

New Jersey To Enact Paid Family Leave Law

Article By:

Sills Cummis & Gross

On April 7, 2008, the New Jersey Senate passed a bill, already passed by the Assembly, that, if enacted, will permit employees to take up to six weeks of paid leave to care for a sick family member or a newborn or newly adopted child. (A873, S786). Governor Jon S. Corzine has indicated that he will sign the bill into law. This new law will supplement the rights and obligations created by the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 *et seq.* ("NJFLA"), and the federal Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA").

NJFLA and FMLA

Since adopting the NJFLA in 1990, New Jersey has required employers of at least fifty employees to permit eligible employees to take unpaid leave in connection with the birth or adoption of a child or to care for a parent, child or spouse with a serious health condition. Under the NJFLA, employees are generally entitled to up to twelve weeks of leave in a twenty-four month period. Enacted in 1993, the FMLA requires employers of at least fifty employees to provide eligible employees with up to twelve weeks of unpaid leave during a twelve month period for a serious health condition of the employee or a member of the employee's immediate family or for the birth or adoption of a child or to care for a family member who is a member of the armed forces.

Covered Employers

The new paid family leave law will amend New Jersey's Temporary Disability Benefits Law, N.J.S.A. § 43:21-25 *et seq.*, to provide up to six weeks of paid leave for eligible employees. The leave must be taken concurrently with any NJFLA or FMLA leave. The law will generally apply to all employers covered by the Temporary Disability Benefits Law. Thus, unlike the NJFLA or FMLA, the new law will apply to virtually every private employer (and certain government employers), regardless of the size of its workforce.

Qualifying Events

Under the new law, employees will generally qualify for paid leave if they take time off: (1) “to participate in the providing of care ... for a family member of the [employee] made necessary by a serious health condition of the family member”; (2) “to be with a child during the first 12 months after the child’s birth, if the [employee], or the domestic partner or civil union partner of the [employee], is a biological parent of the child;” or (3) for “the first 12 months after the placement of the child for adoption with the [employee].” An employer may require an employee, before he or she is eligible to collect payments under the new law, to “use any paid sick leave, vacation time or other leave at full pay” for up to two weeks.

Intermittent Leave

The new law will permit an employee who is caring for a family member with a serious health condition to take paid family leave on an intermittent basis “when medically necessary” if: (1) “the total time within which the leave is taken does not exceed 12 months”; (2) “the [employee] provides the employer with” a certification (discussed below); (3) “the [employee] provides the employer with prior notice of the leave not less than 15 days before the first day on which benefits are paid for the intermittent leave, unless an emergency or other unforeseen circumstance precludes prior notice”; and (4) “the [employee] makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, prior to the commencement of intermittent leave, with a regular schedule of the days or days of the week on which the intermittent leave will be taken.”

Notice Requirements

An employee who wishes to take paid leave under the new law to care for a family member with a serious health condition (on a nonintermittent basis) must: (1) “provide the employer with prior notice of the leave in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance precludes prior notice”; (2) “provide a copy of the certification” (discussed below); and (3) “make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer.” When seeking paid leave in connection with a birth or adoption, an employee must typically provide notice “not less than 30 days before the leave commences,” unless the time of the leave is unforeseeable or changes for unforeseeable reasons. An employee may take paid leave for a birth or adoption at any time within one year following the birth or adoption, but is limited to a single, continuous paid absence.

Medical Certifications

Certifications required under the new law in connection with leave taken to care for a family member with a serious health condition must include such information as the date when the condition arose, the expected duration of the condition, medical facts regarding the condition, a statement that the serious health condition warrants the participation of the employee in providing care, an estimate of how long the employee's care giving will be needed, and, for intermittent leave, a "statement of the medical necessity for the intermittent leave," the expected duration of the intermittent leave, and the dates of any planned medical treatment necessitating the intermittent leave.

Funding

In order to fund this new benefit, the law requires employers to withhold 0.09% of an employee's wages in 2009 and 0.12% in 2010. These withholdings will begin on January 1, 2009, and employees will first become eligible to receive benefits on July 1, 2009. Employees on paid family leave will receive the same amount as he or she would be eligible to collect as disability benefits under the Temporary Disability Benefits Law, which is currently two-thirds of their weekly wage, up to a maximum of \$524 per week.

New Causes of Action

The legislature has clearly expressed that it does not intend the paid family leave law to provide new causes of action for employees alleging violations of family leave rights. The bill states that it should not be "construed as granting any worker entitlement to be restored by the employer to employment held by the worker prior to taking family temporary disability leave or any right to take action, in tort, or for breach of an implied provision of the employment agreement, or under common law, against an employer who fails or refuses to restore the worker to employment after the family temporary disability leave." Of course, the law will also not diminish the rights that employees already have under the NJFLA or the FMLA. The bill states that the new law should not be "construed as increasing, reducing or otherwise modifying any entitlement of a worker to return to employment or right of the worker to take action under the provisions of the [NJFLA] or the federal [FMLA]."

Conclusion

Once the newly-passed bill becomes law, employers should update their employment policies and handbooks. They should also implement standard practices for uniformly evaluating applications for paid leave.

© **Sills Cummis & Gross P.C.**

© Copyright 2025 Sills Cummis & Gross P.C.

National Law Review, Volume , Number 149

Source URL: <https://natlawreview.com/article/new-jersey-to-enact-paid-family-leave-law>