KATZ, J., concurring. The majority concludes that an employee's right, as provided under General Statutes § 31-51pp (c) (1),[1] to use "up to two weeks of *accumulated* sick leave"; (emphasis added); to care for a family member permits an employee to draw on sick time that the employee has *earned*. The majority therefore rejects the construction of the plaintiff, Southern New England Telephone Company, that "accumulated" means that employees are entitled to this benefit only if the employee's sick leave carries over from one period to another. I agree with the majority's conclusion. I disagree, however, with the essential reasoning of that conclusion.

The majority begins its analysis with General Statutes § 31-51*ll* (e) (2) (B),[2] another provision of our state family and medical leave law (leave law); General Statutes §§ 31-51kk through 31-51qq; that permits an employee to elect, or an employer to require, the substitution of certain types of paid leave that the employee has "accrued," including sick leave, for unpaid leave under the leave law.[3] The majority then reasons that, because § 31-51*ll* (e) (2) (B) provides a right to substitute sick leave for family medical leave similar to that provided under § 31-51pp (c) (1), it is reasonable to look to the meaning of "accrued" sick leave under § 31-51*ll* (e) for "interpretive guidance" in determining the meaning of "accumulated" sick leave under § 31-51pp (c). It ultimately concludes that the legislature used the terms "accumulated" and "accrued" interchangeably because such a construction is the most consistent manner in which to read the statutes. The majority therefore declines to adopt the narrower term of "accumulated," and instead reads § 31-51pp (c) (1) as if it stated "accrued" or "earned." I cannot agree with this analytical construct.

Typically, we assume that the legislature has a different intent when it uses different terms in the same statutory scheme. See *Arminio* v. *Butler*, 183 Conn. 211, 219, 440 A.2d 757 (1981); see also *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 609, 830 A.2d 164 (2003). Thus, we would begin with the presumption that the legislature intended for "accrued" sick leave in § 31-51*ll* (e) (2) (B) to have a different meaning than "accumulated sick leave" in § 31-51pp (c) (1). We ultimately could conclude otherwise if the terms in fact shared a common meaning, or there was clear evidence that, despite having used different terms, the legislature nonetheless had intended to use essentially the same term. One way in which that intent might be gleaned is if analysis and application were to demonstrate that the statutory scheme would be unworkable or irrational if we were to give the words their common meaning. The majority avoids this presumptive rule of

construction and analytical process by simply stating that the scheme would be more consistent if we construe the two terms as one. Because I find this reasoning unpersuasive and disagree with the majority's approach to construing the statute, I write separately.

I begin with the text of § 31-51pp (c) (1). Because the term "accumulated" is not defined, we turn to its common meaning. See General Statutes § 1-1 (a). "Accumulate" is defined as "to heap up in a mass: pile up" or "to grow or increase in quantity or number . . . ." Webster's Third New International Dictionary. Applying this definition, the "two weeks of accumulated sick leave" provided for in § 31-51pp (c) (1) could mean sick leave that increases on any basis—from day-to-day, week-to-week, month-to-month or year-to-year.[4] Indeed, the legislature has used the term "accumulate" even to refer to the combining of intermittent periods of time. See General Statutes § 5-213 (c) ("[p]art-time, seasonal or intermittent state service shall be credited as state service for the purposes of this section when such part-time, seasonal or intermittent service, accumulated, totals the calendar years herein above specified"). This use suggests that the legislature does not use the term "accumulated" to mean only a consistent, progressive increase or an automatic rolling over of benefits from period to period. Thus, without further qualifying terms to limit its scope, the term "accumulated sick leave" includes sick leave that increases in any manner.

The commonsense question raised by the plaintiff's construction, however, is why the legislature would have intended to provide this benefit to *every* group of employees other than those who happen to receive their sick leave in a lump sum that cannot be carried forward into a new benefits period. For example, consider three employees, each of whom has twelve days of employer paid sick leave available to use as of December 1 of a given year: A, who received twelve days of sick leave on January 1, but who loses any days unused at year's end; B, who received one day of sick leave per month, carried over from month-to-month, but who loses any sick leave unused at year's end; and C, who received six days of sick leave per year for two years that carried over from year one to year two. Under the plaintiff's construction of the term "accumulated," B and C each would be entitled to use their sick leave for family leave under § 31-51pp (c) (1), because their sick leave increased gradually, either from month-to-month or year-to-year. A, however, would not be entitled to use his sick leave for family leave under § 31-51pp (c) (1), solely because he received his sick days in one lump sum that could not be carried over into the following year.

