OLR Bill Analysis

SB 881

AN ACT ESTABLISHING A PAID FAMILY AND MEDICAL LEAVE PROGRAM.

SUMMARY

This bill creates the Family and Medical Leave Insurance (FMLI) program to provide wage replacement benefits to certain workers taking leave for reasons allowed under the state's unpaid Family and Medical Leave Act (FMLA), as amended by the bill, or the family violence leave law. It provides them with up to 12 weeks of FMLI benefits over a 12-month period. The program also provides two additional weeks of benefits for a serious health condition that occurs during pregnancy.

Under the bill, workers eligible for benefits ("covered workers") are:

1. people who earned at least $2,325 from one or more employers during their highest earning quarter within their base period (the first four of the five most recently worked quarters) and are employed by an employer or unemployed;

2. sole practitioners and self-employed people who earned at least $2,325 during their highest earning quarter within their base period; and

3. state or municipal employees (but not board of education employees) who collectively bargained to participate in the program.

The bill requires the Department of Labor (DOL), or a statutorily defined DOL-designated quasi-public agency, to administer the FMLI program. By October 1, 2020, the program administrator must begin collecting contributions from (1) private-sector employees, (2) the self-employed and sole proprietors, and (3) state or municipal employees

who collectively bargained to participate in the program. The program must begin paying FMLI benefits by January 1, 2022. Anyone aggrieved by a denial of benefits may file a complaint with the labor commissioner.

The bill caps employee contributions at 0.5% of an employee’s earnings through December 31, 2022. After that, the administrator must set a contribution rate that generates at least 140% of the program’s benefit and administrative costs from the previous year. The bill caps the amount of an employee’s annual earnings subject to contributions at the amount of earnings subject to Social Security taxes (currently $132,900).

The bill establishes the FMLI Trust Fund, administered by the state treasurer, to hold employee contributions and pay for FMLI benefits and administrative costs. It requires any funds expended from the General Fund to administer the program or provide benefits to be repaid over a period determined by the program administrator.

Starting on July 1, 2019, the bill also changes various provisions of the state's FMLA. The current FMLA generally requires large private-sector employers to provide job-protected unpaid leave to employees for various reasons related to their health or their family members' health. Among other things, the bill:

1. extends the FMLA to cover all private-sector employers by lowering the employer size threshold from 75 employees to one;

2. changes the criteria for employees to qualify for leave from (a) 12 months of employment and 1,000 work-hours with their employer to (b) having earned at least $2,325 from one or more employers during their highest earning quarter during their base period;

3. changes the maximum FMLA leave allowed from 16 weeks over a 24-month period to 12 weeks over a 12-month period, and allows an additional two weeks of leave due to a serious health condition that occurs during pregnancy;

4. eliminates an employer's ability to require an employee taking FMLA leave to use his or her employer-provided paid sick time or other employer-provided paid leave;

5. adds to the family members for whom an employee can take FMLA leave to include the employee's siblings, grandparents, and grandchildren; and

6. requires employers to allow their employees to use up to two weeks of any employer-provided paid sick leave for the serious health condition of the employee's sibling, grandparent, and grandchild (including each of those related by marriage).

The bill requires the labor commissioner to adopt regulations by July 1, 2020, to implement the FMLI program and the bill's changes to the FMLA. It also makes numerous minor and conforming changes.

EFFECTIVE DATE: Upon passage, except the provisions that (1) affect the terms of the current FMLA and extend requirements for treasurer-administered funds to the FMLI Trust Fund are effective July, 1, 2019; (2) require the administrator to conduct a public education campaign are effective January 1, 2020; and (3) establish employer notice requirements are effective July 1, 2021.

FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Administration (§§ 2, 6, & 19)

The bill establishes the FMLI program and requires either DOL or one of the statutorily-defined quasi-public agencies, designated by DOL, to administer it. (The bill does not specify how DOL must make this designation or what criteria it must consider when doing so. It also does not authorize any of the statutorily defined quasi-public agencies to administer the program.)

