

Recent Amendments to New Jersey's Paid Family Leave Laws: What Employers Need To Know

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On February 19, 2019, Governor Murphy signed into law A-3975, a sweeping piece of legislation that expands New Jersey's paid family leave laws. For employers in New Jersey (many of whom are still acclimating to the changes brought about by the New Jersey Earned Sick and Safe Days Act and the Diane B. Allen Equal Pay Act) A-3975 amends numerous existing laws concerning family leave, temporary disability and family temporary disability leave, as well as domestic or sexual violence safety leave. This includes the New Jersey Family Leave Act (FLA) and New Jersey Family Leave Insurance (FLI) laws.

An important threshold issue for understanding the significance of the newly-signed legislation is the distinction between FLI coverage and the FLA. FLI provides a monetary benefit to employees, not a leave entitlement, and does not provide employees with the right to return to their jobs after a period of family leave. An employee's job is only legally protected if their employer is subject to the federal Family and Medical Leave Act (FMLA) or the FLA.

The big picture overview presented in this Client Alert will assist employers in understanding the latest changes in the law and adjusting their human resources policies and procedures accordingly.

Increases the Money Received Weekly

Employees can now receive 85% of their weekly wage, with the maximum possible benefit increasing to 70% of New Jersey's average weekly wage. Based on current numbers, that would mean the maximum possible weekly benefit would increase from \$650 to \$860.

Doubles the Number of Weeks for Paid Leave

Beginning in July 2020, employees, regardless of the size of their organization, can take up to 12 consecutive weeks of paid family leave

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under FLI or temporary disability insurance (TDI) during any 12-month period. Currently, employees are only able to take up to six weeks of FLI or TDI in a 12-month period. Again, this means an employee can take the leave, but not that their job is necessarily protected during the leave period.

Increases Available Intermittent Leave

Beginning in July 2020, employees may take up to 56 days of intermittent leave within a 12-month period. This is increased from the current 42 days.

Expands Employers covered by Anti-Retaliation Provision

Effective June 30, 2019, employees at companies with 30 or more employees cannot be retaliated against for taking paid leave. This means an employer may not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee requested or took any TDI or FLI benefits. These covered employers also cannot refuse to restore the employee following a period of leave. This represents a decrease from the current threshold of 50-employee organizations required to afford these protections.

Broadens the Definition of “Family Member”

Benefits are now available to employees caring for more categories of family members, including siblings, in-laws, grandparents, grandchildren, other blood relatives, and any individual who can be shown to have the equivalent of a family relationship (similar to New Jersey’s Earned Sick Leave law).

Covers Victims of Domestic or Sexual Violence

An employee is now allowed to take family or disability leave for medical attention, counseling, or legal assistance or proceedings arising out of domestic violence or sexual violence. An employee can take leave if they themselves have been the victim of domestic or sexual violence, or in order to care for a family member who has been a victim.

“Child” Now Includes Foster Child and Child Born via Gestational Carrier

The FLA and the FLI laws are now expanded to provide an employee who becomes a foster/resource parent, or the parent of a child pursuant to a gestational carrier agreement, with the same rights to unpaid and paid family leave as these laws currently provide to a parent of a “biological, adopted,... stepchild, legal ward, or child of a parent.”

The Employees are Footing the Bill

The benefits and costs associated with FLI and TDI are funded entirely through an additional assessment on the employees’ wages. The state’s Office of Legislative Services notes that the increase in benefits, along with any associated administrative costs, will be funded through employee taxes and not through any assessment on employers. The employee paycheck line item “NJ SUI/SDI Tax” includes monies withheld for FLI and TDI.

Recommendations for Employers

Employers should consult with employment counsel to ensure compliance with all amendments included in A-3975. They should be prepared to train human resources and other implicated individuals to

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implement the new policies, and be certain to post appropriate notices regarding the amendments as they become effective.

The above is intended to serve as a preliminary education on the amendments to the paid family leave laws. The bill is available for more comprehensive review at: A-3975

To learn more about the impact this legislation may have on your unique organization, or if you have any questions regarding the legal sufficiency of your employee manuals or policies, please contact the author of this Alert, **Jemi Goulian Lucey**.