

CONNECTICUT ENACTS PAID FAMILY AND MEDICAL LEAVE

On June 25, Connecticut joined California, Massachusetts, New Jersey, New York, Rhode Island, Washington and the District of Columbia by enacting a paid family and medical leave insurance benefit program ("FMLI"). Employee contributions to fund the benefit program will begin **January 1, 2021**; paid benefits for family and/or medical leave may commence **January 1, 2022**. This act generally amends and/or replaces many sections of the existing Connecticut job-protection, unpaid family and medical leave ("CFMLA") benefit program as of **January 1, 2022**.

Expect additional guidance when implementing regulations are issued and information about the FMLI program begins to be made public (i.e. on a website).

Which employers will be required to provide FMLI?

Private sector employers with one or more employees will be subject to FMLI. Public employers including the federal government, state or municipality, a local or regional board of education or a nonpublic elementary or secondary school are generally exempt, although certain public employees may be covered by the statute under certain circumstances. Employers that sponsor a family and medical leave benefit program with benefits and protections equal to or greater than the provisions of the state plan may apply for an exemption from the state FMLI program.

Which employees will be eligible for FMLI benefits?

An employee who has been employed by an employer in the state for 12 weeks and has earnings of at least \$2,325 during the highest earning quarter in the first four out of five recently completed quarters will be eligible for FMLI benefits. Sole proprietors and self-employed individuals may elect to participate in the FMLI program.

When may eligible employees begin to take paid leave under FMLI?

Starting January 1, 2022, eligible employees may take paid leave under FMLI for the following qualifying events:

- Birth, adoption or placement of a child in foster care,
- Care for a family member with a serious health condition,
- Due to the employee's own serious health condition,
- Enable the employee to serve as an organ or bone marrow donor,
- To help with family-related issues arising from a qualifying exigency as defined under the federal FMLA when a spouse, child or parent is on active duty (or has been notified of a call to active duty) in the U.S. armed forces,
- Military caregiver leave, and
- Due to an act of family violence.

Who is considered a family member?

Family members under FMLI are: a spouse, sibling, child, parent, grandparent, grandchild or an individual related to the employee by blood or close relationship to the employee. Family members can include in-laws, adoptive, foster and step-relationships, as well as individuals who stood in loco parentis when the employee was a child or to whom the employee stood in loco parentis to a child.

How much time may be taken by an employee under FMLI?

As of January 1, 2022, eligible employees will be entitled to 12 weeks of paid leave in a 12-month period for one or more of the FMLI qualifying events. Two additional weeks of paid leave are available to an employee for a serious health condition resulting in incapacitation that occurs during pregnancy. Employees on leave to care for a military family

member's serious injury or illness incurred in the line of duty are entitled to a one-time benefit of up to 26 weeks in a 12-month period. Employers have discretion to establish the twelve-month measurement period using the same methods under the federal (and state) FMLA.

How may leave be taken?

FMLI may be taken in consecutive workweeks, intermittently or on a reduced schedule basis although certain restrictions may apply for leave taken intermittently or on a reduced schedule basis as follows:

- Birth, adoption or foster placement - agreed to by the employer and employee.
- Care for a family member or oneself with a serious medical condition - medically necessary and other work-related issues are satisfied.

Employees must provide the employer with 30-days advance notice of leave when the reason for the leave is foreseeable, otherwise as soon as practicable.

How will the program be funded?

A Paid Family and Medical Leave Insurance Authority ("Authority") is being created to administer FMLI. The Authority will establish the annual employee contribution rate not to exceed .5% of earnings up to the Social Security Taxable Wage Base. Employers will begin withholding employee FMLI contributions January 1, 2021.

How much is the benefit under FMLI?

The weekly benefit will be:

- 95% x base weekly earnings up to 40 times the State's minimum wage, plus
- 60% x base weekly earnings in excess of 40 times the State's minimum wage
- The maximum weekly benefit is set at 60 times the State's minimum wage.

The minimum wage in effect on January 1, 2022 is scheduled to be \$13 per hour therefore; the maximum weekly benefit for 2022 would appear to be \$780 [60 x \$13]. The minimum wage will increase to \$15 per hour effective June 1, 2023. The weekly benefit will be pro-rated for intermittent or reduced schedule leave.

If employee contributions used to fund the program are set at the maximum percentage allowed, and the Authority determines the funding is insufficient to ensure solvency of the program, the Authority can reduce FMLI benefits, although any benefit reduction should be minimized to a level necessary to ensure the solvency of the program.

How do employer-provided leave benefits and accrued time off integrate with FMLI?

FMLI may run concurrently with employer-sponsored leave benefits however; FMLI benefits will be reduced if total compensation while on leave from the employer and FMLI exceeds an employee's regular rate of compensation.

An eligible employee may elect, or an employer may require an employee to substitute accrued paid vacation, personal or family leave for leave taken for birth or placement of a child, or to care for a family member with a serious health condition, although the employee retains the right to at least two weeks of FMLI benefits under the state program.

It appears that FMLI may also run concurrently with the federal and state unpaid FMLA programs although further guidance and clarification would be helpful to confirm.

Are there any employer notice requirements?

Effective July 1, 2022, an employer is required to provide a notice of FMLI rights and benefits to employees at the time of hire and annually, thereafter.

What changes does the legislation make to the state's unpaid FMLA ("CFMLA") benefit program?

As of January 1, 2022, the state's unpaid, job-protected FMLA is modified to better align with FMLI as follows:

- Extends CFMLA to cover private-sector employers with at least one employee subjecting most all Connecticut employers to the CFMLA which currently applies to employers with 75 or more employees within the state,
- Expands eligibility for CFMLA to three months of employment, reduced from a 12-month and 1,000 hours worked requirement,
- Aligns the length of leave to FMLI as 12 months in a 12-month period from 16 weeks in a 24-month period,
- Expands the definition of family members to coincide with FMLI, and
- Limits the extent to which an employer may compel an employee to use employer-provided paid leave while on CFMLA.

ADDITIONAL INFORMATION

For specific questions concerning information contained in this Update, please contact your USI-Chernoff Diamond consultant. Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Chernoff Diamond is a Division of USI Insurance Services that provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, and compensation and human capital. For additional information about our services, please contact us at 516.683.6100 or mail@chernoffdiamond.com.