The bill authorizes the program’s administrator to do the following:

1. determine if a person is eligible for FMLI;

2. require a covered worker to provide certification from a health

care provider or certain other documents related to family violence leave to support the worker's FMLI claim;

3. request and examine any books, records, documents, contracts, or other papers relevant to a covered worker's eligibility;

4. summon and examine under oath any witnesses that can provide information relevant to a covered worker's FMLI claim;

5. establish procedures and forms for filing FMLI claims, including the certification required to establish eligibility; and

6. ensure the confidentiality of records and documents related to medical certification, recertifications, or medical histories of covered employees and their family members, as required under the FMLA.

The bill also requires the administrator, in consultation with the state treasurer and the Department of Revenue Services, to establish the procedures needed to implement the program. The administrator must:

1. design, establish, and operate the program to ensure transparency in program management and the FMLI Trust Fund through oversight and ethics reviews of plan fiduciaries;

2. establish and maintain a secure Internet website that displays the administrator's public notices and other information it deems relevant and necessary to implement the program and educate the public about it; and

3. submit a report to the Labor and Public Employees Committee by January 1, 2020, with recommendations for legislative action needed to implement the program.

The bill requires the labor commissioner, by July 1, 2020, to adopt regulations to establish the procedures and guidelines needed to implement the (1) FMLI program and (2) bill's related changes to the private-sector FMLA. The regulations must at least include procedures for hearings and redress, including restoration and restitution, for an employee who believes an employer has violated any of the bill's or these laws' provisions. Unlike the current regulations for private-sector FMLA and state employee family medical leave, the commissioner does not have to make reasonable efforts to ensure the regulations are compatible with the federal FMLA and its regulations.

Employee Contributions (§§ 1, 2, & 6)

The bill requires the administrator to begin collecting employee contributions to the FMLI Trust Fund by October 1, 2020. By that date, private-sector employees, the self-employed and sole proprietors, and state or municipal employees who collectively bargained to participate in the program must begin contributing 0.5% of their weekly earnings to the trust fund in a manner the administrator prescribes.

"Employers" under the bill are private-sector employers with at least one employee. The state and municipalities are also employers under the bill, but only for their employees who collectively bargained to participate in the program. Local or regional boards of education are not employers under the bill (thus, their employees are not covered by the program).

The bill uses the Social Security contribution base (i.e., amount of earnings subject to Social Security taxes, currently $132,900) to cap the annual amount of a worker's earnings subject to contributions.

Annual Contribution Rate Adjustments. Starting on September 1, 2022, the bill requires the administrator to annually publish the following information:

1. the program's total amount of benefits paid and administrative costs during the previous fiscal year,
2. the total amount in the trust fund at the end of the fiscal year,
3. the amount equal to 140% of the previous fiscal year's benefits paid and administrative costs, and

4. the difference between the amount in the trust fund at the end of the fiscal year and 140% of the previous fiscal year’s benefits paid and administrative costs.

Starting on November 1, 2022, the bill requires the labor commissioner to annually announce a revised contribution rate to ensure that the trust fund will maintain or achieve an annualized amount of at least 140% of the previous fiscal year’s expenditures for benefits and administration. The announced revised contribution rate becomes effective on the following January 1.

Other Contribution Provisions. The bill requires the administrator to:

1. design and establish the process by which employees (including the self-employed and sole proprietors) must contribute a portion of their salaries or wages to the trust fund;

2. evaluate and establish a process that allows employers to credit their employee's contributions to the trust fund through payroll deposit; and

3. ensure that contributions are only used for (1) providing FMLI benefits, (2) and satisfying any expenses, including employee costs, incurred to implement, maintain, advertise, and administer the program.

The bill allows an employer to withhold or divert the portion of an employee’s wages that corresponds to the contribution rate established for the program to remit it to the FMLI trust fund. Existing law generally prohibits employers from withholding or diverting a portion of an employee’s wages unless the employer is required to do so by state or federal law, or when the employee grants permission.

