Mashantucket Pequot Family and Medical Leave Law, Title 51 M.P.T.L.
Proposed Regulations of the MERO
MERO-PR2023-001-T51

Chapter 1. Title.

Sec. 51-1-1-1
Title 51 M.P.T.L., the Mashantucket Pequot Family and Medical Leave Law, may also be referred to herein as the Law or MFML Law. Leave provided under the Law may be referred to as MFML

Chapter 2. Definitions.

In addition to the definitions found in 51 M.P.T.L. Ch 2 § 1, the following definitions shall apply:

Sec. 51-2-1-1

ADA means the Americans With Disabilities Act, 42 U.S.C. §12101 *et seq*., as amended.

Sec. 51-2-1-2

Adoption means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for MFML.

Sec. 51-2-1-3

Child means a biological, adopted, or foster child, a stepchild, a Tribal Member Dependent Child, a legal ward, or, in the alternative, a child of an individual standing *in loco parentis*, or an individual to whom an eligible employee or covered servicemember, as applicable, stood *in loco parentis* when the individual was under the age of 18. A child may be of any age.

Sec. 51-2-1-4

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

Sec. 51-2-1-5

Covered active duty or call to covered active duty status for purposes of qualifying exigency leave means:

(a) ***Active duty or call to active duty.***

Active duty or call to active duty by the United Stated government under Title 10 of the United States Code, as amended from time to time, and includes:

(1) In the case of a member of the Regular Armed Forces of the United States, duty during the deployment of the member with the United States Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the United States Armed Forces, duty during the deployment of the member with the U.S. Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

(b) ***Deployment to a foreign country.***
Deployment of the member with the U.S. Armed Forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(c) ***Reserve components of the U.S. Armed Forces.***
The Reserve components of the U.S. Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the United States Regular Armed Forces or Reserves.

(d) **Contingency operation** means a military operation that:

(1) Is designated by the United States Secretary of Defense as an operation in which members of the United States Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12306 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, of the United States.

(e) ***Excluded from a call to covered active duty.***
A call to covered active duty does not include a call to active duty by a state within the United Stated that is not under order of the President of the United States.

Sec. 51-2-1-6

Covered Servicemember means:

(a) ***Current member of U.S. Armed Forces.***
A current member of the United States Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(b) ***Veteran.***

A veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was discharged or released from the United States Armed Forces under conditions other than dishonorable at any time during the five (5) year period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

(c) ***Outpatient status.***
Outpatient status means, with respect to a covered servicemember who is a current member of the United States Armed Forces, the status of a member of the United States Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the United States Armed Forces receiving medical care as outpatients .

Sec. 51-2-1-7

Eligible employee means an employee of an employer subject to the MFML Law who meets the employment tenure and, as applicable, hours of service requirement to be eligible for MFML.

(a) ***Telecommuting employees.***
Eligible employee includes an employee of a covered employer who works outside the Reservation, if the employee reports to and receives assignments from an office on the Reservation.

(b) ***Eligible employee for purposes of leave for the employee's own serious health condition or for organ or bone marrow donation*.**
An employee who has been employed by the employer for at least six (6) consecutive months immediately preceding the date the MFML will commence pursuant to the employee's request. Twenty-six weeks is considered equal to six (6) months.

(c) ***Eligible employee for purposes of leave for any reason provided by the MFML Law other than the employee's own serious health condition or organ or bone marrow donation*.**
To be eligible for leave for the birth, placement or care of a child, to care for a family member with a serious health condition or for servicemember caregiver or qualifying exigency leave, an employee must be employed with the employer for at least 12 months and for at least 1250 hours of service during the 12-month period immediately prior to the date of commencement of the MFML. Fifty-two (52) weeks is considered equal to 12 months.

(1) The 12 months of employment by the employer, which need not be consecutive, is determined as of the date which any MFML is to commence per the employee's request, except that an employer need not consider any period of previous employment that occurred more than seven (7) years before the date of the most recent hiring of the employee, unless a written agreement, including a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law, exists concerning the employer's intention to rehire the employee

after the break in service (e.g., for purposes of the employee furthering their education or for childrearing purposes).

(2) On the date on which any MFML is to commence, the employee must have met the hours of service requirement by having been employed for at least 1,250 hours of service with such employer during the previous 12-month period, not counting personal commute time, or vacation, medical or sick leave.

(d) ***USERRA absences counted.***

Any absence due to USERRA-covered service obligations during the relevant period shall be counted in determining whether the employee has been employed for at least six (6) or 12 months, as applicable. Any hours the employee would have worked for the employer had the employee not been absent due to USERRA-covered service, as generally may be determined by the employee's pre-service work schedule, must be credited to the employee for purposes of determining the employee's hours of service eligibility. This section does not provide any greater entitlement to the employee than would be available under the USERRA.

(e) ***Employees on payroll for partial weeks.***

If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment.

(f) ***Employment more than seven (7) years prior to start of leave.***

Nothing in this section prevents employers from considering employment prior to a continuous break in service of more than seven (7) years when determining whether an employee has met the 12-month employment requirement. However, if an employer chooses to recognize such prior employment, the employer must do so uniformly, with respect to all employees with similar breaks in service.

(g) ***Calculating hours of service.***

Whether an employee has worked a minimum of 1,250 hours of service is determined according to the principles for determining compensable work time. The determining factor is the number of hours an employee has worked for the employer. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked may be used. Federal Fair Labor Standards Act principles for determining compensable hours of work guide hours of service calculations. See 29 CFR part 785.

(h) ***When records are inaccurate.***

In the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from any requirement that a record be kept of their hours worked, and the employer contends the employee has not worked sufficient hours, the employer has the burden of showing that the employee has not worked the requisite hours.

(i) ***Time in service and hours of service determined as of date MFML is to start.***
The determination of whether an employee meets the hours of service requirement and has been employed by the employer for a total of at least six (6) or 12 months, as applicable, must be made as of the date of MFML is requested to start. An employee may be on non-MFML at the time they meet the six (6) or 12-month eligibility requirement, and in that event, any portion of the leave taken for an MFML-qualifying reason after the employee meets the eligibility requirement would be MFML.

Sec. 51-2-1-8

Employee means any individual employed by an employer. Workers who meet the economic realities test for independent contractor status are not employees.

Sec. 51-2-1-9

Employer means any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Mashantucket (Western) Pequot Tribe a/k/a/ the Mashantucket Pequot Tribal Nation, employing employees on the Reservation, excluding wholly owned tribal enterprises and organizations that do not have a principal place of business or are not headquartered on the Reservation. Employer includes:

(a) ***Agents.***
Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;

(b) ***The primary and secondary employer in a joint employment relationship.***
(1) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality.
(2) Factors considered in determining which is the primary employer include authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits.
(3) Employees jointly employed must be counted by both employers in determining employer coverage and employee eligibility.
(4) The provision of notice, leave, health benefits and job restoration are the primary responsibility of the primary employer. A secondary employer is responsible for compliance with the prohibited acts provisions with respect to its jointly employed employees, whether or not the secondary employer is covered by the MFML Law. The prohibited acts include prohibitions against interfering with an employee's attempt to exercise rights under the Law, or discharging or discriminating against an employee for opposing a practice which is unlawful under the MFML Law. A covered secondary employer will be responsible for compliance with all the provisions of the MFML Law with respect to its regular, permanent workforce.

Sec. 51-2-1-10

Employment benefits means all benefits provided or made available to employees by an employer, such as group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by practice or written policy of an employer, and including an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3), as adopted for plans of the Mashantucket Pequot Tribal Nation by Tribal ERISA (TERISA), Title 15, M.P.T.L.. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage.

Sec. 51-2-1-11

Family member means a spouse, sibling, child, grandchild, parent or grandparent as those terms are defined in Title 51 M.P.T.L. and these regulations.

Sec. 51-2-1-12

Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the applicable jurisdiction as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the jurisdiction and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, governmental action is involved in the removal of the child from parental custody.

Sec. 51-2-1-13

Grandchild means a grandchild related to an individual by blood, marriage, adoption by a child of the grandparent, or foster care by a child of the grandparent.

Sec. 51-2-1-14

Grandparent means a grandparent related to an individual by blood, marriage, adoption of a child by a child of the grandparent, or foster care by the child of the grandparent.

Sec. 51-2-1-15

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

(a) ***Excluded.*** For purposes of the MFML Law, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:
    (1) No contributions are made by the employer;
    (2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer.
(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,
(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Sec. 51-2-1-16

Health care provider means:

(a) ***The MFML Law defines health care provider as:***
(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the jurisdiction in which the doctor practices; or
(2) Any other person determined by the MERO to be capable of providing health care services.

(b) ***Others capable of providing health care services include:***
(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice by the jurisdiction in which they practice and performing services within the scope of their practice.
(2) Advanced practice registered nurses, nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice by the jurisdiction in which they practice and performing services within the scope of their practice;
(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee of a family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law; and
(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(c) ***"Authorized to practice by the jurisdiction in which they practice".***

The phrase "authorized to practice by the jurisdiction in which they practice" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions by the state within the United States, the country other than the United States, or other jurisdiction approved by the MERO, in accordance with the laws and regulations of the authorizing jurisdiction, and must engage in the authorized practice within the authorizing jurisdiction.

(d) ***"Performing services within the scope of their practice".***
The phrase "performing services within the scope of their practice" as used in this section means the provider's services are within the scope of their practice as defined under the laws and regulations of the provider's authorizing jurisdiction.

Sec. 51-2-1-17

Highly compensated employee means a salaried MFML-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer on the Mashantucket Pequot Reservation.

Sec. 51-2-1-18

In loco parentis includes, but is not limited to, persons with day-to-day responsibilities to care for or financially support a child under the age of 18 or, in the case of an employee or servicemember, who had such responsibility for the employee or servicemember when the employee or servicemember was under the age of 18. A biological or legal relationship is not necessary.

Sec. 51-2-1-19

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in three (3) or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using the post office, etc.

Sec. 51-2-1-20

Incapacity means inability to work, attend school or perform other regular daily activities due to a serious health condition, treatment therefor, or recovery therefrom.

Sec. 51-2-1-21

Intermittent leave means family or medical leave taken in separate periods of time due to a single qualifying reason, rather than for one (1) continuous period of time. Intermittent leave may include periods from an hour or more to several weeks. Examples of intermittent leave

would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

Sec. 51-2-1-22

Invitational Travel Authorization (ITA) or Invitational Travel Order (ITO) is an order issued by the United States Armed Forces to a family member to join an injured or ill servicemember at their bedside.

Sec. 51-2-1-23

Medical leave means a leave of absence, which may be unpaid, due to a serious health condition of an eligible employee.

Sec. 51-2-1-24

Mental disability: *See* the definition of physical or mental disability in this section.

Sec. 51-2-1-25

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness.

Sec. 51-2-1-26

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, siblings, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take MFML to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

Sec. 51-2-1-27

Parent means a biological parent, adoptive parent, stepparent, foster parent, parent-in-law or legal guardian of an eligible employee or an eligible employee's spouse, an individual standing in loco parentis to an eligible employee, or an individual who stood in loco parentis to an eligible employee when the employee was under the age of 18.

Sec. 51-2-1-28

Parent of a covered servicemember means a covered servicemember's biological, adoptive, step or foster parent, parent-in-law or legal guardian, or any other individual who stood in loco parentis to the covered servicemember when the servicemember was under the age of 18.

