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# NJ Mandates Paid Family Leave for Large and Small Employers

*Legal Alert*

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New Jersey Governor Jon S. Corzine today signed into law a program that will entitle almost all employees in the state  whether they work for large or small businesses -- to take up to six weeks of paid family leave.

The state program  only the third in the country to mandate paid family leave -- will not take effect until July 1, 2009. When it does, employers can expect more employees to take time off to care for children and sick family members, causing greater strain on the employees and managers left behind to do their work.

The new law has the following key provisions:

- It covers all employers who are subject to the New Jersey Unemployment Compensation Law  virtually every employer in the state, regardless of size.
- Employees are eligible for paid leave if they have worked for their employer for 20 base weeks, and earned at least 1,000 times the New Jersey minimum wage (currently $7.15) during that time.
- To qualify, the leave must be (a) to provide care for a family members serious health condition as defined by New Jerseys Family Leave Act (FLA); or (b) to be with a child during the first 12 months after birth or adoption.
- Qualifying employees will receive up to six weeks of paid leave. The weekly benefit payments will equal two-thirds of the employees average weekly wage, up to a maximum of $524 per week.
- The benefit will be funded by payroll taxes *paid by the employee* and will be administered by the state, as an amendment to the Temporary Disability Benefits Law (which already provides paid benefits for an employees own non-work-related disability).

Payroll tax deductions will begin January 1, 2009, and will amount to an estimated 75 cents per week, or about $35 per year for each worker.

The new paid family leave does not change the existing federal Family and Medical Leave Act (FMLA) or the New Jersey FLA, which already requires that employers with 50 or more employees must provide up to 12 weeks of *unpaid* leave to eligible employees for certain family or medical leave purposes. Paid leave under the new law will run concurrently with the FMLA and FLA.

Although the controversial law has generated vocal opposition from business groups and small employers, it does include several provisions that limit the impact to employers:

- Employers do not pay for the leave. Their employees do through the payroll tax.

- The law *does not* require employers to hold an employees job for him or her while on paid disability leave (although the FLA or FMLA, if applicable, do). As a result, a business with fewer than 50 employees (which is therefore not covered by the FMLA and the FLA) could permanently replace the employee while on paid disability leave, if no other law would be violated.
- The law requires employees to give their employers advance notice - between 15 and 30 days - before commencing a paid leave, unless the leave is unforeseeable.
- The law requires the employee to provide a certification by a healthcare provider, if the leave is not for childcare.
- An employer may permit or require employees who take paid family leave to first use up to two weeks of paid sick time, vacation or other paid time off before the employee becomes eligible for the paid leave. The employees six weeks of paid disability benefits would then be reduced by the time he or she received employer-paid leave.
- Employers also can seek state approval to provide similar benefits to employees under a private insurance plan.

The New Jersey Department of Labor and Workforce Development will be issuing regulations on the implementation and application of the new law. In addition, the Department will issue notices that employers must post to inform employees of their rights and responsibilities under the law. Payroll tax deductions will begin January 1, 2009.

If you have any questions about this Alert or about compliance with state and federal family and medical leave laws, please contact us.