



Reconciling Employee Leave Policies with Overlapping State and Federal Laws



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This is the first in a series of NJ BUSINESS SOLUTIONS articles appearing monthly as a service to the members of the New Jersey Business & Industry Association and the readers of New Jersey Business Magazine. They are intended to help New Jersey employers deal with practical issues affecting their business operations.

In New Jersey, employers must reconcile two unpaid leave entitlements with their own policies. These are the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (NJFLA). Qualifying employees can take time off under these two laws, but their employer is not obliged to pay them. In contrast, the New Jersey Temporary Disability Benefits law (NJTDB) and the New Jersey Workers' Compensation Act (NJWCA) are compensation

entitlements. They provide for payment to the employee, rather than for leave from work.

As a practical matter, employers may find that these laws, when combined with their own paid time off policies, result in certain entitlements running concurrently. The employee may qualify for *both* leave *and* compensation during the leave period. In some instances, this could benefit the employer and the employee.

To give one example, an employee

Ian Meklinsky, Esq., addresses more than 220 employers at NJBIA's "Making Sense of Disability and Family Leave," a seminar held in March.

who is seriously injured while at work may qualify for federal Family and Medical leave and also be entitled to receive Workers' Compensation benefits while on leave. This situation cannot arise under the state Family Leave Act, which only grants an employee leave to care for a seriously ill family member – *not* his or her own medical condition.

The state Workers' Compensation and Temporary Disability programs may come into play together if an employee files a Workers' Compensation claim but the insurance carrier contests the claim. Then the employee may apply for and receive Temporary Disability benefits, pending resolution of the claim. However, the employee is prohibited from "double dipping" by receiving both types of benefits in connection with a single claim.

Depending on how an employer structures its company policy regarding paid time off, this time off could run concurrently with leave entitlements under the state and federal medical and family leave laws (FMLA and NJFLA). Employers can require employees to apply their bank of accrued paid time off to leave taken under these laws. *Employees may also request* to apply some or all of their accrued paid time off to family and medical leave. The employee would benefit by continuing to receive pay while out on leave. The

employer could also benefit, as this would prevent an employee from exhausting his or her 12 weeks of family and medical leave, then having the right to take additional paid time off upon their return to work. There are, however, limitations to the application of accrued paid time off to family and medical leave.

Employers can also structure their policies regarding state and federal FMLA and NJFLA policies to require that leave entitlements under both statutes run concurrently when applicable. For example, if an employee requests leave for a reason that would qualify under both the FMLA and the NJFLA, the employer can require that both leave entitlements run concurrently *as long as* the employer's policy so states and employees are notified of the policy before the leave starts. This results in an employee using up his or her leave entitlement under both laws at the same time, potentially avoiding the troubling situation created where an employee who, after being out for 12 weeks of FMLA leave to care for his or her own health condition, thereafter announces that he or she will be taking another 12 weeks of NJFLA leave to care for a family member.

Obviously, the interplay between the state and federal leave laws and employer PTO policies raises complex legal and practical issues that require careful consideration and policy planning. For a more detailed discussion of the subject matter covered in this article go to **www.foxrothschild.com**. You may also want to consult your legal counsel to either prepare or review your leave policies.

*The information in this article was presented by Ian Meklinsky, Esq., at NJBIA's March seminar "Making Sense of Disability and Family Leave." Participants heard from top employment law specialists from several of New Jersey's leading law firms. Meklinsky is a principal in the law firm of Fox Rothschild LLP in Lawrenceville. To learn about upcoming seminars, visit **www.njbia.org**.*