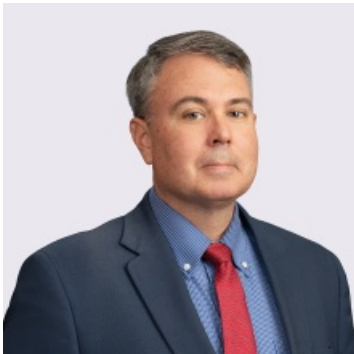


New Jersey Amends Family Leave, Temporary Disability Laws to Expand COVID-19 Benefits

By James M. McDonnell & Justin B. Cutlip

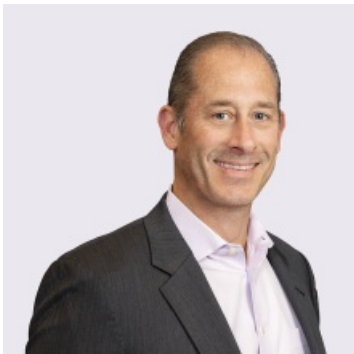
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New Jersey has amended the Family Leave Act (NJFLA) and Temporary Disability Law (TDL) to expand the availability of job-protected leave and benefits for those affected by the COVID-19 pandemic.

The amendments largely revise the state's [previous changes](#) to those laws passed only two weeks earlier. The latest revisions, however, do not affect the previous amendments to New Jersey's Earned Sick Leave Law.

Companies must update and revise their existing policies to remain compliant in the ever-changing legal landscape during the COVID-19 crisis.

Family Leave Act Amendments

New Jersey wholly eliminated changes to the definition of "serious health condition" implemented only weeks earlier in favor of a revised definition of "family leave."

Now, protected leave under the NJFLA includes the following, among other reasons:

[I]n the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, or efforts to prevent spread of a communicable disease, which:

(a) requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;

(b) prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or

(c) results in the recommendation of health care provider or public health authority, that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

The revised NJFLA also eliminates the previous amendment to the definition of "serious health condition," returning it to the definition before the March 25, 2020, amendments. In light of the expansion to include leaves related to communicable diseases, the revised NJFLA vaguely defines a "health care provider" as a "duly

licensed health care provider or other health care provider deemed appropriate by the director.”

The amendments also describe the contents of the certification an employer may request to support a request for NJFLA leave for pandemic-related reasons. The employer may request certifications from health care providers and other individuals (*e.g.*, schools, places of care, healthcare authorities, and public officials) where the reason is not necessarily related to the actual health condition of a covered family member.

The employer may request a certification from the employee seeking leave for pandemic-related reasons, including:

- For leave taken to provide in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of public official due to the epidemic or other public health emergency, the date on which the closure of the school or place of care of the child of the employee commenced and the reason for such closure;
- For leave taken due to a public health authority’s issuance of a determination requiring or imposing responsive or prophylactic measures 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 a family member in need of care by the employee would jeopardize the health of others, the date of issuance of the determination and the probable duration of the determination; or
- For leave taken because a health care provider or public health authority recommends that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee would jeopardize the health of others, the date of the recommendation, the probable duration of the condition, and the medical or other facts within the health care provider or public health authority’s knowledge regarding the condition.

The amendments also provide that an employer may not utilize the “key employee” exception to deny NJFLA leave where a state of emergency is declared and the family leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of a communicable disease.

Finally, the revisions permit a covered employee to use NJFLA for pandemic-related reasons intermittently, provided the employee gives advance notice and attempts to schedule the intermittent leave in a manner designed not to disrupt normal operations. Additionally, if possible, the employee should provide the employer with a regular schedule of the day or days of the week on which the intermittent leave will be taken. These provisions should permit parents to schedule leaves with their respective employers to allow for seamless childcare while the other parent tends to work.

Temporary Disability Law Amendments

Much like the NJFLA amendments, the state revised the TDL to wholly eliminate the March 25, 2020, change to the definition of “serious health condition.” Instead, the state amended the terms “disability,” “family temporary disability leave,” and

“compensable disability” to include:

in the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority [...] an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, which requires in-home care or treatment of the employee [*family member for “family temporary disability leave”*] due to:

- (i) the issuance by a health care provider or the commissioner or other public health authority of a determination that the presence in the community of the employee [*family member*] may jeopardize the health of others; and
- (ii) the recommendation, direction, or order of the provider or authority that the employee [*family member*] be isolated or quarantined as a result of suspected exposure to a communicable disease.

Accordingly, benefits from temporary disability and family temporary disability funds are available for employees who take leave for pandemic-related reasons covered under the revised TDL. The amendment also eliminates the seven-day waiting periods for benefits related to the above reasons.

The amendments provide clarity and revise technical errors in the state’s March 25, 2020, bill. To comply, companies should consider revisiting policies to ensure the language incorporates leaves or benefits covered by the amendments.

Jackson Lewis will continue to apprise you of further developments as the laws continue to develop during the COVID-19 crisis.

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