

LABOR AND EMPLOYMENT

ALERT

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New Jersey Extends State’s Family Leave Act to COVID-19 Leaves

By Michael J. Wietrzychowski

On April 14, 2020, New Jersey amended its state Family Leave Act (“NJFLA”) to cover certain leaves of absence related to communicable diseases such as COVID-19 where a state of emergency is declared. Prior to its amendment, the NJFLA allowed qualifying employees to take up to 12 weeks of job protected family leave in a 24-month period – provided that: (i) the employer has at least 30 employees or is a government entity, regardless of size, (ii) the employee has worked for that employer for at least one year, and (iii) the employee has worked at least 1,000 hours for the employer during the last 12 months. Under the old NJFLA, employees qualified for NJFLA leave in order to provide care made necessary by reason of:

- 1. the birth of a child of the employee, including a child born pursuant to a valid written agreement between the employee and a gestational carrier;
2. the placement of a child into foster care with the employee or in connection with adoption of such child by the employee; [or]
3. the serious health condition of a family member of the employee.

The amended NJFLA adds the following as qualifying events for job protected leave:

- In the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, which:

- o requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency; or
o prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or
o results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

Importantly, the amended NJFLA does not provide leave for the employee’s own exposure to a communicable disease, and the leave remains unpaid – although an employee may qualify for a paid leave benefit under New Jersey’s Family Leave Insurance Program.

The amended NJFLA provides a process for leave to be taken intermittently. Specifically, the leave may be

taken intermittently if: (i) the employee provides the employer with prior notice of the leave as soon as practicable; and (ii) the employee makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, prior to the commencement of the intermittent leave, with a regular schedule of the day or days of the week on which the intermittent leave will be taken.

Takeaways

The amended New Jersey Family Leave Act requires employers with 30 or more employees to grant job protected leave to qualifying employees that are providing care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease. The amendment does not provide an employee with new additional leave time, and therefore leave time taken for both COVID-19 and non COVID-19 reasons under the NJFLA should count against the employee's total existing NJFLA entitlement to 12 weeks of leave in a 24 month period. Finally, the COVID-19 leave is retroactive to March 25, 2020. Therefore, absent legal challenge, the law seemingly requires that employers revisit employment actions taken on or after March 25, 2020 to ensure such actions were consistent with the amended NJFLA. ♦

This Alert is based on information available at the time of publishing. It is subject to change. Business leaders should consult with counsel and refer to government websites and publications for the most up-to-date information.

For more detailed analysis on a wide range of legal issues, please see Schnader's COVID-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center.

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