



New Jersey Enacts Paid Family Leave Law

New Jersey Governor Jon Corzine has just signed a new law that provides New Jersey employees with up to six weeks of paid leave to care for seriously ill family members, newborns or newly adopted children. The new family leave benefits will be funded through an increase in employee payroll taxes.

Introduction

Federal and many state laws (including New Jersey) allow eligible employees to take unpaid leave to care for a seriously ill relative, a newborn or a newly adopted child. Because many employees are financially unable to take unpaid leave, the DOL issued regulations in 2000 permitting states to establish programs that would allow employees to receive payments from the state unemployment system when taking a family leave. In 2004, California was the first state to implement such a program (see our October 2, 2002 [For Your Information](#)). Washington State enacted a law last year, establishing a program that is slated to go into effect in October 2009. New Jersey has now become the third state to enact a paid family leave law.

New Jersey Paid Family Leave Law

The [New Jersey law](#) gives employees up to six weeks of paid leave in any 12-month period to care for a seriously ill family member or to care for or bond with a new child. The leave benefits will be paid through the state's existing Temporary Disability Insurance (TDI) program and will be funded by a new tax on employee wages, beginning January 1, 2009.

BUCK COMMENT. *The new law defines family members more broadly than under the state's unpaid leave law, and includes a child, spouse, parent, domestic partner or civil union partner, as well as a child of such partners.*

Unlike the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (NJFLA) which apply to employers with 50 or more employees, the new paid leave law covers all employers subject to the New Jersey unemployment compensation laws, regardless of size. Since the paid leave law contains no job protections, only employers subject to FMLA or NJFLA must reinstate employees upon their return from leave. Like NJFLA but unlike FMLA, the new law does not cover leave for an employee's own serious health condition.

The paid leave law does not alter an employee's rights under FMLA or NJFLA. If the employee is eligible for unpaid leave under federal or state law, paid leave under the new law would run concurrently with that leave. Thus, the first six weeks of the employee's leave would be paid under the new law, and leave thereafter would be unpaid.

Employees seeking paid family leave must apply in the same manner as those seeking disability pay under New Jersey law. As with the state's TDI program, employers may opt to provide their own paid family leave plan provided the costs and benefits are at least as favorable to employees as the state's plan.

Benefits and Eligibility

To be eligible for benefits under the new law, New Jersey employees need only be employed as defined under the state's unemployment compensation law (i.e., worked at least 20 weeks in covered New Jersey employment or earned at least 1,000 times the applicable minimum wage during the prior year). The minimum employment thresholds under the FMLA and NJFLA are more stringent (i.e., 12 months of employment with an employer and worked at least 1,250 hours for federal law purposes or 1,000 hours for state law purposes during the 12 months immediately preceding leave). Thus, an employee may be eligible to take up to six weeks of paid family leave but remain ineligible for unpaid leave.

Beginning July 1, 2009, employees are eligible for benefits after a one-week waiting period. If the leave period extends beyond three weeks, benefits for the waiting period may be paid retroactively. Eligible employees will receive up to two-thirds of their salary capped at \$524 per week during the leave period. No more than six weeks of benefits will be paid within any 12-month period. Employers may permit or require an employee to use up to two weeks of available sick pay, vacation, or other employer paid leave before the new benefits are payable, which will reduce the paid leave under the new law. An individual may use any available paid leave during the one-week waiting period preceding the start of the paid family leave benefits.

Serious Health Conditions and Certifications

Consistent with the NJFLA, the paid family leave law defines a serious health condition as an illness, injury, impairment, or physical or mental condition which requires inpatient care, continuing medical treatment or supervision. When leave is taken to care for an employee's seriously ill family member, the employee must provide certification by a health care provider describing the nature and duration of the family member's medical condition, the need for the employee's participation in providing care and how much time the employee will need for such care.

Taking Leave

Under the new law, leave to care for a family member with a serious health condition can be taken in a single, continuous period or intermittently, when medically necessary. If taken intermittently, leave is limited to a total of 42 days per year. For the birth or adoption of a child, leave must occur within 12 months after the birth or adoption and must be taken in a single continuous period unless the employer agrees otherwise.

Employer Notice Requirements

The law requires the New Jersey Commissioner of Labor to develop a notice to apprise employees of their benefit rights, which employers must post and distribute within 30 days after its issuance. A written notice must also be

provided upon the hire of a new employee, whenever an employee notifies the employer of an intended leave covered by the new law, and upon an employee's request.

Within nine days after an employee's paid family leave begins, the employer must send a notice containing specified personal and compensation information to the New Jersey Division of Temporary Disability Insurance and to the employee.

Employee Notice Requirements

An employee wishing to take leave for the birth or adoption of a child must notify the employer 30 days before taking leave or else forgo two weeks of paid benefits. This penalty would not apply if the leave was due to unforeseeable circumstances. An employee seeking leave to care for a sick family member should provide 15 days' notice for intermittent leave unless the need is unforeseeable. The employee must also submit a claim for benefits to the Division of Temporary Disability Insurance within 30 days after the leave begins.

Funding

As noted above, benefits will be funded entirely by employee payroll taxes. In 2009, employees will be taxed at a rate of 0.09% on wages up to the limit for temporary disability insurance (currently \$27,700), rising to 0.12% in 2010. Thus, the maximum annual tax would be about \$25 per employee in 2009 and \$33 in 2010.

BUCK COMMENT. *Although employers do not currently have any payroll tax obligations, there is concern that they may ultimately be required to contribute if employees' payroll deductions are not sufficient to fund the benefits.*

Effective Date

Employees will be subject to the new payroll deductions beginning on January 1, 2009, but benefits first become payable for family leave that commences on or after July 1, 2009.

Conclusion

The New Jersey paid family leave benefit is to be funded through a new payroll tax on employees, but it will have significant implications for New Jersey employers. Employers should review their current absence management practices, consider how they will administer the new law along with other leave laws, and prepare to put processes in place to do so. Buck's consultants are available to help you comply with the new law.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.