



Senate

General Assembly

File No. 430

February Session, 2004

Substitute Senate Bill No. 327

Senate, April 5, 2004

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR ORGAN DONATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-248a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Each permanent employee, as defined in subdivision (21) of
4 section 5-196, shall be entitled to the following: (1) A maximum of
5 twenty-four weeks of family leave of absence within any two-year
6 period upon the birth or adoption of a child of such employee, or upon
7 the serious illness of a child, spouse or parent of such employee; and
8 (2) a maximum of twenty-four weeks of medical leave of absence
9 within any two-year period upon the serious illness of such employee
10 or in order for such employee to serve as an organ or bone marrow
11 donor. Any such leave of absence shall be without pay. Upon the
12 expiration of any such leave of absence, the employee shall be entitled
13 (A) to return to the employee's original job from which the leave of

14 absence was provided or, if not available, to an equivalent position
15 with equivalent pay, except that in the case of a medical leave, if the
16 employee is medically unable to perform the employee's original job
17 upon the expiration of such leave, the Personnel Division of the
18 Department of Administrative Services shall endeavor to find other
19 suitable work for such employee in state service, and (B) to all
20 accumulated seniority, retirement, fringe benefit and other service
21 credits the employee had at the commencement of such leave. Such
22 service credits shall not accrue during the period of the leave of
23 absence.

24 (b) The leave of absence benefits granted by this section shall be in
25 addition to any other paid leave benefits and benefits provided under
26 subdivision (7) of subsection (a) of section 46a-60 which are otherwise
27 available to the employee.

28 (c) Any permanent employee who requests a medical leave of
29 absence due to the employee's serious illness or a family leave of
30 absence due to the serious illness of a child, spouse or parent pursuant
31 to subsection (a) of this section shall be required by the employee's
32 appointing authority, prior to the inception of such leave, to provide
33 sufficient written certification from the physician of such employee,
34 child, spouse or parent of the nature of such illness and its probable
35 duration. For the purposes of this section, "serious illness" means an
36 illness, injury, impairment or physical or mental condition that
37 involves (1) inpatient care in a hospital, hospice or residential care
38 facility, or (2) continuing treatment or continuing supervision by a
39 health care provider.

40 (d) Any permanent employee who requests a medical leave of
41 absence in order to serve as an organ or bone marrow donor pursuant
42 to subsection (a) of this section shall be required by the employee's
43 appointing authority, prior to the inception of such leave, to provide
44 sufficient written certification from the physician of such employee of
45 the proposed organ or bone marrow donation and the probable
46 duration of the employee's recovery period from such donation.

47 [(d)] (e) Any permanent employee who requests a family leave of
48 absence pursuant to subsection (a) of this section shall submit to the
49 employee's appointing authority, prior to the inception of such leave, a
50 signed statement of the employee's intent to return to the employee's
51 position in state service upon the termination of such leave.

52 [(e)] (f) Notwithstanding the provisions of subsection (b) of section
53 38a-554, as amended, the state shall pay for the continuation of health
54 insurance benefits for the employee during any leave of absence taken
55 pursuant to this section. In order to continue any other health
56 insurance coverages during such leave, the employee shall contribute
57 that portion of the premium the employee would have been required
58 to contribute had the employee remained an active employee during
59 the leave period.

60 Sec. 2. Section 31-51ll of the general statutes, as amended by section
61 2 of public act 03-213, is repealed and the following is substituted in
62 lieu thereof (*Effective October 1, 2004*):

63 (a) (1) Subject to section 31-51mm, an eligible employee shall be
64 entitled to a total of sixteen workweeks of leave during any twenty-
65 four-month period, such twenty-four-month period to be determined
66 utilizing any one of the following methods: [(1)] (A) Consecutive
67 calendar years; [(2)] (B) any fixed twenty-four-month period, such as
68 two consecutive fiscal years or a twenty-four-month period measured
69 forward from an employee's first date of employment; [(3)] (C) a
70 twenty-four-month period measured forward from an employee's first
71 day of leave taken under sections 31-51kk to 31-51qq, inclusive; or [(4)]
72 (D) a rolling twenty-four-month period measured backward from an
73 employee's first day of leave taken under sections 31-51kk to 31-51qq,
74 inclusive. [.]

75 (2) Such leave may be taken for one or more of the following:

76 [(1)] (A) Upon the birth of a son or daughter of the employee;

77 [(2)] (B) Upon the placement of a son or daughter with the employee

78 for adoption or foster care;

79 [(3)] (C) In order to care for the spouse, or a son, daughter or parent
80 of the employee, if such spouse, son, daughter or parent has a serious
81 health condition; [or]

82 [(4)] (D) Because of a serious health condition of the employee; or

83 (E) In order to serve as an organ or bone marrow donor.

