DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OF CONNECTICUT

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TO: AGENCY HEADS & AGENCY HUMAN RESOURCES ADMINISTRATORS

DT: July 8, 2013

RE: Statewide Family and Medical Leave Policy - Revised

PURPOSE

This General Letter is to provide a statewide Family and Medical Leave Policy to ensure consistent application and implementation of C.G.S. §5-248a, §5-248b and Personnel Regulations §5-248b-1 through §5-248b-9 inclusive. Additionally, this document incorporates the requirements under amended regulations to the federal Family and Medical Leave Act (FMLA) effective January 16, 2009 and March 8, 2013. Therefore, any and all individual agency policies on this topic are hereby deemed obsolete and agencies shall comply with the instructions specified herein. Supplemental information is available to State employees and agency Human Resources professionals via the DAS publication, "**Understanding Family and Medical Leave (A Primer for Connecticut State Employees).**"

BACKGROUND

Legislation passed at both *federal* and state levels provides eligible employees with job-protected leave for certain family and medical reasons. The *federal* Family and Medical Leave Act (FMLA) was enacted by Congress in 1993 and was amended in 2008 and 2009 to extend additional leave rights to families of members of the Armed Forces. The federal Department of Labor issued revised regulations regarding the *federal* FMLA effective January 16, 2009 and March 8, 2013. Connecticut's statute governing family and medical leaves for public sector employees (C.G.S. 5-248a) was enacted in 1988, and was most recently amended in May 2009 (P.A. 09-70) to include military family caregiver leave.

ELIGIBILITY

To be eligible for *federal* FMLA, employees must have at least 12 months of total service (in the aggregate) and have worked at least 1,250 hours in the 12 months immediately preceding the commencement of leave. ("Hours worked" does not include time spent on paid leave – sick, vacation, PL, administrative – or unpaid leave. However, overtime hours and military leave do count toward the 1,250-hour requirement.)

To qualify for *state* family/medical leave, employees must be a permanent employee with the state as defined in C.G.S. 5-196(19).

A state employee may be eligible for:

- *Federal* FMLA only,
- State family/medical leave only,
- Both *federal* FMLA and state family/medical leave, or
- Neither.

An employee who is eligible under only one law receives benefits in accordance with that law only. If the leave qualifies for both *federal* FMLA leave and state family/medical leave, the leave may count against an eligible employee's entitlement under both laws and run concurrently. *Federal* FMLA (though not state family/medical leave) may run concurrently with a Workers' Compensation absence.

REASONS FOR LEAVE

The circumstances covered under either the state family/medical leave or *federal* FMLA or a combination of the acts are as follows:

- The birth of employee's child or adoption of a child by the employee (*both state and federal*);
- The placement of a foster child with the employee (*federal only*);
- The "serious illness (*state*) or "serious health condition" (*federal*) of a child*, spouse** or parent;
- The "serious illness" (*state*) or "serious health condition" (*federal*) of the employee;
- For an employee to serve as an organ or bone marrow donor *(state only);*
- Military family leave
  - Military caregiver leave *(state and federal)*
  - Qualified exigency leave *(federal only)*

*The term "child" means:

- a biological, adopted or foster child, stepchild, child of a person standing in "loco parentis," and a child of whom a person has legal guardianship or custody, and
- who is under age 18 years <u>or</u> 18 or older and incapable of self-care because of a mental or physical disability.

For purposes of caring for a son or daughter under state and/or federal military caregiver leave, there is no age restriction.

**The term "spouse" includes same sex marriages under the state family/medical leave <u>and</u> federal FMLA leave.

AMOUNT OF LEAVE

Except as described below, eligible employees are entitled to a maximum of 12 weeks of unpaid leave or paid leave with earned accruals in a twelve-month period under *federal* FMLA and are entitled to a maximum of twenty-four (24) weeks of unpaid leave* within a two-year period under state family/medical leave.

