



SHIPMAN

CCIC FORUM 2021:
*Connecticut FMLA and Leave
Changes on the Horizon*

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Presentation Roadmap

Topics to be discussed



- Overview of CTFMLA
- Changes to CTFMLA
- Amended CTFMLA vs. Federal FMLA
- FAQs and Scenarios for Employers
- Best Practices

What CTFMLA Is NOT



Not the Connecticut Paid Leave program (“CTPL”), which is administered by the CT Paid Leave Authority.

- CTPL is Administrated by the CT Paid Authority
- CTPL is income replacement, not job protection



Not the Federal Family and Medical Leave Act (“FMLA”)

Connecticut Family and Medical Leave Act ("CTFMLA")

The CTFMLA provides job protection to employees who require leave for certain reasons.



- 12 weeks every 12 months
- Job protected - return to same or, if not available, equivalent position
- Benefits protected while on leave
- Employee may take up to two additional weeks of leave during the 12-month period for a serious health condition resulting in incapacitation that occurs during a pregnancy

Who is Covered By CTFMLA as of Jan. 1, 2022?



Employers with one or more employees



CTFMLA **includes** the state



Excludes municipalities, local or regional boards of education, nonpublic elementary or secondary schools

NOTE: Federal FMLA applies to all public agencies, federal, state and local, regardless of number of employees.
It also applies to all private employers with 50+ employees.

What Triggers Leave Under CTFMLA

The birth of a child and care within the first year after birth;

The placement of a child with employee for adoption or foster care and care for child;

To care for a family member with a serious health condition;

- means a spouse, sibling, son or daughter, grandparent, grandchild or parent, 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
- "Grandchild" means a grandchild related to a person by (A) blood, (B) marriage, (C) adoption by a child of the grandparent, or (D) foster care by a child of the grandparent
- "Grandparent" means a grandparent related to a person by (A) blood, (B) marriage, (C) adoption of a minor child by a child of the grandparent, or (D) foster care by a child of the grandparent
- "Parent" means a biological parent, foster parent, adoptive parent, stepparent, parent-in-law or legal guardian of an eligible employee or an eligible employee's spouse, an individual standing in loco parentis to an eligible employee, or an individual who stood in loco parentis to the eligible employee when the employee was a child
- "Sibling" means a brother or sister related to a person by (A) blood, (B) marriage, (C) adoption by a parent of the person, or (D) foster care placement

What Triggers Leave Under CTFMLA

Because of the employee's own serious health condition ;

To serve as an organ or bone marrow donor;

To address qualifying exigencies arising from a son, daughter, parent, spouse's active duty service in the armed forces; or

To care for a son, daughter, parent, spouse or next of kin injured on active duty in the military;

NOTE: **Federal FMLA** does **NOT** include leave for a family member – limited to spouse, son, daughter or parent, which are not as broadly defined

12-Month Period

To determine the 12-month period, the employer must utilize any one of the following:

- a calendar year
- any fixed 12-month period, such as a fiscal year or a 12-month period measured forward from an employee's first date of employment;
- a 12-month period measured forward from an employee's first day of leave taken;
- a rolling 12-month period measured backward from an employee's first day of leave taken

Overview of Changes To CTFMLA

	Previous CTFMLA (pre-1/1/22)	Amended CTFMLA (as of 1/1/22)
Covered employers	<ul style="list-style-type: none"> Private employers with 75+ employees The State 	<ul style="list-style-type: none"> Private employers with 1+ employees The State
Eligibility – time worked	<ul style="list-style-type: none"> 12+ months for the employer 1,000+ hours in prior 12 months 	<ul style="list-style-type: none"> 3+ months for the employer No hours requirement
Amount of job-protected leave	<ul style="list-style-type: none"> 16 weeks in 24-month period 	<ul style="list-style-type: none"> 12 weeks in 12-month period Additional 2 weeks for incapacitation for serious health condition during pregnancy
Use of PTO	<ul style="list-style-type: none"> Employer can require all available PTO to be used 	<ul style="list-style-type: none"> Employer can require available PTO to be used But employee can choose to keep up to 2 weeks of accrued PTO
Caring for Family Members	<ul style="list-style-type: none"> Spouse Son or daughter (including step, foster, adopted, legal ward) Parent (including step, foster, adoptive, or in-law) 	<ul style="list-style-type: none"> Same as before, plus: <ul style="list-style-type: none"> Sibling Grandparent/grandchild Individual related by blood or affinity whose close association to employee is equivalent to covered relationship

