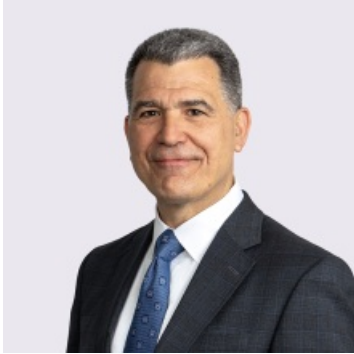


New Jersey Eliminates 7-Day Wait Period for Temporary Disability Benefits, Expands Leave Rights

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Meet the Authors



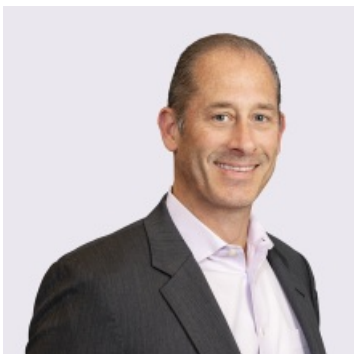
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New Jersey Governor Phil Murphy has signed a bill expanding the scope of the New Jersey Earned Sick Leave Law (ESLL), the New Jersey Family Leave Act (FLA), the New Jersey Temporary Disability Law (TDL) to cover absences related to epidemics such as the coronavirus (COVID-19) pandemic. The law is designed to create immediate enhanced eligibility for employee leaves in New Jersey.

The Legislature, by 78-0 vote, approved the bill and the Governor signed on the same day the Assembly passed the measure.

ESLL

The new law amends the reasons for which an employee may utilize ESLL to cover COVID-19-related absences.

Since becoming effective in October 2018, the ESLL covers absences related to, among other reasons, the following:

(4) time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that 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;

The amendment expands this part of the law to more fully cover absences resulting from government actions designed to stop the spread of COVID-19. The amended section provides:

(4) time during which the employee is not able to work because of:

(a) a closure of the employee's workplace, or the school or place of care of a child of the employee by order of a public official ***or because of a state of emergency declared by the Governor***, due to an epidemic or other public health emergency [, or because of];

(b) the declaration of a state of emergency by the Governor, or the issuance by a health care provider or the Commissioner of Health or other public health authority of a determination that 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]

(c) during a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the

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Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others; or ...

Emphasis added to indicate change in law. (The amended reasons are in addition to those in the original ESLL. Only the new provisions are discussed in this update.)

Basically, in addition to an order of closure of a school, workplace, or daycare, an employee may also use ESLL if a workplace closes because of a state of emergency declared by the Governor due to an epidemic or other health emergency.

In addition, the ESLL now permits an employee to use ESLL “upon recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official” that the employee quarantine or isolate or care for a family member in quarantine or isolation. These changes are effective immediately.

These amendments are designed to expand the types of situations in which New Jersey employees can use ESLL benefits if they are unable to work due to COVID-19-related absences. However, the precise circumstances covered by the law remain unclear. For example, the law does not expressly cover when an employer follows the Centers for Disease Control and Prevention’s (CDC) procedures for addressing COVID-19 exposures in the workplace and directs an employee to remain in home self-quarantine for 14 days.

Although it appears the legislature intended to cover this situation (see the [March 25, 2020, press release](#)), the specific language of the amendments is unclear. Senator Nicholas Scutari said, “Those who have been forced to take an extended leave of absence from their jobs due to self-quarantining or are home taking care of a loved one are more than deserving to see these benefits afforded to them.” A Joint Statement from Assembly Sponsors said, “The more COVID-19 spreads, the more people will need to self-quarantine and take time away from work. By extending family leave and disability benefits to people impacted by COVID-19, we will lessen the financial burden on workers who do not have access to unemployment benefits but still must stay home from work.”

FLA, TDL

The new law amends the FLA and TDL to redefine “serious health condition” to include, during a state of emergency declared by the Governor or as required by the Commissioner of Health, “an illness caused by an epidemic of communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment[.]”

The leave must be due to:

1. The issuance of a determination of a healthcare provider or a public health authority that the family member’s/individual’s presence in the community may jeopardize the health of others; or
2. The recommendation, direction, or order of the healthcare provider or an authority that the family member or individual be isolated or quarantined because of

suspected exposure.

The amendments also limit an employer's ability to deny FLA leave to "key employees" for the above reasons.

FLA and TDL benefits may now be used if a family member or individual requires in-home care or treatment as part of "efforts to prevent spread of a communicable disease." Therefore, actual illness is not required to be eligible for short-term disability benefits or family leave insurance benefits. Rather, "suspected exposure" requiring isolation alone will make the employee eligible for such state benefits. Additionally, the State eliminated the seven-day waiting period for Temporary Disability.

As discussed above, because of the definitions used throughout the ESSL, FLA, and TDL, some uncertainty and ambiguity exist about how these new entitlements actually apply. However, it appears clear that the intent of the law is to broaden employee entitlements to cover many of the present COVID-19-related absences.

Reinstatement Rights

The Legislature in its statement explained New Jersey amended the FLA to provide reinstatement rights to individuals who take such leave during an epidemic. By providing expanded leave and reinstatement rights to individuals who may be absent from work due to COVID-19, the state has taken steps to ensure employees may return to work following the crisis.

Companies must be aware of the expanded worker protections as they take steps to prevent the spread of COVID-19 in the workplace and adjust to decreased revenue caused by the crisis. The approach to COVID-19 exposures or infections in New Jersey requires employers to be familiar with the available benefits and protections under state law. Please contact a Jackson Lewis attorney if you have any questions or need further guidance.

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