

## New Jersey Poised to Become the Third State to Provide Paid Family Leave

The New Jersey Senate recently approved a bill (A873) that will give nearly all New Jersey employees up to six weeks of paid family leave. Governor Jon Corzine is expected to sign the bill into law in the coming weeks. Currently, only California and Washington offer some form of paid family leave.

New Jersey's proposed paid family leave does not modify the protections under the New Jersey Family Leave Act (NJFLA) or the federal Family Medical Leave Act (FMLA). Instead, it will supplement New Jersey's Temporary Disability Benefits (TDB) system which provides financial assistance to workers unable to work due to injuries or illnesses suffered outside the workplace.

Here is a brief look at the proposed law:

### What is it?

The new law provides employees with six weeks of paid leave over a 12-month period to care for a newborn or newly-adopted child or an ill child, parent, spouse or domestic partner. Employees taking leave for these reasons will receive up to two-thirds of their wages, capped at \$524 a week. A one-week waiting period is required before paid leave kicks in.

### When does it take effect?

The new law will take effect on January 1, 2009. However, payments under the program will only become available on July 1, 2009.

### Who is eligible?

Paid family leave will be available to all New Jersey employees who pay into the state's TDB system – i.e., employees who have worked at least 20 weeks or earned at least 1000 times the minimum wage during the prior year. Unlike the NJFLA and FMLA, which only apply to full-time workers of employers with 50 or more employees, paid leave through the TDB system will be available regardless of the number of employees. Hence, employers not subject to the NJFLA and FMLA will be subject to the paid family leave law if the affected employee qualifies for benefits under the TDB system.

### How is it funded?

New Jersey employees will fund paid family leave by way of an increase to TDB taxes starting January 1, 2009. It is projected that the increase will range from 34 cents a week to 64 cents a week depending on annual income. It will cost no worker more than \$33 per year, and the money paid to employees who take paid family leave will come from the TDB fund and not from the employer.

### What does the TDB system currently provide to employees?

The TDB system provides two-thirds wages to employees who are unable to work because of disability, illness or injury not suffered while on the job. This includes disability due to pregnancy and recovery after giving birth. Paid family leave would provide a similar benefit to those employees that need to take leave not because of their own illness or injury, but instead because of an illness or injury to a family member, or to bond with a newborn or adopted child regardless of whether the individual suffers from a disability or illness resulting from child birth.



### **How does this affect the NJFLA and FMLA?**

Paid family leave will not affect the protections provided by the NJFLA and FMLA, but instead supplements the 12 weeks of leave provided under those Acts. An employee that qualifies for leave under the NJFLA and FMLA and paid family leave under the TDB will essentially receive paid leave for six of the 12 weeks of unpaid leave. Employers can require employees to exhaust their paid family leave benefits and NJFLA and FMLA benefits concurrently.

Unlike the NJFLA and FMLA, paid family leave does not offer job protection for employees. Hence, if the employee qualifies for paid family leave and not leave under the NJFLA and FMLA (e.g., if the employer has less than 50 employees), there is no requirement that the employer reinstate the employee after taking paid family leave.

### **Does the bill require employers to provide notice of paid family leave to employees?**

Employers will be required to provide notice of paid family leave benefits through a conspicuous posting and copy of the notification. The employee notice must be issued: (1) not later than 30 days after the notification form is provided by the Department of Labor; (2) at the time of hire; (3) whenever an employee provides notice that the employee is taking covered leave; and (4) at any time, upon an employee's first request for a copy of the notice.

### **What effect does the new law have on employers that already provide some form of paid family leave?**

Employers have the option to require employees to use up to two weeks of available sick pay, vacation pay, or other fully paid leave before receiving the paid family leave benefits. Further, employers can require that paid family leave benefits run concurrent with employer paid leave, meaning that employers can require that the 6 weeks of paid family leave under the TDB system be reduced by the amount of fully paid leave provided by the employer. If an employee is required to use up to two weeks of employer paid leave, the employee must be permitted to use the first week's worth of employer paid leave during the one-week waiting period.

### **Will employees be required to provide advanced notice of their intention to take paid family leave?**

Employees must provide at least 30 days notice when seeking paid family leave to care for a newborn or newly-adopted child. No prior notice is required when an employee seeks paid family leave to care for an ill child, parent, spouse or domestic partner.

### **Must paid family leave be taken on a continuous basis?**

Leave taken to care for a newborn or newly-adopted child must be taken on a continuous basis within a 12-month period unless the employer agrees to permit the employee to take intermittent leave. Intermittent leave is permitted when leave is taken to care for an ill child, parent, spouse or domestic partner. However, the employee must make reasonable effort to schedule leave as to not unduly disrupt employer's operations.

### **What measures should employers be prepared to take if the bill is signed into law?**

- Evaluate and update current leave policies to reflect the new paid family leave benefits.
- Prepare notification procedures and posting requirements.
- Provide training to human resource personnel about the new law.

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