



New Jersey Amends Family Leave Act In Response To COVID-19, Also Adjusts Temporary Disability Benefits And Family Leave Insurance Laws

Insights

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New Jersey expanded its Family Leave Act effective immediately in response to the COVID-19 pandemic to include leave to provide 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 law, S2374, will allow employees to take up to 12 weeks of family leave in a 24-month period without losing their jobs. The new law also makes technical corrections to the March 25, 2020 [amendments to the Temporary Disability Benefits and Family Leave Insurance Laws](#) retroactive to March 25, 2020.

Expansion Of New Jersey Family Leave Act

Employers with 30 or more employees must now permit New Jersey employees to take family leave made necessary because 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, to include illnesses caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, for one of the three reasons:

- Reason 1: 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;
- Reason 2: 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
- Reason 3: 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.

Certification Employers May Require

For leaves permitted for these new reasons, an employer may require certification issued by a school, place of care for children, public health authority, public official or health care provider. The

certification will be sufficient if it includes:

- Reason 1: the date on which the closure of the school or place of care commenced and the reason for such closure;
- Reason 2: the date of issuance of the determination and the probable duration of the determination; or
- Reason 3: the date of the recommendation, the probable duration of the condition, and the medical or other facts within the health care provider or public health authority's knowledge regarding the condition.

Intermittent Leave Permitted

Leave taken as a result of an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease may be taken intermittently if the employee: (1) provides the employer with prior notice of the leave as soon as practicable; and (2) makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provides the employer, prior to the commencement of the intermittent leave, with a regular schedule of the day(s) of the week on which the intermittent leave will be taken.

Other Changes

The law defines a "health care provider" as a duly licensed health care provider or other health care provider deemed appropriate by the Director of the Division on Civil Rights.

The recently enacted prohibition on denying family leave to a "key" employee during an epidemic of a communicable disease or a known or suspected exposure to a communicable disease (1) to care for a family member who needs to be quarantined or (2) because their family member's place of care has been closed due to a state of emergency was extended to also include (3) efforts to prevent spread of a communicable disease. Under the New Jersey Family Leave Act, leave may be denied to a "key" salaried employee who is among the greater of the highest paid 5% of employees or the seven highest paid if necessary to prevent "substantial and grievous economic injury to the employer's operations."

Amendments To Temporary Disability Law And Family Leave Insurance Law

S2374 also amends the definition of "disability" and "family temporary disability leave" to make clear when employees are eligible for Temporary Disability Benefits or Family Leave Insurance Benefits in the event of a state of emergency declared by the governor, or when indicated to be needed by a public health authority to include an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease. Benefits are available where the employee or a family member requires in-home care or treatment due to being isolated, quarantined, or when there is a determination that their presence in the community would jeopardize the health of others.

The normal seven-day waiting period for temporary disability benefits does not apply when an employee meets this new definition of disability.

Conclusion

New Jersey provides some of the most generous family leave and temporary disability benefits in the country, and S2374 expands such rights. Employers should be aware of these changes and grant leave and required benefits under any private plan offered in lieu of the state plan. Family Leave Act policies should be amended and, when new posters are issued, employers should post them in a conspicuous place.

The law is changing rapidly in response to this pandemic, and employers should monitor how additional changes may impact their workforces. For now, we will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [New Jersey office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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