If there is a rational reason for making such a distinction, it is not evident from the statutory scheme.

Although the leave law imposes temporal limitations on when an employee becomes eligible for leave; see General Statutes §§ 31-51kk (1) and 31-51*ll* (a) (1); once the requisite period and hours of employment have been satisfied, the leave law imposes no further preconditions to eligibility on the basis of the manner in which an employee receives employer benefits. Indeed, the leave law defines employee benefits to mean "all benefits provided or made available to employees by an employer . . . ." General Statutes § 31-51kk (5).

The purpose and history of § 31-51pp (c) demonstrate that the legislature did not intend to exclude this limited class of employees solely by its use of the term "accumulated." To put this issue in context, I begin with the state of the law at the time the legislature was considering the bill that thereafter became § 31-51pp (c). As the majority properly recognizes, the sixteen weeks of family and medical leave provided for under the leave law generally is unpaid. See General Statutes § 31-51*ll* (d); Regs., Conn. State Agencies § 31-51qq-18 (a). Section 31-51*ll* (e) (2) (B), however, allows a substitution of "accrued" paid leave under specified circumstances for any part of the sixteen weeks of leave. An employee may "elect" that substitution to ameliorate the financial hardship that unpaid leave would impose, or an employer may "require" that substitution to avoid an employee's absence from work for both the sixteen weeks of unpaid leave under the leave law and company paid accrued leave. General Statutes § 31-51*ll* (e) (2) (B).

Significantly, however, that section of the leave law imposes a specific limitation on the substitution of accrued sick or medical leave, but not on other types of leave, providing: "An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection, *except that nothing in section 5-248a [leaves of absence for state employees] or sections 31-51kk to 31-51qq, inclusive, shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave*." (Emphasis added.) General Statutes § 31-51*ll* (e) (2) (B). The regulations clearly explain that this "in any situation" exception in § 31-51*ll* (e) (2) (B) limits the right to substitute employer paid sick leave to only those situations in which the employer's benefit plan allows sick leave to be used for the purpose for which leave is sought. See Regs., Conn. State Agencies § 31-51qq-18 (c).[5] For example, an employee could not substitute company paid sick leave to care for a child with a serious health condition, a permissible purpose for unpaid leave under the leave law, if the employ-

er's plan permitted the employee to use sick leave only for the employee's own illness, and not for family medical leave. See id.

Thus, the benefit of the substitution provision as it applied to sick leave under § 31-51*ll* (e) (2) (B) was rather illusory from the employees' perspective—they were entitled to no more than the right to use paid sick leave benefits to which they already were entitled under their employment agreement. The only evident benefit to employees was that, should their employer interfere with their use of company sick leave for a purpose permitted both under the leave law and the employer's plan, they could invoke the enforcement mechanisms provided under the leave law. See General Statutes § 31-51pp (a) and (b);[6] see also Regs., Conn. State Agencies § 31-51qq-25 (delineating enforcement protections under leave law); Regs., Conn. State Agencies § 31-51qq-47 (stating types of redress commissioner of labor may order for violations of leave law). Thus, in many family medical situations, employees often either could not substitute their accrued sick leave or had insufficient paid leave that could be used for that purpose. Indeed, between 1993, the year the federal Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., was enacted, and 2000, two thirds of the 24 million workers who had taken unpaid leave under the federal act to care for new children or family members could not afford the leave, and of these approximately 16 million workers, one-tenth were forced onto welfare. See Conn. Joint Standing Committee Hearings, Labor and Public Employees, Pt. 2, 2003 Sess., p. 673, written statement of Beverley Brakeman, executive director of the Connecticut Chapter of the National Organization for Women (citing study conducted by Family Leave Commission).

