



Senate

General Assembly

File No. 525

January Session, 2019

Substitute Senate Bill No. 881

Senate, April 8, 2019

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A PAID FAMILY AND MEDICAL LEAVE PROGRAM.

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

1 Section 1. (NEW) (*Effective from passage*) As used in this section and
2 sections 2 to 13, inclusive, of this act:

3 (1) "Covered worker" means an individual who (A) (i) has earned
4 not less than two thousand three hundred twenty-five dollars from one
5 or more employers during the employee's highest earning quarter
6 within the base period, and (ii) is employed by an employer or not
7 currently employed, (B) is a self-employed individual or sole
8 proprietor who has earned not less than two thousand three hundred
9 twenty-five dollars during the worker's highest earning quarter within
10 the base period, or (C) is a member of a collective bargaining unit that
11 has negotiated inclusion in the program, in accordance with chapter 68
12 of the general statutes or sections 7-467 to 7-477, inclusive, of the
13 general statutes;

14 (2) "Administrator" means the Labor Department or such quasi-
15 public agency, as defined in section 1-120 of the general statutes, as the
16 Labor Commissioner may designate;

17 (3) "Employ" means to allow or permit to work;

18 (4) "Employee" means an individual engaged in service to an
19 employer in this state in the business of the employer and includes a
20 self-employed individual or sole proprietor in the state;

21 (5) "Employer" means a person engaged in any activity, enterprise
22 or business who employs one or more employees, and includes any
23 person who acts, directly or indirectly, in the interest of an employer to
24 any of the employees of such employer and any successor in interest of
25 an employer. "Employer" does not include the state, or a municipality,
26 or a local or regional board of education, except when a collective
27 bargaining unit negotiates inclusion of the members of that collective
28 bargaining unit in the program, in accordance with chapter 68 of the
29 general statutes or sections 7-467 to 7-477, inclusive, of the general
30 statutes;

31 (6) "Family and medical leave compensation" or "compensation"
32 means the paid leave provided to covered workers from the Family
33 and Medical Leave Insurance Trust Fund;

34 (7) "Family and Medical Leave Insurance Program" or "program"
35 means the program established in section 2 of this act;

36 (8) "Family and Medical Leave Insurance Trust Fund" or "trust"
37 means the trust fund established in section 3 of this act;

38 (9) "Person" means one or more individuals, partnerships,
39 associations, corporations, limited liability companies, business trusts,
40 legal representatives or any organized group of persons;

41 (10) "Base period" means the first four of the five most recently
42 worked quarters; and

43 (11) "Base weekly earnings" means an amount equal to one twenty-
44 sixth, rounded to the next lower dollar, of the average of a worker's
45 total wages, as defined in subsection (b) of section 31-222 of the general
46 statutes, paid during the two quarters of the worker's base period in
47 which such wages were highest.

48 Sec. 2. (NEW) (*Effective from passage*) (a) There is established a
49 Family and Medical Leave Insurance Program. The program shall be
50 administered by the administrator and shall offer up to twelve
51 workweeks of family and medical leave compensation to covered
52 workers during any twelve-month period. The program shall offer two
53 additional weeks of family and medical leave compensation to a
54 covered worker for a serious health condition that occurs during a
55 pregnancy.

56 (b) On or before October 1, 2020, the administrator shall begin
57 collecting contributions to the Family and Medical Leave Insurance
58 Trust Fund, established in section 3 of this act and, on and after
59 January 1, 2022, shall begin to provide compensation to covered
60 workers. For the purposes of this section and sections 3 to 13, inclusive,
61 of this act, the administrator shall have the power to (1) determine
62 whether an individual meets the requirements for compensation under
63 this section; (2) require a covered worker's claim for compensation
64 pursuant to this section be supported by certification pursuant to
65 section 31-51mm of the general statutes, as amended by this act, and
66 subsection (d) of section 31-51ss of the general statutes; (3) examine, or
67 cause to be produced or examined, any books, records, documents,
68 contracts or other papers relevant to the eligibility of a covered worker;
69 (4) summon and examine under oath such witnesses as may provide
70 information relevant to a covered worker's claim for family and
71 medical leave compensation; (5) establish procedures and forms for the
72 filing of claims for compensation, including the certification required
73 for establishing eligibility for such compensation; and (6) ensure the
74 confidentiality of records and documents relating to medical
75 certifications, recertifications or medical histories of covered workers
76 or covered workers' family members pursuant to section 31-51oo of the

77 general statutes, as amended by this act.

78 (c) (1) Beginning on or before October 1, 2020, each employee shall
79 contribute one-half of one per cent of his or her weekly earnings to the
80 Family and Medical Leave Insurance Trust Fund, in a manner and
81 form prescribed by the administrator pursuant to section 6 of this act.

82 (2) On September 1, 2022, and on each September first thereafter, the
83 administrator shall publish the following information: (A) The total
84 amount of benefits paid by the administrator during the previous fiscal
85 year, as well as the total amount required for the administration of the
86 Family and Medical Leave Insurance Program in such year; (B) the
87 total amount remaining in the trust fund at the close of such fiscal year;
88 (C) the total amount equal to one hundred forty per cent of the
89 previous fiscal year's expenditure for benefits paid and for the
90 administration of the Family and Medical Leave Insurance Program;
91 (D) the amount by which the total amount remaining in the trust fund
92 at the close of the previous fiscal year is less than or greater than one
93 hundred forty per cent of the previous fiscal year's expenditure for
94 benefits paid and for the administration of the Family and Medical
95 Leave Insurance Program. On November 1, 2022, and on each
96 November first thereafter, the Labor Commissioner shall announce a
97 revision to the contribution rate set forth in subdivision (1) of this
98 subsection to ensure that the trust fund shall maintain or achieve an
99 annualized amount of not less than one hundred forty per cent of the
100 previous fiscal year's expenditure for benefits paid and for the
101 administration of the Family and Medical Leave Insurance Program.
102 Effective on January first of the calendar year following each such
103 announcement, the revised contribution rate announced by the Labor
104 Commissioner under this subsection shall supersede the rate
105 previously set forth in subdivision (1) of this subsection or established
106 in accordance with this subsection.

107 (3) The amount of earnings subject to contributions for a given year
108 shall not exceed the Social Security contribution and benefit base, as
109 determined pursuant to 42 USC 430, as amended from time to time,

110 and shall be utilized to provide compensation to covered workers
111 pursuant to this subsection and subsections (d) to (f), inclusive, of this
112 section.

113 (4) Notwithstanding section 31-71e of the general statutes, an
114 employer may withhold or divert the portion of an employee's wages
115 that corresponds to the contribution rate established pursuant to this
116 subsection for the purpose of remitting such wages to the Family and
117 Medical Leave Insurance Trust Fund.

118 (5) If, after notice, an employee or employer fails to make a payment
119 required by this section, a state collection agency, as defined in section
120 12-35 of the general statutes, shall collect such contribution and interest
121 by any means provided in sections 12-35, 31-265 and 31-266 of the
122 general statutes.

123 (d) The weekly compensation offered to covered workers shall be
124 equal to ninety per cent of a covered worker's base weekly earnings up
125 to an amount equal to forty times the minimum fair wage, as defined
126 in section 31-58 of the general statutes, and sixty-seven per cent of that
127 worker's base weekly earnings above an amount equal to forty times
128 the minimum fair wage, except that the weekly compensation shall not
129 exceed an amount equal to sixty times the minimum fair wage. If the
130 Internal Revenue Service determines that family and medical leave
131 compensation is subject to federal income tax and a covered worker
132 elects to have federal income tax deducted and withheld from his or
133 her compensation, the administrator shall deduct and withhold the
134 amount specified in the United States Internal Revenue Code in a
135 manner consistent with state law.

