



Senate

General Assembly

File No. 24

January Session, 2009

Substitute Senate Bill No. 710

Senate, March 3, 2009

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 UPDATES TO THE FAMILY AND MEDICAL LEAVE ACT.

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

1 Section 1. Section 31-51ll of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) (1) Subject to section 31-51mm, as amended by this act, an
4 eligible employee shall be entitled to a total of sixteen workweeks of
5 leave during any twenty-four-month period, such twenty-four-month
6 period to be determined utilizing any one of the following methods:
7 (A) Consecutive calendar years; (B) any fixed twenty-four-month
8 period, such as two consecutive fiscal years or a twenty-four-month
9 period measured forward from an employee's first date of
10 employment; (C) a twenty-four-month period measured forward from
11 an employee's first day of leave taken under sections 31-51kk to 31-
12 51qq, inclusive, as amended by this act; or (D) a rolling twenty-four-
13 month period measured backward from an employee's first day of

14 leave taken under sections 31-51kk to 31-51qq, inclusive, as amended
15 by this act.

16 (2) Leave under this subsection may be taken for one or more of the
17 following reasons:

18 (A) Upon the birth of a son or daughter of the employee;

19 (B) Upon the placement of a son or daughter with the employee for
20 adoption or foster care;

21 (C) In order to care for the spouse, or a son, daughter or parent of
22 the employee, if such spouse, son, daughter or parent has a serious
23 health condition;

24 (D) Because of a serious health condition of the employee; or

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

26 (b) Entitlement to leave under subparagraph (A) or (B) of
27 subdivision (2) of subsection (a) of this section may accrue prior to the
28 birth or placement of a son or daughter when such leave is required
29 because of such impending birth or placement.

30 (c) (1) Leave under subparagraph (A) or (B) of subdivision (2) of
31 subsection (a) of this section for the birth or placement of a son or
32 daughter may not be taken by an employee intermittently or on a
33 reduced leave schedule unless the employee and the employer agree
34 otherwise. Subject to subdivision (2) of this subsection concerning an
35 alternative position, subdivision (2) of subsection (f) of this section
36 concerning the duties of the employee and subdivision (5) of
37 subsection (b) of section 31-51mm, as amended by this act, concerning
38 sufficient certification, leave under subparagraph (C) or (D) of
39 subdivision (2) of subsection (a) or under subsection (i) of this section
40 for a serious health condition may be taken intermittently or on a
41 reduced leave schedule when medically necessary. The taking of leave
42 intermittently or on a reduced leave schedule pursuant to this
43 subsection shall not result in a reduction of the total amount of leave to

44 which the employee is entitled under subsection (a) of this section
45 beyond the amount of leave actually taken.

46 (2) If an employee requests intermittent leave or leave on a reduced
47 leave schedule under subparagraph (C), (D) or (E) of subdivision (2) of
48 subsection (a) or under subsection (i) of this section that is foreseeable
49 based on planned medical treatment, the employer may require the
50 employee to transfer temporarily to an available alternative position
51 offered by the employer for which the employee is qualified and that
52 (A) has equivalent pay and benefits, and (B) better accommodates
53 recurring periods of leave than the regular employment position of the
54 employee, provided the exercise of this authority shall not conflict
55 with any provision of a collective bargaining agreement between such
56 employer and a labor organization which is the collective bargaining
57 representative of the unit of which the employee is a part.

58 (d) Except as provided in subsection (e) of this section, leave
59 granted under subsection (a) of this section may consist of unpaid
60 leave.

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

66 (2) (A) An eligible employee may elect, or an employer may require
67 the employee, to substitute any of the accrued paid vacation leave,
68 personal leave or family leave of the employee for leave provided
69 under subparagraph (A), (B) or (C) of subdivision (2) of subsection (a)
70 of this section for any part of this sixteen-week period of such leave
71 under said subsection or under subsection (i) of this section for any
72 part of this twenty-six-week period of such leave.

73 (B) An eligible employee may elect, or an employer may require the
74 employee, to substitute any of the accrued paid vacation leave,
75 personal leave, or medical or sick leave of the employee for leave

76 provided under subparagraph (C), (D) or (E) of subdivision (2) of
77 subsection (a) of this section for any part of the sixteen-week period of
78 such leave under said subsection or under subsection (i) of this section
79 for any part of the twenty-six-week period of leave, except that
80 nothing in section 5-248a, as amended by this act, or sections 31-51kk
81 to 31-51qq, inclusive, as amended by this act, shall require an employer
82 to provide paid sick leave or paid medical leave in any situation in
83 which such employer would not normally provide any such paid
84 leave.

