

New Jersey Expands State Leave Laws

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New Jersey has enacted an omnibus law that expands significantly protections and benefits for employees under the state's laws providing unpaid family leave, domestic or sexual violence safety leave, and temporary paid family leave insurance.

Prior to the law's passage, the New Jersey Family Leave Act (NJFLA) required employers with at least 50 employees to provide 12 weeks of unpaid leave (in a given 24-month period) for the care of a newborn or adopted child or to care for a parent, spouse, child, or domestic partner with a serious health condition. Similarly, the Security and Financial Empowerment Act (SAFE Act) required employers with at least 25 employees to provide 20 days of unpaid leave to address circumstances resulting from domestic violence or a sexually violent offense. The New Jersey Temporary Disability Benefits Act (TDB), in relevant part, established a temporary family leave insurance account under which the state provided eligible employees up to six weeks of compensation (up to a maximum amount of \$650 per week) for leave taken to bond with a child or care for a family member with a serious health condition. The TDB also permitted employers to provide these temporary family leave insurance benefits through a private plan approved by the state; however, employers were required to obtain written consent by a majority of the employees for any private plans that required employee contributions for coverage.

All of the above laws are amended by the omnibus legislation. The sweeping changes require employers to review and amend their existing leave policies and benefit programs to ensure compliance with the state's ever-expanding employee protections and entitlements. This article discusses highlights of the omnibus law. Some changes are effective immediately and others will go into effect later.

Changes Applicable to All Laws

The new law amended the definitions of "child," "parent," and "family member" in the NJFLA, the SAFE Act, and TDB (which is the source of the New Jersey temporary family leave insurance benefits) as follows:

- *Child* – This term now includes a foster child or any "child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier." The legislation also removed from the definition the previous qualifier that a child included an individual under the age of 18 or over the age of 18 "but incapable of self-care because of a mental or physical impairment[.]"
- *Parent* – This term now includes a foster parent or anyone "who became the parent of the child pursuant to a valid written agreement between the parent and a gestational carrier."
- *Family Member* – This term now includes a parent-in-law, sibling, grandparent, grandchild, domestic partner, "or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship."

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The state further amended the laws individually to expand coverage and benefits as follows.

Family Leave Act Changes

In addition to the definitional revisions discussed above, New Jersey revised the NJFLA to expand protections to employees of smaller companies. Effective July 1, 2019, businesses with “30 or more employees for each working day during each of 20 or more calendar workweeks” in the current or preceding year, regardless of worker location, must provide NJFLA leave benefits to employees. The previous threshold, 50 employees, aligned with federal coverage for leave pursuant to the Family and Medical Leave Act (FMLA).

Also, an employer must now provide an eligible employee with intermittent NJFLA for a period not exceeding 12 consecutive months, rather than the previous limit of 24 consecutive weeks. The NJFLA was further amended to eliminate the requirement that employers agree to allow employees to bond with a newborn or adopted child required. Eligible employees can now take bonding leave intermittently as a matter of right.

SAFE Act Changes

The SAFE Act has been amended to eliminate an employer’s right to require an employee to utilize accrued but unused vacation or personal, medical, or sick leave during unpaid leaves. An eligible employee also may now collect temporary family leave insurance during leave taken pursuant to the SAFE Act.

Temporary Disability Benefits Act Changes

The new law revises several sections within the TDB, particularly those provisions concerning temporary family leave insurance. In addition to the definitional changes discussed above, the law increases both the maximum weekly benefits for temporary family leave insurance and the number of weeks employees may receive such benefits. Currently, an employee may receive only six weeks of family leave insurance, up to a maximum of \$650 in benefits per week. Effective July 1, 2020, an employee may receive up to 12 weeks of temporary family leave benefits at a maximum weekly benefit of \$860. Effective July 1, 2020, the law also increases the amount of intermittent family leave insurance from 42 days to 56 days.

Effective January 1, 2020, the state will require workers to contribute additional funds through payroll deductions at “the rate necessary to obtain a total amount of contributions equal to 125% of the benefits which the department anticipates will be paid for period of family temporary disability leave during the respective calendar year[.]” The contributions also must cover the full amount of anticipated costs associated with the administration of the benefits.

Additional changes of note include the following:

- The law eliminates an employer’s ability to require an employee to use paid sick leave, vacation time, or other leave at full pay before receiving family temporary disability leave insurance.
- The revised TDB excludes the seven-day waiting period for benefits that previously existed, meaning employees are eligible for benefits starting the first day they are absent.
- The TDB now requires employees to provide the employer 15 days’ notice of

intermittent leave due to a birth, placement in foster care, or adoption (unless an emergency or unforeseen circumstances prevent such notice) of a child and 30 days' notice for a single continuous leave for a birth, placement in foster care, or adoption of a child.

- With the exception of unionized workforces, the revised TDB allows employers to adopt private temporary disability benefit plans in lieu of the State plan without obtaining the consent or election of a majority of employees. The revised TDB provides that a majority of employees subject to a collective bargaining agreement, by written election, must consent to a private plan before it becomes effective. However, if the collective bargaining agreement expressly waives the right to a majority election as a condition for a private plan, no such election is required.
- If an employer implements a private plan, notice "in a form approved by the director" must be conspicuously posted and provided individually to employees covered by the private plan. The notice must be provided to covered employees at the time of establishment of the private plan, at the time of hire, and within three business days after the employer knows or should know of the need for disability or family temporary disability benefits. The notice must contain the current rates, eligibility requirements, benefit entitlements, the rights of the employee (*e.g.*, appeal rights), and contact information for the plan and instructions for filing a claim for benefits.

Next Steps

Employers should consult with employment counsel and identify steps that should be taken immediately and in the longer term to comply with these legislative changes. To comply with the provisions of the law that are effective immediately, employers should update any existing policies to include the expanded definitions and terms applicable to the NJFLA, SAFE Act, and TDB. Employers also should post and distribute the revised notices regarding the NJFLA, SAFE Act, and TDB when they are available from the respective state agencies.

Longer term, employers should ensure they deduct the appropriate TDB taxes from employees' wages starting January 1, 2020. Employers also should ensure they provide the enhanced NJFLA and TDB leave benefits that become effective July 1, 2020. Finally, some employers may want to reconsider the possibility of adopting a private temporary disability benefit plan given that there is no longer a need, at least in non-unionized workforces, for a majority of employees to elect or consent to such plans. As always, employers should consider training leave administrators, human resources, and managers regarding these new leave and benefit requirements.

Jackson Lewis attorneys are available to assist employers in determining how these and other changes affect their particular business.

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