

New Jersey Expands Paid Family Leave: Action Items for New Jersey Employers

Legal Alert

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Earlier this week, New Jersey Governor Phil Murphy signed into law a bill providing for an expansion of the New Jersey Family Leave Act (“NJFLA”) in important ways. Prior to this bill, the NJFLA required employers with 50 or more employees to provide employees up to 6 weeks of consecutive paid leave, or 42 days of intermittent leave in any 12-month period, to care for a sick family member.

This new bill expands those protections to cover smaller employers and to extend the amount of leave, among other things. Some of the bill’s most notable changes include:

- As of June 30, 2019, employers with 30 or more employees will be subject to the NJFLA’s leave requirements;
- For leave commencing on or after July 1, 2020, employees are permitted up to 12 weeks of consecutive leave (instead of 6), or 56 days of intermittent leave over a 12-month period;
- The definition of an applicable “family member” now includes not only children, parents and spouses, but also parents-in-law, siblings, grandparents, grandchildren, domestic partners, any individual related to the employee by blood, or even any individual who shares a relationship with the employee that is equivalent to a family relationship, including foster children and children who are born via a gestational carrier;
- Employees may also now take leave under the New Jersey Security and Financial Empowerment Act to care for any family member (as defined above) in the event of a domestic violence or sexually violent incident; and
- Employees can now receive 85% of their weekly wage from the State’s Family Leave Insurance program, with the maximum possible benefit increasing to 70% of New Jersey’s average weekly wage, meaning, based on current calculations, the maximum weekly benefit would increase from \$650 to \$860.

What does this mean for employers?

The bill’s expansion of who is covered under the NJFLA, the amount of leave required, and the increase in available compensation through the State’s Family Leave Insurance program presents new and unique challenges for employers. For the very first time, the bill requires employers with between 30 and 49 employees to provide its employees with paid leave to care for a sick family member. This can have dramatic consequences on the benefits provided by those employers to their employees. Even for employers already subject to the NJFLA, the bill increases, and in some cases doubles, the paid leave they are required to provide to their employees. Moreover, employees will be more likely to take full leave since the increase in benefits eases the financial burden of doing so. Covered employers must now prepare for employees to take longer absences in the face of sudden and/or planned health conditions, pregnancies/births, adoptions, and

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even the placement of children into foster care.

Next steps for employers?

Given this information, below are three action items New Jersey employers should take into consideration when preparing to their workplace for the implementation of this expansion of the NJFLA

1. Review your employee handbook and modify certain policies

The employee handbook is frequently the most basic protection an employer has to ensure compliance with employment laws. Most employee handbooks provide for employees to take leave to care for themselves and/or a sick family member. An employer may open itself up to liability under the NJFLA if its handbook conflicts with the Act's minimum requirements. In most cases, a simple update of the employee handbook can help employers become compliant with the NJFLA's new requirements and avoid liability for failing to provide sufficient paid leave. Many employers will also want to ensure employees are using their paid leave concurrently to minimize any disruption.

2. Provide training to managers and supervisors to ensure compliance with the NJFLA

As managers and supervisors are typically directly responsible for granting employees leave and accounting for subsequent absences, it is critical that managers and supervisors be familiar with the NJFLA's requirements. The best way to ensure such familiarity is to train managers so that they understand and carry out the company's policies concerning paid leave, as well as the NJFLA's requirements.

3. Documentation

Thorough and precise documentation will help support any decision to deny an employee's request for leave to care for a sick family member that is later challenged. Document every decision granting or denying any employee's request for paid leave, as this will help demonstrate uniformity in the employer's decision-making. Further, the NJFLA permits employers to request written proof of covered occurrences, such as medical notes from an employee's family member's doctors. Employers should not hesitate to exercise this right under the NJFLA, and should adopt policies urging managers to do so.

If you have any questions about this legal alert or if you run across a paid family or sick leave issue in your workplace, please feel free to contact Adam Gersh, Jeremy Cole, or any other member of Flaster Greenberg's Labor & Employment Department.

ATTORNEYS MENTIONED

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