In 2003, the joint committee on labor and public employees (committee) considered several bills that would have allowed employees to take paid leave, rather than unpaid leave, and to expand the circumstances under which leave could be taken under the leave law. See Proposed Senate Bill Nos. 26 and 933; Proposed House Bill Nos. 5119, 5537, 5890, 6151 and 6448. Representative Lenny T. Winkler introduced Proposed House Bill No. 6151, entitled "An Act Concerning the Use of Sick Time for Family Leave," which was enacted, after further amendments, as § 31-51pp (c). The stated purpose of the bill was "[t]o require businesses to authorize the use of sick time for family leave."[7] Proposed House Bill No. 6151. The bill as originally drafted proposed to add this provision to § 31-51*ll* and set no limit on the amount or type of sick leave that could be used. It provided that "no employer may deny an employee the right to use sick leave to attend to an illness of a child, spouse or parent of the employee, or for the birth or adoption of a child of the employee," it barred an employer from interfering with that right,

and it provided administrative and civil remedies to enforce that right. Proposed House Bill No. 6151. Thus, as originally presented to the committee, the bill would have permitted employees who had little or no paid sick leave that could be used for family leave to use whatever paid sick leave they had for that purpose. See Conn. Joint Standing Committee Hearings, supra, p. 642, remarks of Robert Katz (testifying that he supported bill because his wife suffers from chronic debilitating condition, then current law did not allow him to use accrued sick leave for family leave, his collective bargaining agreement provided only five family sick days and, although he is allowed under current law to use accrued vacation time for family leave, his vacation leave is limited).

During public hearings on the original version of Proposed House Bill No. 6151, Representative Winkler explained that this bill would serve the dual purpose of providing employees with paid family medical leave and helping businesses curb employees' abuse of sick leave.[8] Id., p. 613. Representative Richard O. Belden asked Representative Winkler to clarify a comment that he had made suggesting that there might be a limit to the amount of sick leave that could be used. Representative Belden noted that employers would not be happy with a system under which employees who had earned extraordinarily large amounts of sick leave due to seniority could use their entire leave to care for a family member.[9] Id., p. 614. An exchange ensued in which Representative Winkler indicated that he would support a limit of between two and four weeks. Significantly, Winkler noted: "I'm not advocating that we give . . . people more sick time, just another way of using what they *currently* have." (Emphasis added.) Id., p. 615. No comments were made during the hearings to suggest that a limitation should be imposed on the basis of how employers conferred sick time.

Thereafter, the bill was redrafted by the committee and presented in its revised form to the General Assembly.[10] See Committee Bill No. 6151. Among the changes made to the original bill was the placement of the new provision in § 31-51pp, rather than in § 31-51*ll*, and the modification of the term "sick leave" to provide for "accumulated sick leave." In light of Representative Winkler's comment clarifying that he had not intended for the bill to require employers to provide additional sick leave to employees, but, rather, to allow employees to use what they currently had for family leave, it appears that the insertion of the word "accumulated" simply was intended to make that clarification. Indeed, as the majority correctly points out, the debates that followed in the House of Representatives and in the Senate do not indicate that any legislator expressed a concern about or support for *any* type of limitation on employees' rights to use sick time they had earned on the basis of how they earned it. In the absence of any

indication in the statutory scheme or the history of § 31-51pp (c) that the legislature intended the word "accumulated" to do anything other than to clarify that it was not requiring employers to provide sick leave, and in light of the remedial purpose of the statute, I would not construe "accumulated" narrowly to exclude only that class of employees who receive sick leave in a lump sum. See *Small* v. *Going Forward, Inc.*, 281 Conn. 417, 424, 915 A.2d 298 (2007) (noting that ambiguous statute in remedial scheme must be interpreted liberally in favor of those whom legislature intended to benefit). I agree with the majority that "accumulated" sick leave simply means "earned" sick leave.

Accordingly, I respectfully concur.

[1] General Statutes § 31-51pp (c) provides: "(1) *It shall be a violation of sections 31-51kk to 31-51qq, inclusive, for any employer to deny an employee the right to use up to two weeks of accumulated sick leave or to discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, up to two weeks of accumulated sick leave to attend to a serious health condition of a son or daughter, spouse or parent of the employee, or for the birth or adoption of a son or daughter of the employee.* For purposes of this subsection, 'sick leave' means an absence from work for which compensation is provided through an employer's bona fide written policy providing compensation for loss of wages occasioned by illness, but does not include absences from work for which compensation is provided through an employer's plan, including, but not limited to, a short or long-term disability plan, whether or not such plan is self-insured.

