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## Connecticut DOL Releases New FMLA Regulations for School Paraprofessionals

In 2012 the legislature passed Public Act 12-43 to provide Family and Medical Leave Act (FMLA) rights to school paraprofessionals who, typically, did not work enough hours each year to be eligible for leave under the federal FMLA. Federal FMLA applies not only to private sector employers with 50 or more employees, but also to municipalities and boards of education, and requires employees to work at least 1,250 hours in the 12 months immediately preceding FMLA leave. As the state's FMLA law expressly excludes coverage of municipalities, boards of education, and private elementary and secondary schools,<sup>1</sup> the legislature crafted the new law to require boards of education to provide benefits equal to those under federal FMLA if a paraprofessional worked only 950 hours in the 12 months immediately preceding an FMLA leave, rather than the standard federal requirement of 1,250 hours worked.

The new act also required the labor commissioner to adopt implementing regulations and it specified that no paraprofessional would begin accruing the necessary 950 hours before those regulations became effective.

As with federal FMLA's 1,250 hour requirement, only actual hours worked count towards the 950 hours requirement, as determined under Fair Labor Standards Act principles. Time off, whether paid or unpaid, does not count, including paid holidays, personal time off, etc.

With the regulations stating their effective date as May 12, 2014, hours worked after that date by a school district employee who falls under the paraprofessional definition set out in the regulations will begin to count toward the required 950 hours. Practically speaking,

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<sup>1</sup> **Sec. 31-51kk. Family and medical leave: Definitions.** As used in sections 31-51kk to 31-51qq, inclusive:

(4) "Employer" means a person engaged in any activity, enterprise or business who employs seventy-five or more employees, and includes any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer and any successor in interest of an employer, **but shall not include the state, a municipality, a local or regional board of education, or a private or parochial elementary or secondary school.** The number of employees of an employer shall be determined on October first annually;

Emphasis added here.



this means that covered employees will likely not be eligible for their first leave under the new regulations until sometime late in the 2014-2015 school year, given a typical paraprofessional's hours per workweek.

The net effect of PA 12-43, and the new regulations, is expansion of the number of employees in public school districts who will be taking FMLA leave in the future. Given the significant job protection that FMLA provides to employees on leave, and given the nature of the work that many school paraprofessionals perform in the area of special education, school districts may find implementation challenging. All of the rights, responsibilities and obligations that employees and employers have dealt with under federal FMLA for over 20 years will now apply to a whole new population of workers.

While many people feel that FMLA "works great," and has not been a problem for most employers, our experience with FMLA has shown that often it can be a very difficult law to implement and that employers wrestle with such issues as covering for absent employees and calculating leave use when the time is used only intermittently. Hopefully, prior experience with FMLA issues will be of assistance and will help make applying FMLA to school paraprofessionals a smooth process.

### ***Questions or Assistance?***

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