



Senate

General Assembly

File No. 216

February Session, 2008

Substitute Senate Bill No. 486

Senate, March 27, 2008

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 FOR EMPLOYEES OF MUNICIPALITIES.

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

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) For purposes of this
2 section, "child" means a biological, adopted or foster child, stepchild,
3 child of whom a person has legal guardianship or custody, or, in the
4 alternative, a child of a person standing in loco parentis who is (1)
5 under eighteen years of age, or (2) eighteen years of age or older and
6 incapable of self-care because of a mental or physical disability,
7 "employee" means any person holding a position in municipal service
8 subject to appointment by the appointing authority, and "permanent
9 employee" means an employee holding a position in service to the
10 municipality under a permanent appointment except employees in
11 positions funded in whole or in part by the federal government as part
12 of a public service employment program, on-the-job training program
13 or work experience program. Each permanent employee shall be
14 entitled to a family leave of absence upon the birth or adoption of a

15 child of such employee, or upon the serious illness of a child, spouse or
16 parent of such employee, and a medical leave of absence upon the
17 serious illness of such employee or in order for such employee to serve
18 as an organ or bone marrow donor. The total amount of time that an
19 employee is entitled to leaves of absence pursuant to this section shall
20 be twenty-four weeks within any two-year period. Any such leave of
21 absence shall be without pay. Upon the expiration of any such leave of
22 absence, the employee shall be entitled to (A) return to the employee's
23 original job from which the leave of absence was provided or, if not
24 available, to an equivalent position with equivalent pay, except that in
25 the case of a medical leave, if the employee is medically unable to
26 perform the employee's original job upon the expiration of such leave,
27 the municipality shall endeavor to find other suitable work for such
28 employee in municipal service, and (B) all accumulated seniority,
29 retirement, fringe benefits and other service credits the employee had
30 at the commencement of such leave. Such service credits shall not
31 accrue during the period of the leave of absence.

32 (b) The leave of absence benefits granted by this section shall be in
33 addition to any other paid leave benefits and benefits provided under
34 subdivision (7) of subsection (a) of section 46a-60 of the general
35 statutes which are otherwise available to the employee.

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

48 (d) Any permanent employee who requests a medical leave of
49 absence in order to serve as an organ or bone marrow donor pursuant
50 to subsection (a) of this section shall be required by the employee's
51 appointing authority, prior to the inception of such leave, to provide
52 sufficient written certification from the physician of such employee of
53 the proposed organ or bone marrow donation and the probable
54 duration of the employee's recovery period from such donation.

55 (e) Any permanent employee who requests a family leave of
56 absence pursuant to subsection (a) of this section shall submit to the
57 employee's appointing authority, prior to the inception of such leave, a
58 signed statement of the employee's intent to return to the employee's
59 position in state service upon the termination of such leave.

60 (f) Notwithstanding the provisions of this section, the municipality
61 shall pay for the continuation of health insurance benefits for the
62 employee during any leave of absence taken pursuant to this section.
63 In order to continue any other health insurance coverages during such
64 leave, the employee shall contribute that portion of the premium the
65 employee would have been required to contribute had the employee
66 remained an active employee during the leave period.

67 Sec. 2. (NEW) (*Effective October 1, 2008*) (a) (1) It shall be a violation
68 of section 1 of this act for any employer to interfere with, restrain or
69 deny the exercise of, or the attempt to exercise, any right provided
70 under said section.

71 (2) It shall be a violation of section 1 of this act for any employer to
72 discharge or cause to be discharged, or in any other manner
73 discriminate, against any individual for opposing any practice made
74 unlawful by said section or because such employee has exercised the
75 rights afforded to such employee under said section.

76 (b) It shall be a violation of section 1 of this act for any person to
77 discharge or cause to be discharged, or in any other manner
78 discriminate, against any individual because such individual:

79 (1) Has filed any charge, or has instituted or caused to be instituted
80 any proceeding, under or related to section 1 of this act;

81 (2) Has given, or is about to give, any information in connection
82 with any inquiry or proceeding relating to any right provided under
83 section 1 of this act; or

84 (3) Has testified, or is about to testify, in any inquiry or proceeding
85 relating to any right provided under section 1 of this act.

86 (c) (1) It shall be a violation of section 1 of this act for any employer
87 to deny an employee the right to use up to two weeks of accumulated
88 sick leave or to discharge, threaten to discharge, demote, suspend or in
89 any manner discriminate against an employee for using, or attempting
90 to exercise the right to use, up to two weeks of accumulated sick leave
91 to attend to a serious health condition of a child, spouse or parent of
92 the employee, or for the birth or adoption of a child of the employee.
93 For purposes of this subsection, "sick leave" means an absence from
94 work for which compensation is provided through an employer's bona
95 fide written policy providing compensation for loss of wages
96 occasioned by illness, but does not include absences from work for
97 which compensation is provided through an employer's plan,
98 including, but not limited to, a short or long-term disability plan,
99 whether or not such plan is self-insured.

