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NEW JERSEY UPDATES, EXPANDS FAMILY AND DISABILITY BENEFITS

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New Jersey has updated and aligned four state leave laws to work together more seamlessly, extended its paid family leave benefit to 12 weeks in a 12-month period and increased wage replacement amounts in the state's paid leave programs. Many key amendments ([2019 Ch. 37](#)) take effect in 2020, but a few apply this year, and some are already in force.

Two of the amended laws — the [Family Leave Act](#) (FLA) and the [Security and Financial Empowerment \(SAFE\) Act](#) — provide employees with job protections during unpaid leave. The other two — [Family Leave Insurance](#) (FLI) and [Temporary Disability Insurance](#) (TDI) — establish programs that provide partial wage replacement for family and medical leave. Leave under the laws typically runs concurrently and may run concurrently with leave under the federal [Family and Medical Leave Act](#) (FMLA) when eligibility conditions are met.

NEW DEFINITIONS

From Feb. 19, 2019, the definitions for “child,” “parent” and “family member” under all four state laws have changed. A child is no longer defined as someone under 18, and leave can now be taken to bond with a newly placed foster child. The definition also includes a newborn child conceived through an agreement with a gestational carrier and placed with the employee, and “parent” includes a person who became the parent of a covered individual through such an agreement. Family members now include a parent-in-law, sibling, grandparent, grandchild, any other blood relative, domestic partner or any individual with whom the employee has a close association equivalent to a family relationship. New Jersey's definition of family member is now one of the most expansive among the state paid family leave programs.

EXPANSION OF PROTECTED, UNPAID FAMILY LEAVE

The amendments expand employee rights under the FLA, which like FMLA, provides up to 12 weeks of unpaid, protected leave for covered employees to bond with a new child or care for a family member with a serious health condition (although the FLA defines family member more broadly). Unlike the FMLA, the FLA doesn't allow leave to be taken for an employee's own serious health condition.

Covered employers. Previously, the FLA applied to employers with 50 or more employees. But effective July 1, 2019, the law will cover employers that have 30 or more employees on each work day for at least 20 calendar work weeks in the current or immediately preceding calendar year.

Reduced leave schedules. The duration of leave protected by the FLA (12 weeks in a 24-month period) remains unchanged. But effective immediately, employees can work on a reduced leave schedule under the FLA for 12 consecutive months, up from the previous 24 weeks, for a single period of leave.

EMPLOYEE GAINS UNDER SAFE ACT

New Jersey’s SAFE Act, which applies to employers with at least 25 employees, provides up to 20 days of unpaid, job-protected leave when employees or their family members become victims of domestic or sexual violence. Leave must be taken within 12 months of the violent act in full-day increments. And it can be used for purposes related to the violence, such as seeking medical attention for physical or psychological injuries, participating in safety planning, or attending criminal or civil court proceedings. If leave is used for a reason covered by both the SAFE Act and FLA or FMLA, the leave counts simultaneously against the employee’s entitlement under each law respectively.

Use of paid leave/wage replacement. Effective immediately, employers can no longer require employees to use accrued vacation, personal or sick time for SAFE Act purposes. Employees may choose to use accrued paid leave, but it must run concurrently with the unpaid leave available under the SAFE Act. Employees taking leave under the SAFE Act will be eligible for FLI benefits. The definition of “family temporary disability leave” under FLI has been amended to add SAFE Act leave.

CHANGES TO PAID LEAVE PROGRAMS

The state’s FLI and TDI program work in conjunction with the state unemployment insurance law and apply to any employer with at least one employee in New Jersey. Benefit amounts are the same for each paid leave program, which are intended to run concurrently with any unpaid, protected leave rights, including FLA, the SAFE Act or FMLA. Under both paid leave programs, employers may instead provide benefits through an approved private plan.

The following chart illustrates how these laws work together.

REASON FOR LEAVE	JOB PROTECTION			PAID LEAVE	
	FMLA	FLA	SAFE	TDI	FLI
Care for family member	✓	✓	✓		✓
Bond with new child	✓	✓			✓
Employee’s own disability	✓			✓	
Victim of violence			✓		✓

Some changes to the paid leave programs apply immediately, including measures addressing retaliation, coordination with employer-paid leave, and partial disability benefits. A change to the waiting period takes effect later this year, and more changes apply in 2020.

Changes effective immediately

New anti-discrimination and anti-retaliation protections. In some cases, employees may qualify for paid leave (TDI or FLI), but not protected leave (FMLA, FLA or SAFE Act). The amendments add a new provision that prohibits discrimination and retaliation for requesting and taking TDI or FLI, including refusal to reinstate an employee following leave. Employees and former employees can sue for damages for alleged violations. However, the new provision specifies that it does not increase, decrease or change protections under FLA. It's uncertain whether regulations will clarify how these anti-discrimination and anti-retaliation protections differ from FLA's.

Intermittent leave/notice requirements for child bonding. Effective immediately, employees can use intermittent leave for child bonding after giving 15 days' advance notice to the employer (down from 30 days), unless an emergency or unforeseen circumstances precludes prior notice. These changes align with new notice requirements for intermittent leave under the FLA. Employees must continue to give 30-days' advance notice for continuous bonding leave.

