

How to Handle Connecticut Family and Medical Leave Act Leave Periods Spanning Between 2021-2022

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Amendments to the Connecticut Family and Medical Leave Act (CTFMLA) will go into effect on January 1, 2022, and employees will be entitled to 12 weeks of leave in a 12-month period, instead of the current 16 weeks of leave in a 24-month period. (The amendments also provide that employees may be entitled to two additional weeks if they have an incapacitating serious health condition related to pregnancy beginning January 1.)

Employers should prepare to address employees who request 16 weeks of *continuous* Connecticut FMLA leave from now to the end of 2021, as the requested leave period will run into 2022.

DOL's Position on Leaves Spanning 2021 and 2022

The Connecticut Department of Labor (DOL) has released its Guidance on how employers should assess leaves that cross from 2021 to 2022. According to the Guidance, "if [an employee starts] CTFMLA leave prior to January 2022, the duration of [their] CTFMLA leave would be capped at 12 weeks in the applicable 12-month period as of January 1, 2022, even if [they] were approved for, and commenced, 16 weeks of CTFMLA leave in 2021."

Based on the Connecticut DOL's position, for a *continuous* leave that runs into 2022, an employer will need to view leave status as of January 1, 2022, under the *new* law and based on the measuring period the company uses (rolling lookback period, calendar year, or other method). For example, for an employer using a 12-month look back period, if an employee beginning a continuous leave this fall will use 12 weeks of Connecticut FMLA leave *prior to* January 1, based on the Connecticut DOL Guidance, they will have no CTFMLA remaining as of January 1. Under this example, the employee would have *12 weeks* covered by CTFMLA, *not 16 weeks*.

The Guidance does not have the same legal authority as CTFMLA regulations, which are expected later this year. As the DOL notes in the Guidance, "if a complaint is filed in court, that court may have a different interpretation [than that set forth in the Guidance]."

What Employers Should Consider Now

Employers should assess how they will handle continuous CTFMLA leaves that span from 2021 into 2022, including:

- What information to communicate to impacted employees.
- How to administer affected CTFMLA leaves. For example, whether the company should consider providing the additional four weeks for various reasons, including risk management or employee relations. If an employer provides an additional four weeks in 2022 that would not otherwise be considered CTFMLA under the Connecticut DOL's Guidance, they cannot count this against the employee's CTFMLA entitlement.

Related considerations employers should have on their radar as 2021 comes to an end include:

- Revising current CTFMLA policies and forms to reflect all amendments to the CTFMLA.
- Making necessary adjustments to internal leave tracking systems.
- Preparing for the commencement of Connecticut Paid Leave benefits from the state, including consideration of how employer-provided paid benefits will interact with Paid Leave.

Please contact a Jackson Lewis attorney if you have any questions regarding CTFMLA changes or Connecticut Paid Leave.

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