84 (b) Entitlement to leave under [subdivision (1) or (2)] subparagraph
85 (A) or (B) of subdivision (2) of subsection (a) of this section may accrue
86 prior to the birth or placement of a son or daughter when such leave is
87 required because of such impending birth or placement.

88 (c) (1) Leave under [subdivision (1) or (2)] subparagraph (A) or (B)
89 of subdivision (2) of subsection (a) of this section for the birth or
90 placement of a son or daughter may not be taken by an employee
91 intermittently or on a reduced leave schedule unless the employee and
92 the employer agree otherwise. Subject to subdivision (2) of this
93 subsection concerning an alternative position, subdivision (2) of
94 subsection (f) of this section concerning the duties of the employee and
95 subdivision (5) of subsection (b) of section 31-51mm concerning
96 sufficient certification, leave under [subdivision (3) or (4)]
97 subparagraph (C) or (D) of subdivision (2) of subsection (a) of this
98 section for a serious health condition may be taken intermittently or on
99 a reduced leave schedule when medically necessary. The taking of
100 leave intermittently or on a reduced leave schedule pursuant to this
101 subsection shall not result in a reduction of the total amount of leave to
102 which the employee is entitled under subsection (a) of this section
103 beyond the amount of leave actually taken.

104 (2) If an employee requests intermittent leave or leave on a reduced
105 leave schedule under [subdivision (3) or (4)] subparagraph (C), (D) or
106 (E) of subdivision (2) of subsection (a) of this section that is foreseeable
107 based on planned medical treatment, the employer may require the
108 employee to transfer temporarily to an available alternative position

109 offered by the employer for which the employee is qualified and that
110 (A) has equivalent pay and benefits and (B) better accommodates
111 recurring periods of leave than the regular employment position of the
112 employee, provided the exercise of this authority shall not conflict
113 with any provision of a collective bargaining agreement between such
114 employer and a labor organization which is the collective bargaining
115 representative of the unit of which the employee is a part.

116 (d) Except as provided in subsection (e) of this section, leave
117 granted under subsection (a) of this section may consist of unpaid
118 leave.

119 (e) (1) If an employer provides paid leave for fewer than sixteen
120 workweeks, the additional weeks of leave necessary to attain the
121 sixteen workweeks of leave required under sections 5-248a, as
122 amended by this act, and 31-51kk to 31-51qq, inclusive, may be
123 provided without compensation.

124 (2) (A) An eligible employee may elect, or an employer may require
125 the employee, to substitute any of the accrued paid vacation leave,
126 personal leave or family leave of the employee for leave provided
127 under [subdivision (1), (2) or (3)] subparagraph (A), (B) or (C) of
128 subdivision (2) of subsection (a) of this section for any part of this
129 sixteen-week period of such leave under said subsection.

130 (B) An eligible employee may elect, or an employer may require the
131 employee, to substitute any of the accrued paid vacation leave,
132 personal leave, or medical or sick leave of the employee for leave
133 provided under [subdivision (3) or (4)] subparagraph (C), (D) or (E) of
134 subdivision (2) of subsection (a) of this section for any part of the
135 sixteen-week period of such leave under said subsection, except that
136 nothing in section 5-248a, as amended by this act, or 31-51kk to 31-
137 51qq, inclusive, shall require an employer to provide paid sick leave or
138 paid medical leave in any situation in which such employer would not
139 normally provide any such paid leave.

140 (f) (1) In any case in which the necessity for leave under

141 [subdivision (1) or (2)] subparagraph (A) or (B) of subdivision (2) of
142 subsection (a) of this section is foreseeable based on an expected birth
143 or placement of a son or daughter, the employee shall provide the
144 employer with not less than thirty days' notice, before the date of the
145 leave is to begin, of the employee's intention to take leave under said
146 [subdivision (1) or (2)] subparagraph (A) or (B), except that if the date
147 of the birth or placement of a son or daughter requires leave to begin
148 in less than thirty days, the employee shall provide such notice as is
149 practicable.

150 (2) In any case in which the necessity for leave under [subdivision
151 (3) or (4)] subparagraph (C), (D) or (E) of subdivision (2) of subsection
152 (a) of this section is foreseeable based on planned medical treatment,
153 the employee (A) shall make a reasonable effort to schedule the
154 treatment so as not to disrupt unduly the operations of the employer,
155 subject to the approval of the health care provider of the employee or
156 the health care provider of the son, daughter, spouse or parent of the
157 employee, as appropriate; and (B) shall provide the employer with not
158 less than thirty days' notice, before the date the leave is to begin, of the
159 employee's intention to take leave under said [subdivision (3) or (4)]
160 subparagraph (C), (D) or (E), except that if the date of the treatment
161 requires leave to begin in less than thirty days, the employee shall
162 provide such notice as is practicable.

