

## **Evolution of a Statutory Benefit: Use of Paid Sick Leave by Employees Who Aren't Sick Themselves**

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### **Working Together**

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The Connecticut employment laws mandate several workplace protections for employees which in an earlier era would have been found only in collective bargaining agreements or the employer's own policies. Just a few examples are restrictions on workplace surveillance (Conn. Gen. Stat. Sec. 31-48b), limitations on employee drug testing (Conn. Gen. Stat. 31-51t et seq.), employee break time (Conn. Gen. Stat. 31-51ii), or the right to receive emergency phone calls (Conn. Gen. Stat. 31-51jj).

Another major area of employee protection is excused time off and paid time off, since it involves employer expenditures not offset by productivity. Once left to the discretion of employer policy or bargained for with a union, leaves of absence have become one of the more significant areas of legislated employee benefits. The evolution of one aspect of this benefit, whether an employee on leave can collect sick leave pay even though the absence is not due to the employee's own illness, provides an interesting example of how the legislature has become increasingly involved in the management of the workplace.

The Connecticut Family and Medical Leave Act (FMLA) became effective in 1990, followed by the federal Family and Medical Leave Act of 1993, which was followed in turn by subsequent amendments to the Connecticut FMLA to coordinate it – somewhat – with the federal law. Some significant differences were retained in the Connecticut law with respect to employee eligibility, employer coverage and length of leave, Connecticut allowing a maximum of 16 weeks of leave in a two-year period whereas the federal law provides 12 weeks in a one-year period.

But both FMLA's allowed eligible employees to use paid leave time accumulated under employer policies, such as vacation, medical or sick leave, for an FMLA absence, but with the condition (Conn. Gen. Stat. Sec. 31-51ll and 29 CFR sec. 825.207) that nothing in the laws required an employer to provide paid sick leave in any situation in which the employer would not normally provide such paid leave. In practice, this meant that employees could use accrued vacation pay or paid personal time even if their FMLA absence was for the purpose of caring for a family member, because most employers didn't care what an employee did on "vacation."

But employees could not use sick pay if they themselves were not sick, unless the employer's own uniform policy already permitted use of accrued sick pay to care for the serious illness of a family member. This was unlikely to be the case, because sick time traditionally was to allow an ailing employee to stay home without

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forfeiting pay, rather than come to work when weak or contagious.

However, this deference to employer policy was superseded in 2003, when the Connecticut FMLA was amended (Conn. Gen. Stat. Sec. 31-51pp) to require employers to allow an eligible employee to use up to two weeks of accumulated paid sick leave, even if the FMLA absence was to care for an eligible family member such as a child, spouse or parent (or birth or adoption of a child), rather than because of the employee's own illness.

The benefits of family leave were expanded in 2010 by legislation which required an employer to allow up to 12 days of unpaid leave for victims of family violence (Conn. Gen. Stat. Sec 31-51ss), so they could obtain medical or psychological care or counseling, obtain services from a victim services organization, relocate, or participate in civil or criminal proceedings related to the family violence. This leave was required of all employers with three or more employees, unlike Connecticut FMLA which generally is applicable to employers of 75 or more employees. As originally enacted, family violence leave was unpaid.

Finally, excused time off and paid time off were brought together in the paid sick leave law which became effective on January 1, 2012, which applies to employees who are service workers of an employer with 50 or more employees (Conn. Gen.Stat. Sec. 31-57r et seq). Under a complicated formula, employees can accrue up to 40 hours of paid sick leave per year (amounting to five eight-hour sick days) which can also be carried over to the following year.

In addition to the employee's own absence for health reasons, paid sick leave can be used to care for a child or spouse or for preventative care for a child or spouse. In addition, paid sick leave can be used where the employee has been the victim of family violence or sexual assault and needs time off for medical care or counseling, to obtain services from a victim services organization, to relocate, or to participate in civil or criminal proceedings related to the family violence or assault.

So gradually and over time, the Legislature has increased the responsibility of employers to support their employees with excused time off from work, often with pay, for an array of personal issues beyond the traditional employee sick day.

**Posted in** Leave

**Tags:** Family and Medical Leave Act (FMLA), Sexual Assault