Amended CTFMLA vs. Federal FMLA

	Amended CTFMLA	Federal FMLA
Covered employers	<ul style="list-style-type: none"> Private employers with 1+ employees The State 	<ul style="list-style-type: none"> Private employers with 50+ employees Public employers Schools (public or private)
Eligibility – time worked	<ul style="list-style-type: none"> 3+ months for the employer No hours requirement 	<ul style="list-style-type: none"> 12+ months for the employer 1,250 hours for the employer in prior 12-month period
Amount of job-protected leave	<ul style="list-style-type: none"> 12 weeks in 12-month period Additional 2 weeks for incapacitation for serious health condition during pregnancy 26 weeks in a 12-month period to care for covered service member 	<ul style="list-style-type: none"> 12 weeks in 12-month period for 26 weeks in 12-month period to care for covered service member
Use of PTO	<ul style="list-style-type: none"> Employer can require available PTO to be used But employee can choose to keep up to 2 weeks of accrued PTO 	<ul style="list-style-type: none"> Employer can require all available PTO to be used
Caring for Family Members	<ul style="list-style-type: none"> Same as federal FMLA, plus: <ul style="list-style-type: none"> Sibling Son or daughter (of any age) Grandparent/grandchild Individual related by blood or affinity whose close association to employee is equivalent to covered relationship 	<ul style="list-style-type: none"> Spouse Parent Son or daughter (18 or older if the adult child has a disability)

Comparison of Leave Under Various Laws

Federal FMLA job-protected leave	CTFMLA job-protected leave (as of 1/1/22)	CTPL paid leave benefits (as of 1/1/22)
Up to 12 weeks in a 12-month period for all leave reasons <i>except</i> :	Up to 12 weeks in a 12-month period for all leave reasons <i>except</i> :	Up to 12 weeks in a 12-month period for all leave reasons including military caregiver leave <i>except</i> :
Up to 26 weeks in a 12-month period for military caregiver leave	Up to 26 weeks in a 12-month period for military caregiver leave	
	**Under Conn. Gen. Stat. 31-51ss (not CTFMLA), an employee who is a victim of family violence may use up to 12 of leave during any calendar year in which such leave is reasonably necessary. Leave shall not affect any other leave provided under state or federal law	Up to 12 days of the 12 weeks could be used for income replacement during family violence leave
	An employee may be eligible for 2 additional weeks of leave for incapacity due to a serious health condition during pregnancy	An employee may be eligible for 2 additional weeks of income replacement during leave for incapacity due a serious health condition during pregnancy



Will the DOL be issuing regulations or guidance regarding the changes to CTFMLA?

According to the Public Act:

“Not later than January 1, 2022, the Labor Commissioner shall adopt regulations . . . including, but not limited to:

- 1) Guidelines regarding factors to be considered when determining whether an individual's close association with an employee is the equivalent of a family member's, and
- 2) procedures for hearings and redress, including restoration and restitution, for an employee who believes that there is a violation by the employer of such employee of any provision of said sections.”

Eligibility Considerations



Must the employee's three months of work be consecutive?



If an employee works 6 hours every Saturday for three months, is the employee eligible for CTFMLA leave?



If a student works part-time as a lab assistant during the semester, is the student eligible for CTFMLA leave?



Can an Employer run other leaves, like sick, vacation, or PTO, concurrently with CTFMLA leave?

- Generally yes, but:
 - Employee may retain 2 weeks of vacation at his or her option.
- Up to 2 weeks of Sick leave can be used to attend to serious health condition of family member.
- Possible CTPL pay.

Paid Time Off and CTFMLA Considerations



How does an employee notify an employer that they want to keep 2 weeks of accrued PTO?



Should employers expand their sick leave policies to cover care for siblings, grandparents, grandchildren, etc.?

- Pro: Employees could use sick time for the expanded CTFMLA coverage
- Do employees otherwise get paid out for unused sick leave?

Scenario 1: Transition to Amended CTFMLA

Brian is out on FMLA leave for the last 10 weeks of 2021. His doctor says that he will need to remain out of work until at least February 2022.

How should the employer handle this situation?

Does Brian's 12-week FMLA allotment reset on January 1, 2022?

Scenario 2: Transition to Amended CTFMLA

Diana has a chronic medical condition.

