

New Jersey Family Leave Insurance:
What New Jersey Employers Need To Know
January 2009

On May 2, 2008, New Jersey Governor Jon Corzine signed into law a bill that will provide family leave insurance to eligible New Jersey employees. New Jersey became only the third State in the nation to enact legislation providing family leave insurance benefits for workers caring for newborn infants, newly-adopted children and seriously ill family members.

What is the purpose of the new law? The new law provides eligible employees with up to six weeks of family leave benefits in order to bond with a child or care for a family member with a serious health condition (such benefits are referred to hereafter as “Family Leave Insurance Benefits”). The law is designed to protect workers from losing income as a result of taking time off to care for family members who cannot take care of themselves.

When and under what circumstances may employees receive Family Leave Insurance Benefits? Beginning on July 1, 2009, covered employees of all private and government employers subject to the New Jersey Unemployment Compensation Law (N.J.S.A. 43:21-1 *et seq.*) may receive up to six (6) weeks of Family Leave Insurance Benefits in order to (a) bond with a child during the first twelve (12) months after the child’s birth, if such employee or such employee’s domestic partner or civil union partner is a biological parent of the child, (b) bond with a child during the first twelve (12) months after the placement of the child for adoption with the employee, or (c) care for a family member with a serious health condition as evidenced by a certification from a health care provider. *Note: Benefits may be paid for 3 weeks pending receipt of the medical certification from a health care provider.*

Who qualifies as a “family member”? The term “family member” means a child, spouse, domestic partner, civil union partner or parent of the individual claiming Family Leave Insurance Benefits. *Note: The term “child” includes a child of a covered individual, domestic partner of the covered individual or civil union partner of the covered individual who is younger than 19 years of age or 19 years of age and incapable of self-care.*

What is a “serious health condition”? The term “serious health condition” means (i) an illness, injury, impairment or physical or mental condition which requires inpatient care in a hospital, hospice or residential medical care facility, or (ii) continuing medical treatment, or (iii) continuing supervision by a health care provider. *Note: The new law does not cover leave for an employee’s own serious health condition.*

Who qualifies as a “health care provider”? The term “health care provider” means any person licensed to provide health care services or any other person who has been authorized to provide health care by a licensed health care provider.

Which employers are subject to this law? The new law applies to any employer that is subject to the New Jersey Unemployment Compensation Law. *Note: This is broader than the Federal Family Leave Act and the New Jersey Family Leave Act, which generally apply to employers with 50*

or more workers and allow workers to take up to 12 weeks of unpaid leave for family or medical reasons. In addition, although governmental employers may choose not to elect coverage for temporary disability insurance benefits, they may not do so with respect to Family Leave Insurance Benefits.

Who is eligible to file a claim for Family Leave Insurance Benefits? Individuals claiming benefits must have worked at least twenty (20) calendar weeks in covered New Jersey employment in which he or she earned at least \$143 or individuals who have earned at least 1,000 times the New Jersey minimum wage during the fifty-two (52) weeks preceding leave (rounding up to the nearest \$100, that amounts to \$7,200). This means that any employee of an employer that is subject to the New Jersey Unemployment Compensation Law. *Note: The new law is an extension of temporary disability insurance, so these requirements differ from the requirements for the Federal Family Leave Act and the New Jersey Family Leave Act.*

How much money are employees entitled to receive in the form of Family Leave Insurance Benefits? After a one-week waiting period, eligible employees are entitled to receive two-thirds of such employee's average weekly wage up to a maximum of \$546 per week. No more than six weeks of benefits will be paid during any 12 month period. *Note: An employee can take Family Leave Insurance Benefits directly after recovering from a pregnancy-related disability and receiving temporary disability insurance benefits.*

Who pays for the Family Leave Insurance Benefits? In the case of an employer using the State administered plan, the benefits are paid entirely from employee contributions. As of January 1, 2009, such employers must withhold 0.09% from employees' taxable wages but are not required to contribute money to fund Family Leave Insurance Benefits. This amounts to an estimated payroll deduction of \$0.64 per week or \$33.00 per year for each employee. The withholding rate will increase to 0.12% in 2010. Importantly, these employee contributions are mandatory. In the case of an employer using an approved private plan, the employer does not transmit employee contributions to the State. *Note: Taxable wages subject to the New Jersey Family Leave Insurance Benefits program are reported and remitted together with other contributions due on the Employer Quarterly Report. A household employer will report and remit such contributions on the Employer Annual Report.*

Are employees eligible to receive Family Leave Insurance Benefits in addition to benefits from an employer's private paid family leave insurance plan? No. However, if the employer provides family leave insurance coverage through an approved private plan rather than the State administered plan, then the private plan must provide a benefit amount and duration that equals or exceeds the State administered plan. Further, eligibility requirements may not be more restrictive than the State administered plan. The private plan must be approved by the New Jersey Division of Temporary Disability Insurance. If an employee is covered by an approved private plan, the employer will provide the employee with the necessary claim form.

