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EMPLOYMENT LAW

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New Law Assists Families In Their Time of Need

Paid family medical leave now
available to New Jersey employees

Governor Corzine recently signed into law a bill that provides paid family medical leave for those employees taking leave to care for ill family members or to bond with their children following birth or adoption. In providing for paid leave, New Jersey joins California (which provides up to six weeks of paid family medical leave) and Washington (which provides up to five weeks of paid leave, in the form of a \$250 per week stipend, to allow parents to bond with their newborn or adopted child), the only other states in the nation to provide paid family leave. The New Jersey Family Leave Act (NJFLA), N.J.S.A. 34:11B-1, et seq., enacted in 1989, provides for up to 12 weeks of unpaid, job-protected leave (i.e., employees are to be restored to their prior or equivalent position upon return from leave) in any 24-month period to allow eligible employees to care for a child following birth or adoption or to care for an ill spouse, parent, child or civil

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union partner. Providing such family leave is only required of those employers with 50 or more employees, and eligible employees only include those who have worked for an employer for at least 12 months and 1,000 hours. N.J.S.A. 34:11B-3(f), (e).

This new law, which amends New Jersey's Temporary Disability Benefits law (NJTDB), as it will be funded under the NJTDB (see N.J.S.A. 43:21-25 et seq.), provides employees with up to six weeks of paid leave during a 12-month period to care for an ill parent (including foster parent, adoptive parent, stepparent or person who was the worker's legal guardian), spouse, domestic partner, civil union partner or child, or to care for a child following adoption or birth.

The paid leave law covers a much broader spectrum of employers and employees than the NJFLA. In contrast to the NJFLA, all employers which are subject to New Jersey's Unemployment Compensation law are subject to the new law's requirements. With regard to employees who may utilize the paid leave, unlike the NJFLA, there are no requirements that an employee be employed by his or her current employer for a specific period of time to be eligible for the family temporary disability benefits. An em-

ployee, however, generally must have worked, in the year prior to the taking of leave, for at least 20 weeks in New Jersey or earned 1,000 times the applicable minimum wage, which presently amounts to \$7,150. N.J.S.A. 43:21-41-(d)(2), (e). The family medical leave benefits to be paid are two-thirds of a worker's average weekly salary up to a cap of \$524 per week (the current maximum disability benefits), which is the same benefit provided to employees who are on leave for their own disability. As with New Jersey disability benefits for individuals, there is also a one-week waiting period for those taking paid family leave, though if the employee takes more than three weeks of leave, such employee will receive benefits for the first week of leave as well. The paid family leave law provides that notwithstanding the benefits outlined, however, an employer is free to provide a more generous paid leave policy to its workers.

The paid leave program is supported by employee contributions. Such contributions, however, will not begin until January 1, 2009, and paid leave benefits will not be available until July 1, 2009. The amount to be deducted from an employee's paycheck to fund the paid family medical leave will be 0.09 percent of an employee's wages which are subject to temporary disability insurance taxation, during the year 2009, and then 0.12 percent of such wages for the year 2010 and thereafter. The amount will be added on to the tem-

porary disability contributions currently being deducted from the paychecks of New Jersey employees. Therefore, the maximum annual amount an employee would be required to pay is \$25 in 2009 and \$33 in 2010.

Though the paid leave would be available to employees who work for employers of any size, the employees who work for an employer with fewer than 50 employees will not, as a result of the paid family leave law, be afforded job-protected leave. In addition, the paid leave law provides specifically that employees will not have a cause of action against an employer because of the employer's refusal to restore the employee to his or her position following the paid family leave.

An employer can require or permit an employee to use any paid sick, vacation or other leave time at full pay, but only up to two weeks of such leave time, before the employee will be eligible for paid family leave. Also, the paid family leave benefits run concurrently with those benefits provided pursuant to the NJFLA and the federal Family and Medical Leave Act.

With regard to the taking of intermittent paid leave to care for an ill family member, the time frame within which such leave can be taken is 12 months. The employee must give notice of 15 days prior to the taking of the first day of leave on which the intermittent

leave begins, unless it is an emergency situation or an unforeseen circumstance that prevents such 15-day notice. In addition, every effort is to be made on the part of the employee to schedule the intermittent leave so that it will not unduly disrupt the employer's operations, and, if possible, the time off should be on regularly scheduled days.

Family temporary disability benefits taken in connection with the birth or adoption of a child may be taken at any time within a year after the date of the birth or adoption, and employees must provide their employers with 30 days' notice before the leave begins. The paid time off may be taken on a continuous basis; it may also be taken during non-consecutive weeks if the employer agrees to such arrangement.

There are notice and posting requirements under the new law. Employers are required to provide all employees with a written copy of the law's requirements 30 days following the issuance of such notification by regulation. Employers will also be required to provide such notification to all new hires, to employees requesting paid time off, and upon an employee's request. Employers must also post such notification.

There are penalty provisions contained in the paid leave law for those employees found to have engaged in any misrepresentation, fraud or other viola-

tion of the law. The penalties range from \$250 to \$1,000 per violation.

There has been a great deal of debate regarding paid family medical leave, particularly with regard to the funding of the program, its impact on businesses in New Jersey, and its implementation. Though the paid leave program will be funded by employee contributions, critics argue that it will have a negative impact on the state's economy and make New Jersey less competitive to business. See Susan K. Livio, "Paid Family Leave Act Clears State Senate," *The Star-Ledger*, Apr. 7, 2008. Another criticism expressed by some in the business community is that small businesses in particular will face disruption. However, according to a poll conducted by the New Jersey think tank, the Eagleton Institute of Politics, 78 percent of New Jersey residents polled in a 2006 study supported paid family leave.

Now that paid family leave will be available to employees, employers will have to establish administrative procedures and train their staffs to address the paid leave requests and comply with the law's notice and posting requirements. Employees will have to be careful in providing their employers with appropriate notice of their leave requests, recognizing at the same time that their leave is not job-protected leave if they work for an employer of 50 employees or less. ■