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Leave Laws: Changes and Challenges in New York and New Jersey

Presented by Scott A. Ohnegian and Fiona E. Cousland

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Leave Laws: Changes and Challenges in New York and New Jersey

Leave- A Significant Issue for New York and New Jersey Employers

- New Jersey has issued regulations clarifying previous expansions to the New Jersey Family Leave Act
- New York has expanded and clarified its Family Leave Laws
- Both states have codified expanded protections for leave due to Covid-19



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New Jersey's Family Leave Act

- New Jersey Division of Civil Rights adopted final changes to several NJFLA rules and regulations to reflect numerous NJFLA amendments over the years which broadened the application of the NJFLA
- These changes codify revisions made to the NJFLA in 2019
- Publicity around the changes including updated guidance provided by the state has increased employee awareness of the prior updates to the law

New Jersey's Family Leave Act

- Definition of “covered employer” expanded from employers with 50 or more employees to employers with 30 or more employees worldwide
- Definition of “eligible employee” expanded to include persons who were laid off or furloughed up to 90 days thereafter due to slowed business operations resulting from Covid-19

New Jersey's Family Leave Act

- "Family member" now includes the following additional people
 - Parent-in-law
 - Sibling
 - Grandparent
 - Grandchild
 - Domestic partner
 - "other blood relatives"
 - Any other individual with who an employee can show a close association equivalent to a family relationship
 - "parent" and "child" includes parent-child relationships within LGBTQ families and families utilizing gestational surrogacy

New Jersey's Family Leave Act

- Eliminating employers' discretion to deny family leave requests from their highest-paid employees when the employee's request is related to a declared public health emergency involving an epidemic of a communicable disease; and
- Specifying that employees may provide their employers with less than 30 days' advance notice of their intent to take family leave in some situations, including when the employee is seeking family leave to provide care for a family member due to a communicable disease epidemic.

New Jersey Family Leave Act “Quiz”



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New York Family Leave

- When Paid Family Leave (PFL) is taken intermittently, the maximum number of intermittent leave days an employee may take is based on the average number of days the employee works per week.
- The regulations initially capped intermittent PFL at 60 days. This 60-day cap has been removed, allowing for additional days of intermittent PFL for employees who work an average of more than five days per week. (Effective January 1, 2022)
- Definition of family member now includes siblings (Effective January 1, 2023)

New York Sick Leave

- New York Department of Labor adopted new rules implementing the state's sick leave law (NY Labor Law §196-b) on December 22, 2021
- Documentation
 - Employers may not require employees to provide medical verification for sick leave lasting fewer than three consecutive workdays or shifts
 - If greater than three days, limited to requesting an attestation from a licensed medical provider that the leave is necessary, the amount of leave needed, and a return date, or an attestation from the employee
 - Employer may not ask the nature of its illness, prognosis, or treatment, and employers are prohibited from requiring employees to bear any costs associated with obtaining the documentation

New York Sick Leave

- **Determining Employer Size**
 - Under the Sick Leave Law, the amount of leave an employer is obligated to provide to its employees and whether it is paid depends on the size of the employer's workforce
 - (i) employers with four or fewer employees must provide 40 hours, which may be unpaid if the employer's annual revenue is under \$1 million
 - (ii) employers with between five and ninety-nine employees must provide 40 paid hours
 - employers with one hundred or more employees must provide 56 paid hours.
 - Prior guidance instructed employers to use the number of employees they had in New York to determine the leave entitlement

New York Sick Leave

- New guideline issued in a response to comments of the proposed rule
- Employers must include all employees nationwide in the Count
- Number of employees is determined by the highest total number of employees concurrently employed at any point during the calendar year
- If an employer's size falls below a threshold, leave amount cannot be adjusted until the next year
- If an employer increases in size above a threshold, new leave amount takes effect on that date

New York Sick Leave

- Employees accrue one hour of leave for every 30 hours worked, and may round to the nearest 5 minutes, one-tenth, or quarter of an hour for increments under 30 hours so long as there is no impact to the overall accrual
- Employees may carry over unused sick leave but employers may give them the option to voluntarily elect to be paid out for unused sick leave instead

New York Family Leave “Quiz”



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New Jersey- Stacking Leave

- New Jersey has always permitted NJ Family Leave and FMLA to be taken consecutively in certain circumstances
- An employee may not take NJFLA for their own health condition, so is permitted to take FMLA for their own health condition and still have available NJFLA time to take care of a family member
- Guidance from the state now says for expecting parents, employees may:
 - “Take up to 12 weeks of FMLA for pregnancy/recover and/or a
 - related serious health condition + up to 12 weeks of NJFLA for
 - bonding = up to 24 weeks of job protection”

New Jersey- Stacking Leave

- Employees are reading this guidance and concluding that they are entitled to 24 weeks of maternity leave, up to 22 of which might be partially covered by temporary disability and family leave insurance
- In fact, an employee must be able to demonstrate through a certification from a medical provider that they personally have a medical need for 12 weeks to recover from birth (or time prior to birth)
- 24 weeks is not an automatic entitlement

New York- Stacking leave

- An employee may take short-term disability with the job protection benefits of the FMLA and subsequently take Paid Family Leave to bond with a new baby
- New York's distinction from NJ on this is simply the language the state is using to explain the law to employees. Employees may receive pay through the state for a total of 26 weeks of Paid Family Leave and Temporary Disability in any 52 week period

Connecticut FMLA

- Connecticut's Family and Medical Leave Act (CFMLA) expanded considerably as of January 1, 2022
- CFMLA now applies to all Connecticut employers with at least one employee; previously, it applied only to those with 75 or more employees
- Instead of the previous requirement that an employee must have worked at least 1,000 hours during the preceding 12 months to be eligible for leave, employees now are eligible for CFMLA leave if they have worked for their employer for at least three months prior to seeking leave
- CFMLA previously provided for up to 16 weeks of job-protected leave in a two-year period, it now provides for up to 12 weeks of job-protected leave in a 12-month period, plus an additional two weeks for a serious health condition resulting in incapacitation that occurs during pregnancy

Connecticut Paid Family Leave

- Connecticut paid family and medical leave (PFML) benefits became available on January 1, 2022.
- PFML provides income replacement (with weekly benefits not to exceed 60 times the minimum wage) for leave taken for generally the same reasons as under CFMLA.
- Eligible employees may receive up to 12 weeks of PFML benefits in a 12-month period, plus an additional two weeks for a serious health condition that results in incapacitation during pregnancy.

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Don't forget- ADA leave!

- In addition to Family Leave, employees may request leave as an accommodation for a disability
- Increasingly seeing employees request leave as an accommodation for a family member's disability
- No obligation to accommodate a family member, although depending on the disability the employee may be eligible for Family Leave



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Takeaways

- Employees are more well informed about their leave rights than ever
- State guidance is to interpret leave generously
- Employers can and should ask for documentation for leave from every employee every time significant leave is taken