

**P.L. 2008, c. 17, New Jersey Paid Family Leave Act
Formerly A-873AcsAca (Albano, Oliver, Sweeney)**

—Background—

New Jersey has become only the second state in the nation to mandate a broad paid family leave program for employees. Governor Corzine signed the mandate into law on May 2, 2008. The leave applies to nearly all private and public employers and may be used by an employee to: (1) bond with a newborn or adopted child or (2) care for a family member with a serious health condition. Paid family leave may never be used for your employee’s own “serious health condition.”

Employers should be mindful of two important dates:

As of January 1, 2009, employers must withhold the employee tax.

As of July 1, 2009, employees are eligible to take paid family leave benefits.

Additional requirements, including the proper forms employees will use, will be issued by the Department of Labor & Workforce Development. You can review the final regulations by visiting the NJBIA Web site at www.njbja.org/issues_pflregs.asp.

—What Is Paid Family Leave?—

Paid family leave provides employees with up to six weeks of partial wage replacement to care for newborn, adopted or seriously ill family members every year. The program is similar to the State’s existing Temporary Disability Insurance (TDI) program. The paid leave benefit provides two-thirds of the employee’s wages capped at \$546 per week for 2009. The maximum benefit rate is adjusted every year. The paid family leave program does not require any employer to hold the employee’s position open, but employers should be mindful of other State and federal laws that may provide employees with the right to reinstatement. Eligible employees will also be able to take the leave on an intermittent basis.

The program is funded by a new payroll tax on employees. The new employee payroll tax began on January 1, 2009. The tax rate is specified as: .0009 percent for 2009 and .0012 percent for 2010 and beyond. The tax is levied on the taxable wage base for the given year. For 2009, the taxable wage base will be \$28,900 of income. Please note that there is no direct contribution by employers to the paid family leave fund.

Employees of businesses that have an approved private plan for TDI benefits will not need to contribute to the paid family leave fund provided that the private plan provides paid family leave benefits that are consistent with or greater than the new program (e.g. six weeks of partial wage replacement for birth, adoption or a serious health condition, calculated at two-thirds the salary, capped at \$546 for 2009, etc.). NJBIA urges these employers to discuss options with any third-party insurance provider. Additionally, businesses that self-insure short-term disability benefits should review their current policy.

—What Employees Are Eligible?—

All full- and part-time employees are eligible for paid family leave based on the amount of wages paid over a period of “base weeks.” Specifically, an employee qualifies for the program who earns either:

- 1) \$143 or more per week for 20 consecutive weeks, or
- 2) \$7,200 or more over the previous 52 calendar weeks.

Businesses that have 50 or more employees are required to continue to comply with the unpaid-leave provisions of the federal Family and Medical Leave Act and the New Jersey Family Leave Act. These laws require employees to work for the employer for a period of time before they become eligible for the unpaid leave. However, the paid family leave law will allow an eligible employee to take paid family leave almost immediately.

—Definitions—

Employers should be familiar with these terms in order to properly handle requests from employees.

Family Temporary Disability Leave provides up to six weeks of paid leave to: (1) bond with a newborn or adopted child or (2) care for the serious health condition of a family member. An employer may require an employee to use up to two weeks of any paid sick, vacation or other paid time off in connection with a period of paid family leave. No employee may receive paid family leave benefits and simultaneously receive TDI or unemployment compensation benefits.

Family members included in the program consist of the following: biological, adopted or foster children less than 19 years of age; a child over 19 years of age that is incapable of self care; a spouse; “domestic partners”; “civil union partners”; biological, foster, adopted parents or stepparents; or a legal guardian of the eligible employee when the employee was a child.

“Serious health condition” is defined as an illness, injury, impairment or physical or mental condition that requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing medical treatment or continuing supervision by a healthcare provider.

“Health care provider” is defined as any person licensed under federal, state or local law, or the laws of a foreign nation, to provide healthcare services; or any other person who has been authorized to provide healthcare by a licensed healthcare provider.