If, after notice, an employee or employer fails to make a required payment to the program, the bill requires a state collection agency (the state treasurer, Revenue Services commissioner, or any other official authorized to collect state taxes) to collect the payment and interest under the processes for collecting unpaid state taxes or unemployment taxes, which can include liens and foreclosures.

FMLI Benefits (§ 2)

The bill requires the administrator, by January 1, 2022, to begin paying FMLI benefits to covered workers who file claims. The program must provide up to 12 weeks of FMLI benefits to covered workers during any 12-month period, plus two additional weeks of benefits for a serious health condition that occurs during a pregnancy.

The bill requires a covered worker's weekly benefit to be calculated as 90% of his or her base weekly earnings, up to 40 times the state minimum wage, plus 67% of the amount of the worker's base weekly earnings that exceeds 40 times the minimum wage. Total benefits cannot exceed 60 times the minimum wage. Under the bill, a worker's base weekly earnings is 1/26th of the average of the worker's total wages paid during the two highest paid quarters in the worker's base period (i.e., ½ of the worker's average weekly wage during his or her two highest paid quarters).

The bill defines a worker's total wages using the definition used in the state's unemployment law (however, since this definition does not include earnings made by sole proprietors or the self-employed, the bill does not provide a way to calculate their benefits).

If the IRS determines that the benefits are subject to federal income taxes and the employee chooses to have the taxes withheld from the benefits, DOL must deduct and withhold the amount required by the U.S. Internal Revenue Code in a manner consistent with state law (in practice, the employee may not have a choice of whether to have taxes withheld, depending on the IRS's determination).

Benefit Uses (§§ 2 & 15)

The bill generally allows a covered worker to receive FMLI benefits for leave taken for the same reasons allowed under the state's FMLA, as amended by the bill, or family violence leave law.

Under current law, these allow leave:

1. on the birth of the employee's son or daughter;
2. on the placement of a son or daughter with the employee for adoption or foster care;
3. for a spouse's, son's, daughter's, or parent's serious health condition;
4. for the employee's own serious health condition;
5. to serve as an organ or bone marrow donor;
6. for certain family members who are armed forces members undergoing treatment for an injury or illness incurred in the line of duty; and
7. for family violence victims, to (a) seek medical care or psychological counseling, (b) obtain services from a victim services organization, (c) relocate because of family violence, or (d) participate in any civil or criminal proceeding related to, or resulting from, the family violence.

Since the bill also adds to the family members for whom an employee can take FMLA leave (see "Changes to Current FMLA, below), FMLI benefits will also be available for these additional types of leave. Under the bill, the added family members include the employee's siblings, grandparents, and grandchildren. Although FMLA also allows leave under certain circumstances when certain family members are in the armed forces and on active duty or have been notified of an impending call or order to active duty, the bill does not provide FMLI benefits for employees on this type of leave.

To qualify for benefits under the bill, a worker must notify the administrator and his or her employer, if applicable, of the need for FMLI benefits. The administrator must determine the notice's form and manner. If the administrator requests it, the worker must also provide a health care provider's certification as required under the FMLA law.

The bill allows a covered worker to receive benefits for intermittent leave, but limits the benefits to a minimum of four consecutive hours in any work week. If a worker takes benefits for at least four hours, but less than one week, the worker's hourly compensation must be determined on a pro rated basis at the administrator's discretion.

The bill allows covered workers to receive FMLI benefits concurrently with any employer-provided employment benefits as long as their total compensation while they are on leave does not exceed their regular compensation rate. Under the bill, no workers can receive FMLI benefits concurrently with unemployment compensation benefits or workers' compensation benefits.

Waiting Period (§ 2)

The bill prohibits covered workers from receiving FMLI benefits during the greater of the first 40 work hours or seven calendar days of leave in any 12-month period, unless the leave is for the birth or placement of the worker’s child. The bill specifies that a worker (1) may use employer-provided paid leave, such as accrued sick or vacation pay, during this waiting period and (2) is still entitled to the job and other protections provided by the state’s FMLA.