136 (e) A covered worker shall receive compensation under this section
137 for leave taken for one or more of the reasons listed in subparagraphs
138 (A) to (E), inclusive, of subdivision (2) of subsection (a) of section 31-
139 51ll of the general statutes, as amended by this act, or the reasons listed
140 in subsection (i) of said section or section 31-51ss of the general
141 statutes, if such covered worker (1) provides notice to the
142 administrator, and such covered worker's employer, if applicable, of

143 the need for such compensation in a form and a manner as prescribed
144 by the administrator, and (2) upon the request of the administrator,
145 provides certification of such covered worker's need for compensation
146 in accordance with the provisions of section 31-51mm of the general
147 statutes, as amended by this act, to the administrator and such
148 employer, if applicable.

149 (f) A covered worker may receive compensation under this section
150 for intermittent leave, provided such leave shall not be less than four
151 consecutive hours of leave in any workweek. If family and medical
152 leave benefits are taken for four hours or more, but for less than one
153 full week, such hourly compensation shall be determined on a pro rata
154 basis at the discretion of the administrator.

155 (g) A covered worker may receive compensation under this section
156 concurrently with any employer-provided employment benefits,
157 provided the total compensation of such covered worker during such
158 period of leave shall not exceed such covered worker's regular rate of
159 compensation.

160 (h) No covered worker shall receive compensation under this
161 section concurrently with compensation under chapter 567 or 568 of
162 the general statutes or any other state or federal program that provides
163 wage replacement.

164 (i) No covered worker shall receive compensation under this section
165 during the greater of the first forty work hours or seven calendar days
166 of such leave in any twelve-month period, unless taken upon the birth
167 of a son or daughter of the covered worker or upon the placement of a
168 son or daughter with the covered worker for adoption or foster care;
169 except that a covered worker may utilize accrued sick or vacation pay
170 or other paid leave provided under an employer policy during the first
171 forty work hours or seven calendar days of such leave. Covered
172 workers taking family or medical leave for which benefits are not
173 payable under this subsection shall be entitled to the protections of
174 section 31-51nn of the general statutes.

175 (j) Any moneys expended from the General Fund for the purpose of
176 administering the Family and Medical Leave Insurance Program, or
177 providing compensation to covered workers, shall be reimbursed to
178 the General Fund by the administrator over a period established by the
179 administrator.

180 Sec. 3. (NEW) (*Effective from passage*) (a) There is established a fund
181 to be known as the "Family and Medical Leave Insurance Trust Fund"
182 for the purpose of providing family and medical leave compensation
183 to covered workers. The Family and Medical Leave Insurance Trust
184 Fund shall be a nonlapsing fund held by the State Treasurer separate
185 and apart from all other moneys, funds and accounts. Investment
186 earnings credited to the trust shall become part of the trust.

187 (b) The trust shall constitute an instrumentality of the state and shall
188 perform essential governmental functions in accordance with the
189 provisions of this section. The trust shall receive and hold all payments
190 and deposits and premiums intended for the trust, as well as gifts,
191 bequests, endowments or federal, state or local grants and any other
192 funds from any public or private source and all earnings until
193 disbursed in accordance with the provisions of this section.

194 (c) The amounts on deposit in the trust shall not constitute property
195 of the state and the trust shall not be construed to be a department,
196 institution or agency of the state. Amounts on deposit in the trust shall
197 not be commingled with state funds and the state shall have no claim
198 to or against, or interest in, such funds. Any contract entered into by or
199 any obligation of the trust shall not constitute a debt or obligation of
200 the state and the state shall have no obligation to any designated
201 beneficiary or any other person on account of the trust and all amounts
202 obligated to be paid from the trust shall be limited to amounts
203 available for such obligation on deposit in the trust. The trust shall
204 continue in existence as long as it holds any deposits or has any
205 obligations and until its existence is terminated by law and upon
206 termination any unclaimed assets shall return to the state. Property of
207 the trust shall be governed by section 3-61a of the general statutes.

208 (d) The State Treasurer shall be responsible for the receipt and
209 investment of moneys held by the trust. The trust shall not receive
210 deposits in any form other than cash. No depositor or designated
211 beneficiary may direct the investment of any contributions or amounts
212 held in the trust other than the specific fund options provided for by
213 the trust.

214 (e) The assets of the trust shall be used for the purpose of (1)
215 distributing family and medical leave compensation to covered
216 workers, (2) educating and informing persons about the program, and
217 (3) paying the operational, administrative and investment costs of the
218 trust, including those incurred pursuant to section 6 of this act.

219 Sec. 4. (NEW) (*Effective from passage*) The State Treasurer, on behalf
220 of the Family and Medical Leave Insurance Trust Fund and for
221 purposes of the trust, shall:

222 (1) Receive and invest moneys in the trust in any instruments,
223 obligations, securities or property in accordance with sections 3 and 5
224 of this act;

225 (2) Procure insurance as the State Treasurer deems necessary to
226 protect the trust's property, assets, activities or deposits or
227 contributions to the trust; and

228 (3) Apply for, accept and expend gifts, grants or donations from
229 public or private sources to carry out the objectives of the trust.

230 Sec. 5. (NEW) (*Effective from passage*) The State Treasurer shall invest
231 the amounts on deposit in the Family and Medical Leave Insurance
232 Trust Fund in a manner reasonable and appropriate to achieve the
233 objectives of the trust, exercising the discretion and care of a prudent
234 person in similar circumstances with similar objectives. The State
235 Treasurer shall give due consideration to rate of return, risk, term or
236 maturity, diversification of the total portfolio within the trust,
237 liquidity, the projected disbursements and expenditures and the
238 expected payments, deposits, contributions and gifts to be received.

239 The State Treasurer shall not require the trust to invest directly in
240 obligations of the state or any political subdivision of the state or in
241 any investment or other fund administered by the State Treasurer. The
242 assets of the trust shall be continuously invested and reinvested in a
243 manner consistent with the objectives of the trust until disbursed upon
244 order of the administrator or expended on expenses incurred by the
245 operations of the trust.

246 Sec. 6. (NEW) (*Effective from passage*) The administrator, in
247 consultation with the State Treasurer and the Department of Revenue
248 Services, shall establish the procedures necessary to implement the
249 Family and Medical Leave Insurance Program. The administrator
250 shall:

251 (1) Design, establish and operate the program to ensure
252 transparency in the management of the program and the Family and
253 Medical Leave Insurance Trust Fund through oversight and ethics
254 review of plan fiduciaries;

255 (2) Design and establish the process by which employees shall
256 contribute a portion of their salary or wages to the trust;

257 (3) Evaluate and establish the process by which employers may
258 credit employee premiums to the trust through payroll deposit;

259 (4) Ensure that contributions to the trust collected from employees
260 shall not be used for any purpose other than to provide compensation
261 to covered workers or to satisfy any expenses, including employee
262 costs, incurred to implement, maintain, advertise and administer the
263 program;

264 (5) Establish and maintain a secure Internet web site that displays all
265 public notices issued by the administrator and such other information
266 as the administrator deems relevant and necessary for the
267 implementation of the program and for the education of the public
268 regarding the program; and

269 (6) Not later than January 1, 2020, submit a report, in accordance

270 with the provisions of section 11-4a of the general statutes, to the joint
271 standing committee of the General Assembly having cognizance of
272 matters relating to labor regarding any recommendations for
273 legislative action that may be necessary for the implementation or
274 administration of the program.

