

THE COST OF GETTING SICK

Know the laws that protect your employees | *by Ian D. Meklinsky, Esq.*

Employee absences pose operational challenges for employers, but they also give rise to concerns about compliance with applicable laws and policies. Depending on the reason, an employee's leave may trigger certain requirements imposed under federal and state law, as well as under the employer's own policies. The following provides an overview of the laws and policies that need to be taken into account.

FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

The FMLA covers employers who have 50 or more employees on their payroll for 20 or more weeks during the current or preceding calendar year. An employee is eligible for FMLA leave if he or she has worked at least 12 months (not necessarily consecutive) for the covered employer, has worked at least 1,250 hours during the 12 months immediately preceding the leave commencement date, and is employed at a worksite employing 50 or more employees within a 75-mile radius. The following are qualifying leave reasons under the FMLA:

- Birth or adoption of a child
- Care of an ill parent, child, or spouse
- Care of the employee's own serious health condition

Eligible employees can take up to 12 weeks of leave during a 12-month period. The leave may be taken consecutively, intermittently, or on a reduced leave schedule. Upon completion of an FMLA leave, generally speaking, employees must be reinstated to their former position.

NEW JERSEY FAMILY LEAVE ACT (NJFLA)

The NJFLA covers employers who employ 50 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more work weeks during the current or immediately preceding calendar year. An employee is eligible for NJFLA leave if he or she has worked at least 12 months in New Jersey for the covered employer and has worked at least 1,000 base hours during the immediately preceding 12-month period.

The birth or placement for adoption of a child and the care of a parent, child, or spouse with a serious health condition are qualifying leave reasons under the NJFLA.

Eligible employees may take up to 12 weeks of unpaid leave during any 24-month period. The leave may be taken consecutively, intermittently, or on a reduced leave schedule. Upon completion of an NJFLA leave, generally speaking, employees must be reinstated to their former position.

DRILLING DOWN

» Extra Steps

Understanding is only part of the plan

When analyzing your company's obligations and rights under the various leave and compensation laws, pay particular attention to the following:

- Make sure that you have posted all of the required federal and state posters.
- Make sure that you prepare appropriate leave and paid time off policies as part of your overall employee handbook. The FMLA and NJFLA provide various options with respect to a number of items, including the "benefit year."
- Make sure that you provide the required notices to

employees when they bring the need for a leave to your attention. The FMLA and NJFLA require that employees be provided notice of their rights and responsibilities when they indicate that they have a need to take a leave that may be governed by those laws. As such, employers need to develop appropriate forms for compliance with these requirements.

- When in doubt, contact legal counsel.





TEMPORARY DISABILITY INSURANCE (TDI), WORKERS' COMPENSATION INSURANCE (WCI), AND FAMILY LEAVE INSURANCE (FLI) TDI protects against wage loss caused by an employee's own inability to work because of non-occupational illness or accident, including temporary disability associated with pregnancy and childbirth. TDI covers most employers in New Jersey. TDI-eligible employees may receive two-thirds of their average weekly wage (up to \$584 for 2013). The maximum benefit period for TDI is generally 26 weeks.

WCI allows employees to receive no-fault compensation for accidents and/or illnesses that occur as a result of employment. All employers are required to have WCI. An injured worker will be eligible to receive benefits at a rate of 70 percent of their average weekly wage (up to \$826 for 2013). WCI benefits normally continue until the worker is released to return to work in some capacity or upon reaching maximum medical improvement (MMI).

FLI provides compensation to employees to assist their family members who are unable to care for themselves, including newborns and newly adopted children. FLI provides up to six weeks of monetary benefits in a 12-month period.

PAID TIME OFF

Many employers offer their employees paid time off (PTO). Offering PTO is entirely voluntary in New Jersey. Employers may adopt policies in which they supplement the compensation benefits received by employees who are out on leave and receiving TDI, WCI, and/or FLI benefits.

PUTTING IT ALL TOGETHER

When trying to understand how the laws apply to a given situation, and how these various laws interact with each other, employers should note whether the law in question is a leave entitlement or compensation entitlement. Technically speaking, none of these laws provide for both leave and compensation. The FMLA and NJFLA are leave entitlements. TDI, WCI, and FLI are compensation entitlements. Many employers are surprised to learn that there is no such thing as "work-

ers' compensation" or "temporary disability" leave. Despite these distinctions, the practical application of these laws, when combined with employer policies, may result in certain leave entitlements and compensation entitlements running concurrently. In other words, depending on the situation, and on how an employer structures its policies, an employee may find herself in a situation where she qualifies for both leave and compensation

during the leave. It is incumbent upon the employer to develop and implement policies that take all of these laws into consideration and establish appropriate policies and practices for implementation and documentation of employee leaves of absence. **EMJ**

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