Sec. 51-2-1-29

Person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

Sec. 51-2-1-30

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Federal Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the ADA, 42 U.S.C. 12101 *et. seq.,* as amended, serve as a guide for determining whether an individual has a physical or mental disability.

Sec. 51-2-1-31

Reduced schedule leave means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee for a period of time. An example of reduced schedule leave is an employee's work schedule change from full-time to part-time while the employee recovers from a serious health condition.

Sec. 51-2-1-32

Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. For purposes of determining whether an illness, injury, impairment or physical or mental condition is a serious health condition:

(a) ***Inpatient care.***
Inpatient care means an overnight stay in a hospital, hospice, nursing home or residential medical care facility, including any period of incapacity as defined in Sec. 51-2-1-20 or any subsequent treatment in connection with such inpatient care.

(b) ***Incapacity and treatment.***
Incapacity and treatment means a period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves

(1) Treatment two (2) or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one (1) occasion, which results in a regimen of continuing treatment under the supervision of the health care provider or by a provider of health care services.
(3) The requirement in paragraphs (b)(1) and (b)(2) of this section for treatment by a health care provider means an in-person or telemedicine visit to a health care provider; provided that the first (or only) in-person or telemedicine treatment visit takes place within seven (7) days of the first day of incapacity.
(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
(5) The term "extenuating circumstances" in paragraph (b)(1) of this sectionmeans circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts.

(c) ***Pregnancy or prenatal care.***
Any period of incapacity due to pregnancy, or for prenatal care.

(d) ***Chronic conditions.***
Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
(1) Requires periodic in-person or telemedicine visits (at least twice a year) for treatment by health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
(2) Continues over an extended period of time, including recurring episodes of a single underlying condition; and
(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy)

(e) ***Permanent or long-term conditions.***
A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(f) ***Conditions requiring multiple treatments.***
Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
(1) Restorative surgery after an accident or other injury; or
(2) A condition that would likely result in a period of incapacity of more than three (3) consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

(g) ***Absence for incapacity without treatment during absence.***
Absences attributable to incapacity under paragraphs (c), (d), or (e) of this section qualify for MFML even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) consecutive full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(h) ***Treatment.***
The term treatment includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be imitated without a visit to a health care provider, is not by itself, sufficient to constitute a regimen of continuing treatment for purposes of MFML.

Sec. 51-2-1-33

Serious injury or illness means:

(a) ***Current military.***
In the case of a current member of the U. S. Armed Forces, including a member of the Reserve components of the U.S. Armed Forces, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the U.S. Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the U.S. Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(b) ***Veteran.***
In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the U.S. Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the U.S. Armed Forces) and manifested itself before or after the member became a veteran, and is:

(1) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the U.S. Armed Forces and rendered the

servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(2) A physical or mental condition for which the covered veteran has received a U.S. Department of Veteran's Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(3) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

Sec. 51-2-1-34

Sibling means a biological sibling, half-sibling, step-sibling, adopted sibling, foster sibling or sibling-in-law of the eligible employee or the eligible employee's spouse.

Sec. 51-2-1-35

Spouse means a party to a marriage or a partner of a civil union where the marriage or civil union is legal in the jurisdiction in which it was performed.

Sec. 51-2-1-36

Telemedicine means using telecommunications technologies for the delivery of medical, diagnostic and treatment-related services by health care providers.

Sec. 51-2-1-37

Tribal Member dependent child means a person who is not a member of the Mashantucket Pequot Tribal Nation who was in the custody and care of a member of the Mashantucket Pequot Tribal Nation and resided in the household of the Tribal Member as a member of their family for at least seven (7) years on or before reaching the age of eighteen (18) years. Custody and care may be shown by a certified custody order, a notarized power of attorney and/or a certified school record. See, 46 M.P.T.L. ch1 §3(B)

Sec. 51-2-1-38

TRICARE is the health care program serving active duty members of the U.S. Armed Forces, members of the Reserve components of the U.S. Armed Forces, retirees, their families, survivors, and certain former spouses worldwide.

Sec. 51-2-1-39

USERRA means the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301, et seq.

Sec. 51-2-1-40

U.S. means the United States of America.

Chapter 3. Leave Entitlements and Requirements.

Sec. 51-3-1-1

Qualifying reasons for leave, general rule.

(a) ***Circumstances qualifying for leave.***
Employers covered by MFML are required to grant leave to eligible employees for one (1) or more of the following reasons:
   (1) For birth of a child, and to care for the newborn child;
   (2) For placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
   (3) Because the employee is needed to care for the employee's family member with a serious health condition;
   (4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;
   (5) To serve as an organ or bone marrow donor;
   (6) Because of any qualifying exigency arising out of the fact that the employee's family member is a military member on or notified of an impending covered active duty deployment to a foreign country;
   (7) Because the employee is needed to care for a covered servicemember with a serious injury or illness where the employee is a family member or next of kin of the covered servicemember.

(b) ***Equal application.***
The right to take leave under the MFML Law applies equally to employees of any gender. Each parent may take family leave for the birth, placement for adoption or foster care, or care of a child.

(c) ***Documenting family or next of kin relationships***
For purposes of confirming that an individual is a "family member," or that the employee is the next of kin of a covered servicemember, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or a statement of the relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The employer is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

The MERO has developed an optional form, *Verification of Relationship*, MERO Form 51-6350, for use in documenting family and next of kin relationships.

(d) ***Active employee****.*
In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for MFML. Under such circumstances, an eligible employee is immediately entitled to further MFML for a qualifying reason.

Sec. 51-3-1-2

Leave entitlements generally.

(a) ***12 workweeks leave during a 12-month period.***
An eligible employee is entitled to 12 workweeks of leave during any 12-month period for one (1) or more of the following reasons:
(1) For birth of a child, and to care for the newborn child;
(2) For placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
(3) Because the employee is needed to care for the employee's family member with a serious health condition;
(4) Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's job;
(5) To serve as an organ or bone marrow donor;
(6) Because of any qualifying exigency arising out of the fact that the employee's family member is a military member on or notified of an impending covered active duty deployment to a foreign country.

(b) ***26 workweeks leave during a 12-month period for servicemember caregiving.***
An eligible employee who is a family member or next of kin of a covered servicemember with a serious injury or illness is entitled to 26 workweeks of leave during a 12-month period if the employee is needed to care for the servicemember. During the 12-month period beginning on the first day of servicemember caregiver leave, the eligible employee is entitled to a combined total of 26 workweeks of leave for any qualifying reasons under the MFML, provided the employee is entitled to no more than 12 workweeks of leave for the reasons in paragraphs (a)(1)(2)(3)(5) or (6) of this section and no more than 14 workweeks of leave for the employee's own serious health condition as set forth in paragraphs (a)(4) and (c) of this section.

(c) ***Additional two (2) workweeks continuous leave during the 12-month period for the employee's own serious health condition.***
An eligible employee who has exhausted their 12 workweeks of leave under section (a) is entitled to an additional two (2) workweeks of leave during the applicable 12-month period for the employee's own serious health condition that makes the employee unable to perform the functions of their position. The additional two (2) workweeks of

leave may be taken only for the employee's serious health condition and only on a continuous leave basis.

(d) ***Co-worker spouses receive full individual entitlements*.**
Spouses who are eligible for MFML and are employed by the same covered employer are each entitled to their full individual leave entitlements regardless of the qualifying reason for the leave.

(e) ***Measuring the 12-month period.***

(1) An employer is permitted to choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(i) The calendar year;

(ii) Any fixed 12-month leave year, such as a fiscal year or a year starting on an employee's anniversary date;

(iii) The 12-month period measured forward from the date an employee's first MFML begins; or,

(iv) A "rolling" 12-month period measured backward from the date an employee uses any MFML as described in paragraph (a) of this section.

(2) An employer may select any of the alternatives in paragraph (e)(1) of this section for the leave entitlements described in paragraph (a) of this section provided the chosen alternative is applied consistently and uniformly to all employees. If an employer fails to elect an option, the option that provides the most beneficial outcome to the employee must be used. An employer that wishes to make an election after not having made and election previously, or wishes to change an election, is required to give at least 60 days notice to all employees and implement the transition in such a way that affords the employees the greatest benefits under the MFML Law

(3) An employer shall determine the single 12-month period in which the 26 weeks of leave entitlement described in paragraph (b) of this section occurs using the 12-month period measured forward from the date an employee's first MFML to care for a covered servicemember begins.

Sec. 51-3-1-3

Leave for pregnancy or birth.

(a) ***General rules.***
Eligible employees are entitled to MFML Law leave for pregnancy or birth of a child as follows:

(1) Both parents are entitled to MFML for the birth of their child.

(2) Both parents are entitled to MFML to be with the healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to MFML for a birth expires at the end of the 12-month

period beginning on the date of the birth. If the employer permits, bonding leave to be taken beyond this period, such leave will not qualify as MFML. Under this section, both parents are entitled to MFML even if the newborn does not have a serious health condition.

(3) The expectant mother is entitled to MFML for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. Circumstances may require that MFML begin before the actual date of birth of a child. An expectant mother may take MFML before the birth of the child for prenatal care or if her condition makes her unable to work. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three (3) consecutive calendar days. For example, a pregnant employee may be unable to report to work because of severe morning sickness.

(4) A spouse is entitled to MFML if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. An employee is also eligible for MFML to care for a family member with a serious health condition who is pregnant or has given birth.

(b) ***Intermittent and reduced schedule leave.*** See also Sec. 51-3-2-1.

An eligible employee may use intermittent or reduced schedule leave for parental bonding after the birth to be with a healthy newborn child only if the employer agrees. For example, an employer and employee may agree to a part-time work schedule after the birth or for the employee to take leave in several segments. If the employer agrees to permit intermittent or reduced schedule leave for the birth of a child, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfers may be subject to applicable law or the terms of a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child.

Sec. 51-3-1-4

Leave for adoption or foster care.

(a) ***General rules.***

Eligible employees are entitled to MFML for placement with the employee of a child for adoption or foster care as follows:

(1) Employees may take MFML before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with their attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for the purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement. If the employer permits leave for adoption or foster care to be taken beyond this period, such leave will not qualify as MFML. Under this section, the employee is entitled to MFML even if the adopted or foster child does not have a serious health condition.

(b) ***Intermittent and reduced schedule leave.*** See also Sec. 51-3-2-1.

An eligible employee may use intermittent or reduced schedule leave for parental bonding after the placement of a healthy child for adoption or foster care only if the employer agrees. Thus, for example, the employer and employee may agree to a part-time work schedule after the placement for bonding purposes. If the employer agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular positions. Transfer to an alternative position may be subject to applicable law or the terms of a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child.

Sec. 51-3-1-5

Leave for a serious health condition.

(a) ***Generally.***

Eligible employees may take MFML Law leave for their own serious health condition that makes the employee unable to perform the functions of their job, or to care for a family member with a serious health condition. Any condition that meets one of the definitions of a serious health condition in §51-2-1-32, including a mental health condition, shall be a qualifying reason for leave. The specific facts of the situation must be considered when making a determination. Conditions for which cosmetic treatments

are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Allergies may be a serious health conditions if all the conditions of Sec. 51-2-1-32 are met.

