

## Prepare now for Paid Family Leave Act, taking effect in 2009

On May 2, 2008, Gov. Jon Corzine signed the Paid Family Leave Act (PFLA), making New Jersey the third state to provide workers with paid family-leave benefits. The PFLA extends temporary disability insurance (TDI) to provide paid family leave of up to six weeks during any 12-month period for employees caring for sick family members and newborn and newly adopted children.

The PFLA takes effect on January 1, 2009, when employees will begin contributing to the fund. They will be able to start drawing benefits on July 1, 2009.

The PFLA applies to all private and government employers subject to the state's unemployment compensation law, including local government employers who choose to opt out of the regular TDI program.

The PFLA allows paid leave for employees to care for:

- A family member with a serious health condition, including psychological "comfort" and time to arrange third-party care
- A newborn or newly adopted child during the first 12 months following birth or adoption

### PFLA paid benefits

PFLA benefits will be substantially the same as those received by employees on temporary disability leave. Employees are entitled to collect two-thirds of their weekly salary up to \$524, beginning after a one-week waiting period. Employee contributions of approximately \$33 per year will fund PFLA benefits.

### Notice requirements

Employees must tell their employers they intend to take paid leave. However, the amount of notice depends upon the reason for the leave. When caring for a child following a birth or adoption, an employee must give 30 days' notice. Employees who fail to provide adequate notice forfeit two weeks of benefits.

For intermittent leave taken to care for sick family members, employees must give 15 days' notice unless

### Get ready for the PFLA:

#### What employers should do now

Although the PFLA doesn't take effect until 2009, now's the time to get ready.

- Carefully review your company's current policies regarding paid and unpaid leave.
- Provide written notice to your employees, alerting them to the upcoming requirements of the new PFLA.
- Consider carefully any requests for leave, as they may qualify under the new PFLA, the NJFLA, the NJLAD, the FMLA or the ADA.
- Consult with an attorney if you require assistance in bringing your company into compliance with the new PFLA, or if you have questions regarding an employee's request for leave.

unforeseen emergencies make that impossible. (Intermittent leave involves taking nonconsecutive days off from work.) Finally, an employee must attempt to schedule intermittent leave for the care of a sick family member in a manner that creates the least disruption to the employer's operations.

Employers can require employees to take up to two weeks of available sick or vacation leave or other forms of paid time off provided by the employer. Employers also can require medical certification of the need for leave.

### The FMLA, NJFLA and PFLA

The PFLA applies to all private and government employers subject to the unemployment compensation law, but includes no guarantee that workers who take leave must be allowed to return to their old jobs.

Therefore, *small employers* may replace employees who opt to take paid family leave under the PFLA. Small employers are not covered by the New Jersey Family Leave Act (NJFLA) or the federal FMLA.

For employers with 50 or more employees, paid leave under the PFLA

runs concurrently with any unpaid leave under the NJFLA or the FMLA. Therefore, employees could qualify for job restoration under the NJFLA or the FMLA.

The PFLA does not apply to leave requests for an employee's own disability or serious medical condition. However, large and small employers alike still must pay close attention to such leave requests, as they could trigger the application of the ADA or the New Jersey Law Against Discrimination (NJLAD) to the extent that they pertain to the employee's own disability or serious medical condition. Under either the ADA or the NJLAD, the need for a leave of absence could be viewed as a reasonable accommodation.

### Notice of rights

An employer must provide employees with a PFLA notice explaining employees' rights and payable benefits under the PFLA. It must post the notice in a conspicuous place accessible to all employees. The New Jersey Department of Labor and Workforce Development (NJDLWD) is working on the notice wording.

The employer must provide written notice of the PFLA:

- To each current employee no later than 30 days after the NJDLWD finalizes the notification wording
- To each employee upon hire after the issuance of the notification
- Whenever an employee provides notice of his or her desire to take paid leave
- Whenever an employee asks for information about the PFLA.



Emily J. Wexler is an associate at Genova, Burns & Vernoia ([www.gbvlaw.com](http://www.gbvlaw.com)), a New Jersey-based law firm with offices in Livingston, Red Bank, Camden, New York and Philadelphia. You may reach her at (973) 533-0777 or [ewexler@gbvlaw.com](mailto:ewexler@gbvlaw.com).