How much paid time off are employees entitled to receive in the form of Family Leave Insurance Benefits? Eligible employees are entitled to receive benefits for up to six weeks or 42 days for any one period of family leave during any twelve month period. *Note: The term for Family Leave Insurance Benefits runs concurrently with benefits provided under the Federal Family Leave Law and the New Jersey Family Leave Law.*

Must an employee take Family Leave Insurance Benefits all at once? Not necessarily. With respect to any one period of leave, claims may be filed for six consecutive weeks, for six intermittent weeks or for 42 intermittent days. When medically necessary, leave to care for a family member with a serious health condition may be taken intermittently provided that the total time for such intermittent leave does not exceed 42 days over a twelve-month period from the first date of the claim. Such employees must make a reasonable effort to schedule leave to avoid undue disruption to the employer. However, leave in connection with the birth of a child or an adoption of a child must be taken in one period of six consecutive weeks (unless otherwise agreed to by the employer). A claim for benefits must be filed by an employee within 30 days after the commencement of a period of family leave.

Is an employee that receives Family Leave Insurance Benefits entitled to return to his or her former position or a substantially equivalent one? While employers that are subject to the Federal Family Leave Law and the New Jersey Family Leave Law must still reinstate employees to the same position or a comparable position, smaller employers that are not subject to these laws are not required to reinstate or rehire an at-will employee that received Family Leave Insurance Benefits under the new law. *Note: Although employers that are not subject to the Federal Family Leave Law and the New Jersey Family Leave Law may generally decline to reinstate or rehire employees who take Family Leave Insurance Benefits, such employers may still not violate the terms of an employment contract or collective bargaining agreement and the refusal to reinstate or rehire may not serve as a basis for unlawful discrimination.*

Do employers need to give employees notice of the new law? Yes. Employers must post a notice developed by the New Jersey Commissioner of Labor advising employees of their rights with respect to Family Leave Insurance Benefits. In addition, a written notice must also be provided upon the hiring of new employees, when an employee so requests and when an employee notifies the employer of his or her intention to take such leave. *Note: The required notification poster from the New Jersey Department of Labor and Workforce Development is available for download at http://lwd.dol.state.nj.us/labor/fli/content/emp_requirements.html. Please note that employers were required to conspicuously display the poster notification at each workplace by December 15, 2008 and give employees a written copy of such notification by that date.*

Do employees need to give employers notice of their intent to take Family Leave Insurance Benefits? Yes. Employees that wish to take paid leave in connection with the birth or adoption of a child must give an employer 30 days prior notice. An employee failing to provide such notice will be required to forgo two weeks of paid benefits. In the case of an employee taking leave to care for a family member with a serious health condition, the employee must provide 15 days prior notice unless the need for such leave is unexpected.

Will an employee's receipt of other benefits affect his or her claim for Family Leave Insurance Benefits? Yes. An employee may not receive Family Leave Insurance Benefits while receiving temporary disability benefits, any benefits from another government disability program, unemployment compensation benefits or workers' compensation benefits. *Note: Similarly, paid time off, including sick leave and vacation pay reduces an employee's entitlement to benefits. An employer may require the employee to use up to two weeks of paid time off during the period of family leave.*

May an individual receive Family Leave Insurance Benefits during a period of unemployment? Yes. If an individual becomes unemployed, he or she may apply for benefits more than 14 days after his or her last day of work under the Family Leave Insurance Benefits During Unemployment Program. Such individuals must satisfy the eligibility requirements under the New Jersey Unemployment Compensation Law. *Note: There is no provision for intermittent leave days during a period of unemployment and individuals may not receive unemployment compensation benefits at the same time.*

Many critics of the law wonder if the new benefits program will be able to sustain itself by only using employee contributions and if it will be too costly for employers that must now manage the increased expenses resulting from more workers taking extended leaves of absence. Still, New Jersey officials tout the new law as necessary assistance for workers trying to balance the demands of family life and the workplace. Moreover, these officials believe that the new law will attract workers to the State. Only after the State has had time to administer the new law and employers have had time to assess its residual effects will we know the true import of its enactment.

This article is only intended to summarize some of the more salient issues that may arise in connection with the new law. There may be other issues which are not mentioned above and require a more detailed and intensive examination. The new law and regulations just add to any employer's list of human resources issues that must be considered and managed. This article is not to be construed as legal advice. If you have any questions about anything you read in this article or any other labor and employment related issues please contact:

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