

# New Jersey COVID-19 Bills Would Expand Employee Benefits, Establish Benefits for Independent Contractors

By James M. McDonnell & Justin B. Cutlip

March 16, 2020

## Meet the Authors

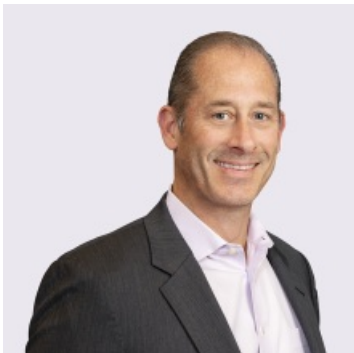


**James M. McDonnell**

Principal

908-795-5208

James.McDonnell@jacksonlewis.com



**Justin B. Cutlip**

Of Counsel

908-795-5136

Justin.Cutlip@jacksonlewis.com

## Related Services

COVID-19

Disability, Leave and Health Management

Staffing and Independent Workforce

Two bills to expand benefits and job protection for employee absences related to the COVID-19 pandemic are under consideration by the New Jersey State Assembly. The bills would provide greater benefits to affected employees under the state Earned Sick Leave, Family Leave, and Temporary Disability laws.

The legislature also is considering establishing an Epidemic Emergency Relief Employment Fund to provide benefits to independent contractors who may lose income due to COVID-19 or other infectious diseases.

Another bill in the Assembly would prohibit employers from taking adverse employment action against employees who take or request time off related to an infectious disease that may affect others in the workplace.

### Proposed Amendments to Leave, Disability Statutes

Amendments to New Jersey's Earned Sick Leave, Family Leave, and Temporary Disability statutes would permit employees to recover benefits for absences or illnesses related to infectious diseases.

#### *Earned Sick Leave*

The covered permissible uses of Earned Sick Leave will expand to include times during which an employee cannot work because of:

1. The issuance by a public health authority of a determination that the employee, including by mandatory quarantine as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or
2. The recommendation of a physician or public health authority that the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.

An employee who uses Earned Sick Leave for the above reasons, or due to the closure of a workplace, school, or daycare by order of a public official because of an epidemic or other public health emergency, must report such use to the New Jersey Department of Labor and Workforce Development (NJDLWD). The NJDLWD will confirm the circumstances surrounding the claim for benefits and reimburse the employer for any such Earned Sick Leave from a newly established fund (discussed below).

### *Family Leave, Temporary Disability*

The Family Leave Act and Temporary Disability Act would be amended to define a “serious health condition” to include a number of potential absences that may be caused by COVID-19 or other epidemics. “Serious health condition” would include an illness caused by an epidemic of a communicable disease or known or suspected exposure to such a disease that may require:

- In-home care or treatment due to the closure of a school or daycare by order of a public official because of the epidemic or public health emergency;
- Issuance by a public health authority of a determination of mandatory quarantines to stop the spread or exposure to the communicable disease; or
- Recommendations from physicians to self-quarantine to prevent the spread or exposure to the communicable disease.

Accordingly, employees may receive job-protected leave and benefits under the respective laws for absences related to COVID-19. The state also will not consider any benefits paid for disability benefits for these reasons in calculating an employer’s contributions to the state disability fund. The employee must similarly report to the NJDLWD that they claimed the disability benefits due to the epidemic for confirmation.

### **The Fund and Independent Contractors**

The establishment of an Epidemic and Emergency Relief Employment Fund would make benefits available to independent contractors. The Fund would be used to reimburse employers for any hours paid due to Earned Sick Leave paid for the reasons above, *i.e.*, in the event of an epidemic.

Any employer who receives such reimbursement, however, may not count any such time against the employee’s 40 hours of earned sick leave for that benefit year. Moreover, the new sections would require an employer to report any self-disclosure by an employee of an absence/claim or earned sick leave related to a communicable disease (or exposure thereto) to the NJDLWD.

Independent contractors would be permitted to file claims for lost earnings from the Fund for the reasons covered under the proposed revisions to the Earned Sick Leave Act (*e.g.*, workplace closures, school closures, and self-quarantines). The independent contractor would have to submit information supporting the inability to work, as well as documentation supporting the claim for lost income. The NJDLWD would base any such benefit payments upon the average weekly earnings from the independent contractor’s prior calendar year.

### **Job Protection**

The Assembly is considering a bill to provide employment protections to any individual who requests or takes time off due to an infectious disease. Any such request or absence must be based on the written recommendation of a medical professional licensed in the State of New Jersey.

The bill provides employee reinstatement rights following such an absence, without any reduction in seniority, status, employment benefits, pay, or other terms and conditions of employment.

The bill provides for a private right of action or enforcement through the NJDLWD.

\* \* \*

These changes certainly will affect company policies and procedures as New Jersey's employee benefits and protections will be expanded to include absences or loss of income occasioned by a public health epidemic. Moreover, the state continues its outreach to independent contractors by providing what amounts to Earned Sick Leave benefits for absences or income loss due to circumstances surrounding an epidemic.

If passed as written, the new laws will take effect immediately, providing companies with little time to adjust policies and procedures to comply with the new requirements. Please contact a Jackson Lewis attorney with any questions or for assistance with workplace issues.

To better support clients as they respond to this challenging public health issue, Jackson Lewis has established a dedicated [COVID-19 Task Force](#) that is continually assessing risks, preparing employee communications, and providing practical advice on the workplace compliance issues flowing from [coronavirus workplace concerns](#) and the [travel restrictions and new facts](#) we are continuing to learn about COVID-19.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.