Complaints (§ 9)

The bill allows a covered worker aggrieved by a denial of benefits to file a complaint with the labor commissioner. The commissioner must investigate after receiving the complaint and make a finding about jurisdiction and whether a violation of the bill’s provisions on the program occurred.

If the commissioner finds that the agency has no jurisdiction or no violation occurred, he must dismiss the complaint and issue a release of jurisdiction that allows the complainant to bring a Superior Court civil action within 90 days after receiving the release. The employee (presumably, covered worker) may be awarded all appropriate relief, including any compensation or benefits to which he or she would have otherwise been eligible.

If the commissioner finds that a violation occurred, there must be a mandatory settlement conference. If there is no settlement, he must hold a hearing and subsequently send each party a written copy of his decision. He may award the worker all appropriate relief, including any compensation or benefits to which the worker would have otherwise been eligible. Any party aggrieved by the commissioner's decision may appeal to the Superior Court under the Uniform Administrative Procedure Act.

Anti-Fraud Provisions (§ 11)

Under the bill, anyone who willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact to obtain FMLI benefits is disqualified from receiving program benefits for two years after making the false statement or failing to report.

The administrator can also seek repayment of any benefits paid (1) erroneously, (2) due to willful misrepresentation, or (3) before a FMLI claim was rejected. In cases of willful misrepresentation, the administrator may also impose a penalty of up to 50% of the benefits paid due to the misrepresentation. The bill gives the administrator discretion to waive any repayments, in whole or in part, when they would be against equity and good conscience.

If benefits are paid to someone due to a health care provider's willful misrepresentation, the administrator must notify the labor commissioner and may impose on the health care provider a penalty of up to 50% of the benefits paid due to the misrepresentation. The administrator may waive any repayments, in whole or in part, when they would be against equity and good conscience.

The bill requires a health care provider to complete a medical certification for a patient's serious medical condition at the patient's request and with no charge.

§ 8 — PRIVATE PLAN OPTION

The bill allows an employer to apply to the administrator for approval to meet its obligations under the program through a private plan, which the administrator must evaluate in coordination with the Insurance Department.

To be approved, a private plan must (1) confer all of the same rights, protections, and benefits provided by the program; (2) impose no additional conditions or restrictions on using family or medical leave beyond those explicitly authorized in the bill's provisions about the program or regulations; and (3) cost employees no more that the cost charged to employees under the state program. The plan must also comply with the following provisions:

1. if the plan is self-insured, the employer must provide a surety bond to the state, from a surety company authorized to do business in the state as a surety, in a form as may be approved by the administrator, and in an amount as may be required by the department;

2. the plan must cover all eligible employees for the duration of their employment;

3. if the plan provides insurance, the policy forms must be issued by an approved insurer; and

4. the plan must be approved by a majority vote of the employer's employees.

The bill allows the administrator to withdraw approval for a private plan when the plan's terms or conditions have been violated. The causes for a plan's termination include failures to (1) pay benefits; (2) pay benefits timely and in a manner consistent with the public plan (presumably, the FMLI program); (3) maintain an adequate security deposit (the bill does not specify any requirements for a security deposit); (4) properly use private plan funds; (5) submit reports as required by regulations adopted by the administrator; or (6) comply with the bill's FMLI provisions, the regulations adopted for it, or both.

The bill allows a private plan's denial of benefits to be appealed to the administrator and Superior Court under the same complaint procedure established by the bill (see § 9 above).

§§ 3-5 & 20 — THE FMLI TRUST FUND

Trust Fund

The bill establishes the FMLI Trust Fund to provide FMLI benefits to covered workers taking leave under the FMLA or the family violence leave law, as amended by the bill. The trust's assets must be used for (1) FMLI benefits; (2) educating and informing people about the program; and (3) paying the trust's operational, administrative, and investment costs. It must be a non-lapsing fund held by the state treasurer separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the fund must become part of it.

The bill makes the trust an instrumentality of the state and requires it to perform essential government functions under the bill. It must receive and hold all payments and deposits or contributions intended for it, plus any gifts, bequests, and endowments; federal, state, or local grants; any other funds from a public or private source; and all earnings until disbursed under the bill's provisions.

