



Advocating for teachers
and public education

**Connecticut Education
Association**

Governance

Philip Apruzzese, President
Sheila Cohen, Vice President
Cheryl Prevost, Secretary
Michael Freeman, Treasurer
Rae Baczek, NEA Director
Maureen Honan, NEA Director

Executive Office

Dr. John Yrchik
Executive Director

Government Relations

Mark Waxenberg, Director
Capitol Place, Suite 500
21 Oak Street
Hartford, CT 06106-8001
860-525-5641, 800-842-4316
Fax: 860-725-6362
www.cea.org

Affiliated with the
National Education
Association

TO: Members of the Judiciary Committee

FROM: Mark Waxenberg, CEA, Director of Government
Relations
Ron Cordilico, CEA, Legal Counsel

RE: Raised Bill #1447 'An Act Concerning Family and
Medical Leave for Municipal Employees'

DATE: March 26, 2007

Attached is a comparison of the Federal Family and Medical Leave Act, the Connecticut Family and Medical Leave Act for state employees and the Connecticut Family and Medical Leave Act for private sector employees.

Teachers in Connecticut are covered by the federal FMLA and not the state FMLA. (Page 1) State employees, however, are covered by both the federal and state FMLA laws. This means, among other things, that a teacher in a civil union is not entitled to FMLA leave to care for his/her civil union partner whereas a state employee is entitled to such leave. This is because, although both the federal FMLA and the state FMLA allow leave to be taken to care for a "spouse" with a serious illness, the definition of "spouse" under federal law "... refers only to a person of the opposite sex who is a husband or a wife." (Page 5). By contrast, under Connecticut law, the definition of "spouse" includes partners in a civil union (Page 5). Under Connecticut law, civil union partners have all of the statutory benefits and protections as are granted to spouses in a marriage. (Page 5).

If this legislation passes, any other benefits under the Connecticut FMLA which are greater than those provided under the federal FMLA would be available to teachers. This is because the federal FMLA provides a "floor" upon which states may provide greater benefits. (Page 6) An example of this is that teachers would be entitled to twenty-four weeks of leave within a twenty-four month period under Connecticut's FMLA rather than the lesser benefit of twelve weeks within any twelve month period under federal law. It is also possible that a teacher could get thirty-six weeks of leave in a two year period by combining the two statutes. (Page 6) This is a benefit that state employees have at the present time.

COMPARISON BETWEEN FEDERAL FAMILY MEDICAL LEAVE ACT (FMLA) AND STATE FAMILY MEDICAL LEAVE ACT

	STATE EMPLOYEES	CONNECTICUT FMLA	FEDERAL FMLA
Who is covered?	<p>C.G.S. Section 5-248a (1987)</p> <p>State employees</p> <p>5-196(12) - "Full-time employee" means an employee holding a position normally requiring thirty-five hours or more of service in each week.</p>	<p>C.G.S. Section 31-51kk (1996)</p> <p>Private employees</p> <p>(4) Employer....employs 75 or more employees....</p> <p><u>Does not cover</u> state, municipality local/regional BOE, and private or parochial elementary or secondary school.</p>	<p>29 C.F.R. Section 825.104 (1993)</p> <p>(a)....Public agencies without regard to the number of employees employed. Public as well as private elementary and secondary schools are also covered employers without regard to the number of employees employed.</p> <p>29 C.F.R. Section 825.104</p> <p>(d)Private employer with 50 or more employees</p>

