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On March 26, 2020, New Jersey Governor Murphy signed Senate Bill 2304 which expands the Temporary Disability Benefits (TDB) and Family Leave Insurance (FLI) programs effective immediately. The law also provides for job protection under the New Jersey Family Leave Act (NJFLA) and expands New Jersey's Earned Sick Leave Law (ESLL). On April 14, 2020, the Governor also signed into law, Senate Bill 2374, which amends the NJFLA and FLI to provide job protected, paid leave to care for family members quarantined due to COVID-19, and amends the NJFLA to provide for job-protected unpaid leave to care for children due to school closures.

## TDB and FLI

In response to the COVID-19 pandemic, the law expands the definition of a "serious health condition" to include an illness caused by a public health emergency. Workers now have access to TDB and FLI if they are unable to work because they are diagnosed with or suspected of exposure to a communicable disease or taking care of a family member in the same situation. The bills do not specifically refer to COVID-19, therefore, this expansion applies to COVID-19 and

any public health emergencies declared by the Governor or Commissioner of Health or other public health authority. The latest legislation also expands the definition of an employee's own disability under the TDB to recognize the impact of an illness or exposure to a communicable disease including the need to quarantine.

The bills eliminate the current one-week waiting period for temporary disability benefits for public health emergency related cases.

## Earned Sick Leave

The legislation expands New Jersey's ESLLs to permit the use of earned sick time for quarantine or isolation recommended or ordered by a health care provider or public health official as a result of suspected exposure to a communicable disease or to care for a family under the same situation. Please review our March 31, 2020 Bulletin "New Jersey Expands Disability and Leave Benefits to Address COVID-19" and our May 8, 2018 Bulletin "New Jersey Enacts Paid Sick Leave Law" for a summary of the ESLL.

## Family Leave Act

Generally, the NJFLA provides an eligible employee with up to 12 weeks of unpaid, job protected leave for the birth of a child of the employee, adoption or placement of a child in foster care, or the care of a family member with a serious health condition.

In response to the current pandemic, S2374 expands the NJFLA's categories of leave. Specifically, NJFLA leave must be provided:

- to care for or bond with a child, as long as the leave begins within 1 year of the child's birth or placement for adoption or foster care;
- to care for a family member, or someone who is the equivalent of family, with a serious health condition (including a diagnosis of COVID-19), or who has been isolated or quarantined because of suspected exposure to a communicable disease (including COVID-19) during a state of emergency; or
- to provide required care or treatment for a child during a state of emergency if their school or place of care is closed by order of a public official due to an epidemic of a communicable disease (including COVID-19) or other public health emergency.

The new law also provides that an employer may request certification issued by a "school, place of care for children, public health authority, public official or health care provider" for any school or childcare closure, mandatory quarantine or any other measure that gives rise to the leave.

The leave may also be taken intermittently, as long as prior notice is provided to the employer as soon as possible, and a reasonable effort is made to schedule leave so as not to disrupt the operations of the employer and where possible, provide a regular schedule of the day(s) when intermittent leave will be taken.

The new law also indicates that family leave cannot be denied to highly paid employees when the leave is due to a state of emergency declared by the Governor or when indicated as necessary by a public health authority, and "for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or effects to prevent the spread of a communicable disease".

NJFLA has been amended so that the rights to reinstatement to employment provided also apply to those taking leaves for public health emergencies as provided for in the legislation.

## Employer Action

Employers should review leave policies to ensure compliance with the new guidance.