(b) ***Unable to perform the functions of the position.***
Unable to perform the functions of the position means the employee's health care provider finds that the employee is unable to work at all or is unable to perform any one (1) of the essential functions of the employee's position. The ADA, as amended, 42 U.S.C. 12101 *et seq.*, and the regulations at 29 CFR 1630.2(n), serve as a guide for determining essential functions. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(1) *Statement of functions.* An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the employer can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of MFML, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

(c) ***Intermittent and reduced schedule leave.*** See also Sec. 51-3-2-1.

(1) For intermittent leave or reduced schedule leave taken because of one's own serious health condition, or to care for a family member with a serious health condition, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition, if required by the employer, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition.

(2) Intermittent leave may be taken for a serious health condition of a family member, or for the 12-week leave entitlement for the employee's own serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods

from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(3) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition, even if he or she does not receive treatment by a health care provider.

(4) Intermittent or reduced schedule leave may not be taken for the additional two (2) weeks of leave available for the employee's own serious health condition if the 12-week entitlement is exhausted.

Sec. 51-3-1-6

Leave for treatment of substance abuse.

(a) ***Substance abuse may be a serious health condition.*** However, MFML may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment does not qualify for MFML.

(b) ***Employer disciplinary policies related to substance abuse may be enforced.*** Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised their right to take MFML for treatment. However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to the policy the employee may be terminated whether or not the employee is presently taking MFML. An employee may also take MFML to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

Sec. 51-3-1-7

Leave to serve as an organ or bone marrow donor.

(a) ***Generally.***

Eligible employees are entitled to MFML to serve as an organ or bone marrow donor, including for the surgery and recuperation.

(b) ***Intermittent and reduced schedule leave.*** See also Sec. 51-3-2-1.
Leave to serve as an organ or bone marrow donor may be taken on an intermittent or reduced schedule basis.

Sec. 51-3-1-8

Leave because of a qualifying exigency.

(a) ***Generally.***
Eligible employees may take MFML Law leave for a qualifying exigency while the employee's Family Member (the "military member" or "member") is on or notified of an impending covered active duty deployment to a foreign country.

(b) ***Qualifying exigencies for which leave may be taken.***
An eligible employee may take MFML Law leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment*.

(i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven (7) or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven (7) calendar days beginning on the date the military member is notified of an impending call or order to covered active duty.

(2) *U.S. Military events and related activities*.

(i) To attend any official ceremony, program, or event sponsored by the U.S. military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school actives listed in (i) through (iv) of this paragraph, the child of the military member must either be under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that MFML is to commence.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstance arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.*

(i) To make or update financial or legal arrangements to address the military member's absence while on active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the military member's child who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that MFML is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member.

(6) *Rest and Recuperation.*

(i) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(ii) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.*

(i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care*. For purposes of leave to care for the covered servicemember's parent listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three (3) or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental actives of daily living include cooking, cleaning shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member, and

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status or notification of an impending call or order to covered active duty, provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

(c) ***Intermittent and reduced schedule leave.*** See also Sec. 51-3-2-1.

Leave due to a qualifying exigency may be taken on an intermittent or reduced schedule leave basis.

Sec. 51-3-1-9

Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

(a) ***Generally.***
An eligible employee who is a family member or the next of kin of a covered servicemember with a serious injury or illness is entitled to MFML to care for the covered servicemember.

(b) ***Eligible employees receive up to 26 workweeks of leave in a 12-month period.***
An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

(1) The single 12-month period described in paragraph (b) of this section begins on the first day the eligible employee takes MFML to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other MFML qualifying reasons. If an eligible employee does not take all of their 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of their 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in paragraph (b) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any MFML qualifying reason during the single 12-month period described in paragraph (b) of this section provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the

birth of a child of the employee and in order to care for such child; because of the placement of a child with the employee for adoption or foster care; in order to care for the employee's family member with a serious health condition; in order to serve as an organ or bone marrow donor, because of a qualifying exigency as described in Sec. 51-3-1-8, or because of the employee's own serious health condition, provided that an employee may take up to two (2) additional workweeks of continuous leave for their own serious health condition. For example, an eligible employee may, during the single 12-month period, take 16 workweeks of MFML to care for a covered servicemember and 10 workweeks for MFML to care for a newborn child. However, the employee may not take more than 12 weeks of MFML to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of MFML to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as MFML-qualifying, and for giving notice of the designation to the employee. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period described in paragraph (b) of this section, the employer must designate such leave as leave to care for covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described in paragraph (b) of this section must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember.

(c) ***Intermittent and reduced schedule military caregiver leave.*** See also Sec. 51-3-2-1.

(1) For intermittent leave or reduced schedule leave taken to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the certification of a serious injury or illness, if required by the employer, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment for a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a covered servicemember's serious injury or illness.

It may also be taken to provide care or psychological comfort to a covered servicemember with a serious injury or illness.

(2) Intermittent leave may be taken for a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

(3) Intermittent or reduced schedule leave may be taken for absences where the covered servicemember is incapacitated because of a serious injury or illness of a covered servicemember, even if they do not receive treatment by a health care provider.

Sec. 51-3-2-1

Intermittent and Reduced Schedule Leave.

(a) ***Availability.***

An eligible employee may take MFML intermittently or on a reduced schedule for:

(1) Incapacity due to pregnancy, prenatal care or for a serious health condition associated with pregnancy or birth;

(2) Parental bonding after the birth or placement of a healthy child if the employer agrees.

(3) The care of a family member with a serious health condition if an intermittent or reduced schedule leave is medically necessary;

(4) The employee's own serious health condition if an intermittent or reduced schedule leave is medically necessary and only for the first 12-weeks of leave;

(5) Organ or bone marrow donation;

(6) A qualifying exigency as defined in Sec. 51-3-1-8

(7) The care by an employee who is a family member or next of kin of a covered servicemember's serious injury or illness if an intermittent or reduced schedule leave is medically necessary

Intermittent leave is MFML that is taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is a leave schedule that reduces an employee's usual number of working hours per workweek or hours per workday. A reduced schedule leave is a change in the employee's schedule for a period of time, such as from full-time to part-time.

(b) ***Scheduling medically necessary leave when leave is foreseeable.***

Eligible employees may take MFML on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. Eligible

employees may also take MFML on an intermittent or reduced schedule basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

(c) ***Transfer of an employee to an alternative position****.*

(1) *Transfer.* If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, including recovery therefrom, for the employee's serious health condition, a family member's serious health condition, for the employee to serve as an organ or bone marrow donor or for a covered servicemember's serious injury or illness, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced schedule leave is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(2) *Compliance.* Transfer to an alternative position may be subject to applicable law or the terms of a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

(3) *Equivalent pay and benefits.* The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(4) *Employer limitations.* An employer may not transfer the employee to an alternative position to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, an employer may not transfer a

white-collar employee to a position performing manual work; an employee working the day shift to a position on the graveyard shift; an employee working in the headquarters facility to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer will be held to be contrary to the prohibited acts of the MFML Law.

(5) *Reinstatement of employee.* An employer must return an employee who has been transferred to an alternative position as a result of taking leave intermittently or on a reduced schedule and who no longer needs to continue on leave and is able to return to full-time work, to the same or equivalent job as the job the employee left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave**.**

(d) ***Increments of leave under the MFML Law for intermittent or reduced leave schedule***.

(1) *Minimum increment.*

(i) When an employee takes MFML on an intermittent or reduced schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's MFML entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. If an employer uses different increments to account for different types of leave, the employer must account for MFML in the smallest increment used to account for any other type of leave. For example, if an employer accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then MFML use must be accounted for using increments no larger than one-half hour. If an employer accounts for use of leave in varying increments at different times of the day or shift, the employer may also account for MFML in varying increments, provided that the increment used for MFML is no greater than the smallest increment used for any other type of leave during the period in which the MFML is taken. If an employer accounts for other forms of leave use in increments greater than one hour, the employer must account for MFML use in increments no greater than one hour. An employer may account for MFML in shorter increments than used for other forms of leave. For example, an employer that accounts for other forms of leave in one-hour increments may account for MFML

in a shorter increment when the employee arrives at work several minutes late, and the employer wants the employee to begin work immediately. Such accounting for MFML will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of MFML in other circumstances. In all cases, employees may not be charged MFML for periods during which they are working.

(2) *Calculation of leave.*

(i) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who normally works five (5) days a week takes off one (1) day, the employee would use one-fifth (1⁄5) of a week of MFML. Similarly, if a full-time employee who would otherwise work eight (8)-hour days works four (4)-hour days under a reduced schedule, the employee would use one-half (1⁄2) of a week of MFML each week. Where an employee works a part-time schedule or variable hours, the amount of MFML that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced schedule leave, the employee's 10 hours of leave would constitute one-third (1⁄3) of a week of MFML for each week the employee works the reduced leave schedule.

(ii) If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than the MFML Law, and prior to the notice of need for MFML), the hours worked under the new schedule are to be used for making this calculation.

(iii) If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked but for the taking of MFML, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement. However, where the employee has been employed by an employer for less than 12 months prior to the beginning of the leave period, a weekly average of the hours scheduled over the employee's entire period of employment with the employer (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(3) *Overtime.*

(i) If an employee would normally be required to work overtime, but is unable to do so because of a the MFML Law-qualifying reason that limits

the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's the MFML Law entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of the MFML Law-protected leave out of the 48-hour workweek, or one-sixth (1⁄6) of a week of MFML. Voluntary overtime hours that an employee does not work due to an the MFML Law-qualifying reason may not be counted against the employee's MFML entitlement.

Sec. 51-3-3-1

Effect of MFML deductions on minimum wage and overtime exemptions.

Leave taken under the MFML Law may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements under applicable law, providing unpaid leave under the MFML Law to the employee will not cause the employee to lose the exemption. An employer may make deduction from the employee's salary for any hours taken as intermittent or reduced schedule leave within a workweek, without affecting the exempt status of an employee.

Sec. 51-3-4-1

Substitution of paid leave for unpaid leave.

(a) ***Paid leave may be substituted for unpaid leave.***
Generally, MFML is unpaid leave. However, under the circumstances described in this section, the MFML Law permits an eligible employee to choose to substitute accrued paid leave for unpaid MFML. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid MFML, except that the employee may retain at least two (2) weeks of accrued leave. The term substitute means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid MFML. Accordingly, the employee receives pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid MFML.

(b) ***Limitation on substitution of paid sick or medical leave.***
Substitution of paid sick or medical leave under this subsection may be elected only to the extent the circumstances meet the employer's usual requirements for the use of paid sick or medical leave.

(c) ***Any procedural requirements for substituting paid leave for unpaid leave must be met.***
An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. When an employee chooses, or an

employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid MFML. Employers may not discriminate against employees on MFML in the administration of their paid leave policies.

(d) ***If no election or requirement to substitute paid leave, the employee maintains their full paid leave accrual.***

If neither the employee nor the employer elects to substitute accrued paid leave for unpaid MFML, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(e) ***An employee's use of accrued paid leave for non-MFML reasons may not be counted against the employee's MFML entitlement.***

If an employee uses accrued paid leave under circumstances which do not qualify as MFML, the leave will not count against the employee's MFML entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's MFML entitlement.

(f) ***Leave under a disability plan and MFML.***

Leave taken pursuant to a disability leave plan would be considered MFML for an employee's own serious health condition and counted in the leave entitlement permitted under the MFML Law. In such cases, the employer may designate the leave as MFML and count the leave against the employee's MFML entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where applicable law permits, to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(g) ***Leave under Workers' Compensation and MFML.***

A serious health condition may result from injury to the employee on or off the job. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a light duty job. As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid MFML until the employee's MFML entitlement is exhausted.