She used 16 weeks of CTFMLA leave in 2021,
returning to work on September 1, 2021

When can she next take FMLA leave?

Scenario 3: Interaction of CTFMLA and FMLA: Family Member Definitions

In February 2022, Sandra uses 6 weeks of leave to recover from a personal qualified serious health condition.

In June 2022, Sandra uses 6 weeks of leave to care for her brother, who is suffering from a qualified serious health condition.

In October 2022, Sandra requests FMLA leave to care for her daughter, who is suffering from a qualified serious health condition.

Must the employer approve FMLA leave?

Scenario 4: Interaction of CTFMLA and FMLA (cont.)

Same fact pattern as above, except that Sandra's company only employed 45 individuals until June 1, 2022, when it hired 10 additional employees.

What is Sandra's leave entitlement when she requests leave in October 2022?

Unemployment

- No base period employer's account shall be charged with respect to benefits paid to a claimant whose separation from employment (temporary replacement employee) is attributable to the return of an individual who was absent from work due to a bona fide leave taken pursuant to CTFMLA or CTPL.
- **All benefits paid which are not charged to any employer shall be pooled**

Violations

It shall be a violation for any employer to

- interfere with, restrain or deny the exercise of, or the attempt to exercise, any right provided.
- discharge or cause to be discharged, or in any other manner discriminate, against any individual for opposing any practice made unlawful by said sections or because such employee has exercised the rights afforded to such employee under said sections.
- deny an employee the right to use up to two weeks of accumulated sick leave or to discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, up to two weeks of accumulated sick leave to attend to a serious health condition of a family member of the employee, or for the birth or adoption of a son or daughter of the employee.

Best Practices: Recordkeeping

- Both HR and managers/supervisors should keep detailed and accurate records of FMLA
- When an employee calls out, document the reason the employee gives for calling out
- Communicate with the employee in writing
 - Document all verbal conversations or discussions
 - Be responsive if employee has questions
 - Be specific about what the employee is entitled to and what is required of the employee
- Comply with applicable record retention laws for maintaining records

Questions?

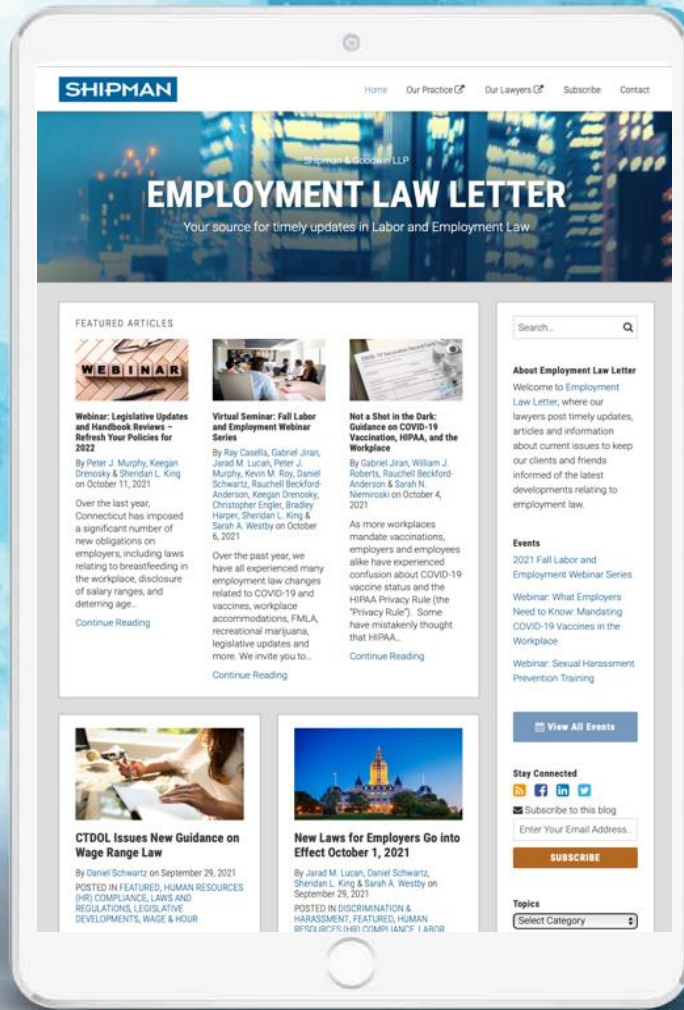


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