



# Leave Laws Overview

## FMLA, Paid Sick Leave

Presentation by

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# FMLA and PSL

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# FMLA

## **PFML Proposed Bill in the Legislature**

- **SB 1 – Passed Labor Committee and Appropriations**
- **PFML and FMLA for any employer with one or more employees**
  - **12 weeks every 12 months**
  - **Employee must have earned not less than \$2325.00 from one or more employers during the employee's highest earning quarter within the five most recently completed calendar quarters**
  - **Employee's contribution – one half of one percent**
  - **100% of weekly wage not to exceed \$1000.00**

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## **TRAIN SUPERVISORS**

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

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## **BASIC ELIGIBILITY**

- **Maximum 16 weeks of leave over a 24 month period (For Federal, 12 weeks every 12 months)**
- **Job protected (return to same or, if not available, an equivalent)**
- **Benefits protected**
- **General rule - treat employee as though they never took leave**

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## **TRIGGERING EVENTS**

- **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 spouse, son, daughter or parent with a serious health condition**
- **Because of the employee's own serious health condition**
- **In order to serve as an organ or bone marrow donor**

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# **SERIOUS HEALTH CONDITION**

**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.)**

**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 conditions exists, not your own judgment**

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# **SUMMARY OF SERIOUS HEALTH CONDITION**

- 1. Inpatient**
- 2. Incapacitated more than 3 consecutive calendar days plus two HCP visits (1<sup>st</sup> within 7 days, 2<sup>nd</sup> within 30 days)**
- 3. Incapacitated more than 3 consecutive calendar days plus one HCP visit (within 7 days) and regimen of treatment (prescription medicine, physical therapy, etc.)**
- 4. Pregnancy**
- 5. Chronic**
- 6. Restorative surgery/illness left untreated**
- 7. Long-term condition**

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## EMPLOYEE NOTICE

- **When the need for leave is FORESEEABLE:**
  - Typically 30 day advance request
- **When the need for leave is NOT FORESEEABLE:**
  - Notify employer as soon as practicable
  - Request need not mention FMLA initially

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## EMPLOYEE NOTICE

- **If the employee is calling in absent, he or she must give adequate information to indicate that the illness may be FMLA qualifying**
  - “I am sick” is not sufficient
- **When employee calls in absent due to intermittent leave, employee must notify that the leave is due to previously qualifying FMLA reason**

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# EMPLOYER RESPONSIBILITY

- Prompt determination of eligibility
- Prompt notification of rights and responsibilities
- Prompt designation or denial of requested leave
  
- ▶ Because the employer is responsible for providing this information in a timely manner, it is imperative that supervisors inform HR immediately of any possible FMLA issues
  - Employer has specific timeframes with which it must comply

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# INTERMITTENT LEAVE

- FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances
  - when medically necessary for planned and/or unanticipated medical treatment
  - for recovery from treatment or recovery from a serious health condition
  - for the care and comfort of a family member
  - for absences where employee or family member is incapacitated

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## **MEDICAL CERTIFICATION**

- **Employer may request certification of the serious health condition by a health care provider**
- **Employee must be given at least 15 days after receipt of the form from the employer to return the medical certification**

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## **MEDICAL CERTIFICATION**

- **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**
- **Employer cannot ask for more information than that allowed in medical certification**

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## **MEDICAL CERTIFICATION**

- **Employer cannot contact the employee's HCP directly**
- **Employer cannot ask for a doctor's note for each intermittent FMLA absence.**

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## **SUMMARY OF MEDICAL CERTIFICATION PROCESS**

- 1. Medical Certification**
- 2. Cure/Clarification**
- 3. Second opinion**
- 4. Third binding opinion**
- 5. Recertification – no more than every 30 days**
- 6. Clarification on recertification but no second or third opinion**

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# **SICK LEAVE FOR FAMILY MEMBER'S SHC UNDER FMLA**

## **Use of Sick Leave for Family Member**

- Employee may use up to two weeks of accumulated sick leave for the serious health condition of a parent, spouse, son or daughter, or for the birth or adoption of a son or daughter of the employee
- Employer must have a bona fide written sick leave policy
- This is only for CT, not Federal

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# **HONEST BELIEF**

- The key inquiry in assessing whether an employer holds an honest belief that the employee has abused his/her FMLA rights is whether the employer made a reasonably informed and considered decision before taking the complained of action.

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# PAID SICK LEAVE

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## 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.**

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# SERVICE WORKER

- **"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
  - Can find on Bureau of Labor Statistics website for classifications - <https://www.bls.gov/>
  - Look at duties, not job titles
  - More than one job, look at primary duties

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[http://www.bls.gov/soc/major\\_groups.htm](http://www.bls.gov/soc/major_groups.htm)

- **29-2050 Health Practitioner Support Technologists and Technicians**
- This broad occupation includes the following seven detailed occupations:
  - 29-2051 [Dietetic Technicians](#)
  - 29-2052 [Pharmacy Technicians](#)
  - 29-2053 [Psychiatric Technicians](#)
  - 29-2054 [Respiratory Therapy Technicians](#)
  - 29-2055 [Surgical Technologists](#)
  - 29-2056 [Veterinary Technologists and Technicians](#)
  - 29-2057 [Ophthalmic Medical Technicians](#)

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# 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.?

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# WHAT IS PER DIEM?

- **Examples:**
  - No performance evaluations
  - No requirement to work 1 weekend a month
  - No repercussion for turning down a job

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# 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**

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# COMPLIANCE

- **If employer offers other paid leave, may be in compliance**
  - **Can accrue at a rate  $\geq$  PSL law**
  - **May be used in same way**
- **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?**

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# DOCUMENTATION

- 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

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