100 (2) Any employee aggrieved by a violation of section 1 of this act
101 may file a complaint with the Labor Commissioner alleging such
102 violation. Upon receipt of any such complaint, the commissioner shall
103 hold a hearing. After the hearing, the commissioner shall send each
104 party a written copy of the commissioner's decision. The commissioner
105 may award the employee all appropriate relief, including rehiring or
106 reinstatement to the employee's previous position, payment of back
107 wages and reestablishment of employee benefits to which the
108 employee otherwise would have been eligible if a violation of section 1
109 of this act had not occurred. Any party aggrieved by the decision of the
110 commissioner may appeal the decision to the Superior Court in
111 accordance with the provisions of chapter 54 of the general statutes.

112 (3) The rights and remedies specified in this subsection are
113 cumulative and nonexclusive and are in addition to any other rights or
114 remedies afforded by contract or under other provisions of law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	New section
Sec. 2	October 1, 2008	New section

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Labor Dept.	GF - Cost	75,000	75,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	19,000	44,000

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 09 \$	FY 10 \$
All Municipalities	STATE MANDATE - Cost	Potential	Potential

Explanation

The bill requires municipalities to provide their employees with the same Family and Medical Leave Act (FMLA) benefits the state provides to its employees.

Municipal employees are currently covered under the federal FMLA. Federal law provides employees with up to 12 weeks of unpaid leave in a one-year period; state law provides up to 24 weeks in a two-year period.

The bill requires the Department of Labor to hold a hearing upon receipt of all complaints regarding a violation of section one of the bill. A staff attorney (annual salary of \$75,000 and full fringe benefits

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

totaling \$44,000) will be needed to adjust for the increased number of hearings. Currently, the department reviews approximately 100 cases annually for probable cause hearings regarding the Family Medical Leave Act, resulting in approximately 20 hearings per year.

The Out Years

Allowing an employee to take additional unpaid FMLA leave may increase municipal personnel costs. For example, a municipality would incur increased costs if a police officer or firefighter on FMLA leave had his shift covered by an employee with a higher salary or by an employee working an overtime shift. However, any increase in personnel costs would be mitigated by the fact that the employee taking FMLA leave would not be compensated.

OLR Bill Analysis**sSB 486*****AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR EMPLOYEES OF MUNICIPALITIES.*****SUMMARY:**

This bill requires municipalities to provide their employees with the same Family and Medical Leave Act (FMLA) benefits the state provides to its employees. Currently, municipalities are covered by the federal FMLA, which provides up to 12 weeks of unpaid leave per year. The bill provides up to 24 weeks of unpaid leave over two years (which could all be taken in one year).

Since the federal law would still apply, the bill makes municipal employees eligible for the federal or state leave that grants the greater benefit. This makes municipal employees eligible for up to 36 weeks of unpaid leave over a two-year period.

The bill applies the standards from the state employee law to municipal employee leave. Most state and federal FMLA standards are similar, such as providing leave for similar purposes. But the state law (1) permits leave to serve as an organ or bone marrow donor; (2) permits leave for same-sex civil-union couples, which are not recognized in federal law; and (3) provides stronger job reinstatement rights for a returning employee no longer able to perform his or her original job.

EFFECTIVE DATE: October 1, 2008

STATE AND FEDERAL FMLA

The bill and the federal law give an employee unpaid leave for (1) the birth or adoption of a child; (2) the serious illness of his or her

child, spouse, or parent; or (3) the employee’s own serious illness.

The federal law provides workers with up to 12 weeks of unpaid leave in a one-year period; the bill provides up to 24 weeks in a two-year period. Under the bill, a municipal employee could take 12 weeks of leave under the federal law in one year and take 24 weeks under the state law in the next year. This provides a combined benefit of 36 weeks over two years. This is because the federal law does not supersede any provision in a state law, and when the state law is more generous, the two must be read together to allow an employee the full benefits under each (29 CFR 825.701).

Leave time used under one law does count concurrently under the other one. For example, 12 weeks taken in one year would exhaust all federal leave time for that year and use up half of the available 24 weeks of state leave time.

The bill expands the eligible leave to include civil-union couples. While the bill does not specifically mention these couples, state law requires civil unions to be included in statutes relating to marital status. The federal leave act does not recognize civil-union couples.

Under current state law, a municipal employee in a civil union has leave benefits equivalent to those the federal FMLA grants for married couples. The bill expands such an employee’s state-provided leave from 12 weeks over one year to 24 weeks over two years.