—Use of Paid Time Off in Connection with Paid Family Leave—

The law specifies that an employer may not require an employee to utilize more than two weeks of sick, vacation or other paid time off in connection with a period of paid family leave. In other words, you can require an employee to use up to two weeks of sick, vacation or other paid time off as part of the six weeks of paid leave, leaving four weeks of paid leave available to that employee under this act.

—Paid Family Leave in Connection with the Birth or Adoption of a Child—

Employees may take paid family leave at any time within one year of the birth or adoption of a child. The six weeks of leave must be taken consecutively in connection with the birth or adoption of a child unless the employer and employee mutually agree on a plan that allows the employee to take the leave during non-consecutive weeks. The employee is required to provide 30 days notice to the employer prior to taking paid family leave. If the employee does not provide the 30 days advance notice, they are required to forfeit two weeks of the leave, unless the failure to provide notice was for unforeseeable reasons.

—Paid Family Leave in Connection with a “Serious Health Condition” —

Employees taking paid family leave for six weeks consecutively in connection with a family member’s “serious health condition” are required to provide the employer with prior notice in a “reasonable and practicable manner,” unless an emergency or other unforeseen circumstance precludes prior notice. The employee must also provide the employer with a medical certification of the necessity of the leave.

— Intermittent Paid Family Leave in Connection with a “Serious Health Condition” —

Employees taking paid family leave in connection with a family member’s “serious health condition” may take the leave “intermittently” or consecutively. The law defines intermittent leave as 42 separate days of leave. For example, an employee that works five days a week would receive a maximum of 30 days of paid family leave if the employee took the leave consecutively. The same employee will receive 42 days of paid family leave if the employee takes the leave intermittently. While the law does not define the time increments for intermittent paid family leave, the legislative history suggests that it can only be taken in full-day increments.

An employee seeking to take intermittent paid family leave for a family member’s “serious health condition” is required to provide their employer with 15 days notice unless: (1) an emergency or other unforeseen circumstance precludes prior notice and (2) the employee makes a reasonable attempt to schedule the leave in a nondisruptive manner. Additionally, the employee may provide the employer with a regular schedule of days for intermittent leave.

—Healthcare Provider Certification—

Employees seeking to take paid family leave for the “serious health condition” of a family member are required to complete a form for benefits, which includes a certification from a healthcare provider. This certification must include: (1) the date the “serious health condition” commenced, (2) the probable duration of the condition, (3) the medical facts within the knowledge of the provider of the certification, (4) a statement concerning the need for the employee to provide care for the individual, (5) an estimate of the time the employee will need to provide care, (6) a statement of the medical necessity for any intermittent leave, and (7) dates of any future intermittent treatment.

—Employer Requirements—

Employers in the State plan for paid family leave must provide the employee and the NJ Department of Labor & Workforce Development with an application form for paid family leave benefits. The form must be completed by the employer within nine days of the commencement of the paid family leave period. The form includes: (1) the name, address and Social Security number of the employee; (2) the wages paid to the employee, including any sick or vacation time paid to the employee at the beginning of the period of paid family leave; and (3) the name, address and State identity number of the employer.

All employers are required to post a notice alerting employees of their rights to paid family leave. Additionally, employers are required to provide employees with [copies of the notice](#): (1) upon request of the employee, (2) at the time of the employee’s hiring, and (3) whenever the employee is requesting time off for a qualifying reason.

—For More Information—

To find the latest information and links to the appropriate forms, visit the NJBIA Paid Family Leave Web page at www.njbja.org/issues_pfl.asp.

For additional information, contact Melanie Willoughby at mwilloughby@njbia.org.

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Information should not be construed as constituting specific legal advice. It is intended to provide general information about this subject and general compliance strategies. For specific legal advice, NJBIA strongly recommends members consult with their attorney.