

April 2020

Client Advisory

New Jersey Makes Additional Changes to the Family Leave Act and the Temporary Disability/Family Leave Insurance Law to Expand Protection and Benefits to Employees out for COVID-19 Reasons

On March 25th, Governor Murphy signed a bill expanding the scope of several New Jersey laws, including [the Family Leave Act and Temporary Disability Insurance Law](#). These expansions were implemented to broaden eligibility requirements in order to enhance employee job protections and benefits by expanding the definition of a “serious health condition” to include an illness caused by an epidemic of a communicable disease, known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

Less than three weeks later, on April 14th, the Governor signed a new bill, which again amended the Family Leave Act and the Temporary Disability Insurance Law to offer increased eligibility through newly modified and expanded definitions of “family leave,” “disability,” “compensable disability,” and “family temporary disability leave.”

Family Leave Act (FLA) Amendments

The FLA guarantees up to 12 weeks of unpaid family leave during a 24-month period. An employee may use family leave to provide care for any of the following reasons:

- The birth of a child of the employee, including a child born pursuant to a valid written agreement between the employee and a gestational carrier.
- The placement of a child into foster care with the employee or in connection with adoption of such child by the employee.
- The serious health condition of a family member of the employee.

As a result of the new bill, the definition of “family leave” has expanded, permitting employees to use family leave in the event of a state or emergency declared by the Governor or during an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, which:

- Requires 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.

- Prompts 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.
- Results in 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.

In addition, the new bill not only expands the categories of protected leave under the NJFLA, but it also expands the categories of employees eligible to take it. Prior to the bill, employers could invoke the “key employee” exception to deny leave to certain highly paid salaried employees if necessary to prevent substantial and grievous economic injury to the employer’s operations. The exception is not available for key employees who take leave for any of the newly enumerated categories. Additionally, an employee has flexibility in how they choose to schedule their epidemic-related leave. An employee may take the leave intermittently as long as they provide the employer with notice as soon as practicable and make a reasonable effort to schedule the leave in a manner that does not unduly disrupt the operations of the employer. Interestingly, the new law appears to require employers to allow intermittent leave even when an employee is home caring for a family member who is sick with the communicable disease, despite the danger of cross-contagion from the employee coming in and out of work during the period.

An employee’s right to such leave is not entirely without limitation, as employers may require certification from employees to ensure that the leave is taken pursuant to an epidemic-related reason. The source and sufficiency of the certification varies depending on the reason for leave.

Note that the new law also withdraws language added to the law only three weeks before, on March 25th, which had expanded the definition of “serious health condition” to include absences related to communicable diseases during a declared emergency. This deletion does not reflect a narrowing of coverage, but rather the fact that the April 14th law addresses all of the new provisions for communicable disease emergencies separately, rather than within the definition of serious health condition.

Temporary Disability Insurance Law (TDI) and Family Leave Insurance (FLI) Amendments

New Jersey’s Temporary Disability Law is the long-standing state-mandated short-term disability plan offering insurance benefits to eligible employees who are not able to work due to a non-occupational illness or injury. The Family Leave Insurance Law is a more recent addition to the TDI law, which provides similar insurance benefits to employees who must take time off to care for a family member (defined expansively) with a serious health condition.

Consistent with the amendments made to the FLA, the new bill withdraws the previously expanded definition of a “serious health condition,” and instead increases eligibility through modified, expanded definitions of “disability” and “compensable disability” during a state of emergency 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, which requires in-home care or treatment of the employee due to:

- The issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of the employee may jeopardize the health of others.
- The recommendation, direction, or order of the provider or authority that the employee be isolated or quarantined as a result of suspected exposure to a communicable disease.

The bill expands the definition of “family temporary disability leave” in an identical manner, to include in-home care or treatment of the family member of an employee for the same reasons. Additionally, employers should be aware that for a period of disability taken for any of these newly enumerated reasons, there is no seven-day waiting period.

If have any questions regarding these newly enacted amendments, or otherwise need advice in navigating the complex employment issues arising as a consequence to the pandemic, please contact any one of the attorneys in our [Labor and Employment Practice Group](#) or any member of [Archer’s COVID-19 Task Force](#).

DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal or tax advice, and may not be used and relied upon as a substitute for legal or tax advice regarding a specific issue or problem. Advice should be obtained from a qualified attorney or tax practitioner licensed to practice in the jurisdiction where that advice is sought.

Subscribe to COVID-19 Advisories

To subscribe to the latest news and updates on COVID-19, click the link above, or copy and paste this address into a new browser: <https://www.archerlaw.com/news-resources/client-advisories/covid-19-legal-updates-subscription/>