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New Jersey Legislature Approves Paid Family Leave

On April 7, 2008, the New Jersey Senate approved legislation providing for a state-wide paid family leave program. The bill expands the New Jersey Temporary Disability Insurance Law to provide employees with up to six weeks of paid leave to care for a newborn child, newly adopted child, or a family member with a serious health condition. A “family member” includes an eligible employee’s child, spouse, domestic partner, civil union partner or parent. Employees taking a leave for one of the foregoing reasons would be entitled to two-thirds of their average weekly wage up to \$524 per week, for a maximum of six weeks. To fund the paid family leave program, the portion of the Temporary Disability Insurance tax assessed on employees would be increased by .09% in 2009. It is estimated that this increase would cost each employee between \$32-35 per year.

The proposed legislation, introduced in February 2007, sparked state-wide debate due to its potential impact on both employers and employees. Critics of the bill focused on the staffing and operational effects this legislation would have on small employers and the overall increase in the numbers of employees taking leave that is expected to affect all employers. Unlike both the New Jersey Family Leave Act (“NJFLA”) and the federal Family and Medical Leave Act (“FMLA”), the paid family leave bill does not exempt employers with fewer than 50 employees.

Importantly, however, the bill does not provide job restoration rights to employees taking a paid family leave. Both the NJFLA and FMLA provide job restoration rights and other protections to employees who take qualifying leaves. As a result, small employers will not have a statutory obligation to hold the jobs of employees taking paid family leave. They will, however, still have to take into account requests for reasonable accommodation under the New Jersey Law Against Discrimination and the Americans With Disabilities Act which, in practical effect, may mean holding those jobs for some period of time beyond the paid leave period. For employers with 50 or more employees, the NJ paid family leave will run concurrently with either the NJFLA or the FMLA, or both, so the jobs of employees taking paid family leave at larger companies will be protected by virtue of the overlay of the NJFLA or the FMLA.

Governor Jon Corzine expressed his intention to sign the New Jersey bill which will become effective July 2009. Once signed into law, New Jersey will be the third state to approve paid family leave. Accordingly, New Jersey employers need to start reviewing their policies, payroll practices and benefits in light of the new legislation.

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