163 (g) In any case in which a husband and wife entitled to leave under
164 subsection (a) of this section are employed by the same employer, the
165 aggregate number of workweeks of leave to which both may be
166 entitled may be limited to sixteen workweeks during any twenty-four-
167 month period, if such leave is taken: (1) Under [subdivision (1) or (2)]
168 subparagraph (A) or (B) of subdivision (2) of subsection (a) of this
169 section; or (2) to care for a sick parent under [subdivision (3)]
170 subparagraph (C) of said subsection (a).

171 (h) Unpaid leave taken pursuant to sections 5-248a, as amended by
172 this act, and 31-51kk to 31-51qq, inclusive, shall not be construed to
173 affect an employee's qualification for exemption under chapter 558.

174 (i) Notwithstanding the provisions of sections 5-248a, as amended
175 by this act, and 31-51kk to 31-51qq, inclusive, all further rights granted
176 by federal law shall remain in effect.

177 Sec. 3. Section 31-51mm of the general statutes is repealed and the
178 following is substituted in lieu thereof (*Effective October 1, 2004*):

179 (a) An employer may require that request for leave based on a
180 serious health condition in [subdivision (3) or (4)] subparagraph (C) or
181 (D) of subdivision (2) of subsection (a) of section 31-51ll, as amended
182 by this act, be supported by a certification issued by the health care
183 provider of the eligible employee or of the son, daughter, spouse or
184 parent of the employee, as appropriate. The employee shall provide, in
185 a timely manner, a copy of such certification to the employer.

186 (b) Certification provided under subsection (a) of this section shall
187 be sufficient if it states:

188 (1) The date on which the serious health condition commenced;

189 (2) The probable duration of the condition;

190 (3) The appropriate medical facts within the knowledge of the
191 health care provider regarding the condition;

192 (4) (A) For purposes of leave under [subdivision (3)] subparagraph
193 (C) of subdivision (2) of subsection (a) of section 31-51ll, as amended
194 by this act, a statement that the eligible employee is needed to care for
195 the son, daughter, spouse or parent and an estimate of the amount of
196 time that such employee needs to care for the son, daughter, spouse or
197 parent; and (B) for purposes of leave under [subdivision (4)]
198 subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll,
199 as amended by this act, a statement that the employee is unable to
200 perform the functions of the position of the employee;

201 (5) In the case of certification for intermittent leave or leave on a
202 reduced leave schedule for planned medical treatment, the dates on
203 which such treatment is expected to be given and the duration of such

204 treatment;

205 (6) In the case of certification for intermittent leave or leave on a
206 reduced leave schedule under [subdivision (4)] subparagraph (D) of
207 subdivision (2) of subsection (a) of section 31-511l, as amended by this
208 act, a statement of the medical necessity of the intermittent leave or
209 leave on a reduced leave schedule, and the expected duration of the
210 intermittent leave or reduced leave schedule; and

211 (7) In the case of certification for intermittent leave or leave on a
212 reduced leave schedule under [subdivision (3)] subparagraph (C) of
213 subdivision (2) of subsection (a) of section 31-511l, as amended by this
214 act, a statement that the employee's intermittent leave or leave on a
215 reduced leave schedule is necessary for the care of the son, daughter,
216 parent or spouse who has a serious health condition, or will assist in
217 their recovery, and the expected duration and schedule of the
218 intermittent leave or reduced leave schedule.

219 (c) (1) In any case in which the employer has reason to doubt the
220 validity of the certification provided under subsection (a) of this
221 section for leave under [subdivision (3) or (4)] subparagraph (C) or (D)
222 of subdivision (2) of subsection (a) of section 31-511l, as amended by
223 this act, the employer may require, at the expense of the employer, that
224 the eligible employee obtain the opinion of a second health care
225 provider designated or approved by the employer concerning any
226 information certified under subsection (b) of this section for such leave.

227 (2) A health care provider designated or approved under
228 subdivision (1) of this subsection shall not be employed on a regular
229 basis by the employer.

230 (d) (1) In any case in which the second opinion described in
231 subsection (c) of this section differs from the opinion in the original
232 certification provided under subsection (a) of this section, the
233 employer may require, at the expense of the employer, that the
234 employee obtain the opinion of a third health care provider designated
235 or approved jointly by the employer and the employee concerning the

236 information certified under subsection (b) of this section.

237 (2) The opinion of the third health care provider concerning the
238 information certified under subsection (b) of this section shall be
239 considered to be final and shall be binding on the employer and the
240 employee.

241 (e) The employer may require that the eligible employee obtain
242 subsequent recertifications on a reasonable basis, provided the
243 standards for determining what constitutes a reasonable basis for
244 recertification may be governed by a collective bargaining agreement
245 between such employer and a labor organization which is the
246 collective bargaining representative of the unit of which the worker is
247 a part if such a collective bargaining agreement is in effect. Unless
248 otherwise required by the employee's health care provider, the
249 employer may not require recertification more than once during a
250 thirty-day period and, in any case, may not unreasonably require
251 recertification. The employer shall pay for any recertification that is not
252 covered by the employee's health insurance.

