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Paid Family Leave is Now the Law in New Jersey

By Kathleen M. Connelly, Esq.

On May 2, 2008, Governor Corzine signed the New Jersey Paid Family Leave Law granting employees six weeks of paid leave per year to care for a family member with a serious health condition or a newborn or newly-adopted child. New Jersey joins California and Washington to become the third state in the country to enact paid family leave. Benefits are available to qualifying employees taking leave as of July 1, 2009.

Unlike the New Jersey Family Leave Act (NJFLA) and its federal counterpart, the Family Medical Leave Act (FMLA), both of which exempt small businesses employing fewer than 50 employees from the requirement to provide employees with 12 weeks of *unpaid* leave, the new law applies to all employers in the state without regard to size. Whereas the Legislature ignored the cries from small businesses that they were without the resources to absorb prolonged absences by employees, the impact of this new legislation will no doubt have a greater impact on this sector of the business community.

Qualifying for Paid Leave – The eligibility requirements for coverage are minimal – all employees with 20 weeks of service or with earnings of 1,000 times the minimum wage in the prior year (presently \$7,150) are covered.

The leave request must be for a qualifying event under the law – to care for a family member with a serious health condition or for a newborn or newly-adopted child.¹ “Family member” is defined as a child, spouse, domestic partner, civil union partner or parent of the employee. To safeguard against fraudulent claims in cases where the leave is to care for an ill family member, employees are required to submit a certification from a treating physician setting forth the nature and duration of the serious illness.

The six-week leave entitlement may be taken consecutively or, in the case of a family member who has a serious health condition, intermittently, so long as the leave period does not exceed one year. Employees are expected to give practicable advance notice of the need for leave, and in the case of birth or adoption, 30 days are generally required.

How Much and Who Pays? – Employees taking the leave will be eligible to receive a maximum amount initially set at \$524 a week. (cont'd ►)

1. Leave to care for oneself is not included because these benefits are already available to employees under the Temporary Disability Benefits Law.

Kathleen M. Connelly provides counseling to private and public sector clients on a wide array of labor and employment matters. Kathleen can be contacted at kconnelly@lindabury.com



The good news for employers is that commencing on January 1, 2009, benefits will be funded through employee payroll taxes with no contribution from employers.

This may be of little comfort to employers, however, who will nevertheless face increased administrative costs, an expected increase in long-term employee absences, decreased productivity and expenses associated with hiring and/or training substitute employees.

On the Employer's Side - Despite the hardship that employers will face in adjusting to paid family leave, several aspects of the law were designed to soften the impact upon businesses. To keep the instances of long-term absenteeism down, employers are permitted to require employees to substitute up to two weeks of accrued paid time off benefits (e.g., vacation, sick time). In addition, if the employer is covered by the NJFLA and the FMLA, the employee may be required to exhaust his/her six weeks of paid family leave *concurrently* with NJFLA/FMLA leave.

The major concession to employers is that, unlike the NJFLA and the FMLA, the Paid Family Leave Law merely provides income protection to employees, not any measure of job security. Thus, an employer is not required to reinstate an employee to the same position or any position after the paid family leave is completed. In fact, the law expressly states that employees shall have no legal cause of action against an employer who fails to reinstate after expiration of a paid family leave. While this provision may have little practical impact upon larger employers covered by the NJFLA/FMLA (which provide 12 weeks of *unpaid* leave and guaranteed reinstatement), small employers who cannot absorb the employee's extended absence will be free to hire a permanent replacement.

What's an Employer to Do? Like the FMLA and FLA, employers must conspicuously post

notification (in a form to be issued by the Department of Labor) of employees' rights to paid family leave benefits. In addition, employers must provide each employee with a written copy of the notification 1) no later than 30 days after the form of notification is issued by Department of Labor; 2) or at the time of hiring for subsequently-hired employees; 3) whenever the employee notifies the employer of the need for paid family leave; and 4) at any time the employee requests a written copy of such notification.

The keys to successfully administering all leave of absence policies is the development of clear and up-to-date policies that advise employees of all the rights and limitations of the Paid Family Leave and if applicable, NJFLA and FMLA laws; the development of protocols to properly track and classify all family/medical leave time taken by employees; management training in both employer and employee rights and obligations under the family/medical leave statutes; written notice to any employee seeking a family/leave of absence specifying whether the leave has been granted; how the leave is to be classified (e.g., Paid Family Leave, FMLA, NJFLA or where appropriate, all three concurrently); the duration of the leave; what reinstatement rights, if any, the employee has upon expiration of the leave; and any other information so that employees understand fully their rights under any of the leave statutes.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Kathleen M. Connelly, Esq. of the Labor & Employment Law Group. She provides advice and counsel to company management in employment law matters and can be reached at kconnelly@lindabury.com.

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

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