



**Public Hearing Testimony of
Glenn Marshall, Commissioner
Department of Labor
Labor and Public Employees Committee
March 8, 2012**

Good Afternoon Senator Prague, Representative Zalaski, Senator Guglielmo, Representative Rigby and members of the Labor and Public Employees Committee. Thank you for the opportunity to provide you with testimony regarding ***Senate Bill #184 AAC Concerning the Definition of Employer in the Family and Medical Leave Act***. My name is Glenn Marshall and I am the Commissioner of the Department of Labor.

I am here to speak in support of this proposed bill. As you know, under current law, an employer with 75 or more employees is a covered employer under the Family and Medical Leave Act (FMLA). Clarifying that the 75 or more employees must be in Connecticut will codify the Department's long-standing interpretation of the legislative intent to cover employers who have 75 or more employees within the State of Connecticut.

The Department has dismissed dozens of cases based on our interpretation that the statute subjects employers with 75 or more employees in Connecticut to the FMLA. The Department also has two final decisions in FMLA cases in which the Commissioner has ruled that the 75 or more employees must be in Connecticut. A third case, with a similar decision by the Commissioner, was appealed to Superior Court where a judge overruled her decision. See *Velez v Commissioner, Department of Labor*, 2010 WL 2573509, (5/14/10). The case was recently heard on appeal at the Connecticut Supreme Court. It must be noted that regardless of this change in statute, if the Supreme Court were to rule in favor of the plaintiff, her rights to a further hearing will not be affected by this law change in any way.

Since the enactment of Connecticut's FMLA in 1990, the Department has limited its jurisdiction to those employers with 75 or more employees in Connecticut. If the Supreme Court interprets Section 31-51kk(4) of the Connecticut General Statutes to mean that Connecticut's FMLA law applies to employers with 75 or more employees throughout the country, rather than just Connecticut, it would have an adverse impact on the small business community in Connecticut. For example, if a company in this state has 10 employees and has 70 employees in California, then the employer in Connecticut would be required to give an FMLA leave to one of its 10 Connecticut employees. It was not the intent of the legislature to affect small offices of employers in such a way.

When the FMLA regulations were first promulgated, there was a provision that mandated that the Commissioner look to the third quarter contained in the Employee Quarterly Earnings Reports that every employer subject to the Unemployment Compensation Act is required to file. Those reports

indicate the number of employees on the employer's payroll in Connecticut. They remained in effect until the regulations were revised pursuant to Public Act 96-140, AA to Coordinate the State Family and Medical Leave Laws with the Federal Family and Medical Leave Laws (codified at Sections 31-51kk, *et seq.*) When the new regulations were promulgated, the section provided that the Department may rely on the Employee Quarterly Earnings Reports. The directive to refer to the report was no longer mandatory but permissive. The Commissioner still had the authority to refer to those reports in order to determine the employee count for purposes of the FMLA.

If the Supreme Court were to rule in favor of the plaintiff in the *Velez* case, an absence of clarifying language could result in a substantial impact on business owners within Connecticut who do not have 75 or more employees in its small offices in Connecticut but do have 75 or more employees in the United States. It will assist employers with less than 75 employees in Connecticut but more than 75 in other states because this proposal will ensure that they are not subject to the FMLA.

Thank you for the opportunity to provide this testimony. I am available to answer any questions you might have.