

New Jersey Expands Scope of Paid Family Leave and Benefits

The Bottom Line

- *New Jersey employers should review and revise their leave policies as necessary to comply with the new requirements. They should also be prepared to field increased requests for leave, given the expanded circumstances under which employees may take family leave.*
- *Additionally, smaller employers who previously may not have met the 50-employee threshold for the NJFLA should review the size of their workforce to determine whether they now have obligations under the NJFLA.*

Earlier this year, New Jersey Governor Phil Murphy signed into law sweeping amendments to the state's paid family leave program, which is governed by the New Jersey Family Leave Act (NJFLA) and the New Jersey Family Temporary Disability Leave Law (PFL). Under the amendments, more New Jersey employers will be obligated to provide family leave and more New Jersey employees will become eligible to take family leave and receive increased paid benefits during such leave.

Overview of Existing Law Prior to the Amendments

The NJFLA provides eligible New Jersey employees with up to 12 weeks of job-protected leave in a 24-month period to (1) care for a newly born or adopted child; or (2) care for a family member with a serious health condition requiring in-patient care, continuing medical treatment or medical supervision. New Jersey's PFL law, which was passed in 2009, provides eligible employees with partial wage-replacement benefits (funded through employee payroll deductions) while on leave for baby-bonding purposes or to care for a family member with a serious health condition. The two laws typically run concurrently so that employees may receive pay for some or all of their NJFLA leave.

Summary of Changes to the NJFLA and New Jersey PFL Law

The new law effects significant changes to both the NJFLA and New Jersey PFL law. With respect to the NJFLA, the legislation provides that:

- Effective June 30, 2019, the NJFLA will cover employers with 30 or more employees who have been working 20 or more calendar weeks in the current or immediately preceding calendar year. Previously, the NJFLA only covered employers with 50 or more employees during this timeframe. When counting employees, all of the employer's employees – not just those located in New Jersey – must be included.
- Effective immediately, the definition of "family member" has been expanded to include a child (including a foster child or a child born through a gestational carrier), parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, partner in a civil union, any other individual related by blood to the employee and any other individual with whom an employee has a close association equivalent to a family relationship.

- Employers must now provide baby bonding leave to employees on an intermittent basis, whereas previously, intermittent leave to care for a new child was only available if the employer agreed to it.
- Employees may now take leave on an intermittent or reduced schedule (whether to care for a new child or a family member with a serious health condition) over the course of 12 consecutive months for any one period of leave. Prior to the amendments, intermittent or reduced schedule leave could only be taken over the course of 24 consecutive weeks.

The changes to the New Jersey PFL law include:

- Effective July 1, 2020, employees may receive up to 12 continuous weeks of PFL benefits or, if the leave is taken on an intermittent basis, up to 56 days of PFL benefits. This is a significant increase from the six weeks or 42 days of PFL benefits, respectively, that employees were previously entitled to.
- Effective July 1, 2020, the maximum weekly PFL benefit will be raised to 85% of the employee's average weekly wage (up from 67%), subject to a maximum of 70% (formerly 53%) of the statewide average weekly compensation paid to workers by employers.
- Previously, PFL benefits would not be paid for the first seven days of family leave, unless the benefits continued for more than three weeks; that seven-day waiting period has been eliminated under the new law. Employers are also now prohibited from requiring employees to exhaust any unused, accrued paid time off (such as vacation, paid sick time, etc.) prior to using PFL.
- Employees may now also receive PFL benefits during leave taken pursuant to the New Jersey Security and Financial Empowerment Act (SAFE), which provides up to 20 days of leave to an employee if the employee or his/her family member (as defined under the new law) is the victim of domestic and/or sexual violence.
- The New Jersey PFL law now contains a robust anti-retaliation provision, which states that an employer may not discriminate or retaliate against an employee — including by refusing to restore the employee to his or her former position — for using PFL benefits. This provision gives employees a private cause of action, as well as a number of remedies, including monetary damages, injunctive relief, reinstatement and attorneys' fees. Civil fines may also be assessed against employers who violate this provision.

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