253 Sec. 4. Subsection (d) of section 31-51nn of the general statutes is
254 repealed and the following is substituted in lieu thereof (*Effective*
255 *October 1, 2004*):

256 (d) As a condition of restoration under subsection (a) of this section
257 for an employee who has taken leave under [subdivision (4)]
258 subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll,
259 as amended by this act, the employer may have a uniformly applied
260 practice or policy that requires each such employee to receive
261 certification from the health care provider of the employee that the
262 employee is able to resume work, except that nothing in this
263 subsection shall supersede a valid law of this state or a collective
264 bargaining agreement that governs the return to work of such
265 employees.

This act shall take effect as follows:
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The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
All	All Appropriated Funds - Cost	Potential Minimal	Potential Minimal
Labor Dept.	GF - Cost	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill expands the family and medical leave acts (FMLAs) for state employees and private sector employees to provide unpaid leave to donate an organ or bone marrow.

Allowing a state employee to use unpaid leave to donate an organ or bone marrow, may in some cases, increase personnel costs to the state. However, any increase in personnel costs, either through overtime costs or the hiring of temporary employees, would be mitigated by the fact that permanent employees taking leave for organ donation are not being compensated. It should be noted that for many state agencies the workload of employees taking unpaid leave will be divided among co-workers.

It is anticipated that the Department of Labor will not require additional resources as a result of any future workplace complaints due to the bill's provisions.

OLR Bill Analysis

sSB 327

AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR ORGAN DONATION**SUMMARY:**

This bill expands the family and medical leave acts (FMLAs) for state employees and private sector employees to provide unpaid leave to donate an organ or bone marrow.

Under these separate FMLAs, state and private sector employees can take unpaid leave for (1) the birth or adoption of a child or (2) the serious illness of an employee's child, spouse, parent, or the employee himself. The bill amends both laws to make an employee donating an organ or bone marrow eligible for leave. While the two laws are very similar, they differ on the maximum amount of unpaid leave allowed over two years: 24 weeks under the state employee FMLA and 16 weeks under the private sector FMLA. Both laws require an employee to get his original job back, or an equivalent one, upon return from leave.

The bill requires physician certification of state employee organ or bone-marrow donation, but it does not require similar certification for private sector employees. Existing law requires physician certification for leaves involving illness or medical treatment.

EFFECTIVE DATE: October 1, 2004

FMLA REQUIREMENTS***State Employee Provisions***

The bill requires that any employee seeking a leave to donate an organ or bone marrow must provide written certification from his physician of the proposed donation and the probable length of recovery. This is similar to the written physician certification the employee must provide under law regarding leave for the employee's or qualifying relative's illness. By law, only permanent state employees are eligible

under FMLA.

Private Sector Provisions

The bill requires that any employee seeking a leave to donate an organ or bone marrow must make a reasonable effort to schedule the procedure, with approval of the health care provider, so as not unduly to disrupt the employer's operation and, when possible, must provide at least 30-day notice before the leave begins. Current law requires this for leave due to the serious health condition of the employee or a qualifying relative.

The bill also specifies that when an employee requests intermittent leave or a reduced schedule that is foreseeable based on the organ or bone-marrow donation, the employer may require the employee to transfer temporarily to an available alternative position that has the same pay and benefits and better accommodates the recurring periods of leave. This arrangement must not conflict with any prevailing collective bargaining agreement. Current law has the same provision for the serious health condition of the employee or qualifying relative.

It also provides that employees eligible for the donor leave may elect, or the employer may require, to use any accrued paid vacation, personal, or sick leave for part of the FMLA leave.

BACKGROUND

Family and Medical Leave Acts

There are three separate FMLAs that apply to employees in Connecticut and each give unpaid leave for similar purposes:

1. The federal FMLA applies to (a) all private employers with 50 or more employees in a 75-mile radius and (b) the federal government, states, municipalities, and private and public school districts regardless of the number of employees. To be eligible, an employee must have worked at least 1,250 hours for his employer in the previous 12 months.
2. The state private sector FMLA applies to all private sector employees with 75 or more employees. It specifically exempts the state, municipalities, local and regional boards of education, and private and parochial schools. An eligible employee must have

worked at least 1,000 hours for his employer in the previous 12 months.

3. The state employee FMLA, part of the state personnel act, covers only state employees. It was enacted before the federal law.

Related Bill

SB 336 (File 225) allows state, municipal, school district, and private school employees to use up to two weeks of accrued paid sick leave for family and medical leave purposes. On March 31, the Senate referred the bill to the Education Committee.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 14 Nay 0

Public Health Committee

Joint Favorable Report

Yea 22 Nay 0