(h) ***Employee may retain two (2) weeks of paid accrued leave, if available.***

Regardless of whether an eligible employee substitutes accrued paid leave for MFML by their own election or as required by the employer, the employee must be permitted to retain at least two (2) weeks of paid accrued leave. The employer, may, through a uniform policy, prescribe the type of accrued leave that may be retained, if available.

Sec. 51-3-5-1

Employee notice responsibilities.

(a) ***Employee Notice Generally.***

An employee giving notice of the need for MFML does not need to expressly assert rights under the Law or even mention the MFML Law to meet their obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in Sec. 51-3-5-2 - Sec. 51-3-5-3 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for MFML must explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies under the MFML Law. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employer to designate the leave as MFML. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a MFML-qualifying reason does not explain the reason for the leave and the employer denies the employee's request, the employee will need to provide sufficient information to establish a MFML-qualifying reason for the needed leave so that the employer is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's MFML entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a MFML-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the MFML-qualifying reason against the employee's MFML entitlement.

(b) ***As soon as practicable.***

Generally, employees are expected to provide notice of leave 30 days in advance, unless doing so is impracticable. For purposes of the employee notice requirements, “as soon as practicable” means as soon as both possible and practical, considering all of the facts and circumstances in the individual case. When an employee becomes aware of a need for MFML less than 30 days in advance, as soon as practicable ordinarily would mean at least verbal notification to the employer of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must consider the individual facts and circumstances.

(c) ***Disputes.***

If there is a dispute between an employer and an employee as to whether leave qualifies as MMFML, it should be resolved through discussions between the employee and the employer. Such discussions and the decision must be documented**.**

(d) ***Remedies.***

If an employer's failure to timely designate leave causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's MFML rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

Sec. 51-3-5-2

Employee notice requirements for foreseeable MFML.

(a) ***Timing of notice.***

An employee must provide the employer at least 30 days advance notice before MFML is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, the employee must give notice as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether MFML is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information.

(b) ***Content of notice.***

An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs MFML-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that the military member is on or has been notified of an impending deployment to a foreign country, and that the requested leave is for one of the reasons listed in Sec. 51-3-1-8(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or if the leave is

for a covered servicemember, that the employee is a family member or next of kin of the covered servicemember and the servicemember has a serious injury or illness. The employee shall also provide the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a MFML-qualifying reason, the employee need not expressly assert rights under the MFML or even mention the MFML. When an employee seeks leave due to a MFML-qualifying reason, for which the employer has previously provided MMFML-protected leave, the employee must specifically reference the qualifying reason for leave or the need for MFML. In all cases, the employer should inquire further of the employee if it is necessary to have more information about whether MFML is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. An employer may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. When an employee has been previously certified for leave due to more than one MFML-qualifying reason, the employer may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially MFML-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of MFML protection if the employer is unable to determine whether the leave is MFML-qualifying.

(c) ***Complying with employer policy.***

An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employer's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employer's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of their need for MFML there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, MFML-protected leave may be delayed or denied. However, MFML-protected leave may not be delayed or denied where the employer's policy requires notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section.

(d) ***Scheduling planned medical treatment.***

When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the

employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. If an employee neglects to consult with the employer to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(e) ***Medically necessary intermittent or reduced schedule leave.***
In the case of intermittent or reduced schedule leave which is medically necessary due to a serious health condition or a serious injury or illness, an employee shall advise the employer, upon request, of the reasons why the intermittent leave or reduced schedule leave is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(f) An employer may waive employee MFML notice requirements.

Sec. 51-3-5-3

Employee notice requirements for unforeseeable MFML.

(a) ***Timing of notice.***
When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave their child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employer promptly after ensuring the child has used the inhaler.

(b) ***Content of notice.***
An employee shall provide sufficient information for an employer to reasonably determine whether the MFML may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that the military member is on or has been notified of an impending

deployment to a foreign country, and that the requested leave is for one of the reasons listed in Sec. 51-3-1-8(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or if the leave is for a covered servicemember, that the employee is a family member or next of kin of the covered servicemember and the servicemember has a serious injury or illness. The employee shall also provide the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a MFML-qualifying reason, the employee need not expressly assert rights under the MFML or even mention the MFML. When an employee seeks leave due to a qualifying reason, for which the employer has previously provided the employee MFML-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for MFML. Calling in "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligations under the Law. The employer will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially MFML-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of MFML protection if the employer is unable to determine whether the leave is MFML-qualifying.

(c) ***Complying with employer policy.***

When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until their condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a MFML-qualifying reason, written advance notice pursuant to an employer's internal rules and procedures may not be required when MFML is involved. If an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, MFML-protected leave may be delayed or denied.

Sec. 51-3-5-4

Employee failure to provide required notice.

(a) ***Proper notice required.***

In all cases, in order for the onset of an employee's MFML to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the MFML notice requirements. This condition would be satisfied by the employer's proper posting of the required notice where the employee is employed and the employer's provision of the required notice as required by these regulations.

(b) ***Foreseeable leave—30 days.***
When the need for MFML is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer may delay MFML coverage until 30 days after the date the employee provides notice. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) ***Foreseeable leave—less than 30 days.***
When the need for MFML is foreseeable fewer than 30 days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employer may delay MFML coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employer two weeks notice but instead only provided one week notice, then the employer may delay MFML-protected leave for one week (thus, if the employer elects to delay MFML coverage and the employee nonetheless takes leave one week after providing the notice (i.e., a week before the two week notice period has been met) the leave will not be MFML Law-protected).

(d) ***Unforeseeable leave.***
When the need for MFML is unforeseeable and an employee fails to give notice in accordance with Sec. 51-3-5-3, the extent to which an employer may delay MFML coverage for leave depends on the facts of the particular case. For example, if it would have been practicable for an employee to have given the employer notice of the need for leave very soon after the need arises consistent with the employer's policy, but instead the employee provided notice two days after the leave began, then the employer may delay MFML coverage of the leave by two (2) days.

(e) ***Waiver of notice.***
An employer may waive employees' MFML notice obligations or the employer's own internal rules on leave notice requirements. If an employer does not waive the employee's obligations under its internal leave rules, the employer may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking MFML and the rules are not inconsistent with Sec. 51-3-5-1-Sec. 31-3-5-4.

Sec. 51-3-6-1

Spouses employed by the same employer.

If spouses are employed by the same employer, each receives their full entitlement of MFML under the Law, regardless of the qualifying reason for the leave.

Chapter 4. Certification.

Sec. 51-4-1-1

Certification, general rule.

(a) ***General.***

(1) An employer may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employer may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification. An employer must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by Sec. 51-8-1-1(c). An employer's oral request to an employee to furnish any subsequent certification is sufficient.

(2) Certification for an employee who seeks leave to care for a family member, next of kin or military member must confirm that the employee is “needed to care for” the person for whom leave is taken. The medical certification encompasses both physical and psychological care. The term includes

(i) situations where, for example, because of a serious health condition, the family member is unable to care for their own basic medical, hygienic, or nutritional needs or safety, or is unable to transport themselves to a doctor

(ii) providing psychological comfort and reassurance which would be beneficial to a person with a serious health condition who is receiving inpatient or home care;

(iii) situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home, even if the employee is not the only individual or family member available;

(iv) intermittent or reduced schedule leave for situations where the condition of the family member or covered servicemember is intermittent, or where the employee is needed only intermittently.

(b) ***Timing.***

In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five (5) business days thereafter, or, in the case of unforeseen leave, within five (5) business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration.

The employee must provide the requested certification to the employer within 15 calendar days after the employee's receipt of the certification form, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employer provides more than 15 calendar days to return the requested certification**.**

(c) ***Complete and sufficient certification.***

The employee must provide a complete and sufficient certification to the employer if required by the employer. The employer shall advise an employee whenever the employer finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employer must provide the employee with seven (7) calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of MFML. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) ***Consequences.***

At the time the employer requests certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employer may deny the taking of MFML. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer to support the employee's MFML request. This provision will apply in any case where an employer requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient.

(e) ***Annual medical certification.***

Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical

certifications are subject to the provisions for authentication and clarification set forth in Sec. 51-4-2-2, including second and third opinions.

Sec. 51-4-2-1

Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) ***Required information.***
When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employer may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
(2) The approximate date on which the serious health condition commenced, and its probable duration;
(3) A statement or description of appropriate medical facts regarding the patient's health condition for which MFML is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;
(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability;
(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member needs care, as described in Sec. 51-4-1-1(a)(2), and an estimate of the frequency and duration of the leave required to care for the family member;
(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;
(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) ***Optional MERO forms.***

The MERO has developed two optional forms (MERO Form 51-6370 *Certification of Health Care Provider for Employee's Serious Health Condition* and MERO Form 51-6380 *Certification of Health Care Provider for Family Member's Serious Health Condition*) for use in obtaining medical certification, including second and third opinions, from health care providers that meets the MFML Law's certification requirements. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. MERO Form 51-6370 and MERO Form 51-6380, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in these regulations. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

(c) ***Interaction with other medical leaves.***

If an employee is on MFML running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to request additional information from the employee's workers' compensation health care provider, the MFML Law does not prevent the employer from following the workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to MFML Law-protected leave. Similarly, an employer may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employer informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant to such policy or plan may be considered in determining the employee's entitlement to MFML Law-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid MFML.

(d) ***Employee is responsible for providing complete and sufficient certification information.***

While an employee may choose to comply with the certification requirement by providing the employer with an authorization, release, or waiver allowing the employer to communicate directly with the health care provider of the employee or their covered family member, the employee may not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's

responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of MFML.

Sec. 51-4-2-2

Authentication and clarification of medical certification for a serious health condition.

If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employer has given the employee an opportunity to cure any deficiencies as set forth in Sec. 51-4-1-1(c). To make such contact, the employer must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider. For purposes of these regulations, authentication means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested. Clarification means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employers may not ask health care providers for additional information beyond that required by the certification form. The requirements of any law governing the privacy of individually-identifiable health information must be satisfied when individually-identifiable health information of an employee is shared with an employer by a health care provider. If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of MFML if the certification is unclear. It is the employee's responsibility to provide the employer with a complete and sufficient certification and to clarify the certification if necessary.

Sec. 51-4-2-4

Certification for leave taken to donate an organ or bone marrow.

(a) ***Required Information.***
When leave is taken because an employee is donating an organ or bone marrow, an employer may require an employee to obtain a medical certification from a health care provider that sets forth the following information:
(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
(2) A statement that the employee is providing an organ or bone marrow donation, and whether the donation is an organ or bone marrow;
(3) The approximate donation date, and estimated duration of leave;

(4) If an employee requests leave on an intermittent or reduced schedule basis for organ or bone marrow donation, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the expected duration of such intermittent or reduced schedule leave.

(b) ***Optional MERO Form.***

The MERO has developed an optional form (MERO Form 51-6375, *Certification of Health Care Provider for Organ or Bone Marrow Donation*) for use in obtaining a health care provider certification for an employee's donation of an organ or bone marrow. The optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information. MERO Form 51-6375 or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in these regulations.

Sec. 51-4-2-5

Certification for leave taken because of a qualifying exigency.