Under the bill, the amounts deposited in the trust are not state property, and the trust must not be construed as a state department, institution, or agency. Amounts in the trust cannot be comingled with state funds, and the state must not have any claim to or against, or interest in, the funds. If the fund is terminated by law, however, any unclaimed funds become assets of the state.

Any contract or obligation made by the trust is not a state debt or obligation, and the state does not have any obligation to a designated beneficiary or any other person because of the trust. All debts owed by the trust are limited to the amounts available to pay the debt deposited in the trust. The trust must exist (1) as long as it holds any deposits or has any obligations and (2) until it is terminated by law.

The law for determining when property held by a fiduciary is presumed abandoned applies to the trust's property (CGS § 3-61a).

Thus, property in the trust is presumed abandoned unless, within seven years after it became payable or distributable, the owner has (1) increased or decreased the principal; (2) accepted payment of principal or income; (3) corresponded in writing with the fiduciary concerning the property; or (4) otherwise indicated an interest through a memorandum on file with the fiduciary.

State Treasurer's Duties

The bill makes the state treasurer responsible for receiving and investing money held by the trust. The trust can only receive cash deposits, and no depositor or designated beneficiary may direct the investments of any contributions or amounts in the trust other than the specific fund options the trust provides.

The bill requires the treasurer, on behalf of the FMLI Trust Fund and for its purposes, to:

1. invest the trust's funds in any instruments, obligations, securities, or property required under the bill;

2. procure insurance, if he deems it necessary, to protect the trust's property, assets, activities, deposits, or contributions; and

3. apply for, accept, and expend gifts, grants, or donations from public or private sources to carry out the trust's objectives.

The bill requires the treasurer to invest the trust's fund in a manner reasonable and appropriate to the trust's objectives, using the discretion and care of a reasonable person in similar circumstances with similar objectives. The treasurer must give due consideration to (1) rate of return; (2) risk; (3) term or maturity; (4) diversification of the trust's total portfolio; (5) liquidity; (6) projected disbursements and expenditures; and (7) expected payments, deposits, contributions, and gifts to be received.

The bill prohibits the treasurer from requiring the trust to invest directly in (1) any obligations of the state or its political subdivisions or (2) any other treasurer-administered investment or fund. The trust's assets must be continuously invested and reinvested in a manner consistent with the trust's objectives until they are disbursed under DOL's order or spent on the trust's operating expenses.

The bill places the treasurer's trust investments under the same oversight and requirements the law establishes for treasurer-administered funds, including the Teachers' Pension Fund, the State Employee Retirement Fund, and the Connecticut Municipal Employees' Retirement Fund.

§ 7 — FMLI PUBLIC EDUCATION CAMPAIGN

The bill requires the administrator, in consultation with the state treasurer, to conduct a public education campaign to inform the public and employers about the FMLI program. The campaign must at least include information about (1) the requirements for receiving benefits under the program and (2) how to apply for benefits and the circumstances under which benefits may be available. The bill allows DOL to use funds from the FMLI Trust Fund for the public education campaign. Information distributed or available under the campaign must be in English, Spanish, and any other language the department prescribes.

§ 10 — EMPLOYER NOTICE REQUIREMENT

Starting July 1, 2021, the bill requires employers to notify their employees at the time of hiring and every year thereafter:

1. of their entitlement to family and medical leave, as amended by the bill, and family violence leave, and the terms under which the leave may be used;

2. that employer retaliation against an employee for requesting, applying for, or using family medical leave for which an employee is eligible is prohibited;

3. that the employee can file a complaint with the labor commissioner for any violation of the FMLA or family violence leave law, as amended by the bill.

The bill also specifies that an employee claiming to be aggrieved in relation to a complaint filed with the labor commissioner may bring an action in Hartford Superior Court within one year after the alleged aggrievement occurred. (It appears that this provision conflicts with existing law, which similarly allows someone to appeal the commissioner's decision about a violation of the FMLA or family violence leave law, but does not require the case to be brought in Hartford or impose a deadline (CGS § 31-51pp(c)(2).)