For purposes of military caregiver leave, both federal and state law provided additional leave time. Under *federal* FMLA, an eligible employee is entitled to a maximum of 26 weeks of unpaid leave or paid leave with earned accruals during a single 12-month period to care for a covered servicemember (including a covered veteran) who was injured while on active duty in the U.S. Armed Forces. Under state family/medical leave, an eligible employee is entitled to a maximum of 26 weeks of unpaid* leave in a 2-year period to care for a covered servicemember who was injured while on active duty in the U.S. Armed Forces. Under both state and federal law, military caregiver leave is a one-time benefit per servicemember per injury.

Where possible, leave time granted under the state's family/medical leave law will run concurrently with the *federal* FMLA entitlement.

* Employees are required to exhaust their sick time before going on state family/medical leave if the leave is for their own illness. Employees may request to use vacation, personal or comp time when on state family/medical leave but this time cannot be used to extend the 24-week entitlement.

ADVANCE NOTICE AND MEDICAL DOCUMENTATION

Employees are required to submit a medical certificate to substantiate leave taken for a serious health condition/serious illness. Employees must use the following forms:

- **Form P-33A-Employee** – when the leave is for the employee's own illness.

- **Form P-33B-Caregiver** – when the employee requests leave to care for a child, spouse or parent with a serious health condition/serious illness.

For military family leave, employees are required to submit a certificate to substantiate leave for a serious injury or illness of a covered service member or a qualifying exigency. Employees must use the following forms:

- **Form DOL-WH384** – Certification of Qualifying Exigency for Military Family Leave (*federal*)
- **Form DOL-WH385** – Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave (*federal and state*)
- **Form DOL-WH385-V** – Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (*federal*)

Where the employee has advance notice of the need for the leave (i.e., an anticipated birth, adoption or surgery), the medical certificate form should be submitted at least 30 days in advance, using approximate dates if definite ones are not yet available. Where there is no forewarning (i.e., major unexpected illness), the medical form should be submitted as soon as the employee becomes aware that he/she is to be absent for an FMLA qualifying reason. Failure to provide the needed documentation may result in a disapproval of the leave or a delay in its commencement.

Employees who request a leave under the State's C.G.S. 5-248a are required to sign a statement confirming their intent to return to work immediately following the leave. Failure to return to work at the end of the leave period may be treated as a resignation unless an extension of the employee's absence has been agreed to and approved in writing by the agency. In no event shall the period of FMLA exceed the benefit provided under federal or state law.

BENEFIT CONTINUATION

The state will continue the employee's health insurance coverage while the employee is on leave. The employee must continue to pay any share of the group health plan premiums that he/she had paid prior to taking leave. The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

RETURN TO WORK

At the conclusion of family/medical leave, employees are entitled with limited exceptions to return to the same position or an equivalent position with equivalent pay, benefits and working conditions. In the vast majority of cases, employees will be returned to the position they occupied prior to the leave. If this is not possible, the agency will notify them of their new position prior to their return from leave. In cases involving the serious health condition of an employee, the agency will require the employee to produce a fitness-for-duty report on which the physician has certified the employee is able to return to work. This requirement protects the employee, co-workers and the public from the negative consequences that can result when an individual returns to work before being medically ready to do so. Therefore, employees who are notified of the need for a fitness-for-duty certification will not be allowed to return to work without it.

UNLAWFUL ACTS

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations regarding the *federal* FMLA. Complaints regarding federal and or state family/medical leave may be directed to the Human Resources Director/designee in each state agency or to the employee's union.

MORE INFORMATION

As mentioned above, the DAS brochure, "**Understanding Family and Medical Leave"** can be found on the DAS website in the Human Resources—Employees section under "Employee Benefits". Also, this general letter may be found via the DAS website. Employees who have additional questions may also contact their Human Resources Specialist in the Human Resources Office.

Donald J. DeFronzo *7-8-13*

Donald J. DeFronzo, Commissioner
Department of Administrative Services

Date