85 (f) (1) In any case in which the necessity for leave under
86 subparagraph (A) or (B) of subdivision (2) of subsection (a) of this
87 section is foreseeable based on an expected birth or placement of a son
88 or daughter, the employee shall provide the employer with not less
89 than thirty days' notice, before the date of the leave is to begin, of the
90 employee's intention to take leave under said subparagraph (A) or (B),
91 except that if the date of the birth or placement of a son or daughter
92 requires leave to begin in less than thirty days, the employee shall
93 provide such notice as is practicable.

94 (2) In any case in which the necessity for leave under subparagraph
95 (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection
96 (i) of this section is foreseeable based on planned medical treatment,
97 the employee (A) shall make a reasonable effort to schedule the
98 treatment so as not to disrupt unduly the operations of the employer,
99 subject to the approval of the health care provider of the employee or
100 the health care provider of the son, daughter, spouse or parent of the
101 employee, as appropriate; and (B) shall provide the employer with not
102 less than thirty days' notice, before the date the leave is to begin, of the
103 employee's intention to take leave under said subparagraph (C), (D) or
104 (E), except that if the date of the treatment requires leave to begin in
105 less than thirty days, the employee shall provide such notice as is
106 practicable.

107 (g) In any case in which a husband and wife entitled to leave under
108 subsection (a) of this section are employed by the same employer, the

109 aggregate number of workweeks of leave to which both may be
110 entitled may be limited to sixteen workweeks during any twenty-four-
111 month period, if such leave is taken: (1) Under subparagraph (A) or (B)
112 of subdivision (2) of subsection (a) of this section; or (2) to care for a
113 sick parent under subparagraph (C) of said subdivision. In any case in
114 which a husband and wife entitled to leave under subsection (i) of this
115 section are employed by the same employer, the aggregate number of
116 workweeks of leave to which both may be entitled may be limited to
117 twenty-six workweeks during any twelve-month period.

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

122 (i) Subject to section 31-51mm, as amended by this act, an eligible
123 employee who is the spouse, son or daughter, parent, or next of kin, as
124 defined in subsection (h) of section 5-248a, as amended by this act, of a
125 member of the Armed Forces, including a member of the National
126 Guard or Reserves, who is undergoing outpatient medical treatment,
127 recuperation or therapy, is otherwise in outpatient status or is on the
128 temporary disability retired list for a serious injury or illness, shall be
129 entitled to a total of twenty-six workweeks of leave during any twelve-
130 month period. Such twelve-month period shall commence on an
131 employee's first day of leave taken to care for a covered service
132 member and end on the date twelve months after such first day of
133 leave.

134 (j) Leave taken pursuant to sections 31-51kk to 31-51qq, inclusive, as
135 amended by this act, shall not run concurrent with the provisions of
136 section 31-313.

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

140 Sec. 2. Section 31-51mm of the general statutes is repealed and the

141 following is substituted in lieu thereof (*Effective from passage*):

142 (a) An employer may require that request for leave based on a
143 serious health condition in subparagraph (C) or (D) of subdivision (2)
144 of subsection (a) or leave based on subsection (i) of section 31-51ll, as
145 amended by this act, be supported by a certification issued by the
146 health care provider of the eligible employee or of the son, daughter,
147 spouse, [or] parent or next of kin of the employee, as appropriate. The
148 employee shall provide, in a timely manner, a copy of such
149 certification to the employer.

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

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

153 (2) The probable duration of the condition;

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

156 (4) (A) For purposes of leave under subparagraph (C) of subdivision
157 (2) of subsection (a) of section 31-51ll, as amended by this act, a
158 statement that the eligible employee is needed to care for the son,
159 daughter, spouse or parent and an estimate of the amount of time that
160 such employee needs to care for the son, daughter, spouse, [or] parent
161 or next of kin; and (B) for purposes of leave under subparagraph (D) of
162 subdivision (2) of subsection (a) of section 31-51ll, as amended by this
163 act, a statement that the employee is unable to perform the functions of
164 the position of the employee;

165 (5) In the case of certification for intermittent leave or leave on a
166 reduced leave schedule for planned medical treatment, the dates on
167 which such treatment is expected to be given and the duration of such
168 treatment;

169 (6) In the case of certification for intermittent leave or leave on a
170 reduced leave schedule under subparagraph (D) of subdivision (2) of

