



# Senate

General Assembly

**File No. 225**

February Session, 2004

Substitute Senate Bill No. 336

*Senate, March 24, 2004*

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th 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.***

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

1 Section 1. Subsection (a) of section 5-247 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2004*):

4 (a) (1) Each appointing authority shall grant, on account of illness or  
5 injury, to each full-time employee in a permanent position in the state  
6 service who has furnished satisfactory proof of such illness or injury,  
7 such sick leave with pay as has accrued to [his] such employee's credit  
8 at the rate of one and one-quarter working days for each completed  
9 calendar month of continuous full-time service which may be  
10 computed on an hourly basis. Hourly computation of sick leave shall  
11 not diminish benefit entitlement.

12 (2) Each appointing authority shall grant to each full-time employee

13 in a permanent position in the state service who has furnished  
14 satisfactory proof of (A) the birth or adoption of a child of the  
15 employee, or (B) a serious illness of a child, spouse or parent of the  
16 employee, up to two weeks of such sick leave with pay as has accrued  
17 to the employee's credit pursuant to subdivision (1) of this subsection.

18 (3) On or before [October 1, 1980] January 1, 2005, the Commissioner  
19 of Administrative Services shall adopt regulations, in accordance with  
20 the provisions of chapter 54, concerning the accrual, prorating and  
21 granting of sick leave with pay to other employees in the state service  
22 and extending sick leave with pay or with part pay for longer periods  
23 to full-time permanent employees disabled through illness or injury.  
24 Such regulations shall specify that such other employees are entitled to  
25 use up to two weeks of accumulated sick leave upon the birth or  
26 adoption of a child of such employee, or upon the serious illness of a  
27 child, spouse or parent of such employee.

28 (4) Each such employee who retires under the provisions of chapter  
29 66 shall be compensated, effective as of the date of [his] retirement, at  
30 the rate of one-fourth of such employee's salary for sick leave accrued  
31 to [his] such employee's credit as of [his] such employee's last day on  
32 the active payroll up to a maximum payment equivalent to sixty days'  
33 pay. Such payment for accumulated sick leave shall not be included in  
34 computing retirement income and shall be charged by the State  
35 Comptroller to the department, agency or institution in which the  
36 employee worked.

37 (5) For purposes of this subsection, "serious illness" means an  
38 illness, injury, impairment or physical or mental condition that  
39 involves (A) inpatient care in a hospital, hospice or residential care  
40 facility, or (B) continuing treatment or continuing supervision by a  
41 health care provider.

42 Sec. 2. Subdivision (4) of section 31-51kk of the general statutes is  
43 repealed and the following is substituted in lieu thereof (*Effective*  
44 *October 1, 2004*):

45 (4) "Employer" means a person engaged in any activity, enterprise  
46 or business who employs seventy-five or more employees, and  
47 includes any person who acts, directly or indirectly, in the interest of  
48 an employer to any of the employees of such employer and any  
49 successor in interest of an employer, but [shall] does not include the  
50 state or a parochial elementary or secondary school. [, a municipality, a  
51 local or regional board of education, or a private or parochial  
52 elementary or secondary school.] The number of employees of an  
53 employer shall be determined on October first annually.

54 Sec. 3. (NEW) (*Effective October 1, 2004*) (a) As used in this section:

55 (1) "Eligible employee" means an employee who has been employed  
56 (A) for at least twelve months by the parochial elementary or  
57 secondary school with respect to whom sick leave is requested; and (B)  
58 for at least one thousand two hundred fifty hours of service with such  
59 school during the twelve-month period preceding the first day of the  
60 leave;

61 (2) "Employ" includes to allow or permit to work;

62 (3) "Employee" means any person engaged in service to a parochial  
63 elementary or secondary school in the business of the school;

64 (4) "Employment benefits" means all benefits provided or made  
65 available to employees by a parochial elementary or secondary school,  
66 including group life insurance, health insurance, disability insurance,  
67 sick leave, annual leave, educational benefits and pensions, regardless  
68 of whether such benefits are provided by practice or written policy of a  
69 parochial elementary or secondary school or through an "employee  
70 benefit plan", as defined in Section 1002(3) of Title 29 of the United  
71 States Code;

72 (5) "Health care provider" means (A) a doctor of medicine or  
73 osteopathy who is authorized to practice medicine or surgery by the  
74 state in which the doctor practices; (B) a podiatrist, dentist,  
75 psychologist, optometrist or chiropractor authorized to practice by the

76 state in which such person practices and performs within the scope of  
77 the authorized practice; (C) an advanced practice registered nurse,  
78 nurse practitioner, nurse midwife or clinical social worker authorized  
79 to practice by the state in which such person practices and performs  
80 within the scope of the authorized practice; (D) Christian Science  
81 practitioners listed with the First Church of Christ, Scientist in Boston,  
82 Massachusetts; (E) any health care provider from whom a parochial  
83 elementary or secondary school or a group health plan's benefits  
84 manager will accept certification of the existence of a serious health  
85 condition to substantiate a claim for benefits; (F) a health care provider  
86 as defined in subparagraphs (A) to (E), inclusive, of this subdivision  
87 who practices in a country other than the United States, who is  
88 licensed to practice in accordance with the laws and regulations of that  
89 country; or (G) such other health care provider as the Labor  
90 Commissioner determines, performing within the scope of the  
91 authorized practice. The commissioner may utilize any determinations  
92 made pursuant to chapter 568 of the general statutes;