275 Sec. 7. (NEW) (*Effective January 1, 2020*) The administrator, in
276 consultation with the State Treasurer, shall conduct a public education
277 campaign to inform individuals and employers about the Family and
278 Medical Leave Insurance Program. Such campaign shall include, but
279 not be limited to, information about (1) the requirements for receiving
280 family and medical leave compensation, (2) how to apply for such
281 compensation, and (3) the circumstances for which such compensation
282 may be available. The administrator may use funds contributed to the
283 Family and Medical Leave Insurance Trust Fund for purposes of the
284 public education campaign. Information distributed or made available
285 under the campaign shall be available in English and Spanish and in
286 any other language as prescribed by the administrator.

287 Sec. 8. (NEW) (*Effective from passage*) (a) (1) Employers may apply to
288 the administrator for approval to meet their obligations under sections
289 1 to 13, inclusive, of this act through a private plan, which the
290 administrator shall evaluate in coordination with the Insurance
291 Department. To be approved as meeting an employer's obligations
292 under sections 1 to 13, inclusive, of this act, a private plan shall confer
293 all of the same rights, protections and benefits provided to employees
294 under sections 1 to 13, inclusive, of this act, impose no additional
295 conditions or restriction on the use of family or medical leave beyond
296 those explicitly authorized by said sections or by regulations issued
297 pursuant to section 31-51qq of the general statutes, as amended by this
298 act, and cost employees no more than the cost charged to employees
299 under the state program.

300 (2) In order to be approved as meeting an employer's obligations
301 under sections 1 to 13, inclusive, of this act, a private plan shall also
302 comply with the following provisions: (A) If the private plan is in the

303 form of self-insurance, the employer shall furnish a bond running to
304 the state, with a surety company authorized to transact business in the
305 state as surety, in such form as may be approved by the administrator
306 and in such amount as may be required by the department; (B) the
307 plan shall provide coverage for all eligible employees throughout their
308 period of employment; (C) if the plan provides for insurance, the forms
309 of the policy shall be issued by an approved insurer; and (D) the plan
310 shall have been approved by a majority vote of the employer's
311 employees.

312 (b) The administrator may withdraw approval for a private plan
313 granted under subsection (a) of this section when terms or conditions
314 of the plan have been violated. Causes for plan termination include,
315 but shall not be limited to, the following: (1) Failure to pay benefits; (2)
316 failure to pay benefits timely and in a manner consistent with the
317 public plan; (3) failure to maintain an adequate security deposit; (4)
318 misuse of private plan funds; (5) failure to submit reports as required
319 by regulations adopted by the administrator; or (6) failure to comply
320 with sections 1 to 13, inclusive, of this act or the regulations adopted
321 hereunder or both.

322 (c) An employee covered by a private plan approved under this
323 section shall retain all applicable rights under sections 31-51kk to 31-
324 51qq, inclusive, of the general statutes, as amended by this act.

325 (d) A denial of family or medical leave benefits by a private plan
326 shall be subject to appeal before the administrator and Superior Court
327 as provided by section 9 of this act.

328 Sec. 9. (NEW) (*Effective from passage*) Any covered worker aggrieved
329 by a denial of compensation under the Family and Medical Leave
330 Insurance Program may file a complaint with the commissioner. Upon
331 receipt of any such complaint, the commissioner shall conduct an
332 investigation and make a finding regarding jurisdiction and whether a
333 violation of sections 1 to 13, inclusive, of this act, has occurred. If the
334 commissioner makes a finding that the agency has no jurisdiction or
335 that no violation of such sections has occurred, the commissioner shall

336 dismiss the complaint and issue a release of jurisdiction allowing the
337 complainant to bring a civil action in Superior Court. Any action
338 brought by the complainant in accordance with this subsection shall be
339 brought not later than ninety days after the date of the receipt of the
340 release from the commissioner. The employee may be awarded all
341 appropriate relief, including any compensation or benefits to which the
342 covered worker otherwise would have been eligible if such denial had
343 not occurred. If the commissioner makes a finding that a violation of
344 sections 1 to 13, inclusive, of this act, has occurred, there shall be a
345 mandatory settlement conference and, in the absence of a settlement,
346 the commissioner shall hold a hearing. After the hearing, the
347 commissioner shall send each party a written copy of the
348 commissioner's decision. The commissioner may award the covered
349 worker all appropriate relief, including any compensation or benefits
350 to which the covered worker otherwise would have been eligible if
351 such denial had not occurred. Any party aggrieved by the decision of
352 the commissioner may appeal the decision to the Superior Court in
353 accordance with the provisions of chapter 54 of the general statutes.

354 Sec. 10. (NEW) (*Effective July 1, 2021*) Each employer shall, at the
355 time of hiring, and annually thereafter, provide notice to each of the
356 employer's employees (1) of the entitlement to family and medical
357 leave under sections 31-51kk to 31-51qq, inclusive, of the general
358 statutes, as amended by this act, and 31-51ss of the general statutes
359 and the terms under which such leave may be used, (2) that retaliation
360 by the employer against the employee for requesting, applying for or
361 using family and medical leave for which the employee is eligible is
362 prohibited, and (3) that the employee has a right to file a complaint
363 with the Labor Commissioner for any violation of said sections. An
364 employee claiming to be aggrieved in relation to such a complaint filed
365 with the Labor Commissioner may bring an action in the superior
366 court for the judicial district of Hartford within one year from the date
367 of the alleged grievement. The Labor Commissioner may adopt
368 regulations, in accordance with chapter 54 of the general statutes, to
369 establish additional requirements concerning the means by which
370 employers shall provide such notice.

371 Sec. 11. (NEW) (*Effective from passage*) (a) Any individual or covered
372 worker participating in the program who wilfully makes a false
373 statement or misrepresentation regarding a material fact, or wilfully
374 fails to report a material fact, to obtain family and medical leave
375 compensation shall be disqualified from receiving any compensation
376 under the program for two years after making such false statement or
377 misrepresentation or failing to report such material fact.

378 (b) If family and medical leave compensation is paid to an
379 individual or covered worker erroneously or as a result of wilful
380 misrepresentation by such individual or covered worker, or if a claim
381 for family and medical leave compensation is rejected after
382 compensation is paid, the administrator may seek repayment of
383 benefits from the individual or covered worker having received such
384 compensation and may also, in the case of wilful misrepresentation,
385 seek payment of a penalty in the amount of fifty per cent of the
386 benefits paid as a result of such misrepresentation. The administrator
387 may, in his or her discretion, waive, in whole or in part, the amount of
388 any such payments where the recovery would be against equity and
389 good conscience.

390 (c) If family and medical leave compensation is paid to an
391 individual or covered worker as a result of wilful misrepresentation by
392 any health care provider, as defined in section 31-51kk of the general
393 statutes, as amended by this act, the administrator shall notify the
394 Labor Commissioner and may seek payment of a penalty from such
395 health care provider in the amount of fifty per cent of the benefits paid
396 as a result of such misrepresentation. The administrator may, in his or
397 her discretion, waive, in whole or in part, the amount of any such
398 payments where the recovery would be against equity and good
399 conscience.

400 (d) A health care provider shall complete a medical certification of a
401 patient's serious medical condition at the request of the patient. No
402 health care provider shall charge a patient a fee for such service.