171 subsection (a) of section 31-51ll, as amended by this act, a statement of
172 the medical necessity of the intermittent leave or leave on a reduced
173 leave schedule, and the expected duration of the intermittent leave or
174 reduced leave schedule; [and]

175 (7) In the case of certification for intermittent leave or leave on a
176 reduced leave schedule under subparagraph (C) of subdivision (2) of
177 subsection (a) of section 31-51ll, as amended by this act, a statement
178 that the employee's intermittent leave or leave on a reduced leave
179 schedule is necessary for the care of the son, daughter, parent or
180 spouse who has a serious health condition, or will assist in their
181 recovery, and the expected duration and schedule of the intermittent
182 leave or reduced leave schedule; and

183 (8) In the case of certification for intermittent leave or leave on a
184 reduced leave schedule under subsection (i) of section 31-51ll, as
185 amended by this act, a statement that the employee's intermittent leave
186 or leave on a reduced leave schedule is necessary for the care of the
187 son, daughter, parent, spouse or next of kin, as defined in subsection
188 (h) of section 5-248a, as amended by this act, who is a member of the
189 Armed Forces, including a member of the National Guard or Reserves
190 who is undergoing outpatient medical treatment, recuperation or
191 therapy, is otherwise in outpatient status or is on the temporary
192 disability retired list, for a serious injury or illness, and the expected
193 duration and schedule of the intermittent leave or reduced leave
194 schedule.

195 (c) (1) In any case in which the employer has reason to doubt the
196 validity of the certification provided under subsection (a) of this
197 section for leave under subparagraph (C) or (D) of subdivision (2) of
198 subsection (a) or under subsection (i) of section 31-51ll, as amended by
199 this act, the employer may require, at the expense of the employer, that
200 the eligible employee obtain the opinion of a second health care
201 provider designated or approved by the employer concerning any
202 information certified under subsection (b) of this section for such leave.

203 (2) A health care provider designated or approved under

204 subdivision (1) of this subsection shall not be employed on a regular
205 basis by the employer.

206 (d) (1) In any case in which the second opinion described in
207 subsection (c) of this section differs from the opinion in the original
208 certification provided under subsection (a) of this section, the
209 employer may require, at the expense of the employer, that the
210 employee obtain the opinion of a third health care provider designated
211 or approved jointly by the employer and the employee concerning the
212 information certified under subsection (b) of this section.

213 (2) The opinion of the third health care provider concerning the
214 information certified under subsection (b) of this section shall be
215 considered to be final and shall be binding on the employer and the
216 employee.

217 (e) The employer may require that the eligible employee obtain
218 subsequent recertifications on a reasonable basis, provided the
219 standards for determining what constitutes a reasonable basis for
220 recertification may be governed by a collective bargaining agreement
221 between such employer and a labor organization which is the
222 collective bargaining representative of the unit of which the worker is
223 a part if such a collective bargaining agreement is in effect. Unless
224 otherwise required by the employee's health care provider, the
225 employer may not require recertification more than once during a
226 thirty-day period and, in any case, may not unreasonably require
227 recertification. The employer shall pay for any recertification that is not
228 covered by the employee's health insurance.

229 Sec. 3. Section 31-51oo of the general statutes is repealed and the
230 following is substituted in lieu thereof (*Effective from passage*):

231 Records and documents relating to medical certifications,
232 recertifications or medical histories of employees or employees' family
233 members, created for purposes of sections 5-248a, as amended by this
234 act, and 31-51kk to 31-51qq, inclusive, as amended by this act, shall be
235 maintained as medical records pursuant to chapter 563a, except that:

236 (1) [Supervisors] Human resources personnel and managers may be
237 informed regarding necessary restrictions on the work or duties of an
238 employee and necessary accommodations; (2) first aid and safety
239 personnel may be informed, when appropriate, if the employee's
240 physical or medical condition might require emergency treatment; and
241 (3) government officials investigating compliance with sections 5-248a,
242 as amended by this act, and 31-51kk to 31-51qq, inclusive, as amended
243 by this act, or other pertinent law shall be provided relevant
244 information upon request.