(a) ***Active Duty Orders.***

The first time an employee requests leave because of a qualifying exigency arising out of a military member on or notified of an impending covered active duty deployment to a foreign country, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member;

(b) ***Required information.***

An employer may require that leave for any qualifying exigency be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which MFML is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;
(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;
(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;
(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and If the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) ***Optional MERO Form.***
The MERO has developed an optional form (MERO Form 51-6393, *Certification for Qualifying Exigency,*) for employees' use in obtaining a certification that meets MFML Law's certification requirements. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support their request for leave because of a qualifying exigency. Form 51-6393 or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section.

(d) ***Verification.***
If an employee submits a complete and sufficient certification to support their request for leave because of a qualifying exigency, the employer may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. An employer also may contact an appropriate unit of the U.S. Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested and the employee's permission is not required.

Sec. 51-4-2-6

Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) ***Required information from health care provider***.

When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense ("DOD") health care provider;
(2) A United States Department of Veterans Affairs ("VA") health care provider;
(3) A U.S. DOD TRICARE network authorized private health care provider;
(4) A U.S. DOD non-network TRICARE authorized private health care provider; or
(5) Any health care provider as defined in Sec. 51 2-1-16.

(b) ***Health care provider reliance on U.S. DOD or U.S. VA determinations.***

If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized U.S. DOD representative (such as a U.S. DOD Recovery Care Coordinator) or an authorized U.S. VA representative. An employer may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:
    (i) A U.S. DOD health care provider;
    (ii) A U.S. VA health care provider;
    (iii) A U.S. DOD TRICARE network authorized private health care provider**;**
    (iv) A U.S. DOD non-network TRICARE authorized private health care provider; or
    (v) A health care provider as defined in Sec. 51-2-1-16.
(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;
(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;
(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which MFML is requested. The medical facts must be sufficient to support the need for leave.
    (i) In the case of a current member of the U.S. Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy.

(ii) In the case of a covered veteran of the U.S. Armed Forces, such medical facts must include:

A. Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the U.S. Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

B. Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

C. Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

D. Documentation of enrollment in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in Sec. 51-4-1-1(a)(2), and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (e.g., episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) ***Required information from employee and/or covered servicemember.***
In addition to the information that may be requested under this section, an employer may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employer of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the U.S. Armed Forces, the U.S. National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the U.S. Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employer may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employer requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status.

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) ***Optional forms available from the MERO.***
The MERO has developed optional forms, MERO Form 51-6391, *Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave* and MERO Form 51-6392, *Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave*, for employees' use in obtaining certification that meets MFML Law's certification requirements. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support their request for leave to care for a covered servicemember with a serious injury or illness. MERO Form 51-6391 and MERO Form 51-6392, as applicable, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave

exists. An employer may seek authentication and/or clarification of the certification under Sec. 51-4-2-2. Second and third opinions are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health care providers identified in Sec. 51-4-2-6(a(1)-(4). However, second and third opinions are permitted when the certification has been completed by a health care provider as defined in Sec. 51-2-1-16 that is not one of the types identified in Sec. 51-4-2-6(a)(1)-(4). Additionally, recertifications are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to Sec. 51-3-1-1(c) of the MFML.

(e) ***Employer must accept ITO or ITA as sufficient certification.***
An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the MERO's optional certification forms or an employer's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at their bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support their request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take MFML to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employer may request that the employee have one of the authorized health care providers listed under Sec. 51-4-2-6(a) complete the DOL optional certification form or an employer's own form, as requisite certification for the remainder of the employee's necessary leave period.
(2) An employer may seek authentication and clarification of the ITO or ITA under Sec. 51-4-2-2. An employer may not utilize the second or third opinion process or the recertification process during the period of time in which leave is supported by an ITO or ITA.
(3) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to Sec. 51-3-1-1(c) when an employee supports their request for MFML with a copy of an ITO or ITA.

(f) ***Employer must accept certification of enrollment in U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.***

An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(g) ***Delay in providing certification.***
Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of MFML.

(1) An employer may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the U.S. Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under Sec. 51-4-2-2. An employer may not utilize the second or third opinion process or the recertification process when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to Sec. 51-3-1-1(c) when an employee supports their request for MFML with a copy of such enrollment documentation. An employer may also require an employee to provide documentation, such as a veteran's Form DD–214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

Sec. 51-4-2-7

Intent to return to work.

(a) ***Employer may require periodic reporting.***
An employer may require an employee on MFML to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) ***Employee unequivocal notice of intent not to return to work.***
If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under the MFML Law to maintain health benefits (subject to any applicable COBRA requirements) and to restore the employee cease. However, these obligations

continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) ***Employee need for additional leave time at expiration of leave period.***
It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more MFML than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employer may require that the employee provide the employer reasonable notice (i.e., within two (2) business days) of the changed circumstances where foreseeable. The employer may also obtain information on such changed circumstances through requested status reports**.**

Sec. 51-4-2-8

Fitness-for-duty certification.

As a condition of restoring an employee whose MFML was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

Sec. 51-4-2-9

Failure to provide certification.

(a) ***Foreseeable leave.***
In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by these regulations, then an employer may deny MFML coverage until the required certification is provided. For example, if an employee has 15 days to provide a certification and does not provide the certification for 45 days without sufficient reason for the delay, the employer can deny MFML protections for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

(b) ***Unforeseeable leave.***
In the case of unforeseeable leave, an employer may deny MFML coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employer can deny MFML Law protections for the leave following the

expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not MFML.

(c) ***Recertification.***
An employee must provide recertification within the time requested by the employer (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employer may deny continuation of the MFML protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not MFML. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember**.**

(d) ***Fitness-for-duty certification.*** When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of MFML taken for the employee's serious health condition, that the employee is fit for duty and able to return to work if the employer has provided the required notice the employer may delay restoration until the certification is provided. Any permitted clarification of a submitted fitness-for-duty certification by the employer may not delay the employee's reinstatement. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time MFML is concluded, the employee may be terminated.

Sec. 51-4-3-1

Second medical opinion.

(a) ***A second opinion at the employer's expense may be obtained if the employer has reason to doubt the validity of a medical certification.***
An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense.

(b) ***Employer may designate health care provider to furnish second opinion.***
The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one (1) or two (2) doctors practice in the relevant specialty in the vicinity).

(c) ***Employee must be treated as MFML qualifying during the certification review.***
Pending receipt of the second medical opinion, the employee is provisionally entitled to the benefits of the Law, including maintenance of group health benefits. If the certification does not ultimately establish the employee's entitlement to MFML, the

leave shall not be designated as MFML and may be treated as paid or unpaid leave under the employer's established leave policies.

(d) ***Consequences for refusal to authorize release of medical information.***
If the employee or the employee's family member fails to authorize their health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion, the consequences set forth in Sec. 51-4-1-1(d) will apply.

(e) ***Copies of opinion.***
The employer is required to provide the employee with a copy of the second medical opinion, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

(f) ***Travel expenses.***
If the employer requires the employee to obtain a second opinion the employer must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second medical opinion. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second opinion except in very unusual circumstances.

(g) ***Medical certification abroad.***
In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second opinion from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employer with a written translation of the certification upon request.

Sec. 51-4-4-1

Resolution of Conflicting Medical Opinions – Third Opinion.

(a) ***Circumstances under which third health care provider opinion may be obtained.***
If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding.

(b) ***Choosing the health care provider to provide the third opinion.***
The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach

agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(c) ***Other terms for third opinions are the same as for second opinions.***
The provisions set forth in 51-4-3-1 (c)-(g) applicable to second opinions apply equally to third opinions.

(d) **Third Opinion is Final and Binding.**
The opinion of the third health care provider is final and binding on the employee and the employer.

Sec. 51-4-5-1

Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) ***30-day rule.***
An employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) ***More than 30 days.***
If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employer must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employer must wait 40 days before requesting a recertification. In all cases, an employer may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employer would be permitted to request recertification every six months in connection with an absence. **Less than 30 days.**

(c) ***Less than 30 days.***
An employer may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for their last two migraines lasted four days each, then the increased duration of absence might constitute a

significant change in circumstances allowing the employer to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled MFML for migraines in conjunction with their scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every 30 days; or

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on MFML for four (4) weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of MFML, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employer to request a recertification in less than 30 days.

(d) ***Timing.***
The employee must provide the requested recertification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employee's receipt), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) ***Content.***
The employer may ask for the same information when obtaining recertification as that permitted for the original certification. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) ***Payment responsibility.*** Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

Chapter 5. Employment and Benefits Protection – Return from MFML.

Sec. 51-5-1-1

Employee right to reinstatement.

(a) ***General rule****.*

On return from MFML Law leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or if the same position is not available, to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or their position has been restructured to accommodate the employee's absence.

Sec. 51-5-1-2

(a) ***Equivalent position.***
An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) ***Conditions to qualify****.*
If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) ***Equivalent pay*****.**

(1) An employee is entitled to any unconditional pay increases which may have occurred during the MFML period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as MFML. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from MFML.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary, made to employees consistent with the provisions of paragraph (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to MFML, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as MFML. For example, if an employee who used paid vacation leave for a non-MFML purpose would receive the payment, then the employee who used paid vacation leave for an -MFML protected purpose also must receive the payment.

(d) ***Equivalent benefits***.

(1) At the end of an employee's MFML, employment benefits as defined in Sec. 51-2-1-10 must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of MFML affecting the entire workforce, unless otherwise elected by the employee. Upon return from MFML, an employee cannot be required to requalify for any benefits the employee enjoyed before MFML began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid MFML, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employers may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from MFML, make arrangements for continued payment of costs to maintain such benefits during unpaid MFML, or pay these costs subject to recovery from the employee on return from leave.

(2) An employee is entitled to accrue any additional benefits or seniority during unpaid MFML if the employer's policy provides that other employees on unpaid leave are entitled to such accrual of benefits or seniority. Benefits accrued at the time leave began (e.g., paid vacation, sick or personal leave to the extent not substituted for MFML) must be available to an employee upon return from leave.

(3) If, while on unpaid MFML, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employer is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employer has no established policy, the employee and the employer are encouraged to agree upon arrangements before MFML begins.

(4) With respect to pension and other retirement plans, any period of unpaid MFML shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid MFML on that date shall be deemed to have been employed on that date. However, unpaid MFML periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid MFML are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period that are not available to employees on unpaid leave, immediately upon return from leave or to the same extent they would have

qualified if no leave had been taken. For example, if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid MFML, the benefit is lost.

(e) ***Equivalent terms and conditions of employment.***
An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) The MFML Law does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employer to accept a different position against the employee's wishes.

(f) ***De minimis exception.***
The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to *de minimis*, intangible, or unmeasurable aspects of the job. Restoration to a job slated for layoff when the position held by the employee prior to MFML is not, would not meet the requirements of an equivalent position.

Sec. 51-5-1-3

Fitness-for-duty certification.

(a) ***Employer may through a uniform policy require a fitness for duty certification.***
As a condition of restoring an employee whose MFML was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from

the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employer) in the fitness-for-duty certification process as in the initial certification process.

(b) ***Fitness-for-duty certification must be limited to condition requiring MFML.***
An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for MFML. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by Sec. 51-8-1-1(e) and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employer satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of their job. Following the procedures set forth in Sec. 51-4-2-2 the employer may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which MFML was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) ***Payment for fitness-for-duty certification.***
The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) ***Fitness-for-duty certification requirement must be in designation notice.***
The designation notice required in Sec. 51-8-1-1(e) shall advise the employee if the employer will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) ***Failure to provide fitness-for-duty certification may result in delay or denial of reinstatement.***
An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notice required in paragraph (d) of this section. If an employer provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional MFML is no longer entitled to reinstatement under the MFML Law.