93 (6) "Parent" means a biological parent, foster parent, adoptive  
94 parent, stepparent or legal guardian of an eligible employee or an  
95 eligible employee's spouse, or an individual who stood in loco parentis  
96 to an employee when the employee was a son or daughter;

97 (7) "Serious health condition" means an illness, injury, impairment,  
98 or physical or mental condition that involves (A) inpatient care in a  
99 hospital, hospice, nursing home or residential medical care facility; or  
100 (B) continuing treatment, including outpatient treatment, by a health  
101 care provider;

102 (8) "Son or daughter" means a biological, adopted or foster child,  
103 stepchild, legal ward, or child of a person standing in loco parentis,  
104 who is (A) under eighteen years of age; or (B) eighteen years of age or  
105 older and incapable of self-care because of a mental or physical  
106 disability; and

107 (9) "Spouse" means a husband or wife, as the case may be.

108 (b) It shall be unlawful for any parochial elementary or secondary  
 109 school to deny an eligible employee the right to use up to two weeks of  
 110 accumulated sick leave or to discharge, threaten to discharge, demote,  
 111 suspend or in any manner discriminate against an eligible employee  
 112 for using, or attempting to exercise the right to use, up to two weeks of  
 113 accumulated sick leave to attend to a serious health condition of a son  
 114 or daughter, spouse or parent of the employee, or for the birth or  
 115 adoption of a son or daughter of the employee.

116 (c) Any employee aggrieved by a violation of this section may file a  
 117 complaint with the Labor Commissioner alleging violation of the  
 118 provisions of this section. Upon receipt of any such complaint, the  
 119 commissioner shall hold a hearing. After the hearing, the  
 120 commissioner shall send each party a written copy of the  
 121 commissioner's decision. The commissioner may award the employee  
 122 all appropriate relief, including rehiring or reinstatement to the  
 123 employee's previous job, payment of back wages and reestablishment  
 124 of employment benefits to which the employee otherwise would have  
 125 been eligible if a violation of this section had not occurred. Any party  
 126 aggrieved by the decision of the commissioner may appeal the  
 127 decision to the Superior Court in accordance with the provisions of  
 128 chapter 54 of the general statutes.

129 (d) The rights and remedies specified in this section are cumulative  
 130 and nonexclusive and are in addition to any other rights or remedies  
 131 afforded by contract or under other provisions of law.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>

**LAB**      *Joint Favorable Subst.*

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:

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### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 05 \$</b>	<b>FY 06 \$</b>
All	All Appropriated Funds - Cost	Potential	Potential

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 05 \$</b>	<b>FY 06 \$</b>
All Municipalities, Regional School Districts	STATE MANDATE - Cost	Potential	Potential

#### **Explanation**

This bill may result in additional costs to the state that cannot be determined at this time. The bill allows state employees to use up to two weeks of accrued paid sick leave for the birth or adoption of a child or upon the serious illness of a child, spouse or parent of such state employee.

Allowing a state employee to use accrued sick leave may in some cases increase personnel costs to the state. Personnel costs exceeding the budgeted level may result due to overtime or temporary staffing costs. It should be noted that collective bargaining agreements provide paid sick leave for the provisions outlined in this bill, however, this use of paid sick leave is limited to no more than five days. As this bill allows state employees to take up to ten days of accrued sick leave, certain state agencies, such as the Department of Corrections and the Department of Public Safety may incur future overtime costs to cover shifts for those employees taking sick leave. For many state agencies the workload of employees taking accrued sick leave will be divided among co-workers.

The bill would impact collective bargaining agreements that are negotiated after the effective date (October 1, 2004) and would not preempt any collective bargaining agreements already in effect.

The bill brings municipal, public school and non-parochial private school employees under all provisions of the state's Family Medical Leave Act (FMLA). It is anticipated that 16 of the 17 regional school districts have over 75 employees and would be affected by this bill. These districts may incur additional costs for substitute teachers to cover for those teachers taking leave.

There are approximately 125 municipalities that have over 75 employees (including municipal school employees). Many of these municipal employees are covered by collective bargaining agreements. This bill would not preempt any collective bargaining agreements already in effect. Municipalities may incur future costs for the replacement of workers who are on leave, either through overtime costs or the hiring of temporary workers. Except for emergency services personnel like police and fire, it is anticipated that for most municipalities the workload of employees taking accrued sick 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 336

***AN ACT CONCERNING FAMILY AND MEDICAL LEAVE*****SUMMARY:**

This bill allows (1) full-time state employees; (2) municipal, public school district, and non-religious private school employees; and (3) sectarian school employees to use up to two weeks of their accrued paid sick leave for (a) the birth or adoption of a child or (b) a serious illness of the employee's child, spouse, or parent (i.e. State Family and Medical Leave Act (FMLA) purposes). Under the current state FMLA law, only private sector non-school employers are required to allow their employees to use up to two weeks of paid sick time for such purposes.