The labor commissioner may adopt regulations to establish additional requirements about how employers must provide notice.

§ 12 — EXCEPTIONS

The bill specifies that nothing in its FMLI provisions or the state FMLA, as amended by the bill, (1) prevents employers from providing more expansive benefits; (2) diminishes any rights provided under a collective bargaining agreement; or (3) interferes with, impedes, or diminishes the right of any employee to collectively bargain for wages or working conditions that exceed the minimums established in the bill's FMLI program or the state FMLA.

§ 13 — REPORT REQUIREMENT

Beginning by July 1, 2022, the bill requires the labor commissioner to submit an annual report to the Labor and Appropriations committees and the Office of Policy and Management on:

1. the projected and actual participation in the program;
2. the balance in the trust;
3. the size of employers at which covered employees are employed;
4. the reasons why covered employees are receiving FMLI benefits;
5. the success of DOL's outreach and education efforts; and
6. demographic information on covered employees, including their gender, age, town of residence, and income level.

§§ 14-19 — CHANGES TO CURRENT FMLA

Starting on July 1, 2019, the bill makes several changes to the state's current unpaid FMLA that generally expand the law's coverage to require all private sector employers to provide job-protected unpaid leave to their employees.

Covered Employers & Employee Eligibility (§ 14)

Current law requires private-sector employers with at least 75 employees to provide eligible employees with unpaid FMLA leave. The bill reduces this employee threshold from 75 to one and removes a requirement that the number of an employer's employees be determined annually on October 1.

The bill specifies that covered employers also include any partnership, association, corporation, or business trust that uses independent contractors for more than 50% of its workforce (i.e., services by self-employed individuals for whom the employer must report payments on IRS Form 1099). (However, since the bill lowers the employee threshold to one, it appears that this provision has no legal effect.)

The bill brings currently exempted state employees and employees of a private or parochial elementary or secondary school under the law. (Since state employees also receive family and medical leave under a separate law (CGS § 5-248a), bringing them under the private-sector FMLA creates two parallel laws with conflicting provisions covering the same group of employees; see COMMENT.)

Under current law, private sector employees are eligible for leave once they work for their employer for at least 12 months and 1,000 work-hours. The bill instead makes employees eligible if they earned at least $2,325 from one or more employers during their highest earning quarter within the five most recently completed calendar quarters. (It is unclear how an employer would determine a new employee's earnings with previous employers to determine a new employee's eligibility for leave.)

Maximum Leave Duration (§ 15)

The bill changes the maximum amount of leave an employee may take from 16 weeks over a 24-month period to 12 weeks over a 12-month period. It also allows an additional two weeks of leave due to a serious health condition that occurs during pregnancy.

Uses of Leave for Family Members' Serious Health Conditions (§ 14)

Current law allows employees to take leave for their own serious health condition or to provide care when their children who are either under age 18 or unable to care for themselves, their spouses, or their parents (including step-parents and in-laws) have a serious health condition.

The bill expands the family members for whom an employee can take leave to include the employee's adult children, siblings, grandparents, and grandchildren. All of these family members include those related by adoption and through foster care. Siblings, grandparents, and grandchildren also include those related by marriage.

Military Caregiver Leave (§ 15)

The law allows employees covered by FMLA to take a one-time benefit of up to 26 weeks of unpaid leave when certain family members or "next of kin" in the armed forces undergo treatment for an injury or illness incurred in the line of duty. The bill allows the injured armed forces member to designate someone as their "next of kin" (thus, making him or her eligible for the leave and FMLI benefits) if their close association is the equivalent of a family member (presumably, this would be defined in regulation).

Health Care Providers (§ 14)

The bill exempts from the FMLA's definition of "health care provider" anyone the labor commissioner includes on a registry of providers who willfully misrepresented information to the administrator (the bill does not define an "administrator" under the FMLA, but presumably this refers to the FMLI program's administrator). In doing so, it makes those providers ineligible to certify an employee’s serious health condition or need for leave to care for another’s serious health condition (CGS §§ 31-51ll(f)(2) and 31-51mm(a)). It also makes any continuing outpatient treatment given by the provider ineligible to qualify as a serious health condition for which an employee may take leave (CGS § 31-51kk(10)).