403 Sec. 12. (NEW) (*Effective from passage*) Nothing in sections 31-51kk to

404 31-51qq, inclusive, of the general statutes, as amended by this act, and
405 31-51ss of the general statutes or sections 2 to 13, inclusive, of this act,
406 shall be construed to (1) prevent employers from providing any
407 benefits that are more expansive than those provided for under said
408 sections, (2) diminish any rights provided to any covered worker
409 under the terms of the covered worker's employment or a collective
410 bargaining agreement, or (3) interfere with, impede or in any way
411 diminish the right of an employee to bargain collectively with his or
412 her employer through a representative of his or her choosing, in order
413 to establish wages or conditions of work in excess of the applicable
414 minimum pursuant to sections 3-13c of the general statutes, as
415 amended by this act, 31-51kk to 31-51mm, inclusive, of the general
416 statutes, as amended by this act, 31-51oo to 31-51qq, inclusive, of the
417 general statutes, as amended by this act, and sections 1 to 13, inclusive,
418 of this act.

419 Sec. 13. (*Effective from passage*) Not later than July 1, 2022, and
420 annually thereafter, the administrator shall report, in accordance with
421 section 11-4a of the general statutes, to the joint standing committees of
422 the General Assembly having cognizance of matters relating to
423 appropriations and the budgets of state agencies and labor, and to the
424 Office of Policy and Management, on (1) the projected and actual
425 participation in the program, (2) the balance of the trust, (3) the size of
426 employers at which covered workers are employed, (4) the reasons
427 covered workers are receiving family and medical leave compensation,
428 (5) the success of the administrator's outreach and education efforts,
429 and (6) demographic information of covered workers, including
430 gender, age, town of residence and income level.

431 Sec. 14. Section 31-51kk of the general statutes is repealed and the
432 following is substituted in lieu thereof (*Effective July 1, 2019*):

433 As used in sections 31-51kk to 31-51qq, inclusive, as amended by
434 this act:

435 (1) "Eligible employee" means an employee who has [been
436 employed (A) for at least twelve months by the employer with respect

437 to whom leave is requested; and (B) for at least one thousand hours of
438 service with such employer during the twelve-month period preceding
439 the first day of the leave] earned not less than two thousand three
440 hundred twenty-five dollars from one or more employers during the
441 employee's highest earning quarter within the base period, as defined
442 in section 1 of this act;

443 (2) "Employ" includes to allow or permit to work;

444 (3) "Employee" means any person engaged in service to an employer
445 in the business of the employer;

446 (4) "Employer" means a person engaged in any activity, enterprise
447 or business who employs [seventy-five] one or more employees, and
448 includes any person who acts, directly or indirectly, in the interest of
449 an employer to any of the employees of such employer and any
450 successor in interest of an employer, [but] as well as any partnership,
451 association, corporation, or business trust that contracts with self-
452 employed individuals for services and is required to report the
453 payment for services to such individuals on IRS Form 1099-MISC for
454 more than fifty per cent of its workforce, and shall not include [the
455 state,] a municipality [,] or a local or regional board of education; [, or a
456 private or parochial elementary or secondary school. The number of
457 employees of an employer shall be determined on October first
458 annually;]

459 (5) "Employment benefits" means all benefits provided or made
460 available to employees by an employer, including group life insurance,
461 health insurance, disability insurance, sick leave, annual leave,
462 educational benefits and pensions, regardless of whether such benefits
463 are provided by practice or written policy of an employer or through
464 an "employee benefit plan", as defined in Section 1002(3) of Title 29 of
465 the United States Code;

466 (6) "Grandchild" means a grandchild related to a person by (A)
467 blood, (B) marriage, (C) adoption by a child of the grandparent, or (D)
468 foster care by a child of the grandparent;

469 (7) "Grandparent" means a grandparent related to a person by (A)
470 blood, (B) marriage, (C) adoption of a minor child by a child of the
471 grandparent, or (D) foster care by a child of the grandparent;

472 [(6)] (8) "Health care provider" means (A) a doctor of medicine or
473 osteopathy who is authorized to practice medicine or surgery by the
474 state in which the doctor practices; (B) a podiatrist, dentist,
475 psychologist, optometrist or chiropractor authorized to practice by the
476 state in which such person practices and performs within the scope of
477 the authorized practice; (C) an advanced practice registered nurse,
478 nurse practitioner, nurse midwife or clinical social worker authorized
479 to practice by the state in which such person practices and performs
480 within the scope of the authorized practice; (D) Christian Science
481 practitioners listed with the First Church of Christ, Scientist in Boston,
482 Massachusetts; (E) any health care provider from whom an employer
483 or a group health plan's benefits manager will accept certification of
484 the existence of a serious health condition to substantiate a claim for
485 benefits; (F) a health care provider as defined in subparagraphs (A) to
486 (E), inclusive, of this subdivision who practices in a country other than
487 the United States, who is licensed to practice in accordance with the
488 laws and regulations of that country; or (G) such other health care
489 provider as the Labor Commissioner determines, performing within
490 the scope of the authorized practice, except that "health care provider"
491 does not mean any such person included by the commissioner on any
492 registry of providers who has wilfully misrepresented information to
493 the administrator. The commissioner may utilize any determinations
494 made pursuant to chapter 568;

495 [(7)] (9) "Parent" means a biological parent, foster parent, adoptive
496 parent, stepparent, parent-in-law or legal guardian of an eligible
497 employee or an eligible employee's spouse, [or] an individual [who
498 stood] standing in loco parentis to an eligible employee, [when the
499 employee was a son or daughter] or an individual who stood in loco
500 parentis to an eligible employee when the employee was a child;

501 [(8)] (10) "Person" means one or more individuals, partnerships,

502 associations, corporations, business trusts, legal representatives or
503 organized groups of persons;

504 [(9)] (11) "Reduced leave schedule" means a leave schedule that
505 reduces the usual number of hours per workweek, or hours per
506 workday, of an employee;

507 [(10)] (12) "Serious health condition" means an illness, injury,
508 impairment, or physical or mental condition that involves (A) inpatient
509 care in a hospital, hospice, nursing home or residential medical care
510 facility; or (B) continuing treatment, including outpatient treatment, by
511 a health care provider;

512 (13) "Sibling" means a brother or sister related to a person by (A)
513 blood, (B) marriage, (C) adoption by a parent of the person, or (D)
514 foster care placement;

515 [(11)] (14) "Son or daughter" means a biological, adopted or foster
516 child, stepchild, legal ward, or, in the alternative, a child of a person
517 standing in loco parentis, [who is (A) under eighteen years of age; or
518 (B) eighteen years of age or older and incapable of self-care because of
519 a mental or physical disability] or an individual to whom the employee
520 stood in loco parentis when the individual was a child; [and]

521 [(12)] (15) "Spouse" means a [husband or wife, as the case may be.]
522 person to whom one is legally married; and

523 (16) "Family member" means a spouse, sibling, son or daughter,
524 grandparent, grandchild or parent.

525 Sec. 15. Section 31-51ll of the general statutes is repealed and the
526 following is substituted in lieu thereof (*Effective July 1, 2019*):

527 (a) (1) Subject to section 31-51mm, as amended by this act, an
528 eligible employee shall be entitled to a total of [sixteen] twelve
529 workweeks of leave during any [twenty-four-month] twelve-month
530 period, such [twenty-four-month] twelve-month period to be
531 determined utilizing any one of the following methods: (A)

532 [Consecutive] A calendar [years] year; (B) any fixed [twenty-four-
533 month] twelve-month period, such as [two] a consecutive fiscal [years]
534 year or a [twenty-four-month] twelve-month period measured forward
535 from an employee's first date of employment; (C) a [twenty-four-
536 month] twelve-month period measured forward from an employee's
537 first day of leave taken under sections 31-51kk to 31-51qq, inclusive, as
538 amended by this act; or (D) a rolling [twenty-four-month] twelve-
539 month period measured backward from an employee's first day of
540 leave taken under sections 31-51kk to 31-51qq, inclusive, as amended
541 by this act. Such employee may take up to two additional weeks of
542 leave due to a serious health condition that results from a pregnancy.

