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New Jersey Family Leave Act and Family Leave Insurance Dramatically Expanded

Client Advisories

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On February 19, 2019, Governor Murphy signed into law dramatic expansions to the New Jersey Family Leave Act ("NJFLA") and New Jersey's Family Leave Insurance ("NJFLI") law. The most significant amendments are:

1. Effective June 30, 2019, the NJFLA applies to employers with 30 or more employees, not 50 or more employees as required by federal law.
2. The family members for which employees may take leave has been significantly expanded.
3. The amount of paid benefits available to the employee under the NJFLI has been increased and the period of time for which benefits can be paid has been doubled.

In keeping with the Murphy Administration's already enacted changes to New Jersey's employment laws since the Governor has taken office, the amendments to NJFLA and NJFLI represent another broad expansion of employee benefits required from New Jersey employers. The most impactful change is to the number of employers who are now subject to the NJFLA. Employers with thirty (30) or more employees will have to abide by the NJFLA starting on June 30, 2019. Previously, and consistent with the federal Family and Medical Leave Act (FMLA), the NJFLA only applied to employers with fifty (50) or more employees. Smaller employers will now for the first time be required to provide time off of up to twelve (12) weeks, as has been the case for employers with 50 or employees.

In addition, the NJFLA will also protect more employees because it now allows time off for an extremely broad definition of "family member." The NJFLA has always allowed employees unpaid time off to care for serious health conditions affecting family members, of up to 12 weeks in a 24-month period. Previously, family members only included newly born or adopted children, parents, children under 18, spouses, or civil union partners. Now, the NJFLA includes almost anyone related by blood or even non-blood relatives (and friends) who are closely associated with the employee - family members now include foster children, children born pursuant to a valid written agreement between the parent and a gestational carrier, parents-in-law, siblings, grandparents, grandchildren, domestic partners, any blood relatives, and, in a catch-all category, anyone with a

close association to the employee that is equivalent to that of a family member. Leave also is expanded to care for victims of sexual or domestic violence - not just for those with serious health conditions.

Another significant change relates to intermittent leave for the birth or adoption of a child. Previously, intermittent leave in those circumstances was only allowed with the employer's consent. Now, the employee has the right for intermittent leave without employer consent.

Although NJFLA is unpaid, changes to NJFLI have also been made which will allow employees to receive additional pay, and for longer periods of time, during leave. That is, the corresponding amendments signed by Governor Murphy to the NJFLI increase the amount of compensation available under the Family Leave Insurance Program to 85% of an employee's average wages, up to a maximum of $860 a week. (Previously it had been approximately two-thirds up to a maximum of $650 per week). Even more significant is that the number of weeks of NJFLI is being doubled, from 6 weeks to 12 weeks, every 12 months. And for intermittent leave, the number of days available is being expanded from 42 days to 56 days. The end result is that an employee taking his or her full entitlement to family leave will receive 85% of his salary for those weeks, up to a maximum of $860 per week.

Lastly, certain restrictions on using NJFLI have been lifted. First, the 7-day waiting period, which excluded NJFLI for the first 7 days unless the leave stretched out for at least 2 weeks, has been eliminated, so that NJFLI is available immediately. Second, employers can no longer require employees to use paid time off in lieu of NJFLI. Employees may elect to use paid time off in lieu of NJFLI, but if they do, the amount of NJFLI time is not reduced by the paid time taken, as had been the case previously.

These changes represent a significant expansion of family leave laws and insurance in New Jersey. This is particularly true for employers with between 30 and 50 employees who had no prior obligations, under New Jersey or federal law, to provide paid time off. In addition, the NJFLI expansions to 12 weeks and up to $860 per week will allow employees who previously could not afford to take a full family leave of absence to now do so.

If you have questions about whether and how your business will be affected by the new expansions of the NJFLA and whether your family leave policies or practices are compliant with the NJFLA, please contact any member of Archer & Greiner's Labor and Employment Group in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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Attachments

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