

CLIENT ALERTS

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PROPOSED READOPTION WITH AMENDMENT OF REGULATIONS TO THE NEW JERSEY FAMILY LEAVE ACT

The regulations interpreting and implementing the New Jersey Family Leave Act (“NJFLA”), N.J.S.A. 34:11B-1 et seq., expire by operation of law on February 6, 2007. The New Jersey Division on Civil Rights (“Division”) has proposed readoption of the regulations, with some proposed changes, primarily designed to make New Jersey’s family leave law more consistent with the federal Family and Medical Leave Act (“FMLA”), to the extent possible, with the goal of simplifying administration and compliance for New Jersey employers covered by both laws. The following summarizes the Division’s proposed amendments:

- Amending the definition of “base hours,” which are used to determine an employee’s eligibility for NJFLA, to include hours an employee would have worked but for an absence from work for a period of time due to military service. N.J.A.C. 13:14-1.2.
- Expanding the definition of the term “care” to include the time needed to arrange for changes in care of a family member, such as for placement in a nursing facility. N.J.A.C. 13:14-1.2.
- Amending the definition of the term “employer” to include the State; any political subdivision thereof; and all public offices, agencies, boards and bodies. N.J.A.C. 13:14-1.2.
- Defining the phrases “continuing medical treatment” and “continuing supervision by a health care provider” as they are used to define the term “serious health condition.” N.J.A.C. 13:14-1.2.
- Clarifying that government entities are employers covered by the NJFLA regardless of the 50-employee requirement applicable to private businesses. N.J.A.C. 13:14-1.3(b).
- Permitting employers to determine how they will calculate the 24-month period during which NJFLA leave is available, by providing the same methods used for determining the 12-month period in which the FMLA leave entitlement occurs, including use of a calendar year, a fixed “leave year” such as a fiscal year, a 24-month period measured back from the date any NJFLA leave begins and a “rolling” 24-month period measured back from the date an employee uses any NJFLA leave. N.J.A.C. 13:14-1.4(c).

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- Expanding the notice period from 15 days to 30 days for an employee who takes a leave in connection with a serious health condition of a family member. The rule would still exempt employees from the 30-day notice requirement where emergent circumstances warrant shorter notice. N.J.A.C. 13:14-1.5(d)1.
- Adding a new regulation to provide that when an employee requests leave on an intermittent or reduced leave basis, an employer may transfer the employee to an alternative position with equivalent pay and benefits during the course of the leave period, if the alternative position better accommodates recurring periods of leave than does the employee's regular position. This new regulation would also provide that an employer may not transfer an employee to an alternative position in order to discourage the employee from taking leave or to otherwise work a hardship on the employee. N.J.A.C. 13:14-1.5(d)4.
- Clarifying the relationship between the NJFLA and the FMLA related to pregnancy, childbirth and caring for a newborn child, by specifically providing that "an eligible employee is on disability leave while pregnant for four weeks and is on disability leave following childbirth for an additional six weeks, those 10 weeks that the employee is on disability leave count against the employee's FMLA entitlement only, and the employee retains the full 12-week entitlement under the Act for the care of the newly-born child." N.J.A.C. 13:14-1.6.
- Explaining that multiple requests for family leave from members of the same family, which must be granted by an employer provided the employees are otherwise eligible for leave, include a husband and a wife. N.J.A.C. 13:14-1.12.
- Requiring employers to display conspicuous notice of its employees' rights and obligations pursuant to the NJFLA, and requiring those employers that maintain written guidelines for employees regarding benefits and leave rights, such as in an employee handbook, to include information about entitlements under the NJFLA in the handbook or other document. Employers that do not maintain such handbooks would be required to provide written guidance to employees regarding the employees' rights and obligations under the NJFLA. N.J.A.C. 13:14-1.14(a) and (b).

Adoption of the proposed amendments should facilitate administration of family leave for employers that are covered by both laws. The following key statutory differences, however, will remain. Unlike the FMLA, the NJFLA does not provide leave for an employee's own serious medical condition. In addition, under the NJFLA, employees are entitled to 12 weeks' leave in a 24-month period, not 12 weeks in a 12-month period as under the FMLA. Further, under the NJFLA, employees must be employed for at least 12 months and have worked 1,000 base hours in the 12-month period preceding the leave request to be eligible for leave. The FMLA requires employees to work at least 1,250 hours during the 12-month period preceding leave.

Members of the public have until January 5, 2007, to submit objections to and comments on the proposal.

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Please feel free to contact [Maxine H. Neuhauser](#) or [Denise Merna Dadika](#) in the firm's [Newark](#) office if you have any questions or comments. Ms. Neuhauser may be reached at 973-639-8269 or mneuhauser@ebglaw.com. Ms. Dadika may be reached at 973-639-8294 or ddadika@ebglaw.com.

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