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

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

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

548 (C) In order to care for [the spouse, or a son, daughter or parent of
549 the employee, if such spouse, son, daughter or parent has] a family
550 member with a serious health condition;

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

552 (E) In order to serve as an organ or bone marrow donor; or

553 (F) Because of any qualifying exigency, as determined in regulations
554 adopted by the United States Secretary of Labor, arising out of the fact
555 that the spouse, son, daughter or parent of the employee is on active
556 duty, or has been notified of an impending call or order to active duty,
557 in the armed forces, as defined in subsection (a) of section 27-103.

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

562 (c) (1) Leave under subparagraph (A) or (B) of subdivision (2) of
563 subsection (a) of this section for the birth or placement of a son or
564 daughter may not be taken by an employee intermittently or on a
565 reduced leave schedule unless the employee and the employer agree
566 otherwise. Subject to subdivision (2) of this subsection concerning an
567 alternative position, subdivision (2) of subsection (f) of this section
568 concerning the duties of the employee and subdivision (5) of
569 subsection (b) of section 31-51mm, as amended by this act, concerning
570 sufficient certification, leave under subparagraph (C) or (D) of
571 subdivision (2) of subsection (a) or under subsection (i) of this section
572 for a serious health condition may be taken intermittently or on a
573 reduced leave schedule when medically necessary. The taking of leave
574 intermittently or on a reduced leave schedule pursuant to this
575 subsection shall not result in a reduction of the total amount of leave to
576 which the employee is entitled under subsection (a) of this section
577 beyond the amount of leave actually taken.

578 (2) If an employee requests intermittent leave or leave on a reduced
579 leave schedule under subparagraph (C), (D) or (E) of subdivision (2) of
580 subsection (a) or under subsection (i) of this section that is foreseeable
581 based on planned medical treatment, the employer may require the
582 employee to transfer temporarily to an available alternative position
583 offered by the employer for which the employee is qualified and that
584 (A) has equivalent pay and benefits, and (B) better accommodates
585 recurring periods of leave than the regular employment position of the
586 employee, provided the exercise of this authority shall not conflict
587 with any provision of a collective bargaining agreement between such
588 employer and a labor organization which is the collective bargaining
589 representative of the unit of which the employee is a part.

590 (d) Except as provided in subsection (e) of this section, leave
591 granted under subsection (a) of this section may consist of unpaid
592 leave.

593 (e) (1) If an employer provides paid leave for fewer than [sixteen]
594 twelve workweeks, the additional weeks of leave necessary to attain

595 the sixteen workweeks of leave required under sections 5-248a and 31-
596 51kk to 31-51qq, inclusive, as amended by this act, may be provided
597 [without compensation] with compensation, through the Family and
598 Medical Leave Insurance Program established pursuant to section 2 of
599 this act.

600 (2) (A) An eligible employee may elect [, or an employer may
601 require the employee,] to substitute any of the accrued paid vacation
602 leave, personal leave or family leave of the employee for leave
603 provided under subparagraph (A), (B) or (C) of subdivision (2) of
604 subsection (a) of this section for any part of the [sixteen-week] twelve-
605 week period of such leave under said subsection or under subsection
606 (i) of this section for any part of the twenty-six-week period of such
607 leave.

608 (B) An eligible employee may elect [, or an employer may require
609 the employee,] to substitute any of the accrued paid vacation leave,
610 personal leave, or medical or sick leave of the employee for leave
611 provided under subparagraph (C), (D) or (E) of subdivision (2) of
612 subsection (a) of this section for any part of the [sixteen-week] twelve-
613 week period of such leave under said subsection or under subsection
614 (i) of this section for any part of the twenty-six-week period of leave,
615 except that nothing in section 5-248a or sections 31-51kk to 31-51qq,
616 inclusive, as amended by this act, shall require an employer to provide
617 paid sick leave or paid medical leave in any situation in which such
618 employer would not normally provide any such paid leave.

619 (f) (1) In any case in which the necessity for leave under
620 subparagraph (A) or (B) of subdivision (2) of subsection (a) of this
621 section is foreseeable based on an expected birth or placement of a son
622 or daughter, the employee shall provide the employer with not less
623 than thirty days' notice, before the date of the leave is to begin, of the
624 employee's intention to take leave under said subparagraph (A) or (B),
625 except that if the date of the birth or placement of a son or daughter
626 requires leave to begin in less than thirty days, the employee shall
627 provide such notice as is practicable.

628 (2) In any case in which the necessity for leave under subparagraph
629 (C), (D) or (E) of subdivision (2) of subsection (a) or under subsection
630 (i) of this section is foreseeable based on planned medical treatment,
631 the employee (A) shall make a reasonable effort to schedule the
632 treatment so as not to disrupt unduly the operations of the employer,
633 subject to the approval of the health care provider of the employee or
634 the health care provider of the [son, daughter, spouse or parent of the
635 employee] family member, as appropriate; and (B) shall provide the
636 employer with not less than thirty days' notice, before the date the
637 leave is to begin, of the employee's intention to take leave under said
638 subparagraph (C), (D) or (E) or said subsection (i), except that if the
639 date of the treatment requires leave to begin in less than thirty days,
640 the employee shall provide such notice as is practicable.

641 (g) In any case in which [a husband and wife] two spouses entitled
642 to leave under subsection (a) of this section are employed by the same
643 employer, the aggregate number of workweeks of leave to which both
644 may be entitled may be limited to [sixteen] twelve workweeks during
645 any [twenty-four-month] twelve-month period, if such leave is taken:
646 (1) Under subparagraph (A) or (B) of subdivision (2) of subsection (a)
647 of this section; or (2) to care for a sick [parent] family member under
648 subparagraph (C) of said subdivision. In any case in which [a husband
649 and wife] two spouses entitled to leave under subsection (i) of this
650 section are employed by the same employer, the aggregate number of
651 workweeks of leave to which both may be entitled may be limited to
652 twenty-six workweeks during any twelve-month period.

653 (h) Unpaid leave taken pursuant to sections 5-248a and 31-51kk to
654 31-51qq, inclusive, as amended by this act, shall not be construed to
655 affect an employee's qualification for exemption under chapter 558.

656 (i) Subject to section 31-51mm, as amended by this act, an eligible
657 employee who is the spouse, son or daughter, parent or next of kin of a
658 current member of the armed forces, as defined in section 27-103, who
659 is undergoing medical treatment, recuperation or therapy, is otherwise
660 in outpatient status or is on the temporary disability retired list for a

661 serious injury or illness incurred in the line of duty shall be entitled to
662 a one-time benefit of twenty-six workweeks of leave during any
663 twelve-month period for each armed forces member per serious injury
664 or illness incurred in the line of duty. Such twelve-month period shall
665 commence on an employee's first day of leave taken to care for a
666 covered armed forces member and end on the date twelve months
667 after such first day of leave. For the purposes of this subsection, (1)
668 "next of kin" means the armed forces member's nearest blood relative,
669 other than the covered armed forces member's spouse, parent, son or
670 daughter, in the following order of priority: Blood relatives who have
671 been granted legal custody of the armed forces member by court
672 decree or statutory provisions, brothers and sisters, grandparents,
673 aunts and uncles, and first cousins, unless the covered armed forces
674 member has specifically designated in writing another blood relative
675 as his or her nearest blood relative or any other individual whose close
676 association with the employee is the equivalent of a family member for
677 purposes of military caregiver leave, in which case the designated
678 individual shall be deemed to be the covered armed forces member's
679 next of kin; and (2) "son or daughter" means a biological, adopted or
680 foster child, stepchild, legal ward or child for whom the eligible
681 employee or armed forces member stood in loco parentis and who is
682 any age.