The bill applies the state FMLA to most municipal, public school, and nonsectarian private school employees (the state FMLA does not apply to employers with fewer than 75 employees). The federal FMLA still applies to these employees, thus eligibility and leave time are determined by looking at the laws together and giving employees the most favorable terms provided under either law.

The state FMLA gives eligible employees up to 16 weeks of unpaid leave during a 24-month period. The federal law gives employee up to 12 weeks of unpaid leave in 12 months. When both laws apply, an eligible employee can take 16 weeks in one 12-month period under the state law and 12 weeks of leave in the next 12 months under the federal law. This provides a total leave of 28 weeks over two years (See BACKGROUND).

The bill also creates a complaint process for parochial school employees to follow in cases of suspected employer sick leave use violations. This process is the same one employees have under the state FMLA.

EFFECTIVE DATE: October 1, 2004

**EMPLOYEE GROUPS**

***Municipal, Public School, and Non-Sectarian Private School Employees***

The bill applies to municipal, public school and non-sectarian private school employees all provisions of the state's FMLA, including allowing employees to use up to two weeks of accrued sick time for the (1) the birth, adoption, or foster placement of a child or (2) a serious health condition of a child, spouse, or parent. It keeps religious schools exempt from the state FMLA.

The state leave law applies to employers with 75 or more employees. In order to be eligible, employees must have worked for the employer for at least 12 months and worked at least 1,000 hours in the 12 months before the first day of the leave. Currently, these employees are covered by the federal FMLA, which affects all public agencies and all public and private elementary and secondary schools, and require employees to work 1,250 hours to be eligible for leave. The federal law does not require employers to allow employees to use paid sick leave as part of the FMLA leave time (although it does allow employers to require employees to use sick time as part of their leave).

***Sectarian School Employees***

The bill allows sectarian elementary and secondary school employees to use paid sick time for the same purposes as the state and federal FMLA. It uses the same language as the state FMLA to define the following terms: (1) employment benefits, (2) health care provider, (3) parent (includes foster parent, adoptive parent, stepparent, legal guardian, or an individual who stood in loco parentis to an employee when the employee was a son or daughter), (4) serious health condition, (5) son or daughter (includes adopted or foster child, stepchild, legal ward, or child of a person standing in loco parentis who is under age 18 or over age 18 but incapable of self care due to mental or physical disability), and (6) spouse. But it uses the federal FMLA eligibility work threshold. To be eligible, employees must have (1) worked for the school for 12 months and (2) worked at least 1,250 hours in the 12 months preceding the first day of the leave. In effect, the bill keeps parochial schools and their employees under the federal FMLA, while creating the two-week paid sick leave benefit in state law.

The bill creates for sectarian schools the same prohibitions and for their employees the same complaint process that exists now under the state FMLA for other private sector employees. It prohibits schools from denying such use or firing, threatening to fire, demoting, suspending, or in any way discriminating against an employee for using or attempting to use sick leave for FMLA purposes.

The bill allows an employee aggrieved by a suspected violation to file a complaint with the labor commissioner, who must hold a hearing on the matter and provide each party with written notification of his decision. Any party aggrieved by the commissioner's decision may appeal in Superior Court.

### ***State Employees***

The bill requires state agencies, commissions, and other appointing authorities to allow each full-time state employee to use up to two weeks of accrued paid sick leave for FMLA purposes, provided the employee provides satisfactory proof of (1) the birth or adoption of a child or (2) a serious illness of the employee's child, spouse, or parent. The administrative services commissioner has until January 1, 2005 to adopt necessary regulations. This expanded use of sick time is done under the state employee sick leave statute and it is not contingent upon the employee reaching the FMLA's work threshold before being eligible. The state's state employee FMLA is a separate statute from the state's private sector employee FMLA.

## **BACKGROUND**

### ***Family and Medical Leave Acts***

There are three separate FMLAs that permit employees in Connecticut to take unpaid leave.

1. The federal FMLA applies to (1) all private employers with 50 or more employees in a 75-mile radius and (2) the federal government, states, municipalities, private schools, and public schools regardless of the number of employees.
2. The state private sector FMLA applies to all private sector employees with 75 or more employees. It specifically excludes the state, municipalities, local and regional boards of education,

and private and parochial schools.

3. The state employee FMLA is part of the state personnel act and covers only state employees.

The three laws can make determining which law affects an employer somewhat complex. For example, a private employer with 50 to 74 employees is covered by the federal law, while a private employer with 75 or more employees is covered by the federal law and the state private sector law and must interpret them together.

### ***Collective Bargaining Agreements***

The bill would not preempt any collective bargaining agreements already in effect. It would have to be taken into account in collective bargaining agreements negotiated after it takes effect.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 12    Nay 2