No benefits for employees receiving full pay. No benefits are payable under the state programs (TDI or FLI) while an employee is receiving paid sick leave, vacation or other leave at full pay. An employer can no longer require an employee use employer-provided sick leave, vacation or other paid time off at full pay before using FLI, but an employee can choose to do so.

TDI benefits now available for a reduced work schedule. The maximum leave available under the TDI program for an employee's own nonwork-related disability (including a disability related to pregnancy and childbirth) remains at 26 weeks in a 12-month period. But the amendments now also provide benefits for individuals returning to work on a reduced schedule while recovering from a disability. After at least seven days of full disability, a covered employee can receive partial benefits while working a reduced schedule for up to eight weeks, or up to 12 weeks if the need for the extension is supported by medical documentation from a qualified health care provider and approved by the TDI program administrator.

Requirements for private plans adjusted. The amendments add public posting and individual employee notice requirements for private plans. These notices must be posted at a conspicuous place at all worksites, and the FLI notice must be distributed to all newly hired employees and employees requesting time off for a reason that may qualify for benefits.

Employers establishing an approved private plan no longer need approval from the majority of covered employees for a contributory plan, unless the employees are subject to a collective bargaining agreement (CBA). However, a CBA can expressly waive the right to a majority vote as a condition for approval. If elections are held, they can be conducted electronically, and all private plan applications can be completed online.

Change effective July 1, 2019

Waiting period eliminated. Currently, an employee must wait seven days before FLI benefits kick in, except in cases of pregnancy and childbirth. From July 1, 2019, no waiting period will apply to benefits for any qualified FLI leave. The waiting period for TDI benefits, which begin on the eighth day of disability,

hasn't changed. The first full week is payable if the employee has been on disability leave for three full weeks.

Change effective Jan. 1, 2020

New benefit costs funded by higher employee contributions. The increased cost of TDI and FLI benefits due to the changes will be funded solely by employee, not employer, contributions. Beginning Jan. 1, 2020, amendments to both laws significantly increase the maximum taxable wage base for employee contributions for these programs from 28 times to 107 times the state average weekly wage (SAWW).

Example. The current taxable wage base is \$34,400 (the current SAWW (\$1228.25) x 28, rounded up to the nearest 100). Based on the change for 2020 and assuming no change in the SAWW, the taxable wage base would be \$131,500 (\$1228.25 x 107, rounded up to the nearest 100).

Under the new formula, the maximum wage base can't decrease from year to year. Instead, the greater of the current or preceding year must be used. Currently, employees contribute 0.17% and 0.08% of wages up to the maximum taxable wage base for TDI and FLI, respectively. Regulators will adjust the methodology for calculating the contribution percentage in 2020 and 2021 to account for the change in benefit levels in 2020.

Changes effective July 1, 2020

FLI leave time doubles. The FLI program currently provides benefits for up to six weeks for time off to care for a new child or seriously ill family member. The amendments expand these benefits to 12 weeks and extend intermittent leave from 42 to 56 days.

FLI available to employees working two jobs. An employee with two jobs will be able take FLI under one employer while continuing to work at the second job as long as the second job's hours don't increase.

Example. Marianne works every weekday in a clerical job. On Sundays, she waits tables at the local diner. Her husband has major surgery, and she needs to take time off from her clerical job for several weeks to take care of him. Her sister is able to help take care of Marianne's husband on Sundays so she can work at her diner job. Marianne can collect an FLI benefit while on leave from her clerical job even though she continues to work her second job waiting tables as long as she doesn't increase the number of hours worked at the diner.

Wage replacement amount increases. Benefit amounts under both TDI and FLI programs will increase from two-thirds to 85% of an individual's average weekly wage during the base period. The weekly maximum benefit will increase from 53% to 70% of the SAWW. The current SAWW is \$1,228.25, so the maximum benefit increases to \$860 from \$650.

EMPLOYER NEXT STEPS

In light of the significant changes made by these amendments, employers with operations in New Jersey should consider taking the following steps:

- Promptly update handbooks, policies and practices to reflect the changes
- Revise internal leave forms to reflect the expanded definitions and reasons for leave
- Educate managers and supervisors about the policy changes and prohibitions against discrimination and retaliation
- Look for updated notices from the Department of Labor and Workforce Development
- Comply with new notice requirements for employers with private plans

RELATED RESOURCES

Non-Mercer Resources

- [2019 Ch. 37](#) (New Jersey Legislature, Feb. 19, 2019)
- [Press Release](#) (Office of the Governor, Feb. 19, 2019)

Mercer Law & Policy Resources

- [2019 State-Mandated Short-Term Disability Contributions and Benefits](#) (Jan. 31, 2019)

Other Mercer Resources

- [The Pressure Is On to Modernize Time-Off Benefits: 6 Survey Findings](#) (Jan. 16, 2019)
- [Will You Be the Last Kid on the Block to Add Paid Parental Leave?](#) (Oct. 22, 2018)
- [Life, Absence & Disability Resource Page](#)

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