



New Jersey DOL Issues Regulations on Family Leave Insurance Benefits

The New Jersey Department of Labor and Workforce Development recently issued final regulations on the state's new paid family leave insurance benefits. The New Jersey paid family leave law, which took effect January 1, 2009, allows eligible employees to receive qualifying leave benefits beginning July 1, 2009. This law impacts virtually all New Jersey employers.

Background

Federal and many state laws allow eligible employees to take unpaid leave to care for a seriously ill family member, newborn or newly-adopted child. The U.S. Department of Labor 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. Last year, New Jersey became the third state to enact such a program. (See our May 5, 2008 [For Your Information](#).)

BUCK COMMENT. *Washington State's family leave insurance program was to go into effect in October 2009, but the legislature has approved a three-year delay in implementation.*

New Jersey's paid family leave law applies to all private and governmental employers subject to New Jersey unemployment compensation law, regardless of size. The law provides eligible employees with up to six weeks of paid family leave each year to care for a seriously ill family member or new child, and is financed by a tax on employee wages that began on January 1, 2009. Benefits are available to eligible employees starting July 1, 2009, and will be paid through the state's existing Temporary Disability Insurance (TDI) program or an approved employer-provided private plan.

The NJDOL Regulations

The New Jersey Department of Labor and Workforce Development (NJDOL) recently issued final [regulations](#) on family leave insurance (FLI) benefits. Importantly, the law and regulations do not create a new leave entitlement, but rather focus on protecting eligible individuals against wage loss during a covered family leave.

BUCK COMMENT. *Although the new paid family leave insurance law does not require employers to reinstate employees following leave, companies employing 50 or more employees remain subject to*

reinstatement obligations under both the federal Family and Medical Leave Act and the New Jersey Family Leave Act.

The regulations clarify a number of areas of employer concern, including notice requirements, claim and payment procedures, intermittent leave, waiting periods, benefit reductions, and private plans.

Employer Notice Requirements

Employers must post a written [notice](#) of employee rights under the family leave insurance law in an employee accessible area. In addition, employers had to distribute a written or electronic copy of the notice to each employee by April 1, 2009, and must also distribute a copy upon hire, when the employee first requests a copy, or when the employee notifies the employer of an intended paid family leave. Both the poster and the written notification form are available on the NJDOL [website](#).

Employee Notice Requirements

Employees generally must give employers at least 30 days' prior notice of the need for paid family leave to bond with a newborn or newly-adopted child. Except in unforeseeable circumstances, failure to provide timely notice will reduce the employee's maximum benefit entitlement by two weeks.

For leave to care for a family member with a serious health condition, an employee must give "reasonable and practicable" notice. In emergency and other unforeseen circumstances, advance notice may not be required. Although an employee intending to take intermittent leave is required to give the employer at least 15 days' notice before the first benefits are paid, the regulations provide no penalty for failure to do so.

An employee seeking benefits must file an application with the state within 30 days after family leave begins. The NJDOL will make forms available for this purpose after June 1, 2009. A copy of the NJDOL decision on the claimant's eligibility for benefits along with his or her weekly benefit rate and expected duration of paid leave will be sent to the employer. The NJDOL may also request employer information relating to a benefits claim, and employers will be subject to penalties for failure to respond within 10 days after receipt.

Intermittent Leave

The regulations clarify when and for what purpose an employee may take intermittent leave with FLI benefits. Leave to bond with a newborn or newly-adopted child must be taken in periods of at least seven consecutive days. By contrast, intermittent leave to care for a seriously ill family member must be taken in increments of not less than one day. Intermittent leave must be medically necessary (i.e., supported by a certification from a health care provider) and taken within a 12-month period. Further, the employee must make a "reasonable" effort to schedule the leave and, where possible, provide the employer with a regular leave schedule.

Waiting Period

Employees are eligible for paid leave benefits after a one-week waiting period. If the leave extends beyond three consecutive weeks, benefits for the waiting period will be paid retroactively. Similarly, benefits will be paid for the first day and subsequent days of intermittent leave taken after the initial one-week period. If benefits are payable on any day after the first three weeks in which intermittent leave is taken, benefits will be paid retroactively for leave taken during the first week. The regulations confirm that benefits for family leave taken immediately following leave for an individual's own disability are not subject to a waiting period.

Benefit Payments and Paid Leave in Lieu of FLI Benefits

Eligible applicants who are covered by the New Jersey FLI plan will receive weekly benefits of no more than two-thirds of their weekly pay, subject to the same maximum as available under the TDI program for an individual's own disability (\$546 per week in 2009). The regulations clarify that all wages earned during the 52 weeks immediately preceding the filing of a claim will be used (including wages earned between July 1, 2008 and December 31, 2008) to calculate the family leave benefits for a covered individual with regard to a claim filed between July 1, 2009 and December 31, 2009.

Generally, employees will be paid directly by the state plan or by an approved private plan. If, however, the employee has agreed in writing, payment may be made to the employer if it has advanced to the employee an amount equal to or greater than the insurance benefit. For example, the employer may elect to pay an amount equal to the insurance benefit through its normal payroll process, and have the employee remit his insurance check to the employer.

The regulations clarify the use of paid sick leave, vacation or other paid time off in lieu of FLI benefits. Employers may require employees to use up to two weeks of paid sick leave, paid vacation or other leave at full pay during a family leave period, and ask the state or private plan to reduce otherwise payable FLI benefits. Employers may also permit employees to use more than two weeks of paid leave for family leave. The employee's maximum insurance benefit entitlement will not be reduced by any such time used, and no FLI benefits will be payable during the period that the employee is absent from work and receiving full pay.

BUCK COMMENT. *Employers should develop a policy on whether employees will be required to use paid time off before receiving family leave benefits, and whether the use of paid time off will reduce the duration of the FLI benefits.*

The regulations also clarify that, under the state plan, a claimant's maximum entitlement for a 12-month period will be reduced by the number of days of FLI benefits actually paid during that period under a private plan or as an unemployed claimant. In addition, benefits otherwise payable under the state plan will be reduced by any amounts concurrently paid under any retirement, pension or permanent disability benefit program to which the employer contributed if the claimant begins receiving those payments before the FLI benefits are paid.

The Private Plan Alternative

As with the state's TDI program, employers may opt to provide their own paid family leave plan, as long as the costs and benefits are at least as favorable to employees as the state's plan. Any employer seeking to self-insure or provide coverage through a private insurance carrier must secure prior approval by the NJDOL Division of Temporary Disability Insurance. For this purpose, the approval process essentially mirrors that governing private plan approval for TDI benefits.

BUCK COMMENT. *The Division of Temporary Disability Insurance indicates it will not approve a private plan requiring employee contributions unless the employer's application evidences that a majority of the employees covered by the plan agreed by written election. Because the regulations also specify the use of dedicated trust fund accounts for paying benefits and impose reporting and other obligations on private plans, this alternative would appear to offer employers little, if any, cost or administrative advantage over the state program.*

Effective Date

Employees became subject to the new payroll deductions January 1, 2009, but benefits under the new family leave insurance program first become payable for leave beginning on or after July 1, 2009.

Conclusion

Although the New Jersey family leave insurance benefit is funded through a new payroll tax on employees, 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 put appropriate processes in place. Buck's consultants are available to help you do so.

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.