(f) ***Fitness-for-duty certifications for employees on an intermittent or reduced schedule leave.***

An employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced schedule basis. However, an employer is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which the employee took such leave. If an employer chooses to require a fitness-for-duty certification under such circumstances, the employer shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employer can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employer advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employer may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. Reasonable safety concerns means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employer should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) ***Applicable law or a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law may govern an employee's return to work.***
If applicable law or the terms of a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law govern an employee's return to work, those provisions shall be applied.

(h) ***Medical examinations.***
Any fitness for duty physical must be job-related and consistent with business necessity.

Sec. 51-5-1-4

Limitations on an employee's right to reinstatement.

(a) ***Employee rights as if continuously employed.***
An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the MFML period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking MFML and employment is terminated, the employer's responsibility to continue MFML, maintain group health plan benefits and restore the employee cease at the time the employee is laid off, provided the employer has no continuing obligations under a collective

bargaining agreement entered into under Mashantucket Pequot Tribal Law or otherwise. An employer would have the burden of proving that an employee would have been laid off during the MFML period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking MFML.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer.

(b) ***Denial of restoration to highly compensated employees.***
An employer may deny job restoration to highly compensated eligible employees (as defined in Sec. 51-2-1-17 and Sec. 51-5-2-1, if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in Sec. 51-5-1-3.

(c) ***Employee unable to perform essential functions of their pre-MFML position.***
If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the MFML Law.

(d) ***No protections for employees who engage in fraud.***
An employee who fraudulently obtains MFML Law benefits from an employer is not protected by MFML Law's job restoration or maintenance of health benefits provisions.

(e) ***Effect of employer policies for outside or supplemental employment.*** If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on MFML. An employer which does not have such a policy may not deny benefits to which an employee is entitled under the MFML Law on this basis unless the MFML was fraudulently obtained as in paragraph (d) of this section.

Sec. 51-5-2-1

Highly compensated employee, general rule.

(a) ***Highly compensated employee.***

A highly compensated employee is a salaried MFML-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer on the Mashantucket Pequot Reservation.

(1) *Salaried.* The term salaried means paid on a salary basis, as defined in applicable law or regulation defining employees who may qualify as exempt from the minimum wage and overtime requirements.

(2) *Highly compensated***.** A highly compensated employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employer on the Mashantucket Pequot Reservation.

(b) ***Determining highest paid 10 percent of employees.***
In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, e.g., stock options, or benefits or perquisites.

(c) ***Determination is made when employee gives notice of the need for leave.***
The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employer's employees on the Mashantucket Pequot Reservation may be highly compensated employees for purposes of the MFML Law.

Sec. 51-5-2-2

Substantial and grievous economic injury.

(a) ***Employer determination.***
In order to deny restoration to a key employee, an employer must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the employer, not whether the absence of the employee will cause such substantial and grievous injury.

(b) ***Temporary replacement may be considered****.*
An employer may consider its ability to replace on a temporary basis (or temporarily do without) the employee on MFML. If permanent replacement is unavoidable, the cost of then reinstating the employee may be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employer of reinstating the employee in an equivalent position.

(c) ***No precise test.***
A precise test cannot be set for the level of hardship or injury to the employer which must be sustained. If the reinstatement of a highly compensated employee threatens the economic viability of the employer, that would constitute substantial and grievous

economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employer would experience in the normal course of doing business would certainly not constitute substantial and grievous economic injury.

Sec. 51-5-2-3

Rights of a highly compensated employee.

(a) ***Employer required to notify employee of potential to deny restoration.***
An employer who believes that reinstatement may be denied to a highly compensated employee must give written notice to the employee at the time the employee gives notice of the need for MFML (or when MFML commences, if earlier) that he or she qualifies as a highly compensated employee. At the same time, the employer must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from MFML. If such notice cannot be given immediately because of the need to determine whether the employee is a highly compensated employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after MFML and, therefore, there would be no need to provide such notice. However, an employer who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) ***Employer requirement to notify employee of economic injury determination.***
As soon as an employer makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a highly compensated employee who has given notice of the need for MFML or is using MFML is reinstated, the employer shall notify the employee in writing of its determination, that it cannot deny MFML, and that it intends to deny restoration to employment on completion of the MFML. It is anticipated that an employer will ordinarily be able to give such notice prior to the employee starting leave. The employer must serve this notice either in person or by certified mail. This notice must explain the basis for the employer's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, considering the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) ***Employee failure to return to work after employer notice of intent to deny restoration.***
If an employee on leave does not return to work in response to the employer's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employer may not recover its cost of health

benefit premiums. A highly compensated employee's rights under the MFML Law continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employer actually denies reinstatement at the conclusion of the leave period.

(d) ***Employer reinstatement request.***
After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employer's notice. The employer must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employer shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

Chapter 6. Group Health Insurance and Other Benefits During MFML.

Sec. 51-6-1-1

Maintenance of Group Health Benefits

(a) ***Group health plan coverage must be maintained as if the employee were not on leave.***
During any MFML, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1))on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. An employer has no obligation regarding the maintenance of a health insurance policy which is not a group health plan.

(b) ***Employee receives the group health plan benefits they had prior to taking leave.***
The same group health plan benefits provided to an employee prior to taking MFML must be maintained during the MFML. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the MFML. Similarly, benefit coverage during MFML for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) ***Changes in group health benefit plans while an employee is on MFML.***
If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on MFML, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employer changes a group health plan so that dental care becomes covered under the plan, an employee on MFML must be given the same opportunity as other

employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on MFML.

(d) ***Employee on MFML receives the same opportunities to change plans and benefits as employees not on leave.***
Notice of any opportunity to change plans or benefits must also be given to an employee on MFML. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on MFML. If the employee requests the changed coverage it must be provided by the employer.

(e) ***Employee choices.***
An employee may choose not to retain group health plan coverage during MFML. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

(f) ***When group health insurance benefits may be terminated.***
Except as may be required by COBRA and for highly compensated employees (as discussed below), an employer's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under the MFML Law ceases if and when the employment relationship would have terminated if the employee had not taken MFML (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employer of their intent not to return from leave (including before starting the leave if the employer is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting their MFML entitlement in the 12-month period.

(g) ***Group health insurance benefits for highly compensated employees.***
If a highly compensated employee does not return from leave when notified by the employer that substantial or grievous economic injury will result from their reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employer that the employee does not desire restoration to employment at the end of the leave period, or the MFML entitlement is exhausted, or reinstatement is denied.

(h) ***Employee entitlement to benefits other than group health insurance.***
An employee's entitlement to benefits other than group health benefits during a period of MFML is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave, paid or unpaid, as appropriate.

Sec. 51-6-1-2

Employee payment of group health plan benefits

(a) ***Employee responsibility for group health insurance premium payments.***
Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the MFML period. Therefore, any share of group health plan premiums which had been paid by the employee prior to MFML must continue to be paid by the employee during the MFML period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employer's group health plan, as described in §51-2-1-15, are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid MFML.

(b) ***Group health insurance premium payments during paid leave.***
If the MFML is substituted paid leave, the employee's share of group health plan premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) ***Group health plan premium payments during unpaid leave*.**
If MFML is unpaid, the employer has a number of options for obtaining group health plan premium payments from the employee. The employer may require that payment be made to the employer or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employer may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;
(2) Payment would be due on the same schedule as payments are made under COBRA;
(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;
(4) The employer's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment (*i.e.,* prior to the commencement of the leave) of the premiums that will become due during a period of unpaid MFML or payment of higher premiums than if the employee had continued to work instead of taking leave; or,
(5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the MFML is foreseeable).

(d) ***Employer provides notice of terms and conditions for premium payments***.
The employer must provide the employee with advance written notice of the terms and conditions under which the group health plan premium payments must be made.

(e) ***Employees on unpaid MFML may not be treated less favorably than employee on other unpaid leaves***.
An employer may not require more of an employee using unpaid MFML than the employer requires of other employees on leave without pay with respect to the payment of group health plan premiums.

(f) ***Employees receiving worker's compensation benefits.***
An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking MFML.

Sec. 51-6-1-3

Employee failure to pay group health plan premium payments.

(a) ***Grace period for employee group health insurance premium payments***.
In the absence of an established employer policy providing a longer grace period, an employer's obligations to maintain group health insurance coverage cease under the MFML Law if an employee's premium payment is more than 30 calendar days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 calendar days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 calendar days after the date of the letter unless the payment has been received by that date. If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid group health insurance premium payment was due, the employer may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(b) ***Termination of an employee's group health insurance due to nonpayment does not affect an employer's obligations under the MFML Law otherwise.***
All other obligations of an employer under the MFML Law would continue; for example, the employer continues to have an obligation to reinstate an employee upon return from leave, even if the employee's group health plan coverage was terminated due to nonpayment.

(c) ***Employer may recover unpaid premiums.***
The employer may recover the employee's share of any premium payments missed by the employee for any MFML period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

(d) ***A group health insurance lapse due to nonpayment of premiums does not affect group health plan entitlement upon the employee's return to work.***

If coverage lapses because an employee has not made required premium payments, upon the employee's return from MFML the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

Sec. 51-6-2-1

Employer recovery of group health insurance premiums if employee does not return to work.

(a) ***Circumstances under which employer may recover unpaid premiums if employee does not return to work.***

In addition to the circumstances discussed in Sec. 51-6-1-3, an employer may recover its share of health plan premiums during a period of unpaid MFML from an employee if the employee fails to return to work after the employee's MFML entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under MFML; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a highly compensated employee who decides not to return to work upon being notified of the employer's intention to deny restoration because of substantial and grievous economic injury to the employer's operations and is not reinstated by the employer. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(b) ***Employer may recover employee's share of costs of certain benefits employer maintained during the employee's leave.***
Under some circumstances an employer may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's (share of) premiums during periods of unpaid MFML. For example, to ensure the employer can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid MFML, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employer elects to maintain such benefits during the leave, at the conclusion of leave, the employer is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) ***Return for at least 30 calendar days is considered returned to work.***
An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking MFML to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) ***Employer may not recover benefit premiums for any period of MFML covered by paid leave.***
When an employee elects or an employer requires paid leave to be substituted for MFML, the employer may not recover its (share of) health insurance or other non-health benefit premiums for any period of MFML covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) ***Recovery of health insurance premiums by self-insured employers.***
The amount that self-insured employers may recover is limited to only the employer's share of allowable premiums as would be calculated under COBRA, excluding the two percent fee for administrative costs.

(f) ***Recovery of employee health insurance premium debt by employer.***
When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employer to recover are a debt owed by the non-returning employee to the employer. The existence of this debt caused by the employee's failure to return to work does not alter the employer's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of MFML. To the extent recovery is allowed, the employer may recover the costs through deduction from any sums due to the employee (e.g., unpaid wages, vacation pay, profit sharing, etc.), provided such deductions do not otherwise violate applicable Federal or State wage payment or other laws. Alternatively, the employer may initiate legal action against the employee to recover such costs.

Sec. 51-6-3-1

Certification of inability to return to work.

(a) ***Employer may require medical certification of the employee's inability to return to work due to the continuation, recurrence or onset of a serious health condition.***
When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employer from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid MFML, the employer may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employer.

