out on leave, the employee shall not



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receive any CT PL benefits during that leave, but the employee's full allowance of CT PL benefits remains available to them in case of a future need.

- ◆ If the employee receives employer-provided income-replacement benefits equal to the employee's regular pay for a portion of the time the employee is out on leave, and the

employee shall receive CT PL benefits only for the remainder of the leave (i.e., the period the employee is on leave but not receiving employer-provided paid time off).

- ◆ If the employee receives employer-provided income-replacement benefits less than the employee's regular pay, the employee shall receive CT

PL benefits, but the benefits will be reduced as necessary to ensure that when the employer-provided paid time off is added to the CT PL benefits, the total does not exceed 100 percent of the employee's regular pay.

As a quasi-public agency, the CT Paid Leave Authority issues policies adopted by its Board of Directors after a public notice period. Copies of its policies can be found on the Resources page of www.ct-paidleave.org. Other useful resources, including Employee Fact Sheets, Employer and HR Toolkits, videos, FAQs, and links to scheduled webinars can also be found on the CT PL website. ■

Erin O'Brien Choquette is the general counsel and chief operating officer for the CT Paid Leave Authority. Previously, she worked for the Connecticut Department of Administrative Services and Robinson+Cole. Attorney Choquette attended the Columbia University School of Law and the College of the Holy Cross.



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