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MUST-KNOW CHANGES TO NEW JERSEY'S LEAVE AND BENEFITS LAWS FOR EMPLOYERS

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On February 19, 2019, Governor Phil Murphy signed new legislation that significantly expands an employee's right to paid and unpaid leave by amending the New Jersey Family Leave Act ("NJFLA"), the New Jersey Family Leave Insurance Law ("NJLFI"), and the New Jersey Security and Financial Empowerment Act "NJ SAFE Act"). Many provisions of these amendments go into effect July 1, 2019, while others take effect in July 2020.

This article highlights the most notable changes that employers must be prepared to address by reexamining and revising their handbooks, policies and procedures to ensure compliance with these changes to the law.

Amendments to the NJFLA

The NJFLA, which provides job-protected unpaid leave for employees to care for the serious health conditions of family members – but not their own – and to bond with newly born or adopted children, has been significantly expanded. Employers should expect to see greater use of this leave than in the past.

Effective **July 1, 2019**, the law expands the definition of "employer" under the NJFLA to include individuals or entities that employ 30 or more employees, replacing the previous threshold of 50. This is likely to sweep in many more employers who had previously not been required to provide job-protected leave.

The law also significantly expands the definition of a "family member" for whom a covered employee can take leave under the NJFLA to include a sibling, parent-in-law, grandparent, grandchild, domestic partner, or any individual related by blood to the employee, as well as any individual with whom the employee has a "close association" which is "the equivalent of a family relationship." The breadth of this language seemingly covers an endless number of relationships that were not previously covered under the NJFLA or its federal analogue, the Family and Medical Leave Act ("FMLA").

The amendments also make several changes related to employees taking leave to bond with a new child. First, the law expands the right to unpaid and paid leave to employees upon the placement of a child into foster care with the employee, which was already available under the FMLA, and to employees who become parents pursuant to a

gestational carrier agreement. Second, the law permits an employee to take leave on an intermittent basis for the birth, adoption or foster care placement of a child without first seeking employer approval.

Third, when an employee requests continuous leave to care for a family member with a serious health condition, the statute appears to reduce the advance notice requirement from 30 days to “a reasonable and practical manner,” though this may be clarified by regulation. For any NJFLA leave taken on an intermittent basis, the notice requirement is now 15 days.

Importantly, no changes were made that affect an employer’s ability to run NJFLA and FMLA leaves concurrently where eligible, and employers should ensure their policies include such language.

Amendments to the NJFLI:

The amendments make a number of changes to the NJFLI program, which is a wage-replacement law, not a leave law. First, the law incorporates the NJFLI’s expanded definition of “family member,” as discussed above. Second, the law no longer requires a one-week waiting period for the payment of NJFLI benefits for leave commencing on or after **July 1, 2019**.

Third, and also effective **July 1, 2019**, employers may no longer require employees to exhaust unused paid leave for any period of time during an NJFLI leave. Although employees may elect to utilize unused paid sick leave, vacation time, or any other paid leave in place of NJFLI benefits, the use of employer paid time off cannot reduce the total amount of such benefits available to the employee. Fourth, as noted below, employees taking leave pursuant to the NJ SAFE Act may elect to use their paid family leave benefits.

Finally, effective **July 1, 2020**, the law doubles the length of time for which NJFLI benefits can be paid from 6 weeks to 12 weeks in a 12-month period, and it increases the maximum intermittent leave period from 42 days to 56 days. NJFLI benefits will also be increased from a maximum of 53% to 70% of the statewide weekly wage average. As with the initial program, the NJFLI benefits will be funded by an increased payroll deduction.

Amendments to the NJ SAFE Act:

Effective **July 1, 2019**, the NJ SAFE Act, which provides employees with unpaid leave related to incidents of domestic violence and sexual assault, will include the expanded definition of a “family member” to mirror the expanded definition under the NJFLA. As discussed above, employees taking leave pursuant to the NJ SAFE Act will also be able to elect to use NJFLI benefits.

When the NJFLI amendments are fully implemented, employers should be prepared for increased usage by employees – both in terms of covered family members and in length of time the benefits are used. Again, because NJFLI leaves are not job-protected, employers should expect to see NJFLI claims paired with FMLA, NJFLA, and now NJ

SAFE Act leave requests. However, the amendments also include anti-retaliation and non-discrimination provisions, and establish a right for employees to sue their employers for same. So, it is important that employers take great care when administering their leave programs.

At this time, employers should ensure that their employment materials (e.g., handbooks, policies and procedures) are compliant with the changes to the NJFLA, NJ SAFE Act, and NJFLI that go into effect on July 1, 2019, and be aware that another wave of changes to NJFLI will go into effect on July 1, 2020. Employers should contact experienced labor counsel for such review and revision to avoid the risk of costly mistakes in the administration of these new laws. **If you have any questions or concerns, please contact Kenneth A. Rosenberg at 973.994.7510 or krosenberg@foxrothschild.com, Justin Schwam at 973.548.3313 or jschwam@foxrothschild.com or any member of Fox Rothschild's Labor & Employment Department.**