(b) ***Costs and timing of the medical certification.***
The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee must supply a medical certification within 30 days of the date of the employer's request.

(c) **Circumstances under which employer may recover 100 percent of the health insurance plan premiums paid on the employee's behalf during the employee's MFML.**
If the employee does not provide a required medical certification within 30 days of the date of the request, or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employer may recover 100 percent of the health benefit premiums it paid during the period of unpaid MFML.

(d) ***Optional MERO Forms.***
For purposes of medical certification, the employee may use the optional MERO forms developed for these purposes, MERO Form 51-6370 *Certification of Health Care Provider for Employee's Serious Health Condition*, MERO Form 51-6380 *Certification of Health Care Provider for Family Member's Serious Health Condition*), MERO Form 51-6391, *Certification for Serious Injury or Illness of a Current Servicemember for Military Caregiver Leave* and MERO Form 51-6392, *Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave*

Chapter 7. Employee Protections – Employer Acts Prohibited.

Sec. 51-7-1-1

Protection for employees who request leave or otherwise assert MFML Law rights.

(a) ***Employer interference with employee rights prohibited.***
The MFML Law prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the MFML Law.
(2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the MFML Law.
(3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has—
    (i) Filed any claim, or has instituted (or caused to be instituted) any proceeding under or related to this Law;
    (ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Law;
    (iii) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Law.

(b) ***Employer violations of MFML Law.***

Any violations of the MFML Law or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Law. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize MFML, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under the MFML Law, for example:

(1) Changing the essential functions of the job in order to preclude the taking of leave;
(2) Reducing hours available to work in order to avoid employee eligibility.

(c) ***Discrimination or retaliation by employer prohibited.***

The Law's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise MFML Law rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid MFML. By the same token, employers cannot use the taking of MFML as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can MFML be counted under no fault attendance policies.

(d) ***Employee waiver of prospective rights prohibited.***

Employees cannot waive, nor may employers induce employees to waive, their prospective rights under the MFML Law. For example, employees (or their collective bargaining representatives) cannot trade off the right to take MFML against some other benefit offered by the employer. This does not prevent the settlement or release of

MFML Law claims by employees based on past employer conduct without the approval of the MERO or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's MFML commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month MFML year.

(e) ***Employer retaliation prohibited.***
Individuals, and not merely employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the Law. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Law or regulations.

Chapter 8. Notices Required to be Provided by the Employer.

Sec. 51-8-1-1

Employer notice requirements.

(a) ***General notice.***

(1) Every employer covered by the MFML Law is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Law's provisions and providing information concerning the procedures for filing complaints of violations of the Law with the Mashantucket Employment Rights Office (MERO). The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. An employer that willfully violates the posting requirement may be assessed a civil money penalty by the MERO of $100 for each separate offense.

(2) Every employer shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.

(3) To meet the requirements of paragraph (a)(2) of this section, employers may duplicate the text of the MERO's prototype notice (MERO Form 51-6150) or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

(b) ***Eligibility notice.***

(1) When an employee requests MFML, or when the employer acquires knowledge that an employee's leave may be for an MFML-qualifying reason, the employer must notify the employee of the employee's eligibility to take MFML within five (5) business days after learning of such need for leave, absent extenuating circumstances. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each MFML Law-qualifying reason in the applicable 12-month period. All MFML absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

(2) The eligibility notice must state whether the employee is eligible for MFML. If the employee is not eligible for MFML, the notice must state at least one (1) reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer and the hours of service with the employer during the 12-month period. Notification of eligibility may be oral or in writing.

(3) If, at the time an employee provides notice of a subsequent need for MFML during the applicable 12-month period due to a different MFML Law-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (e.g., if the employee has not met the hours of service requirement in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the employer must notify the employee of the change in eligibility status within five (5) business days, absent extenuating circumstances.

(c) ***Rights and responsibilities notice.***

(1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. This notice shall be provided to the employee each time the eligibility notice is provided pursuant to paragraph (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record in addition to any other means used to transmit the notice. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual MFML entitlement if qualifying and the applicable 12-month period for MFM entitlement

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of covered active duty or call to covered active duty status, as applicable, and the consequences of failing to do so

(iii) The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any

substitution, the employee's right to choose to retain two (2) weeks of accrued paid leave, if available, and the employee's entitlement to take unpaid MFML if the employee does not meet the conditions for paid leave;

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) The employee's status as a key employee and the potential consequence that restoration may be denied following MFML, explaining the conditions required for such denial

(vi) The employee's rights to maintenance of benefits during the MFML and restoration to the same or, if not available, an equivalent job upon return from MMFML and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid MFML if the employee fails to return to work after taking MFML .

(2) The notice of rights and responsibilities may include other information, for example, whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the MFML.

(d) ***Eligibility and Rights and Responsibilities Notices.***

(1) The employer shall give the eligibility and rights and responsibilities notices within a reasonable time after the employee provides notice of the need for leave, but not later than five (5) business days if feasible. If the specific information provided by the eligibility and rights and responsibilities notices changes with respect to a subsequent period of MFML during the 12-month period, the employer shall, within five (5) business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(2) A prototype optional notice, MERO Form 51-6340, *Notice of Eligibility and Rights and Responsibilities*, , that combines the eligibility and rights and responsibilities notices may be obtained from the MERO. Employers may adapt the prototype notice as appropriate to meet these notice requirements.

(e) ***Designation notice.***

(1) The employer is responsible in all circumstances for designating leave as MFML-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a MFML-qualifying reason, the employer must notify the employee whether the leave will be designated and will be counted as MFML within five (5) business days absent extenuating circumstances. Only one notice of designation is required for each MFML-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as MFML-qualifying the employer must notify the employee of that determination and the reason for that determination. If the employer requires paid leave to be substituted for unpaid MFML, or that paid leave taken under an existing leave plan be counted as MFML, the employer must inform the employee of this designation at the time of designating the MFML.

(2) The employer's decision to designate leave as MFML-qualifying must be based only on the information received from the employee or the employee's spokesperson if the employee is incapacitated. If the employer has sufficient information to designate the leave as MFML immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer may request additional information from the employee, or the employee's spokesperson if the employee is incapacitated, to ascertain whether leave is potentially qualifying. Once the employer has sufficient information that the leave is being taken for a qualifying reason, the employer shall notify the employee that the leave is being designated as MFML.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position.

(4) The designation notice must be in writing. An optional prototype designation notice is available from the MERO.

(5) If the information provided by the employer to the employee in the designation notice changes (e.g., the employee exhausts the MFML entitlement), the employer shall provide, within five business days of receipt of the employee's

first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must notify the employee of the amount of leave counted against the employee's MFML entitlement. If the amount of leave needed is known at the time the employer designates the leave as MFML-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's MFML entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's MFML entitlement (such as in the case of unforeseeable intermittent leave), then the employer must provide notice of the amount of leave counted against the employee's MFML entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's MFML entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(7) If an employer does not designate leave, the employer may retroactively designate leave as MFML with appropriate notice to the employee as required by this subsection provided that the employer's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for MFML protections, an employer and an employee can mutually agree that leave be retroactively designated as MFML. For example, if an employer that was put on notice that an employee needed MFML failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employer's actions. However, if an employee took leave to provide care for a child with a serious health condition believing it would not count toward their MFML entitlement, and the employee planned to later use that MFML to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employer's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously ill child if the leave had been designated timely.

(f) ***All Employer Notices.***

(1) Prototype optional notices that meet the requirements of this Section are available from the MERO.

(2) Unless otherwise specified, group and individual written notices required by the MFML Law may be distributed by an employer electronically, and required written notifications may be via electronic mail, provided the employer routinely utilizes electronic means of communicating with its employees and the employer is not aware of circumstances that may make the electronic communication ineffective.

(3) Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide all required MFML Law notices in a language in which the employees are literate. Employers furnishing MFML notices to sensory-impaired individuals also must comply with all requirements of applicable law.

(g) ***Consequences of failing to provide notice.***
Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's MFML Law rights.

Sec. 51-8-1-2

Violations of the posting requirement.

The MFML Law requires covered employers to post a MERO-approved notice for employees that explains the Law's provisions. If the MERO determines that an employer has committed a willful violation of this posting requirement, a civil money penalty of one hundred dollars and no cents ($100) for each such violation will be assessed. The MERO may issue and serve a notice of penalty on such employer via electronic or U.S. Mail.

Sec. 51-8-1-3

Recordkeeping requirements.

(a) ***Employers must maintain and preserve records related to MFML administration.***
Covered employers shall make, keep, and preserve records pertaining to their obligations under the Law in accordance with these regulations.

(b) ***Records may be maintained in any form that may be viewed and copied.***
No particular order or form of records is required. These regulations establish no requirement that any employer revise its computerized payroll or personnel records systems to comply. However, employers must keep the records specified by these regulations for no less than three years and make them available for inspection, copying, and transcription by representatives of the MERO upon request. The records may be maintained and preserved in any manner that allows for adequate viewing and copying with standard equipment.

(c) ***Records that must be maintained and preserved.***
Covered employers who have eligible employees must maintain records that must disclose the following:

(1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
(2) Dates MFML is taken by MFML eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as MFML; leave so designated may not include leave required under applicable law or an employer plan which is not also covered by MFML.
(3) If MFML is taken by eligible employees in increments of less than one full day, the hours of the leave.
(4) Copies of employee notices of leave furnished to the employer under MFML, if in writing, and copies of all written notices given to employees as required under MFML and these regulations Copies may be maintained in employee personnel files.
(5) Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
(6) Premium payments of employee benefits.
(7) Records of any dispute between the employer and an eligible employee regarding designation of leave as MFML, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

(d) ***Records to be maintained by joint employers.***
Covered employers in a joint employment situation must keep all the records required by paragraph (c) of this section with respect to any primary employees, and must keep the records required by paragraph (c)(1) with respect to any secondary employees.

(e) ***Records for employees exempt from minimum wage and overtime requirements.***
If MFML-eligible employees are not subject to minimum wage or overtime compliance requirements, an employer need not keep a record of actual hours worked, provided that:
(1) Eligibility for MFML is presumed for any employee who has been employed for at least 12 months; and
(2) With respect to employees who take MFML intermittently or on a reduced schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with paragraph (b) of this section.

(f) ***Confidential employee records must be maintained in accordance with the strictest confidentiality requirements of applicable law.***
Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of MFML, shall be maintained as confidential medical records in separate files/records from the usual

personnel files. Documents shall be maintained in accordance with the strictest confidentiality requirements of applicable laws, provided that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
(3) Government officials investigating compliance with MFML (or other pertinent law) shall be provided relevant information upon request.

Chapter 9. Enforcement of Rights – Claim Filing, Mandatory Conciliation.

Sec. 51-9-1-1

Enforcement of rights; claim filing and mandatory conciliation.

(a) ***Employee may file a claim at the Mashantucket Employment Rights Office (MERO).***
An employee who believes their rights under the MFML Law have been violated may file a claim with the MERO.

(b) ***Time to file a claim.***
To be timely, a claim must be received by the MERO no later than 180 calendar days after the action that is alleged to be a violation of the MFML Law.

(c) ***Manner of filing a claim.***
(1) A claim on a form designated by the MERO and signed under oath by the claimant, may be filed in person, by U.S. Mail or, if electronic signature is elected, by electronic mail, with the MERO.
(2) Signing electronically includes a manual signature submitted electronically. An individual submitting a claim electronically must agree that their electronic signature is the legally binding equivalent of their manual signature. The content of electronic submissions must be visible in both electronic and print formats.