"(2) Any employee aggrieved by a violation of this subsection may file a complaint with the Labor Commissioner alleging violation of the provisions of this subsection. Upon receipt of any such complaint, the commissioner shall hold a hearing. After the hearing, the commissioner shall send each party a written copy of the commissioner's decision. The commissioner may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if a violation of this subsection had not occurred. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54.

"(3) The rights and remedies specified in this subsection are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law." (Emphasis added.)

[2] General Statutes § 31-51*ll* (e) provides: "(1) If an employer provides paid leave for fewer than sixteen workweeks, the additional weeks of leave necessary to attain the sixteen workweeks of leave required under sections 5-248a and 31-51kk to 31-51qq, inclusive, may be provided without compensation.

"(2) (A) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave or family leave of the employee for leave provided under subparagraph (A), (B) or (C) of subdivision (2) of subsection (a) of this section for any part of this sixteen-week period of such leave under said subsection.

"(B) An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C), (D) or (E) of subdivision (2) of subsection (a) of this section for any part of the sixteen-week period of such leave under said subsection, except that nothing in section 5-248a or sections 31-51kk to 31-51qq, inclusive, shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave."

[3] The majority notes that the title of § 31-51*ll* also uses the word "accrued" in referring to sick leave. Although I would agree that the legislature actually meant what it said when it used the term "accrued" in the text of the statute, as we recently have made clear, titles to statutes are not a proper source for statutory interpretation. See *Clark* v. *Commissioner of Correction*, 281

Conn. 380, 389 n.14, 917 A.2d 1 (2007); *Small* v. *Going Forward, Inc.*, 281 Conn. 417, 425–26 n.5, 915 A.2d 298 (2007).

[4] There are examples of these various uses in the General Statutes. See, e.g., General Statutes § 7-169 (i) (3) ("the holder of a Class A permit [allowing bingo games one day a week] may offer two additional prizes on a weekly basis not to exceed one hundred twenty-five dollars each as a special grand prize and in the event such a special grand prize is not won, the money reserved for such prize shall be added to the money reserved for the next week's special grand prize, provided no such special grand prize may accumulate for more than sixteen weeks or exceed a total of two thousand dollars"); General Statutes § 10-156 ("[u]nused sick leave [of professional employees certified by state board of education] shall be accumulated from year to year, as long as the employee remains continuously in the service of the same board of education"); General Statutes § 10-183e (a) ("A member [of the Teachers' Retirement Association] shall receive a month of credited service for each month of service as a teacher, provided the Teachers' Retirement Board may grant a member a month of credited service for a month during which such member was employed after the first school day . . . of such month . . . . Ten months of credited service shall be equal to one year of credited service. A member may not accumulate more than one year of credited service during any school year.").

[5] Section 31-51qq-18 of the Regulations of Connecticut State Agencies, entitled "Is [the leave law] leave paid or unpaid?," provides in relevant part: "(a) Generally, [the leave law] leave is unpaid. However, under the circumstances described in this section, [the leave law] permits an eligible employee to choose to substitute paid leave for [the leave law] leave. If the employee does not choose to substitute accrued paid leave for [the leave law] leave, the employer may require the employee to substitute accrued paid leave for [the leave law] leave.

"(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any unpaid [leave law] leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child, parent of the employee or parent of the employee's spouse who has a serious health condition. The term 'family leave' as used in [the leave law] refers to paid leave provided by the employer covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child, parent of the employee or parent of the employee's spouse with a serious health condition.

"(1) For example, if the employer's leave plan allows use of family leave to care for a child but not for a parent, the employer is not required to allow accrued family leave to be substituted for [leave law] leave used to care for a parent.

"(c) Substitution of paid accrued vacation, personal or medical/sick leave may be made for any unpaid leave needed to care for a family member, or the employee's own serious health condition. Substitution of medical/sick leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of medical/sick leave. An employer is not required to allow substitution of paid sick or medical leave for unpaid [leave law] leave 'in any situation' where the employer's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employer's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have the right to substitute paid medical/sick leave for a serious health condition which is not covered by the employer's leave plan. . . ."

