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New Jersey Paid Family Leave Revisited

By: Jill Tobia Sorger, Esq.

Introduction:

On July 1, 2009, New Jersey workers became eligible to file claims for paid family leave. The paid family leave law, which was signed by Governor Corzine in May 2008, is intended to assist employees in balancing work commitments and family needs by allowing for paid leave under certain situations. New Jersey is only the third state, behind California and Washington, to pass such legislation. The New Jersey Department of Labor and Workforce Development estimates that approximately 38,000 workers will claim these benefits annually.

Employers were required to take mandatory payroll deductions to fund requests for leave, beginning January 1, 2009. Since claims for benefits can now be filed as of July 1, it is important for UTCA Contractors to understand the requirements of New Jersey paid family leave. Given that this type of law is newly implemented, the ability to file claims is almost certain to trigger numerous questions from employers as to how the law is intended to be applied.

New Jersey Paid Family Leave - Important Details:

The enacted law, which allows an employee to take up to six (6) weeks of paid leave to provide care for a seriously ill family member (i.e., child, spouse, parent or domestic partner) and/or to care for a newborn or newly adopted child, serves as an extension of New Jersey's Temporary Disability Insurance Program. Once New Jersey workers begin filing claims, the following are some pertinent issues and/or questions that will undoubtedly arise:

Is there a Notice Requirement?

An employee must give an employer a minimum of thirty (30) days notice before commencement of leave to bond with newborn or newly adopted children. In an instance where employees want to take leave to care for sick family members, notice is required; however, an emergency or other unforeseen circumstances that prevents proper notice from being given may excuse the notice requirement.

Can Employers Require Employees to Use Paid Time Off?

An employer can require an employee to use paid time off during the period the employee is claiming Family Leave Insurance benefits, but only up to two weeks. The employee claiming benefits can choose to use more than two weeks, but employer can only require two weeks to be used.

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Does Paid Family Leave Apply to Small Businesses?

Employees working for small businesses can still qualify for benefits, provided the employer is subject to the New Jersey Unemployment Compensation Law.

Are Part-Time Employees Eligible?

Part-time employees can be eligible for benefits, provided they meet certain requirements. Prior to making a determination, employers should consult the law's eligibility requirements for both full-time and part-time employees in order to determine whether a particular employee qualifies for benefits.

Is The Employer Required to Hold An Employee's Position Open?

The new law contains no specific provision requiring an employer to hold an employee's position open while the employee takes paid family leave. However, it is possible that the employer is barred from filling the position under other state and federal laws, such as the New Jersey Family Leave Act. Therefore, an employer must exercise caution when considering the treatment of an employee utilizing paid family leave.

Are There Conditions/Limitations on Taking Leave?

If leave is taken to care for an ill family member, the leave may be taken in one continuous period of up to six (6) weeks, or can be taken intermittently, up to

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forty two (42) days maximum, in a twelve (12) month period. If the leave is taken to bond with a newborn or newly adopted child, the leave must be taken in one continuous period of (7) days or more unless both the employee and the employer have agreed to an intermittent leave schedule. If an intermittent leave schedule is agreed upon, additional conditions can apply which can vary with the circumstances. The employer should consult counsel when making said schedule.

What Is the Duration and Extent of Permitted Leave?

The law does not establish a minimum number of days that an employee must claim benefits; however, as noted above, a maximum of forty-two (42) days within a 12-month period is the allowed duration. If six (6) weeks are claimed in a 12-month period, then the claimant is not eligible to make another claim for paid leave for the remainder of the 12-month period, even if the other claim is based upon different circumstances. For instance, a claimant that took the full six (6) weeks to bond with a newborn child is not thereafter eligible for benefits, even if the second claim is for the care of a sick family member.

Advice for Employers:

The impact of paid family leave on employers is still uncertain. In theory, this law should allow employees to take time away from work to tend to family needs without having to make economic sacrifices. However, especially in recessionary times, employers often cannot afford

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extended employee absences. Accordingly, maintaining an up-to-date knowledge of the law and its implications allows requests for leave to be handled correctly by employers. To this end, employers can anticipate assistance. The State has expanded the Division of Temporary Disability to include assistance for employers and employees with paid family leave. Additionally, the New Jersey Department of Labor and Workforce Development website can be helpful. Also, legal counsel should be consulted when specific issues arise concerning paid family leave.

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