

## NEW JERSEY'S FAMILY LEAVE INSURANCE LAW GOING INTO EFFECT

Insights

Dec 8, 2008

The New Jersey Department of Labor and Workforce Development (DOL) recently issued regulations implementing the State's new Family Leave Insurance (FLI) law, which provides up to six weeks *paid leave* to employees who miss work in order to care for family members who are unable to care for themselves, or to care for newly-born or adopted children. While no FLI leaves may be taken prior to July 1, 2009, there are several steps which employers must take immediately.

### Notice Requirements

FLI requires covered employers – those already subject to the New Jersey Temporary Disability Benefits Law – to post a notice of the key points of the law and employees' rights under it. The notice must be conspicuously displayed in workplaces, in places accessible to all employees, **by December 15, 2008**. The New Jersey Department of Labor and Workforce Development has posted the notice on its website, and it can be downloaded and printed from there (<http://lwd.state.nj.us/labor/fli/fliindex.html>).

In addition to posting the required notice, employers must also provide each employee on the rolls as of December 15 with a written copy of it. An electronic transmission (by e-mail) will comply. In addition, copies of the notice must be provided to 1) all newly-hired employees at or in close proximity to the time they're hired, and 2) each employee who requests to take paid leave under the Law, at the time of the request.

### Deductions From Employees' Pay Effective January 1, 2009

Benefits are paid by the State, funded by a tax on employees, to be paid into a Family Temporary Disability Leave Account within the State's Temporary Disability Insurance Fund. This tax is assessed on the portion of employees' wages that are subject to New Jersey's Temporary Disability Insurance Tax. The rate for 2009 is

.09%, increasing to .12% in 2010. The wage base to which the tax applies in 2009 is \$28,900, and so the maximum annual employee contribution will be \$26. The wage base will most likely change for 2010.

### **Private Plan Requirements**

In lieu of paying into and participating in the State Family Leave Insurance Plan, you may choose to provide self-coverage, or arrange to have employees covered by a private insurance carrier. Both alternatives carry burdensome requirements.

First, an employer electing not to participate in the State fund must submit an application for prior approval to the New Jersey Division of Temporary Disability Insurance ("the Division"), and secure that approval before January 1, 2009. In addition, you must first post a notice, in a form approved by the Division, that describes benefits under the private plan, including eligibility requirements, current rates, the maximum amount and duration of the benefits, the contribution required, and appeal rights. You must also provide a copy of the notice to employees and, once a year, submit a copy to the Division.

Prior to submitting your application, unless you elect to absorb the cost of the private plan, you must conduct an election among your covered employees as to whether they consent to be covered by the private plan. You can only proceed if a majority of employees vote in favor. You must submit evidence of having conducted the election along with your application, and even include copies of the ballots or other documents that show employees have consented. Subsequent to the election, you must post the results and maintain all records relating to the election during the existence of the private plan.

Employee contributions to a private plan must be deposited in a trust fund account whose assets are to be used only for administration and payment of the insurance benefits, and are not to be considered assets of the employer. You are required to make the trust fund account available for inspection and audit periodically by the Division.

The bottom line here is that very significant – possibly almost insurmountable – hurdles have been placed in front of employers seeking to use a private plan, since no deductions can be taken from employees' pay unless the private plan has received State approval, and there is less than a month for all the necessary steps to be taken.

### **Payroll Details**

While payroll service agencies will no doubt be modifying their practices and forms to comply with the new law (and you should confirm this with your payroll services provider), employers who do their own payrolls have additional compliance requirements. A new deduction code (F.L.I.) is to appear on employees' pay stubs.

If the employee is covered by the State Plan for both Temporary Disability Insurance and Family Leave Insurance, or the employee is covered by a private plan for both Temporary Disability Insurance and Family Leave Insurance, then the deduction for Temporary Disability Insurance and Family Leave Insurance can be combined on employees' pay stubs. But the deduction for Temporary Disability Insurance and Family Leave Insurance must be displayed separately on employees' W-2 Statement. Employers will have to report the wages and deductions and submit payment together with the other contributions due with their Employer's Quarterly Report, Form NJ-927.

## **IMMEDIATE ACTION ITEMS**

1. Decide whether to participate in the State Fund. If you intend to use private coverage or self insure, take immediate steps to hold an election among employees and submit an application for approval of a private plan, unless your company is going to absorb the cost of funding paid leaves under a private plan.
2. Post the required notice in conspicuous places, accessible to all employees.
3. Provide each employee on your payroll as of December 15, 2008, and each newly hired employee, a copy of the approved notice. Existing employees must be given the notice on or before December 15; new hires should be given the notice promptly after they're hired.

For more information, or if you have any questions about your company's compliance under this new law, contact any attorney in the New Jersey office of Fisher Phillips at 908.516.1050.

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*This Legal Alert provides an overview of certain aspects of a particular new law. It is not intended to serve as, and should not be considered, legal advice for any specific fact situation.*