683 (j) Leave taken pursuant to sections 31-51kk to 31-51qq, inclusive, as
684 amended by this act, shall not run concurrently with the provisions of
685 section 31-313.

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

689 Sec. 16. Section 31-51mm of the general statutes is repealed and the
690 following is substituted in lieu thereof (*Effective July 1, 2019*):

691 (a) An employer may require that request for leave based on a
692 serious health condition in subparagraph (C) or (D) of subdivision (2)
693 of subsection (a) of section 31-51ll, as amended by this act, or leave

694 based on subsection (i) of section 31-51ll, as amended by this act, be
695 supported by a certification issued by the health care provider of the
696 eligible employee or of the [son, daughter, spouse, parent or next of
697 kin] family member of the employee, as appropriate. The employee
698 shall provide, in a timely manner, a copy of such certification to the
699 employer.

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

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

703 (2) The probable duration of the condition;

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

706 (4) (A) For purposes of leave under subparagraph (C) of subdivision
707 (2) of subsection (a) of section 31-51ll, as amended by this act, a
708 statement that the eligible employee is needed to care for the [son,
709 daughter, spouse or parent] family member and an estimate of the
710 amount of time that such employee needs to care for the [son,
711 daughter, spouse or parent] family member; and (B) for purposes of
712 leave under subparagraph (D) of subdivision (2) of subsection (a) of
713 section 31-51ll, as amended by this act, a statement that the employee
714 is unable to perform the functions of the position of the employee;

715 (5) In the case of certification for intermittent leave or leave on a
716 reduced leave schedule for planned medical treatment, the dates on
717 which such treatment is expected to be given and the duration of such
718 treatment;

719 (6) In the case of certification for intermittent leave or leave on a
720 reduced leave schedule under subparagraph (D) of subdivision (2) of
721 subsection (a) of section 31-51ll, as amended by this act, a statement of
722 the medical necessity of the intermittent leave or leave on a reduced
723 leave schedule, and the expected duration of the intermittent leave or
724 reduced leave schedule;

725 (7) In the case of certification for intermittent leave or leave on a
726 reduced leave schedule under subparagraph (C) of subdivision (2) of
727 subsection (a) of section 31-51ll, as amended by this act, a statement
728 that the employee's intermittent leave or leave on a reduced leave
729 schedule is necessary for the care of the [son, daughter, parent or
730 spouse] family member who has a serious health condition, or will
731 assist in their recovery, and the expected duration and schedule of the
732 intermittent leave or reduced leave schedule; and

733 (8) In the case of certification for intermittent leave or leave on a
734 reduced leave schedule under subsection (i) of section 31-51ll, as
735 amended by this act, a statement that the employee's intermittent leave
736 or leave on a reduced leave schedule is necessary for the care of the
737 spouse, son or daughter, parent or next of kin who is a current member
738 of the armed forces, as defined in section 27-103, who is undergoing
739 medical treatment, recuperation or therapy, is otherwise in outpatient
740 status or is on the temporary disability retired list, for a serious injury
741 or illness incurred in the line of duty, and the expected duration and
742 schedule of the intermittent leave or reduced leave schedule. For the
743 purposes of this subsection, "son or daughter" and "next of kin" have
744 the same meanings as provided in subsection (i) of section 31-51ll, as
745 amended by this act.

746 (c) (1) In any case in which the employer has reason to doubt the
747 validity of the certification provided under subsection (a) of this
748 section for leave under subparagraph (C) or (D) of subdivision (2) of
749 subsection (a) or under subsection (i) of section 31-51ll, as amended by
750 this act, the employer may require, at the expense of the employer, that
751 the eligible employee obtain the opinion of a second health care
752 provider designated or approved by the employer concerning any
753 information certified under subsection (b) of this section for such leave.

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

757 (d) (1) In any case in which the second opinion described in

758 subsection (c) of this section differs from the opinion in the original
759 certification provided under subsection (a) of this section, the
760 employer may require, at the expense of the employer, that the
761 employee obtain the opinion of a third health care provider designated
762 or approved jointly by the employer and the employee concerning the
763 information certified under subsection (b) of this section.

764 (2) The opinion of the third health care provider concerning the
765 information certified under subsection (b) of this section shall be
766 considered to be final and shall be binding on the employer and the
767 employee.

768 (e) The employer may require that the eligible employee obtain
769 subsequent recertifications on a reasonable basis, provided the
770 standards for determining what constitutes a reasonable basis for
771 recertification may be governed by a collective bargaining agreement
772 between such employer and a labor organization which is the
773 collective bargaining representative of the unit of which the worker is
774 a part if such a collective bargaining agreement is in effect. Unless
775 otherwise required by the employee's health care provider, the
776 employer may not require recertification more than once during a
777 thirty-day period and, in any case, may not unreasonably require
778 recertification. The employer shall pay for any recertification that is not
779 covered by the employee's health insurance.

780 Sec. 17. Section 31-5100 of the general statutes is repealed and the
781 following is substituted in lieu thereof (*Effective July 1, 2019*):

782 Records and documents relating to medical certifications,
783 recertifications or medical histories of employees or employees' family
784 members, created for purposes of sections 5-248a and 31-51kk to 31-
785 51qq, inclusive, as amended by this act, and sections 2 to 13, inclusive,
786 of this act, shall be maintained as medical records pursuant to chapter
787 563a, except that: (1) Supervisors and managers may be informed
788 regarding necessary restrictions on the work or duties of an employee
789 and necessary accommodations; (2) first aid and safety personnel may
790 be informed, when appropriate, if the employee's physical or medical

791 condition might require emergency treatment; [and] (3) government
792 officials investigating compliance with sections 5-248a and 31-51kk to
793 31-51qq, inclusive, as amended by this act, and sections 2 to 13,
794 inclusive, of this act, or other pertinent law shall be provided relevant
795 information upon request; and (4) the administrator may maintain a
796 record of employees who take leave to care for a family member, and
797 of the identities of such family members, to ensure the integrity of the
798 program.

799 Sec. 18. Section 31-51pp of the general statutes is repealed and the
800 following is substituted in lieu thereof (*Effective July 1, 2019*):

801 (a) (1) It shall be a violation of sections 5-248a and 31-51kk to 31-
802 51qq, inclusive, as amended by this act, for any employer to interfere
803 with, restrain or deny the exercise of, or the attempt to exercise, any
804 right provided under said sections.

805 (2) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq,
806 inclusive, as amended by this act, for any employer to discharge or
807 cause to be discharged, or in any other manner discriminate, against
808 any individual for opposing any practice made unlawful by said
809 sections or because such employee has exercised the rights afforded to
810 such employee under said sections.

811 (b) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq,
812 inclusive, as amended by this act, for any person to discharge or cause
813 to be discharged, or in any other manner discriminate, against any
814 individual because such individual:

815 (1) Has filed any charge, or has instituted or caused to be instituted
816 any proceeding, under or related to sections 5-248a and 31-51kk to 31-
817 51qq, inclusive, as amended by this act;

818 (2) Has given, or is about to give, any information in connection
819 with any inquiry or proceeding relating to any right provided under
820 said sections; or

821 (3) Has testified, or is about to testify, in any inquiry or proceeding

822 relating to any right provided under said sections.

