

# NJ Family Leave Act: What You Don't Know Could Cost You!

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On May 2, 2008, New Jersey made history with the enactment of The New Jersey Paid Family Leave Act (the "NJPFLA"). In doing so, New Jersey became only the third state in the country (joining California and Washington) to provide eligible employees a total of six weeks of paid leave in a twelve month period. According to this new law, (NJPFLA, N.J.S.A. 43:21-25), your eligible employees are entitled to two-thirds of their regular weekly pay up to a maximum of \$524 per week.

The new law doesn't replace or supercede any of the existing laws. Paid leave runs concurrently with the New Jersey Family Leave Act (the "NJFLA"), N.J.S.A. 34:11B-4, and the Federal Family & Medical Leave Act (the "FMLA"), 29 U.S.C.A. 2912. But there is one key distinction. Unlike the NJFLA and FMLA, the NJPFLA applies essentially to all businesses, regardless of size. The Act does not require a minimum number of employees in order for an employee to be entitled to paid leave.

## Employee Eligibility Criteria

Your employees are eligible for paid leave if you (their employer) are subject to the Temporary Disability Benefits Law, which applies to any business that employs one or more individuals that:

1. Is or was paid at least \$1,000 in the current or preceding year.
2. Earned at least \$142.00 per week for 20 consecutive weeks, or
3. Earned at least \$7,200.00 in the 52 weeks prior to the leave.

Under the NJPFLA, employees may take leave for any reason consistent with the NJFLA. As such, employees will be entitled to take paid leave in order to care for sick family members or a spouse (including domestic partners) or to care for a newborn or newly adopted child during the twelve month period following the birth or adoption. Like the NJFLA, and in contrast to the FMLA, the NJPFLA does not cover leave taken by an employee for his or her own serious health condition.

Also, employees are entitled to take leave on an intermittent basis, as long as they give you adequate notice of fifteen days unless there are emergency or other exceptional circumstances. (This is consistent with the NJFLA and FMLA).

## Employer Responsibilities under the Law

As an employer, you may require that your employees first exhaust two weeks of sick, vacation or other paid time before receiving paid leave benefits. The law requires all employers to post a conspicuous notification in a form published by the commissioner of the Department of Labor and Workforce Development. Eligibility rules under the NJPFLA can be confusing. Before taking action on any request for paid leave, we recommend you undertake a sensitive analysis with a detailed evaluation by an experienced employment attorney.

## How is the Program Funded?

The NJPFLA will be funded by an employee payroll tax, with no contribution required by employers. Employees will notice payroll deductions beginning on January 1, 2009, with benefits beginning on July 1, 2009. In 2009, the expected payroll deduction will be approximately \$25 per year. This is expected to increase to \$33 in 2010. To receive benefits, both the employer and employee will be required to complete forms. Employers must provide employees with an employer-completed form nine days prior to leave. Employees must complete and submit the form to the state no later than 30 days following the commencement of the leave period.

## Employer Rights Under NJPFLA

If your business employ fewer than 50 employees, than you may permanently replace employees who take leave under the NJPFLA. However, if you, as employer, meet the minimum number of employees threshold under the NJFLA or FMLA, than you are not permitted to terminate an employee for taking leave. The intent of the statute is to provide the employee with monetary compensation during periods of leave which is otherwise unavailable.

Although the legislature has attempted to limit ambiguity or confusion, it is inevitable that issues will

arise that may result in a lawsuit. To avoid unnecessary litigation and to learn more about what your obligations are and what impact the law can have on your business, contact Andrew S. Berns, Esq. at Einhorn, Barbarito, Frost & Botwinick, PC Our employment counsel can help you review employment policies and administrative procedures used in evaluating leave requests to ensure that your business complies with this and various other employments laws and regulations.