[6] General Statutes § 31-51pp provides in relevant part: "(a) (1) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, inclusive, for any employer to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right provided under said sections.

"(2) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, inclusive, for any employer to discharge or cause to be discharged, or in any other manner discriminate, against any individual for opposing any practice made unlawful by said sections or because such employee has exercised the rights afforded to such employee under said sections.

"(b) It shall be a violation of sections 5-248a and 31-51kk to 31-51qq, inclusive, for any person to discharge or cause to be discharged, or in any other manner discriminate, against any individual because such individual:

"(1) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to sections 5-248a and 31-51kk to 31-

51qq, inclusive;

"(2) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under said sections; or

"(3) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under said sections. . . ."

[7] Proposed House Bill No. 6151 provides: "That section 31-51*ll* of the general statutes be amended to provide that no employer may deny an employee the right to use sick leave to attend to an illness of a child, spouse or parent of the employee, or for the birth or adoption of a child of the employee. No employer may discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to exercise the right to use sick leave to attend to an illness of a child, spouse or parent of the employee, or the birth or adoption of a child of the employee. Any employee aggrieved by a violation of this section may file a complaint with the Labor Commissioner, or may bring a civil action for judicial enforcement of the requirements of this section."

[8] Because the public hearings on the Proposed House Bill No. 6151 took place before the committee redrafted the bill to include the term "accumulated," I, unlike the majority, would not rely on testimony at those hearings using various other descriptive terms as evidence of the meaning that legislators or others specifically ascribed to the term "accumulated."

[9] Representative Belden cited as an example a situation based on his prior sick leave plan when he worked in the private sector. Notably, the plan appears to have provided sick leave to employees in the same graduated seniority based method as the plaintiff provides to its employees, albeit considerably more generously. He inquired of Representative Winkler: "[I]s it your intention to possibly indicate that some portion of the sick leave could be used? Because I know . . . before I retired, at United Technologies [Corporation], that their sick leave policy was that I could, after [thirty] some years of service, and it grew as you had time, my sick leave was probably about 200 and some work days. And their policy is if I took 200 work days this year sick, at January [1] if I had been back to work for one day I had 200 more sick days. So that's why I'm asking if there would be some type of limitation on how much sick time because, otherwise, for that employer that would be a nightmare, I'm sure. . . . [A]n employer with a sick leave policy like that could have somebody out a 150—without some limitation on how much sick leave could be accounted for and one of these absences that a person could be out, say, adopting a child—say I've got to stay home for the next three years. So, I'll just come in to work on December [23] and then in January I'm eligible for another 200 days of sick leave . . . ." Conn. Joint Standing Committee Hearings, supra, p. 614, remarks of Representative Belden.

[10] Committee Bill No. 6151 provides in relevant part: "Section 31-51pp of the general statutes is amended by adding subsection (c) as follows . . .

"(c) (1) It shall be a violation of sections 31-51kk to 31-51qq, inclusive, for any employer to deny an employee the right to use accumulated sick leave or discharge, threaten to discharge, demote, suspend or in any manner discriminate against an employee for using, or attempting to exercise the right to use, accumulated sick leave to attend to an illness of a son or daughter, spouse or parent of the employee, or for the birth or adoption of a son or daughter of the employee.

"(2) Any employee aggrieved by a violation of this subsection may file a complaint with the Labor Commissioner alleging violation of the provisions of this subsection. Upon receipt of any such complaint, the commissioner shall hold a hearing. After the hearing, the commissioner shall send each party a written copy of the commissioner's decision. The commissioner may award the employee all appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if a violation of this subsection had not occurred. Any employee who prevails in such a complaint shall be awarded reasonable attorney's fees and costs. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54.

"(3) Alternatively, any employee aggrieved by a violation of this subsection may bring a civil action for judicial enforcement of the requirements of this subsection, in the superior court for the judicial district where the violation is alleged to have occurred. If the employee prevails, the court shall award reasonable attorney's fees and costs.

"(4) The rights and remedies specified in this subsection are cumulative

and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law."