823 (c) (1) It shall be a violation of sections 31-51kk to 31-51qq, inclusive,
824 as amended by this act, for any employer to deny an employee the
825 right to use up to two weeks of accumulated sick leave or to discharge,
826 threaten to discharge, demote, suspend or in any manner discriminate
827 against an employee for using, or attempting to exercise the right to
828 use, up to two weeks of accumulated sick leave to attend to a serious
829 health condition of a [son or daughter, spouse or parent of the
830 employee] family member, or for the birth or adoption of a son or
831 daughter of the employee. For purposes of this subsection, "sick leave"
832 means an absence from work for which compensation is provided
833 through an employer's bona fide written policy providing
834 compensation for loss of wages occasioned by illness, but does not
835 include absences from work for which compensation is provided
836 through an employer's plan, including, but not limited to, a short or
837 long-term disability plan, whether or not such plan is self-insured.

838 (2) Any employee aggrieved by a violation of this subsection may
839 file a complaint with the Labor Commissioner alleging violation of the
840 provisions of this subsection. Upon receipt of any such complaint, the
841 commissioner shall conduct an investigation and make a finding
842 regarding jurisdiction and whether a violation of sections 31-51kk to
843 31-51qq, inclusive, as amended by this act, has occurred. If the
844 commissioner makes a finding that the agency has no jurisdiction or
845 that no violation of said sections has occurred, the commissioner shall
846 dismiss the complaint and issue a release of jurisdiction allowing the
847 complainant to bring a civil action in Superior Court. Any action
848 brought by the complainant in accordance with this subdivision shall
849 be brought not later than ninety days after the date of the receipt of the
850 release from the commissioner. The employee may be awarded all
851 appropriate relief, including rehiring or reinstatement to the
852 employee's previous job, payment of back wages and reestablishment
853 of employee benefits to which the employee otherwise would have
854 been eligible if a violation of this subsection had not occurred, as well
855 as attorney's fees. If the commissioner makes a finding that a violation

856 of sections 31-51kk to 31-51qq, inclusive, as amended by this act, has
857 occurred, there shall be a mandatory settlement conference and, in the
858 absence of a settlement, the commissioner shall hold a hearing. After
859 the hearing, the commissioner shall send each party a written copy of
860 the commissioner's decision. The commissioner may award the
861 employee all appropriate relief, including attorney's fees, rehiring or
862 reinstatement to the employee's previous job, payment of back wages
863 and reestablishment of employee benefits to which the employee
864 otherwise would have been eligible if a violation of this subsection had
865 not occurred. Any party aggrieved by the decision of the commissioner
866 may appeal the decision to the Superior Court in accordance with the
867 provisions of chapter 54.

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

871 Sec. 19. Section 31-51qq of the general statutes is repealed and the
872 following is substituted in lieu thereof (*Effective July 1, 2019*):

873 On or before [January 1, 1997] July 1, 2020, the Labor Commissioner
874 shall adopt regulations, in accordance with the provisions of chapter
875 54, to establish procedures and guidelines necessary to implement the
876 provisions of sections [5-248a and] 31-51kk to 31-51qq, inclusive, as
877 amended by this act, and sections 2 to 13, inclusive, of this act,
878 including, but not limited to, procedures for hearings and redress,
879 including restoration and restitution, for an employee who believes
880 that there is a violation by the employer of such employee of any
881 provision of said sections. [In adopting such regulations, the
882 commissioner shall make reasonable efforts to ensure compatibility of
883 state regulatory provisions with similar provisions of the federal
884 Family and Medical Leave Act of 1993 and the regulations
885 promulgated pursuant to said act.]

886 Sec. 20. Section 3-13c of the general statutes is repealed and the
887 following is substituted in lieu thereof (*Effective July 1, 2019*):

888 Trust funds as used in sections 3-13 to 3-13e, inclusive, and 3-31b
 889 shall be construed to include Connecticut Municipal Employees'
 890 Retirement Fund A, Connecticut Municipal Employees' Retirement
 891 Fund B, Soldiers, Sailors and Marines Fund, Family and Medical Leave
 892 Insurance Trust Fund, State's Attorneys' Retirement Fund, Teachers'
 893 Annuity Fund, Teachers' Pension Fund, Teachers' Survivorship and
 894 Dependency Fund, School Fund, State Employees Retirement Fund,
 895 the Hospital Insurance Fund, Policemen and Firemen Survivor's
 896 Benefit Fund and all other trust funds administered, held or invested
 897 by the State Treasurer.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>January 1, 2020</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>July 1, 2021</i>	New section
Sec. 11	<i>from passage</i>	New section
Sec. 12	<i>from passage</i>	New section
Sec. 13	<i>from passage</i>	New section
Sec. 14	<i>July 1, 2019</i>	31-51kk
Sec. 15	<i>July 1, 2019</i>	31-51ll
Sec. 16	<i>July 1, 2019</i>	31-51mm
Sec. 17	<i>July 1, 2019</i>	31-51oo
Sec. 18	<i>July 1, 2019</i>	31-51pp
Sec. 19	<i>July 1, 2019</i>	31-51qq
Sec. 20	<i>July 1, 2019</i>	3-13c

Statement of Legislative Commissioners:

In Section 1(2), the reference to section "1-121" was changed to "1-120" for accuracy; In Section 2(c)(5), "such contributable" was changed to "such contribution" for accuracy; and punctuation and internal references were changed in Sections 1(5), 2(c)(2) and 17.

LAB *Joint Favorable Subst. -LCO*

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 20 \$	FY 21 \$
Labor Dept.	GF - Cost	300,000 - 625,000	300,000 - 625,000
State Comptroller - Fringe Benefits ¹	GF - Cost	132,570 - 257,438	132,570 - 257,438
Treasurer	GF - Cost	Up to 75,000	None
Labor Dept.; Treasurer	Family and Medical Leave Insurance Trust Fund - Cost / Revenue	See Below	See Below
Labor Dept.	Various - Potential Cost	See Below	See Below

Note: Various=Various; GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 20 \$	FY 21 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill: 1) expands the state's current Family Medical Leave Act (FMLA); and 2) establishes a Family and Medical Leave Insurance (FMLI) program. This results in a significant annual state cost beginning as early as FY 20. The impact is explained in detail below.

FAMILY MEDICAL LEAVE ACT EXPANSION

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

The bill expands the FMLA by reducing, from 75 to one, the minimum number of employees that makes an employer subject to FMLA beginning July 1, 2021. The bill also extends allowable leave under FMLA to caring for grandparents, grandchildren, and siblings in addition to relatives covered under current law. In addition, the bill extends the benefit from 16 weeks every 24 months to 12 weeks every 12 months. The FMLA expansion aligns with the terms of the FMLI program.

Expanded FMLA Administrative Costs

The expansion of the existing FMLA program results in a cost to the Department of Labor (DOL) of between \$423,570 and \$882,438 beginning in FY 20, associated with hiring between four and eight additional staff. At the top of the range, DOL would need to hire two Principal Attorneys (\$100,000 for salary and \$41,190 for fringe benefit costs), five Staff Attorneys (\$75,000 for salary and \$30,893 each for fringe benefit costs), and one Administrative Assistant (\$50,000 for salary and \$20,595 for fringe benefit costs).