One federal provision is broader; it allows leave due to the placement of a foster child, and the bill does not. This benefit would still be available to employees under the federal law.

Table 1 shows the differences and similarities in the two laws.

	<p>Federal Law <i>(as applied to municipalities)</i></p>	<p>Bill <i>(same as current state employees law)</i></p>
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Municipalities covered	All	All
Employees eligible	Those who have worked (1) at least 12 months for the employer and (2) at least 1,250 hours	All permanent employees
Leave amount	Up to 12 weeks in one year	Up to 24 weeks in two years
Types of leave	For birth, placement of child for adoption or foster care, to provide care for employee's own parent, child, or spouse with serious health condition, or employee's own serious health condition	Similar, except it also covers (1) leave to serve as an organ or bone marrow donor, and (2) civil union couples are treated as married for purposes of leave to care for partner. It does not cover leave due to a foster care child placement.
Serious health condition/illness	Illness; injury; impairment; or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or continuing treatment by a health care provider	Same as federal provision
Health benefits during leave	Employee health insurance must be continued under same conditions as prior to leave, including any employee contribution required	Same as federal provision

Job reinstatement rights	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment	Similar to federal in all respects except if upon return from medical leave, the employee is unable to perform the original job, the municipality must try to find a position suitable to his or her physical condition if such work is available (federal law does not require this if the employee is unable to perform the old duties)
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RIGHTS ARE IN ADDITION TO OTHER STATE LAW

The leave rights contained in the bill are in addition to rights afforded under other law, including state law providing job protection related to pregnancy leave (CGS § 46a-60(a)(7)).

USE OF SICK TIME AND FMLA

The bill makes it a violation to deny an employee the right to use up to two weeks of accumulated paid sick leave as part of a permitted leave. This is similar, but somewhat narrower, than federal law, although by making it a violation, the bill provides recourse at the state level.

Under the bill, a municipal employee can use up to two weeks of sick leave to attend to a serious health condition of a child, spouse, or parent, or for the birth or adoption of a child. "Sick leave" is defined as an absence from work for which compensation is provided through an employer's written policy providing compensation for wage loss due to illness, but it does not include absences from work for which compensation is provided through an employer's insurance plan, including a short- or long-term disability plan, whether or not it is self-insured.

Under the federal leave law, either the employee can elect to use, or the employer can require use of, accrued paid leave for some or all of the FMLA leave period. The accrued paid leave may be sick or vacation time, and unlike the bill's two-week period, is unlimited. Under either the bill or the federal law, paid time used as part of family and medical leave still counts as part of an employee's leave entitlement.

DOCUMENTATION REQUIRED

Intent to Return

Any employee seeking family leave must provide his or her appointing authority (usually the entity that hires the individual from a pool of applicants), before the leave starts, with a signed statement showing the employee's intent to return to work when the leave ends. Family leave is for the serious illness of a child, spouse, or parent or for the birth or adoption of the employee's child.

Physician Certification

The bill requires the employee's appointing authority to require the employee provide sufficient written certification, before the family or medical leave starts, from the physician of the employee, child, spouse, or parent (as the case may be) indicating the nature of the illness triggering the leave and its probably duration.

For those seeking medical leave to be an organ or bone marrow donor, the appointing authority must require written certification, before the leave starts, from the employee's physician of the proposed donation and the probable length of the employee's recovery period.

VIOLATIONS

It is a violation for an employer to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right provided by the bill.

Specifically, it is a violation for an employer to discharge, cause to be discharged, or in any way discriminate against any individual:

1. for opposing a practice the bill makes illegal,
2. because the employee has exercised his or her rights under the bill,
3. for using or attempting to use up to two weeks of sick leave for purposes the bill permits, or
4. because he or she has (a) filed a charge, or has instituted or caused any proceeding, under or related to the bill, (b) given, or is about to give, any information in an inquiry or proceeding relating to any right the bill provides, or (c) testified, or is about to testify, in any inquiry or proceeding relating to any right the bill provides.

The rights and remedies related to use of accumulated sick leave in the bill are (1) cumulative and nonexclusive and (2) in addition to other rights or remedies afforded by contract or under other law.

Complaints, Awards, and Appeals

Any employee aggrieved by a violation of the bill may file a complaint with the labor commissioner alleging a violation. Upon receiving a complaint, the commissioner must hold a hearing and, after the hearing, send each party a written copy of his decision.

The commissioner may award the employee all appropriate relief, including (1) rehiring or reinstatement to the employee's previous position, (2) payment of back wages, and (3) reestablishment of employee benefits for which he or she otherwise would have been eligible if the violation had not occurred.

A party aggrieved by the commissioner's decision may appeal the decision to the Superior Court.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 7 Nay 2 (03/13/2008)