245 Sec. 4. Section 5-248a of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective from passage*):

247 (a) For purposes of this section, "child" means a biological, adopted
248 or foster child, stepchild, child of whom a person has legal
249 guardianship or custody, or, in the alternative, a child of a person
250 standing in loco parentis, who is (1) under eighteen years of age, or (2)
251 eighteen years of age or older and incapable of self-care because of a
252 mental or physical disability. Each permanent employee, as defined in
253 subdivision (20) of section 5-196, shall be entitled to a family leave of
254 absence upon the birth or adoption of a child of such employee, or
255 upon the serious illness of a child, spouse or parent of such employee;
256 and a medical leave of absence upon the serious illness of such
257 employee or in order for such employee to serve as an organ or bone
258 marrow donor. The total amount of time that an employee is entitled
259 to for leaves of absence pursuant to this section shall be twenty-four
260 weeks within any two-year period. Any such leave of absence shall be
261 without pay. Upon the expiration of any such leave of absence, the
262 employee shall be entitled (A) to return to the employee's original job
263 from which the leave of absence was provided or, if not available, to an
264 equivalent position with equivalent pay, except that in the case of a
265 medical leave, if the employee is medically unable to perform the
266 employee's original job upon the expiration of such leave, the
267 Personnel Division of the Department of Administrative Services shall
268 endeavor to find other suitable work for such employee in state
269 service, and (B) to all accumulated seniority, retirement, fringe benefit

270 and other service credits the employee had at the commencement of
271 such leave. Such service credits shall not accrue during the period of
272 the leave of absence.

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

277 (c) Any permanent employee who requests a medical leave of
278 absence due to the employee's serious illness or a family leave of
279 absence due to the serious illness of a child, spouse or parent pursuant
280 to subsection (a) of this section or a military caregiver leave of absence
281 pursuant to subsection (g) of this section shall be required by the
282 employee's appointing authority, prior to the inception of such leave,
283 to provide sufficient written certification from the physician of such
284 employee, child, spouse, [or] parent, or next of kin of the employee, as
285 appropriate, of the nature of such illness and its probable duration. For
286 the purposes of this section, "serious illness" means an illness, injury,
287 impairment or physical or mental condition that involves (1) inpatient
288 care in a hospital, hospice or residential care facility, or (2) continuing
289 treatment or continuing supervision by a health care provider.

290 (d) Any permanent employee who requests a medical leave of
291 absence in order to serve as an organ or bone marrow donor pursuant
292 to subsection (a) of this section shall be required by the employee's
293 appointing authority, prior to the inception of such leave, to provide
294 sufficient written certification from the physician of such employee of
295 the proposed organ or bone marrow donation and the probable
296 duration of the employee's recovery period from such donation.

297 (e) Any permanent employee who requests a family leave of
298 absence pursuant to subsection (a) of this section or a military
299 caregiver leave of absence pursuant to subsection (g) of this section
300 shall submit to the employee's appointing authority, prior to the
301 inception of such leave, a signed statement of the employee's intent to
302 return to the employee's position in state service upon the termination

303 of such leave.

304 (f) Notwithstanding the provisions of subsection (b) of section 38a-
 305 554, the state shall pay for the continuation of health insurance benefits
 306 for the employee during any leave of absence taken pursuant to this
 307 section. In order to continue any other health insurance coverages
 308 during such leave, the employee shall contribute that portion of the
 309 premium the employee would have been required to contribute had
 310 the employee remained an active employee during the leave period.

311 (g) Each permanent employee, as defined in subdivision (20) of
 312 section 5-196, who is the spouse, son or daughter, parent, or next of kin
 313 of a current member of the Armed Forces, including a member of the
 314 National Guard or Reserves, who is undergoing outpatient medical
 315 treatment, recuperation or therapy, is otherwise in outpatient status or
 316 is on the temporary disability retired list for a serious injury or illness
 317 incurred in the line of duty or active duty, shall be entitled to a total of
 318 twenty-six workweeks of leave within a single two-year period.

319 (h) For purposes of subsection (g) of this section, "next of kin" means
 320 the service member's nearest blood relative, other than the covered
 321 service member's spouse, parent, son or daughter, in the following
 322 order of priority: Blood relatives who have been granted legal custody
 323 of the service member by court decree or statutory provisions, brothers
 324 and sisters, grandparents, aunts and uncles, and first cousins, unless
 325 the covered service member has specifically designated in writing
 326 another blood relative as his or her nearest blood relative for purposes
 327 of military caregiver leave, in which case the designated individual
 328 shall be deemed to be the covered service member's next of kin.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	31-51ll
Sec. 2	<i>from passage</i>	31-51mm
Sec. 3	<i>from passage</i>	31-51oo
Sec. 4	<i>from passage</i>	5-248a

Statement of Legislative Commissioners:

In section 2(b)(4), "or next of kin" was added for internal consistency and in section 4(c) a comma was removed for proper grammar.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Various State Agencies; Labor Dept.	Various - Cost	Potential Minimal	Potential Minimal

Municipal Impact: None

Explanation

The bill permits, under certain conditions, an employee to take up to 26 weeks in unpaid leave under the state family and medical leave (FML) acts to care for a family member or next of kin who is a member of the U.S. armed forces, National Guard, or the military reserves.