(d) ***Docketing and service.***
A filed claim will be docketed by the MERO. The MERO will provide a copy of the claim to the employer.

(e) ***Amendments.***
A filed claim may be amended by the claimant on their own initiative or upon the request of the MERO to clarify the claimant's claims. Additions to a claim that are related to the original claim allegations do not require a new claim to be filed.

(f) ***Employee who elects to proceed under Title 8, M.P.T.L. may not file a claim under the MFML Law.***
An employee who was disciplined and appealed the action under Title 8 M.P.T.L. may not file a claim under the MFML Law if they received a Board of Review or arbitration

decision under Title 8. Evidence of a Board of Review or arbitration decision addressing discipline that is alleged in the MFML claim before the MERO may result in dismissal of all or part of the claim before the MERO.

(g) ***Right to an attorney.***

(1) Any party to a case before the MERO is entitled to retain an attorney of their choosing and at their expense to represent them in the matter. An optional appearance form is available from the MERO.

(2) When an attorney appears on behalf of a party to a MERO case, the MERO will thereafter address substantive issues only to the attorney, not the party the attorney represents.

Sec. 51-9-1-2

Mandatory Conciliation.

(a) ***Scheduling a mandatory conciliation conference.***
Within 21 days of a claim being filed with the MERO, the MERO will schedule a mandatory conciliation conference. Both the employee and the employer, directly or through their legal representatives, are required to attend the mandatory conciliation conference.

(b) ***Conciliation conference postponements.***

(1) Conciliation conference postponements may be requested by the employee or the employer by submitting a request in writing.

(2) The request for a postponement must include the reason for the request.

(3) A postponement request will be granted only if the MERO Director determines that the party making the request has shown good cause for a postponement.

(c) ***Conciliation.***

(1) The conciliation will be conducted in accordance with the MERO's guidelines and may continue after a conciliation conference is held.

(2) Conciliation efforts are considered confidential. The parties will be required to execute and comply with a confidentiality agreement.

(3) Conciliation will be conducted for no longer than 90 business days from the filing of a claim.

(d) ***Claim resolution through conciliation.***

(1) Any resolution reached in conciliation will be documented in a conciliation agreement signed by the employee and employer and approved by the MERO.

(2) A conciliation agreement may include any of the remedies that may be awarded by the Tribal Court under the MFML Law.

(3) Any conciliation agreement signed by the parties and approved by the MERO is final and binding on the parties.

(4) A final and binding conciliation agreement may be enforced by the MERO in the Tribal Court.

(e) ***Issuance of Right to Sue or dismissal of claim.***

(1) The MERO must act on a MFML Law claim no later than 90 business days from the filing of the claim.

(2) If the claim is not resolved or disposed of otherwise, the MERO issues a Right to Sue notice to the claimant. The Right to Sue notice means that the MERO releases its jurisdiction over the claim, that it will not process the claim any further. A Right to Sue notice allows the claimant to take their claim to the Tribal Court if they wish.

(3) A claim may be dismissed by the MERO in certain circumstances, such as if it is determined that the employee already received a Board of Review or arbitration determination.

Chapter 10. Jurisdiction.

Sec. 51-10-(Reserved)

Chapter 11. Enforcement of Rights – Actions in Tribal Court.

Sec. 51-11-1-1

Enforcement of Rights.

(a) ***When an action may be filed in Tribal Court.***

An action may be filed in the Tribal Court:

(1) Within two (2) years of the action that the employee alleges violated the Law, or within three (3) years if the action was a willful violation of the Law, and

(2) After a claim

(i) has been filed with the MERO within 180 days of the action the employee alleges violated the Law, and

(ii) has been processed fully by the MERO, meaning that a Right to Sue notice, dismissal, or other final MERO determination has issued, or

(iii) has been before the MERO for at least 180 days since the filing of the claim without a final determination from the MERO.

Sec. 51-11-2-1

Initiating an action in Tribal Court.

To initiate an action in Tribal Court, the following must be filed with the Court and served on the employer in accordance with the rules of the Court:

(a) ***Complaint.***

A complaint, which may consist of one (1) of the options below.

(1) A writing setting forth the employer's identity, allegations of fact, and provisions of the MFML Law believed to be violated, or
(2) A copy of the claim or amended claim submitted to the MERO on the claim form provided by the MERO.

It is the claimant's responsibility to make sure that whatever the claimant submits to the Tribal Court as the complaint includes all the claims of wrongdoing that the claimant wishes to allege.

(b) ***MERO Outcome.***
One of the following must be submitted to the Tribal Court with the complaint:
(1) A copy of the MERO Right to Sue notice;
(2) A copy of the MERO dismissal; or
(3) A statement that 180 calendar days have passed since the claim was filed with the MERO and no dismissal, Right to Sue notice or other determination was issued by the MERO.

(c) ***Other.***
The Tribal Court may require additional documents or have additional requirements for initiating an action in the Tribal Court.

Sec. 51-11-3-1

Defendants.

An action may be brought against an employer only. An action may not be brought against an individual.

Sec. 51-11-4-1

Deferral to the MERO.

Under any of the circumstances described below, the Tribal Court may defer the processing of the case to the MERO. Deferral means the Tribal Court sends the case to the MERO with specific instructions to the MERO and the parties.

(a) ***MERO Dismissal.***
If the MERO dismissed the claim, the Tribal Court may defer the case to the MERO with instructions to the MERO and/or the parties to correct the deficiencies leading to the dismissal.

(b) ***Right to Sue.***
If the MERO's Right to Sue notice indicates that the conciliation did not take place, for example, if a party to the case did not appear at a mandatory conciliation conference without good cause, the Tribal Court may defer the case to the MERO to conciliate the matter.

(c) ***Other***.

Under such other circumstances as determined by the Tribal Court, the action may be deferred to the MERO.

Sec. 51-11-5-1

Tribal Court decision making.

An action filed under this Law is heard and decided by a judge. A jury trial is not available for an MFML Law action.

Sec. 51-11-6-1

Standard of Proof.

The standard of proof is a preponderance of the evidence, meaning that something must be proven to be more likely than not. As applied to MFML Law actions:

(a) ***Employee.***
An employee is required to prove the elements of the complaint by a preponderance of the evidence.

(b) ***Employer.***
An employer is required to prove any affirmative defense by a preponderance of the evidence.

Sec. 51-11-7-1

Interpreting the Law.

Interpretation of the MFML Law is required to follow Tribal law and Tribal law precedent. Interpretation of the Law may be guided by the Federal Family and Medical Leave Act and decisions interpreting the Act.

Sec. 51-11-8-1

MERO Action to enforce a conciliation agreement.

(a) ***Enforcement must be sought within one (1) year of the last act required by the agreement.***
If a party to a final and binding conciliation agreement does not comply with the terms of the agreement, the MERO may enforce the agreement by bringing an action in the Tribal Court no later than one (1) year after the last act required by the agreement.

(b) ***The conciliation agreement is filed with the court.*** A copy of the conciliation agreement is filed with the Court by the MERO within 30 business days of the filing of the enforcement action. The conciliation agreement is considered confidential and does not become part of the Court's public record.

(c) ***The Tribal Court determines whether the agreement will be enforced.***

Under the MFML Law, the Tribal Court must enforce the conciliation agreement unless the agreement includes terms that are in direct conflict with Tribal law.

Sec. 51-11-10-1

Appeals.

A decision of the Tribal Court under this Law may be appealed to the Mashantucket Pequot Court of Appeals in accordance with the rules of the Tribal Court. Any decision of the Mashantucket Pequot Court of Appeals is final.

Chapter 12. Remedies.

Sec. 51-12-1-1

Remedies are sole and exclusive.

(a) The remedies provided in the MFML Law are the sole and exclusive remedies that may be awarded by the Tribal Court**.** The Tribal Court may grant one or a combination of the following remedies as justified by the facts of a particular case, if the employee demonstrates by a preponderance of the evidence that the employer violated the MFML Law:
    (1) wages, salary or employment benefits, or other compensation denied or lost to such employee by reason of the violation, plus interest at the prevailing rate; or
    (2) where no such tangible loss has occurred, such as when MFML was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 26 weeks of wages for the employee in a case involving leave to care for a covered servicemember, up to 14 weeks of wages for a case involving an employee's own serious health condition, or up to 12 weeks of wages for the employee in a case involving leave for any other MFML qualifying reason, plus interest at the prevailing rate.
    (3) An amount equaling the sums awarded under (1) or (2) of this subsection may also be awarded as liquidated damages if the Court finds that the employee proved by a preponderance of the evidence that the act or omission leading to the violation of this Law was made by the employer in bad faith.
    (4) When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion.

Sec. 51-12-2-1

Attorney's Fees and Costs.

Attorney's fees may be awarded to the prevailing party under the following circumstances:

(a) ***Employee.***
To be eligible for an award of attorney's fees and costs, the employee must be the prevailing party and must prove by a preponderance of the evidence that the employer's violation of the law was willful.

(b) ***Employer.***
To be eligible for an award of attorney's fees and costs, the employer must be the prevailing party and must prove by a preponderance of the evidence that the employee's claim was frivolous and without merit.

Chapter 13. Additional Benefits or Rights; Collective Bargaining Agreements.

Sec. 51-13-1-1

Effect of Employer Policies on Employee Rights Under MFML.

(a) ***Greater rights, but not lesser rights than afforded by the MFML Law may be provided by employer policies.***
An employer must observe any employment policy, benefit program, or plan that provides greater family or medical leave rights to employees than the rights established by the MFML. Conversely, the rights established by the Law may not be diminished by any policy, employment benefit program or plan. If an employer provides greater unpaid family leave rights than are afforded by the MFML Law, the employer is not required to extend additional rights afforded by the MFML Law, such as maintenance of health benefits, to the additional leave period not covered by MFML.

(b) ***Plan or program amendments.***
Nothing in the Law prevents an employer from amending existing leave and employee benefit programs, provided they comply with the MFML Law. However, nothing in the Law is intended to discourage employers from adopting or retaining more generous leave policies.

(c) ***No enforcement through the MFML Law of any additional benefits or greater rights.***
Any additional benefits or greater rights beyond those required by the MFML Law provided by an employer, whether through policy, benefit program, plan collective bargaining agreement, or otherwise, may not be enforced under or through the MFML Law.

Sec. 51-13-1-2

Effect of Collective Bargaining Agreement on Employee Rights Under MFML.

(a) ***Greater rights, but not lesser rights than afforded by the MFML Law may be provided by collective bargaining agreements.***
An employer must observe any collective bargaining agreement entered into under the Mashantucket Pequot Tribal Laws that provides greater family or medical leave rights to

employees than the rights established by the MFML. Conversely, the rights established by the Law may not be diminished by any collective bargaining agreement. For example, a provision of a collective bargaining agreement entered into under Mashantucket Pequot Tribal Law that provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by the MFML Law.

Chapter 14. Regulations.

MERO Implementation.

(a) ***Development and amendment***.
The MERO shall develop regulations that may be amended from time to time to effectuate the purposes of the MFML Law. Significant substantive draft regulations will be subject to a public comment opportunity. Public comments will be addressed in any final regulations.

(b) ***Supplemental implementation materials.***
The MERO's regulations may be supplemented with MERO procedures manuals, guides, FAQ's, agreements, forms and any other materials necessary for implementation of the MFML Law.