

## **What New Jersey Employees Need to Know About the New Jersey Paid Family Leave Law**

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Astute New Jersey employees may have noticed something a bit about their wage statements in 2009 – about 64 cents in extra withholding each week. The reason for the extra deduction is not to deprive employees of their newspaper money, but to implement a brand new employee leave program that will be extremely beneficial to those needing to take time off work to care for an ill relative or newborn baby. The program is the Paid Family Leave Law, and New Jersey is only the second state in the nation to implement one. Payroll deductions to fund the program, which was signed into law last year, began on January 1, 2009. The benefits themselves became available on July 1, 2009.

As with Temporary Disability Insurance and other state benefit programs, however, there are many requirements and limitations to the Paid Family Leave Law that employees should know about before they take advantage of the program. Below are some helpful FAQs.

### For what reasons can I take paid family leave?

An employee may take paid family leave for two reasons: (1) to care for a newborn baby within 12 months of birth (or, alternately, to care for a newly adopted child within 12 months of placement), and (2) to care for a family member with a serious health condition. An employee may not take paid family leave in connection with his or her own serious health condition.

### Who is considered a family member?

Family members, as defined by the Law, are spouses, civil union partners, domestic partners, parents, or children.

### What is considered a “serious health condition”?

A “serious health condition” is any illness, injury, impairment or physical or mental condition which requires: (a) inpatient care in a hospital, hospice, or residential medical care facility, or (b) continuing medical treatment or continuing supervision by a health care provider. When an employee goes out on leave for this reason, their family member’s health care provider must provide a certification setting forth what the condition is, the probable duration of the condition, and an estimate of how long the employee is needed to participate in the care of the family member.

### What do they mean by “care”?

“Care” is defined broadly by the Law. The term includes, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

### How long can I take paid family leave?

Employees taking leave in connection with the birth or adoption of a child may take six weeks of leave consecutively during any 12 month period. Leave for birth or adoption may not be taken intermittently, however, unless the employer and employee agree on a plan whereby leave will be taken during non-consecutive weeks. On the other hand, employees taking leave in connection with a serious health condition may take either six weeks of leave consecutively or 42 days of leave intermittently during any 12 month period. An employee taking intermittent leave must give the employer 15 days notice before going out on leave unless an emergency or other unforeseen circumstance arises, or the employee makes a reasonable attempt to schedule the leave in a non-disruptive manner.

### How much will I be paid when I am out on paid family leave?

Employees out of work on paid family leave will receive 2/3 of their average weekly wage, capped at \$546 per week for 2009. Each year, the maximum benefit rate will be adjusted.

Are all employees eligible?

All employees who would be eligible to receive unemployment benefits are also eligible to take paid family leave. That is, all employees who have earned at least \$143 per week for 20 consecutive weeks, or who have earned at least \$7,200 over the previous 52 calendar weeks. While state employees are not eligible for temporary disability benefits unless they have a private plan, state employees are eligible for paid family leave benefits.

Like with TDI benefits, an employer may opt out of the state paid family leave plan in favor of a private plan. In that case, the employee would be required to take benefits under the private plan rather than the state plan. However, employers who opt for a private plan must ensure that the benefits under that plan offer at least the same benefit amounts, eligibility requirements and duration of payments as the state plan.

What are the pitfalls I need to look out for?

There are a few:

Pitfall # 1 – Waiting period and required application for benefits.

One thing employees need to keep in mind is that they won't receive their benefits right away when they go out on paid family leave. This is due to a one week waiting period in effect from the time an employee goes out on leave. If benefits continue for three weeks, they will payable retroactively to the first day.

In order to obtain their family leave benefits, employees must file an application for benefits with the Division of Temporary Disability Insurance within 30 days after the employee goes out on leave. The application and instructions for filling it out may be obtained from the Division's website at: [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/tdi/complete\\_fl1\\_R2-09.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/complete_fl1_R2-09.pdf).

Pitfall # 2 – Required substitution of paid time off.

An employer may require its employees to use sick, vacation or other paid time off for a period of two weeks before taking paid family leave. If less than two weeks of paid time off is available, the employer may still require employees to extinguish whatever paid time off they have before using paid family leave. Assuming an employee is out for six week of consecutive leave, this means that the employee would receive only four weeks of paid family leave benefits.

Although this requirement means that an employee may lose at least some of his or her vacation or sick time, there are two upsides. First, the employee is permitted to take company paid time off during the one week waiting period imposed by the Law. Second, company paid time off is not subject to the benefit cap imposed by the Law, and thus an employee will not have to take a "pay cut" for the first two weeks of leave where 2/3 of their weekly wage exceeds the cap.

Pitfall # 3 – Paid Family Leave interplay with FMLA/NJFLA.

Paid family leave does not have any impact on leave rights under the federal Family and Medical Leave Act or the New Jersey Family Leave Act. However, because the Paid Family Leave Law does not offer the same protections as the FMLA and NJFLA, an employee who works for an employer not subject to those laws must proceed with caution.

While the FMLA and NJFLA only apply to employers with 50 or more employees, the Paid Family Leave Law applies to nearly all employers. The problem is, unlike the FMLA and NJFLA, the Paid Family Leave Law itself does not require employers to restore employees to their employment upon expiration of the leave. This means that employees working for employers with less than 50 employees could technically be replaced if they go out on

paid family leave. There is a good chance this will be the subject of future litigation as the Law begins to be tested in the courts.

Where the FMLA/NJFLA does apply, an employee must take those benefits concurrently with paid family leave benefits. An employee may not “stack” benefits by taking six weeks of paid family leave and then six weeks of unpaid FMLA/NJFLA leave. However, this means that an employee can benefit from both the protections of the FMLA/NJFLA and the benefits of the Paid Family Leave Law at the same time.