To the extent that this provision would result in an increased number of family medical leave act hearings, the Department of Labor (DOL) would incur a minimal cost associated with compensating hearing officers who administer each hearing and render a decision¹.

It is not known how many state employees would be eligible for this benefit; however, it is anticipated to have a minimal fiscal impact as it aligns state FML with federal FML for military caregiver leave.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ According to DOL, hearing officers are paid approximately \$40 per hour.

OLR Bill Analysis**sSB 710*****AN ACT CONCERNING UPDATES TO THE FAMILY AND MEDICAL LEAVE ACT.*****SUMMARY:**

This bill permits an employee to take up to 26 weeks in unpaid leave from work under the state family and medical leave (FML) acts to care for an immediate family member or next of kin who is a member of the U.S. armed forces, National Guard, or the military reserves and is:

- undergoing outpatient medical treatment, recuperation or therapy;
- otherwise in outpatient status; or
- on the temporary disability retired list for a serious injury or illness.

The bill provides for 26 weeks of leave over a 12-month period under the private sector law and 26 weeks of leave over a two-year period under the state employee law. Under the private sector law, the 12-month period begins on the first day of military caregiver leave.

The bill incorporates the new military caregiver leave into existing provisions of FML laws for private sector and state employees regarding written certification of medical need, intermittent leave, and other items.

The bill specifies that leave taken pursuant to the private sector FML does not run concurrently with a transfer to “light duty” work in lieu of regular work duties under the Workers’ Compensation Act.

By law, medical records related to FML are kept confidential pursuant to the Personnel Files Act, except that supervisors and managers may be informed regarding necessary work duty restrictions or accommodations. The bill removes the exception for supervisors and applies it instead to human resources personnel.

EFFECTIVE DATE: Upon passage

MILITARY CAREGIVER LEAVE UNDER FML ACTS

Eligible Relatives

The bill allows a spouse, son or daughter, parent, or next of kin to take unpaid military caregiver leave under state FML law. It defines “next of kin” as the service member's nearest blood relative, other than his or her spouse, parent, child, in the following order of priority:

1. blood relatives who have been granted legal custody of the service member by court decree or statutory provisions,
2. siblings,
3. grandparents,
4. aunts and uncles, and
5. first cousins.

If the service member has designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, then the designated individual must be deemed the member's next of kin.

Job Protection for Military Leave Caregivers

As with employees taking leave under the existing family and medical leave laws, the bill requires the employer to restore the military caregiver to his or her previous position or an equivalent one.

Conditions or Requirements for Military Caregiver Leave

Private Sector FML Changes. Military caregivers are treated, for the most part, like other employees taking unpaid leave under the existing private sector FML. This means:

1. an eligible employee may elect or eligible employer may require the employee to substitute any accrued paid vacation leave, personal leave, or family leave for any part of the 26-week unpaid leave available to care for a service member;
2. when medical treatment is planned and foreseeable, the employee must make reasonable efforts to schedule treatment so as not to unduly disrupt the employer's operations;
3. when both spouses are eligible for leave and work for the same employer, the leave is limited to an aggregate of 26 weeks during any 12-month period;
4. the employer may require a certification issued from the health care provider of the service member, and the employee must provide this to the employer in a timely manner;
5. intermittent leave or leave on a reduced schedule is allowed to care for a service member;
6. an employer may assign an employee on intermittent leave or reduced schedule to a job of equal pay and benefits that better accommodates the recurring periods of leave; and
7. the intermittent leave or leave on a reduced schedule certification must include the expected leave duration and the schedule of the intermittent leave or reduced schedule.

State Employee FML Changes. The following provisions are part of the existing state employee FML and the bill makes them part of the state employee military caregiver leave. It:

1. requires prior written certification for the leave from the physician of the service member, including the probable leave duration, and

2. requires the employee taking leave, before leave begins, to sign a statement of the employee's intent to return to work.

BACKGROUND

Interaction with Federal FML Law

Under federal law, if an employee meets the qualifications of both the state and the federal FML, the employer is obligated to provide the more generous of the two benefits.

The National Defense Authorization Act for FY 2008 (NDAA), (Public Law 110-181), amended the federal FML to allow eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or ailment. This law covers both the private and public sectors.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 11 Nay 0 (02/17/2009)