



General Assembly

January Session, 2009

**Raised Bill No. 710**

LCO No. 2359

\*02359\_\_\_\_\_LAB\*

Referred to Committee on Labor and Public Employees

Introduced by:  
(LAB)

**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 Section 31-51ll of the general statutes is repealed and the  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; or (D) a rolling twenty-four-month period measured  
13 backward from an employee's first day of leave taken under sections  
14 31-51kk to 31-51qq, inclusive.

15 (2) Leave under this subsection may be taken for one or more of the

16 following reasons:

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

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

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

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

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

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

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

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

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

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

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

71 (B) An eligible employee may elect, or an employer may require the  
72 employee, to substitute any of the accrued paid vacation leave,  
73 personal leave, or medical or sick leave of the employee for leave  
74 provided under subparagraph (C), (D) or (E) of subdivision (2) of  
75 subsection (a) of this section for any part of the sixteen-week period of  
76 such leave under said subsection or under subsection (i) of this section

77 for any part of the twenty-six-week period of leave, except that  
78 nothing in section 5-248a or sections 31-51kk to 31-51qq, inclusive,  
79 shall require an employer to provide paid sick leave or paid medical  
80 leave in any situation in which such employer would not normally  
81 provide any such paid leave.

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

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

104 (g) In any case in which a husband and wife entitled to leave under  
105 subsection (a) of this section are employed by the same employer, the  
106 aggregate number of workweeks of leave to which both may be  
107 entitled may be limited to sixteen workweeks during any twenty-four-  
108 month period, if such leave is taken: (1) Under subparagraph (A) or (B)

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

115 (h) Unpaid leave taken pursuant to sections 5-248a and 31-51kk to  
116 31-51qq, inclusive, shall not be construed to affect an employee's  
117 qualification for exemption under chapter 558.

118 (i) Subject to section 31-51mm, as amended by this act, an eligible  
119 employee who is the spouse, son or daughter, parent, or next of kin of  
120 a member of the Armed Forces, including a member of the National  
121 Guard or Reserves, who is undergoing medical treatment,  
122 recuperation or therapy, is otherwise in outpatient status or is  
123 otherwise on the temporary disability retired list for a serious injury or  
124 illness, shall be entitled to a total of twenty-six workweeks of leave  
125 during any twelve-month period. Such twelve-month period to be  
126 determined utilizing any one of the following methods: (1)  
127 Consecutive calendar year; (2) any fixed twelve-month period, such as  
128 a fiscal year or a twelve-month period measured forward from an  
129 employee's first date of employment; (3) a twelve-month period  
130 measured forward from an employee's first day of leave taken under  
131 sections 31-51kk to 31-51qq, inclusive; or (4) a rolling twelve-month  
132 period measured backward from an employee's first day of leave taken  
133 under sections 31-51kk to 31-51qq, inclusive.

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

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

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

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

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

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

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

152 (2) The probable duration of the condition;

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

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

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

168 (6) In the case of certification for intermittent leave or leave on a

169 reduced leave schedule under subparagraph (D) of subdivision (2) of  
170 subsection (a) of section 31-51ll, as amended by this act, a statement of  
171 the medical necessity of the intermittent leave or leave on a reduced  
172 leave schedule, and the expected duration of the intermittent leave or  
173 reduced leave schedule; [and]

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

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

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

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

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

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

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

227 Sec. 3. Section 31-5100 of the general statutes is repealed and the  
228 following is substituted in lieu thereof (*Effective from passage*):

229 Records and documents relating to medical certifications,  
230 recertifications or medical histories of employees or employees' family  
231 members, created for purposes of sections 5-248a and 31-51kk to 31-

232 51qq, inclusive, shall be maintained as medical records pursuant to  
233 chapter 563a, except that: (1) [Supervisors] Human resources personnel  
234 and managers may be informed regarding necessary restrictions on the  
235 work or duties of an employee and necessary accommodations; (2) first  
236 aid and safety personnel may be informed, when appropriate, if the  
237 employee's physical or medical condition might require emergency  
238 treatment; and (3) government officials investigating compliance with  
239 sections 5-248a and 31-51kk to 31-51qq, inclusive, or other pertinent  
240 law shall be provided relevant information upon request.

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

**Statement of Purpose:**

To amend the family and medical leave act to allow for additional time for family members to help injured soldiers, prevent supervisors from viewing employee medical records, and prevent family and medical leave and light duty work from running concurrently.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*