	STATE EMPLOYEES	CONNECTICUT FMLA	FEDERAL FMLA
Amount of Leave	<p>C.G.S. Section 5-248a</p> <p>(a)(1) and (a)(2) 24 weeks within any 2 year period.</p>	<p>C.G.S. Section 31-51ll</p> <p>(a)(1)16 workweeks of leave during any 24 month period.</p> <p>(a)(1)twenty-four-month period to be determined utilizing any one of the following methods: (A) Consecutive calendar years; (B) any fixed twenty-four-month period, such as two consecutive fiscal years or a twenty-four-month period measured forward from an employee's first date of employment; (C) a twenty-four-month period measured forward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive; or (D) a rolling twenty-four-month period measured backward from an employee's first day of leave taken under sections 31-51kk to 31-51qq, inclusive.</p>	<p>29 C.F.R. Section 825.200</p> <p>(a) ...a total of 12 workweeks of leave during any 12-month period.</p> <p>(b) An employer is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:</p> <p>(1) The calendar year;</p> <p>(2) Any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;</p> <p>(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or,</p> <p>(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave</p>

	STATE EMPLOYEES	CONNECTICUT FMLA	FEDERAL FMLA
Reason for Leave	<p>C.G.S. Section 5-248a</p> <p>(a)(1) Family leave of absence --birth or adoption of a child of such employee --the serious illness of a child, spouse or parent of such employee</p> <p>(a)(2) Medical leave of absence --serious illness of such employee --for such employee to serve as an organ or bone marrow donor (same amount of time as FMLA listed above)</p>	<p>C.G.S. Section 31-511l</p> <p>(a)(2) Leave under this subsection may be taken for one or more of the following reasons:</p> <p>(A) Upon the birth of a son or daughter of the employee;</p> <p>(B) Upon the placement of a son or daughter with the employee for adoption or foster care;</p> <p>(C) In order to care for the spouse, or a son, daughter or parent of the employee, if such spouse, son, daughter or parent has a serious health condition;</p> <p>(D) Because of a serious health condition of the employee; or</p> <p>(E) In order to serve as an organ or bone marrow donor.</p>	<p>29 C.F.R. Section 825.112</p> <p>(a) Employers covered by FMLA are required to grant leave to eligible employees:</p> <p>(1) For birth of a son or daughter, and to care for the newborn child;</p> <p>(2) For placement with the employee of a son or daughter for adoption or foster care;</p> <p>(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;</p> <p>(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.</p>

	STATE EMPLOYEES	CONNECTICUT FMLA	FEDERAL FMLA
Paid leave	<p>C.G.S. Section 5-248a</p> <p>(a)(2) Any such leave of absence shall be without pay.</p>	<p>C.G.S. Section 31-51ll</p> <p>(e)(2)(A) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave or family leave of the employee for leave provided under subparagraph (A), (B) or (3) of subdivision (2) of subsection (a) of this section for any part of this 16 week period...</p> <p>(e)(2)(B) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection, except that nothing in section 5-248a or sections 31-51kk to 31-51qq, inclusive, shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.</p>	<p>29 C.F.R. Section 825.207</p> <p>(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for FMLA leave.</p> <p>(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child or parent who has a serious health condition.</p> <p>(c)An employer is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employer's uniform policy would not normally allow such paid leave....</p>

States and Federal FMLA:

Section 825.701 - (a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws.

Examples of the interaction between FMLA and State laws include:

(1) If State law provides 16 weeks of leave entitlement over two years, an employee would be entitled to take 16 weeks one year under State law and 12 weeks the next year under FMLA. Health benefits maintenance under FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under FMLA (not 16 weeks). An employee would not be entitled to 28 weeks in one year.

(2) If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of unpaid FMLA leave (or accrued paid leave).

(3) A shorter notice period under State law must be allowed by the employer unless an employer has already provided, or the employee is requesting, more leave than required under State law.

(4) If State law provides for only one medical certification, no additional certifications may be required by the employer unless the employer has already provided, or the employee is requesting, more leave than required under State law.

(5) If State law provides six weeks of leave, which may include leave to care for a seriously-ill grandparent or a "spouse equivalent," and leave was used for that purpose, the employee is still entitled to 12 weeks of FMLA leave, as the leave used was provided for a purpose not covered by FMLA. If FMLA leave is used first for a purpose also provided under State law, and State leave has thereby been exhausted, the employer would not be required to provide additional leave to care for the grandparent or "spouse equivalent."

(6) If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. (See Subpart F of this part.)