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Alert

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New Jersey Legislature Considers Paid Family Leave

By John H. Schmidt, Jr., Esq.
Kathleen M. Connelly, Esq.

New Jersey employers may soon be impacted by yet another law affording significant rights to employees seeking leave from work. New Jersey employers with 50 or more employees are currently subject to the federal Family Medical Leave Act (29 U.S.C. §2601, et seq.) and the New Jersey Family Leave Act (N.J.S.A. 34:11B-1, et seq.). Under the federal Family Medical Leave Act, covered employers must allow qualified employees up to 12 weeks of unpaid leave in a 12 month period for i.) the birth of a child; ii.) the placement with the employee of a child for adoption; iii.) the care of a child, spouse, domestic partner or parent with a serious health condition, or iv.) the serious health condition of the employee. Similarly, the New Jersey Family Leave Act entitles qualified employees up to 12 weeks of unpaid leave during a 24 month period to care for an ill child, spouse, domestic partner, or parent, or to care for a newborn or adopted child. Interestingly, leave for the employee to care for his or her self is not covered under New Jersey's law.¹

Under the federal Family Medical Leave Act, the employer is obligated to maintain health insurance for the employee during the leave period, and under both the state and federal laws, the employee is entitled to be reinstated to the same or an equivalent position held prior to taking the leave and is protected against any retaliation for having invoked the right to an unpaid leave.

Despite the fact that many employers have experienced significant difficulty administering the unpaid leave rights of employees under the federal and New Jersey acts, the New Jersey Legislature is now poised to pass legislation that would make New Jersey one of only three states to provide paid family leave to employees. Pursuant to Assembly Bill No. 3812 and Senate Bill No. 2249, the legislature is debating the passage of a new law requiring "covered employers" to provide "benefits" to employees who take a leave from work to provide care for a family member with a serious health condition or to care for a newborn or adopted child of the employee.² As with the current temporary disability benefits law, employees taking paid family leave would be eligible to receive a maximum of 12 weeks of compensation at 2/3rds of their weekly wages, up to a maximum (currently) of \$502 per week.

Proponents of the proposed paid family leave bill will no doubt point out that the legislation would not require the employer to fund any of the paid leave. Rather, the leave benefit would initially be funded by a 0.1% increase in each employee's contribution to the state disability benefits fund. The New Jersey Commissioner of Labor and Workplace Development shall, however, have the authority to make annual adjustments to the rate of employee (cont'd ➔)

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Westfield Office

P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
(TEL) 908-233-6800
(FAX) 908-518-2967

Summit Office

480 Morris Avenue
Summit, NJ 07901
(TEL) 908-273-1212
(FAX) 908-273-8922

Rumson Office

20 Bingham Avenue
Rumson, NJ 07760
(TEL) 732-741-7777
(FAX) 732-758-1879

New York Office

Suite 2300
26 Broadway
New York, NY 10004
(TEL) 212-742-3390
(FAX) 212-269-5016

Pennsylvania Office

Two Penn Center Plaza
Suite 200
Philadelphia, PA 19102
(TEL) 215-854-4090
(FAX) 215-569-0216

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contribution. The increased employee contribution would be paid as an additional employer tax and will not be considered in computing the employer's experience rate for contributions payable under the New Jersey unemployment compensation laws. Nevertheless, it is unrealistic to assume that a covered employer will not ultimately be required to fund at least a portion of the proposed employee benefit through increased payroll taxes.

In addition, employers can presume that the availability of paid family leave will result in an increase in leave requests over what employers currently experience under the unpaid federal and state laws. Armed with income protection, there is little disincentive on the part of the employee to invoke paid family leave rights.

One of the most troubling aspects of the proposed legislation is its failure to take into account the difficulties faced by small employers accommodating employee leave requests. Unlike the federal and states leave acts, which exempt employers with fewer than 50 employees, the proposed paid leave act applies to all employers, without regard to the number of employees. Although we understand the legislature is considering changes to the proposed legislation providing that the new law would not be applicable to employers with fewer than 50 employees, the proposed legislation has not yet been formally amended.

Employers who wish to oppose this legislation should contact your State Senators or Assembly persons. Additionally, employers can contact the New Jersey Business and Industry Association and the New Jersey Chamber of Commerce; both organizations are opposing the proposed legislation.

END

The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact John H. Schmidt, Jr. at jschmidt@lindabury.com or Kathleen M. Connelly at kconnelly@lindabury.com

¹ Where an employee seeks a leave for a reason available under both the federal and New Jersey leave acts, an employer is permitted to count the leave under both statutes concurrently, resulting in a maximum leave entitlement of 12 weeks. However, in circumstances where the leave **is not** covered under both statutes (e.g., pregnancy leave to care for oneself, not covered under the New Jersey Law, followed by maternity leave covered under both statutes), the leave **may not** be counted concurrently, resulting in a possible maximum leave time of 24 weeks.

² Whereas benefits are already available to employees on leave for their own medical conditions under New Jersey temporary disability benefits law, the proposed legislation does not provide for benefits under these circumstances.

