New Jersey Expands Leave and Insurance Benefits To Employees Impacted by COVID-19

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On March 25, 2020, New Jersey passed another law to help ease the burden faced by employees who must miss work due to COVID-19. The new law allows employees affected by COVID-19 to utilize New Jersey's Earned Sick Leave Act, Family Leave Act, Temporary Disability Insurance, or Family Leave Insurance. The most significant change to these laws is that it provides benefits to employees who must be quarantined or care for a family member who must be quarantined.

New Jersey's Earned (Paid) Sick Leave Act

Even before the new law, the Earned Sick Leave Act provided significant protections to New Jersey employees during the state of emergency. In particular, it could be used by employees who were infected, had to take care for a sick family member who was infected, had to care for a child due to school or childcare closures, or because they could not work due to a closure for a public health emergency. Additional details about the Earned Sick Leave Act are available here.

In addition to these protections, the new law allows employees also to use their earned (paid) sick leave in any of the below circumstances:

- The employee is unable to work because his or her workplace is closed by order of a public health official or state of emergency called by the Governor.
- The employee is unable to work because the school or child care facility of the employee's child is closed by order of a public health official or state of emergency called by the Governor.
- The employee's presence in the community or employee's family member's presence in the community (who requires care by the employee) would jeopardize the health of others.
- The employee is quarantined due to suspected exposure to a communicable disease and a healthcare provider indicates that the employee's presence in the community would jeopardize the health of others.
- The employee cares for a family member who is quarantined due to suspected exposure to a communicable disease and a healthcare provider indicates that the family member's presence in the community would jeopardize the health of others.

The first bullet point above clarifies that it is permissible to do what many employers already had been doing -- namely, to permit employees to utilize their earned sick leave time when they are unable to work because their workplace currently is closed and there is no remote work for the employees.

New Jersey's Family Leave Act

New Jersey's Family Leave Act provides employees with up to 12 weeks of unpaid family leave to care for a family member with a serious health condition.[1] The new law expands the definition of a "serious health condition" during a state of emergency to include an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of a communicable disease. However, family leave only can be taken in these circumstances if either:

- A healthcare provider or a public health authority issues a determination that the family member's presence in the community may jeopardize the health of others; or
- A healthcare provider or public health authority makes a recommendation, direction, or order that the family member be isolated or quarantined because of suspected exposure to the communicable disease.

It is important to note that no other aspect of the Family Leave Act was modified by this amendment. Therefore, employers may (and should) still require documentation from the employee, even if only a letter or email noting the need for the leave. It also still only applies for the care of a family member, which definition was expanded in 2019 to include a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship. This definition is the same for the above-referenced Earned Sick Leave.

New Jersey's Temporary Disability Insurance ("TDI") and New Jersey's Family Leave Insurance ("FLI")

Temporary Disability Insurance provides cash benefits to New Jersey workers who suffer an illness, injury, or other disability that prevents them from working, and which was not caused by their job. Most employers in New Jersey must have Temporary Disability Insurance for their employees. Family Leave Insurance provides New Jersey workers cash benefits for up to six weeks to bond with a newborn, newly adopted, newly placed foster child, or to provide care for a seriously ill or injured family member. While most New Jersey workers who take family leave are covered under the State's family leave program, some employers provide Family Leave Insurance through a plan with a private insurance carrier instead.

The main difference between Temporary Disability Insurance and Family Leave Insurance is that Temporary Disability Insurance is used when the employee is seriously sick, whereas Family Leave Insurance is used when the employee is caring for a seriously sick family member. Therefore, employees who became seriously sick due to contracting COVID-19 or had to care for a family member who became seriously sick due to COVID-19 already could use Temporary Disability Insurance or Family Leave Insurance. However, the new law allows employees during a state of emergency to use Temporary Disability Insurance or Family Leave Insurance if they have (1) an illness caused by an epidemic of a communicable disease; (2) a known or suspected exposure to a communicable disease; or (3) are taking efforts to prevent the spread of a communicable disease. In these cases, Temporary Disability Insurance or Family Leave Insurance only can be taken if a healthcare provider or public health authority makes a recommendation, direction, or order that the family member be isolated or quarantined because of suspected exposure to the communicable disease. Family Leave Insurance also may be taken if a healthcare provider or a public health authority issues a determination that the family member's presence in the community may jeopardize the health of others.

Conclusion

New Jersey already provided significant benefits to employees under its Earned Sick Leave Act, Family Leave Act, Temporary Disability Insurance, and Family Leave Insurance. As a result, significant changes were not necessary to provide benefits to those who became sick or needed to care for a family member who became sick due to COVID-19.

Instead, the most noteworthy addition to these laws is they now provide benefits to employees who must themselves be quarantined or who are caring for a family member who must be quarantined because of known or suspected exposure to a communicable disease. Due to the lack of testing available and the unprecedented nature of how COVID-19 spreads, it is not surprising that these provisions were not in the original laws, but the Legislature felt a need to make these revisions.

Employers should review their policies and update them where necessary to ensure compliance with these new expanded provisions. In light of the current COVID-19 circumstances, employers may wish to create new forms to be used by employees seeking to use unpaid time under the Family Leave Act for these new expanded reasons.

[1] It also commonly is used for the birth or adoption of a child.