Employer-provided Paid Leave (§§ 15 & 18)

Current law allows an employer to require employees to use their accrued employer-provided paid vacation, personal, family, medical, or sick leave during the time they are on FMLA leave. Employers can no longer require this under the bill. By law, unchanged by the bill, employees can opt to use their employer-provided paid leave while they are on FMLA leave.

Current law requires employers to allow their employees to use up to two weeks of their employer-provided paid sick leave for a parent’s, spouse's or child's serious health condition or the birth or adoption of a child. The bill expands this requirement to include serious health conditions of siblings, grandparents, grandchildren.

The bill also specifies that if an employer provides paid leave for less than 12 weeks, the additional weeks of leave needed to meet the bill’s requirements may be compensated through the bill’s FMLI program (however, it appears that this provision does not include a necessary conforming change).

Confidentiality (§ 17)

With certain exceptions, FMLA requires employers to keep records and documents related to their employees' medical histories and medical certifications as confidential medical records under the state's Personnel Files Act. The bill extends this requirement to include the same records related to providing FMLI benefits.

The bill also expands the exceptions to the confidentiality requirement to allow the administrator to maintain a record of employees who take leave to care for a family member and the family members' identities, to ensure the program's integrity. (The bill does not define a "program" or "administrator" under FMLA; but, presumably, these refer to the FMLI program and its administrator.)

FMLA Complaints (§ 18)

The bill expands FMLA's current complaint process to mirror the bill's complaint process under the FMLI program. As under current law, an employee aggrieved by a violation of FMLA may file a complaint with the labor commissioner. Current law requires the commissioner to hold a hearing on the complaint, but the bill instead requires him to first investigate and make a finding about jurisdiction and whether a violation occurred. If the commissioner finds that the agency (presumably, DOL) has no jurisdiction or no violation occurred, he must dismiss the complaint and issue a release of jurisdiction that allows the complainant to bring a civil action in Superior Court within 90 days after receiving the release. The employee may be awarded all appropriate relief, including any compensation or benefits to which he or she would have otherwise been eligible.

If the commissioner finds that a violation of FMLA occurred, there must be a mandatory settlement conference. If there is no settlement, he must hold a hearing as current law requires and subsequently send each party a written copy of his decision. As under current law, he may award the worker all appropriate relief, although the bill specifies that this may include attorney's fees. Any party aggrieved by the commissioner's decision may appeal to the Superior Court under the Uniform Administrative Procedure Act.

BACKGROUND

Related Bills

sSB 1 and sHB 5003, reported favorably by the Labor and Public Employees Committee, also establish an FMLI program and expand the current FMLA (the two bills are identical). The differences between those two bills and this bill include different provisions on, among other things: covered public employees; the extent of self-employed and sole proprietor participation; program implementation dates;

contribution rate adjustments; benefit calculations; and start-up cost funding.

COMMENT

Conflicting Provisions

The bill brings state employees under the private sector FMLA, but since state employees also receive family and medical leave under CGS § 5-248a, doing so creates two parallel laws with conflicting provisions covering the same group of employees. This creates the following conflicting provisions:

1. Eligibility: under CGS § 5-248a a state employee is eligible for leave if he or she is a permanent employee, as defined in statute. However, the private sector FMLA, as amended by the bill, requires an employee to have earned at least $2,325 from one or more employers during their highest earning quarter within their base period.

2. Leave duration: the state employee family and medical leave law provides up to 24 weeks of leave over a 24 month period, but the private sector FMLA, as amended by the bill, provides up to 12 weeks of leave over a 12 month period.

3. Leave for parents-in-law: the current private sector FMLA law allows an eligible employee to take leave for a parent in-law. The state employee family medical leave law, however, does not allow leave for a parent in-law.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable
Yea 9 Nay 4 (03/21/2019)