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Paid Family Leave Becomes Law In New Jersey

On May 2, 2008, New Jersey became the third state (joining California and Washington) to enact a law providing employees with paid family leave benefits. The paid leave law amends the state's Temporary Disability Benefits statute to provide eligible workers with up to six weeks of temporary disability leave benefits to care for covered family members. The paid leave law applies to all private and governmental employers subject to the state's unemployment compensation law, N.J.S.A. 43:21-1 *et seq.*

The new law provides benefits for an employee taking leave to (1) participate in providing care certified by a health care provider to be necessary for a family member suffering a serious health condition, or (2) be with a child of the employee during the first 12 months after the child's birth or placement for adoption with the employee's family. The law limits the family leave benefit to a maximum of six weeks during any 12-month period, and if taken on an intermittent basis to provide care for a family member with a serious health condition, to no more than 42 days during any 12-month period.

The law defines a "serious health condition" as an illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility, or continuing medical treatment or continuing supervision by a health care provider. A covered "family member" is defined as a child, spouse, domestic partner, civil union partner or parent of a covered individual.

If the leave is for care of a child after birth or adoption, the employee is required to give at least 30 days prior notice of the intent to take leave, except when unforeseen circumstances prevent such notice. If the leave is for the care of a sick family member, the employee is required, when possible, to schedule the leave in a manner to minimize disruption of employer operations. An employer, however, is permitted to require that an employee use up to two weeks of any paid sick leave, vacation time or other leave at full pay before becoming eligible for the leave benefit.

The benefit provides employees with two-thirds of their weekly salary up to a maximum of \$524 per week. The program is designed to be funded solely through employee payroll deductions, with no contribution from employers. New Jersey workers will begin paying the increased payroll tax on January 1, 2009, and benefits would become available on July 1 of that year. The initial employee

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contribution is expected to be approximately \$33 per year (i.e., 64 cents per pay period). Eligibility for benefits will be the same as provided in the state's Temporary Disability Insurance ("TDI") system. That is, to be eligible for paid leave, an employee must have completed 20 weeks of covered New Jersey employment (not necessarily all with the current employer) and must have earned a minimum threshold level compensation, currently \$143 per week or \$7,200 during the immediately preceding 52 weeks.

As with traditional TDI, employers will have the option of participating in a state-administered plan or a private plan through either self-insurance or an insurance policy. Private plans may not, however, cost more, provide lower benefits or impose more restrictive eligibility requirements than a State plan. The law permits private plans to cover TDI benefits, family leave benefits, both or neither, and requires no changes in existing private plans.

In addition, the paid leave law requires employees to take benefits provided under the law concurrently with any unpaid leave taken under the New Jersey Family Leave Act ("NJFLA"), N.J.S.A. 34:11B-1 *et seq.*, or the federal Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.* Of note, the amendment states that it does not intend the law to increase, reduce or otherwise modify any entitlement a worker might have under either the NJFLA or the FMLA.

The law provides, however, that for small employers (i.e., those not covered by the NJFLA), the failure or refusal to restore the employee to employment "shall not be a wrongful discharge in violation of a clear mandate of public policy" and thus such an employee "shall not have a cause of action against that employer, in tort, or for breach of an implied provision of the employment agreement or under common law." Thus, while the amendment does not increase leave entitlements under the NJFLA or the FMLA, it has apparently created its own six weeks of job protected leave for employees of larger employers. This represents an expansion of job protected rights under the temporary disability insurance law which provided benefits, but no job protection, to employees receiving temporary disability payments.

The paid leave law also increases the penalties for misrepresentations, fraud and other violations under the TDI program. Penalties for knowingly making a false statement or knowingly failing to disclose a material fact to improperly obtain benefits or avoid paying benefits or taxes have been increased from \$20 to \$250 per statement or non-disclosure. Penalties for other certain willful violations have increased from \$50 to \$500, and additional penalties for certain violations with intent to defraud the program have increased from not more than \$250 to not more than \$1,000.

Although paid leave in New Jersey will not become available to employees until July 1, 2009, employers with operations in the state are encouraged to review their leave policies and make appropriate changes to their policies and procedures to ensure timely compliance with the law.

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Please feel free to contact Maxine Neuhauser in the Firm's Newark office at (973) 639-8269 or mneuhauser@ebglaw.com if you have any questions or comments. Patrick Lucignani, an Associate in the Newark office, assisted in the preparation of this Alert.

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