

**P.L. 2008, c. 17 - New Jersey Paid Family Leave Act
(Formerly A-873AcsAca (Albano, Oliver, Sweeney))**

—Background—

New Jersey has become only the second state in the nation to mandate a broad paid family leave program for employees. Governor Corzine signed the mandate into law on May 2. The leave applies to nearly all private and public employers and may be used by an employee to: (1) bond with a newborn or adopted child; or (2) care for the serious health condition of a family member. Paid family leave may never be used for your employee's own "serious health condition."

Employers should be mindful of two important dates:

On January 1, 2009, employers will be responsible for remitting to the state the new employee tax authorized by the program.

On July 1, 2009, employees will be eligible to take paid family leave benefits. Additional requirements involving mandatory employer notices, posters and forms will be determined by regulation in the future.

—What is Paid Family Leave?—

Paid family leave provides employees with up to six weeks of partial wage replacement to care for newborn, adopted or seriously ill family members every year. The program is similar to the State's existing Temporary Disability Insurance (TDI) program. The paid leave benefit provides two-thirds of the employee's wages capped at \$524 per week for 2008. The maximum benefit rate is adjusted every year. The paid family leave program does not require any employer to hold the employee's position open, but employers should be mindful of other State and federal laws that may provide employees with the right to reinstatement.

Eligible employees will also be able to take the leave on an intermittent basis. The program is funded by a new payroll tax on employees. The new employee payroll tax will begin on January 1, 2009. The tax rate is specified as: .09 percent for 2009 and .12 percent for 2010 and beyond. The tax is levied on the taxable wage base for the given year.

Please note that there is no direct contribution by employers to the paid family leave fund. Employees of businesses that have an approved private plan for TDI benefits will not need to contribute to the paid family leave fund provided that the private plan provides paid family leave benefits that are consistent with or greater than the new program (e.g. six weeks of partial wage replacement for birth, adoption or a serious health condition, calculated at two-thirds the salary, capped at \$524 for 2008, etc.). Employers are urged to discuss options with any third-party insurance provider. Additionally, businesses that self-insure short-term disability benefits should begin to review their current policy.

—What Employees Are Eligible?—

All full- and part-time employees are eligible for paid family leave based on the amount of wages paid over a period of "base weeks." Specifically, an employee that earns either: (1) \$143 or more per week for 20 consecutive weeks; or (2) \$7,200 or more over the previous 52 calendar weeks qualifies for the program.

Businesses that have 50 or more employees are required to continue to comply with the unpaid-leave provisions of the federal Family and Medical Leave Act and the New Jersey Family Leave Act. These laws require employees to work for the employer for a period of time before they become eligible for the unpaid leave. However, the paid family leave law will allow an eligible employee to take paid family leave almost immediately.

—Definitions—

Employers should be familiar with these terms in order to properly handle requests from employees.

Family Temporary Disability Leave provides up to six weeks of paid leave to: (1) bond with a newborn or adopted child, or (2) care for the serious health condition of a family member. An employer may require an employee to use up to two weeks of any paid sick, vacation or other paid time off in connection with a period of paid family leave. No employee may receive paid family leave benefits and simultaneously receive TDI or unemployment compensation benefits.

Family members included in the program consist of the following: biological, adopted or foster children less than 19 years of age; a child over 19 years of age that is incapable of self care; a spouse; Domestic Partners; Civil Union Partners; biological, foster, adopted parents or stepparents; or a legal guardian of the eligible employee when the employee was a child.

“Serious Health Condition” is defined as an illness, injury, impairment or physical or mental condition that requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing medical treatment or continuing supervision by a health care provider.

“Health Care Provider” is defined as any person licensed under federal, state or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

—Use of Paid Time Off In Connection with Paid Family Leave—

The law specifies that an employer may not require an employee to utilize more than two weeks of sick, vacation or other paid time off in connection with a period of paid family leave. In other words, you can require an employee to use up to two weeks of sick, vacation or other paid time off, as part of the six weeks of paid leave (leaving four weeks of paid leave under this act).

—Paid Family Leave in Connection with the Birth or Adoption of a Child—

Employees may take paid family leave at any time within one year of the birth or adoption of a child. The six weeks of leave must be taken consecutively in connection with the birth or adoption of a child unless the employer and employee mutually agree on a plan that allows the employee to take the leave during nonconsecutive weeks. The employee is required to provide 30 days notice to the employer prior to taking paid family leave. If the employee does not provide the 30 days advanced notice, the employee is required to forfeit two weeks of the leave, unless the failure to provide notice was for unforeseeable reasons.

—***Paid Family Leave in Connection with a “Serious Health Condition”***—

Employees taking paid family leave for six weeks consecutively in connection with a family member’s “serious health condition” are required to provide the employer with prior notice in a “reasonable and practicable manner,” unless an emergency or other unforeseen circumstance precludes prior notice. The employee must also provide the employer with a medical certification of the necessity of the leave.

—***Intermittent Paid Family Leave in Connection with a “Serious Health Condition”***—

Employees taking paid family leave in connection with a family member’s “serious health condition” may take the leave “intermittently” or consecutively. The law defines intermittent leave as 42 separate days of leave. For example, an employee that works five days a week would receive a maximum of 30 days of paid family leave if the employee took the leave consecutively. The same employee will receive 42 days of paid family leave if the employee takes the leave intermittently. While the law does not define the time increments for intermittent paid family leave, the legislative history suggests that it can only be taken in full-day increments.

An employee seeking to take intermittent paid family leave for a family member’s serious health condition is required to provide employers with 15 days notice unless: (1) an emergency or other unforeseen circumstance precludes prior notice; and (2) the employee makes a reasonable attempt to schedule the leave in a nondisruptive manner. Additionally, the employee may provide the employer with a regular schedule of days for intermittent leave.

—***Healthcare Provider Certification***—

Employees seeking to take paid family leave for the serious health condition of a family member are required to complete a form for benefits, which includes a certification from a health care provider. This certification must include: (1) the date the serious health condition commenced; (2) the probable duration of the condition; (3) the medical facts within the knowledge of the provider of the certification; (4) a statement concerning the need for the employee to provide care for the individual; (5) an estimate of the time the employee will need to provide care; (6) a statement of the medical necessity for any intermittent leave; and (7) dates of any future intermittent treatment.

—***Employer Requirements***—

Employers in the State plan for paid family leave must provide the employee and the NJ Department of Labor & Workforce Development with an application form for paid family leave benefits. The form must be completed by the employer within nine days of the commencement of the paid family leave period. The form, which is currently unavailable, will include: (1) the name, address and Social Security number of the employee; (2) the wages paid to the employee, including any sick or vacation time paid to the employee at the beginning of the period of paid family leave; and (3) the name, address and State identity number of the employer.

All employers are required to post a notice, which is currently unavailable, alerting employees of their rights to paid family leave. Additionally, employers are required to provide employees with copies of the notice: (1) upon request of the employee; (2) within 30 days of its availability; (3) at the time of the employee’s hiring; and (4) whenever the employee is requesting time off for a qualifying reason.

—For More Information—

Many questions pertaining to paid family leave have not been answered as of this writing. The Department of Labor & Workforce Development is charged with administering the program and will promulgate regulations over the next few months.