The estimate is based on the current costs for handling all FMLA inquiries and investigating complaints of alleged violations. There are currently approximately 2,900 employers with 840,000 employees covered by existing FMLA law; under the bill's FMLA expansion, an estimated 103,600 employers with approximately 1,500,000 employees will be covered.²

The estimated number of employees in the expanded scenario above include the approximately 44,000 full time state employees. The expansion would also include a portion of approximately 9,000 part time state employees who meet eligibility criteria and an unknown number of employers with a workforce that is primarily self-employed

² Source: Department of Labor

contractors paid through IRS Form 1099-MISC.³

State Employee Impact

Beginning in FY 20, there is potential for a minimal increase in personnel costs from the expansion of FMLA which includes state employees. The impact of the FMLA expansion represents a marginal increase in use of leave compared to use under current law and existing benefits.⁴

The potential increase in personnel costs is mitigated in two ways: 1) accumulation of overtime or other shift-covering personnel requirements does not apply to all state employees; and 2) the impact of the program represents a marginal increase in use of leave compared to use under current law.

An increase in personnel costs would only be expected to occur in situations where overtime, temporary hires, or other measures were necessary to ensure proper employee coverage. In FY 18, approximately 17,000 state employees paid from the General Fund accumulated some amount of overtime pay.⁵ The increased personnel costs will primarily impact certain state agencies with large numbers of employees who would need shift coverage.⁶ For the majority of agencies, the workload of employees on leave will be absorbed among co-workers and would have little to no fiscal impact on the state.

The potential increase in personnel costs refers only to the marginal increase in leave taken or extended due to the additional availability of leave, where no or shorter leave would have been taken in absence of

³ Since organizations issuing 1099-MISCs to individuals do not consider those individuals employees, they do not include information regarding those individuals in the employee information included in their quarterly returns.

⁴ Existing FMLA protections are enumerated in a different statute (CGS Sec. 5-248a) than the statute being expanded in this bill (CGS. Sec. 31-51kk).

⁵ Nearly 34,000 full time state employees are paid via the General Fund.

⁶ In FY 18, Department of Corrections, Department of Children and Families, Department of Mental Health and Addiction Services, Department of Developmental Services, Department of Emergency Services and Public Protection, and the Judicial Department all had greater than 1,000 employees accumulate overtime.

the expansion. As full time state employees generally have access to a variety of paid time off and there are policies in place to allow for unpaid leave longer than what is required by statute, the increase in unpaid leave due to the expansion of the FMLA for state employees, along with the associated costs, is expected to be minimal.

FAMILY AND MEDICAL LEAVE INSURANCE

FMLI Program – Start-up Costs

The bill establishes the FMLI program to provide wage replacement benefits to covered employees taking leave under certain circumstances. The program will incur start up administrative costs to DOL, or an existing quasi-public designated by the Labor Commissioner,⁷ of at least \$13.6 million prior to January 1, 2022.⁸ The majority of the start-up costs are expected to be incurred prior to the start of initial revenue collection, October 1, 2021. The start-up costs include at least \$4.7 million in salaries and fringe benefit costs, \$7.7 million for information technology, \$776,700 for overhead and capital needs, and \$340,000 for outreach and marketing.⁹ As there is no funding source specified in the bill, these costs are assumed to be to the General Fund.

The bill results in one-time costs to the State Treasurer associated with the establishment of the FMLI Trust Fund of up to \$75,000, which includes funding for legal fees and asset allocation consultation.

The bill specifies that any funds expended from the General Fund for the purpose of administering the FMLI program, or providing compensation to employees, be reimbursed to the General Fund.

⁷ There is no quasi-public for FMLI established in the bill, nor are existing quasi-publics empowered to administer the program.

⁸ The bill specifies that compensation under the FMLI program is to begin January 1, 2022.

⁹ Section 413 of PA 15-5 JSS required the Labor Commissioner to contract with a consultant to create an implementation plan for a paid family and medical leave program by October 1, 2015, including an actuarial analysis and report on the employee contribution level needed to ensure sustainable funding and administration for the program.

However, the timing of the reimbursement from the FMLI Trust Fund to the General Fund is to be determined by the program administrator. This reimbursement would apply to both start-up and ongoing costs.

FMLI Program - Ongoing Costs

There will be ongoing annual administrative and investment costs associated with the FMLI as a result of the bill. Beginning in FY 21, the ongoing administrative expenses are estimated to be at least \$18.6 million annually, including fringe benefits.¹⁰

The bill specifies the ongoing costs of administering the FMLI program are to be covered by the FMLI Trust Fund, which receives revenue from employee contributions. To the extent that there are ongoing administrative and investment costs prior to revenue collection within the FMLI, these costs are assumed to be paid through the General Fund, and later reimbursed by the FMLI Trust Fund.

Private Plan Option Cost

Section 8 of the bill allows employers to provide the same or better FMLI benefits for the same or lesser cost to their employees. These private plans must meet specified requirements and are subject to initial review and ongoing oversight by the FMLI administrator to ensure private implementation meets or exceeds the FMLI benefits.

To the extent that employers pursue a private option for their employees, the review and administration of private plan options results in a potential cost to DOL of approximately \$635,355 beginning not later than the start of collection for the FMLI (October 1, 2020). This cost is associated with hiring six additional staff - a Principal Attorney (\$100,000 for salary and \$41,190 for fringe benefit costs), four Staff Attorneys (\$75,000 for salary and \$30,893 each for fringe benefit costs), and one Administrative Assistant (\$50,000 for salary and \$20,595 for

¹⁰ Source: "Implementing Paid Family and Medical Leave Insurance Connecticut" Institute for Women's Policy Research, 2015 pursuant to a contract with the Labor Department

fringe benefit costs).

Employees participating in a private plan would not generate revenue to the FMLI Trust Fund. It is not clear that the revenues deposited in the FMLI Trust, which are primarily generated from participating employee contributions, are able to be used for review and oversight of private alternatives to the FMLI program.

If FMLI Trust funds cannot be used for state review and oversight of private plans, these costs will be in addition to the ongoing costs associated with administration of the FMLI program and are assumed to be paid from the General Fund.

Alternatively, if FMLI Trust funds may be used for the costs of oversight of private alternatives, these additional administrative costs would be paid from revenues contributed by employees participating in the FMLI program. The bill requires the administrator to maintain the fund's solvency, including by allowing the increase of the participating employee contribution rate.¹¹

FMLI State Employee Impact

The bill excludes state employees from the FMLI program. However, state employees with a collective bargaining unit may opt-in to the program through collective bargaining. To the extent that otherwise excluded employees participate in the program through collective bargaining agreements, there is the potential for increased costs to the state beginning in FY 23 associated with the expansion of leave benefits, similar to the potential impact to state employees from the FMLA expansion described above, and subject to the negotiated terms that allow them to participate in the program.

FMLI Municipal Employee Impact

The bill excludes municipal employees from participation in the

¹¹ The bill requires that employee costs for private plans are no higher than those in the FMLI program. If the FMLI contribution rate increases, the bill allows private plan rate increases with FMLI administrator approval.

FMLI program. However, as with state employees who are covered by a collective bargaining unit, the bill allows certain municipal employees to opt-in through collective bargaining.¹² Current law does not preclude municipal employees from collectively bargaining for any type of paid leave program. To the extent that municipal employees choose to collectively bargain for the FMLI benefits established by the underlying bill, there is a cost to municipal employers associated with the expansion of leave benefits. Such costs would be subject to the terms of municipal collective bargaining agreements.

The Out Years

Ongoing costs for FMLI program administration and employee compensation are expected to be funded by revenues generated by employee contributions and the proceeds of investments of the resources of the FMLI Trust Fund, with the possible exception of the review of private alternatives to FMLI described above.

The annualized ongoing fiscal impact of FMLI and the expansion of FMLA will continue into the future subject to inflation.

¹² The bill allows municipal employees to opt in to the FMLI through collective bargaining, but does not include a similar provision for those employed by boards of education.

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., 1/2 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 than 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 grievance 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)