



New Jersey expands leave and benefit laws to address COVID-19 absences



If you have New Jersey Temporary Disability Insurance (TDI)* insurance coverage with us and you are a private employer (not public), rest assured that we have adapted our business practice to accommodate payment for the special COVID-19 Quarantine Order related TDI benefits.

New Jersey has made a number of statutory changes to respond to challenges employees are facing as a result of the COVID-19 pandemic.

Changes by S2304/S2374

On March 25, 2020, New Jersey Governor Murphy signed into law S2304 that makes significant changes to three New Jersey laws offering expanded leave and benefits to employees impacted by COVID-19, and made additional revisions in S2374 which was signed on 4/14/20. Specifically, S2304/2374 together expand the New Jersey:

- Earned Sick Leave Law
- Unpaid Family Leave Act
- Temporary Disability Insurance (TDI) law which provides income replacement for an employee's own temporary disability and for employees who need to be absent from work to care for family members (PFI).

Earned Sick Leave Law

Under the Earned Sick Leave law, covered employees can accrue up to 40 hours of paid sick and safe time. Under the new amendments, employers must allow employees to use their earned sick and safe leave when they *are unable to work* because:

- The employee's workplace *or* the school or place of care of the employee's child, has been closed by order of a public official or because of a state of emergency declared by the Governor (Governor SOE) due to an epidemic.
- There is a Governor SOE *or* the issuance by a health care provider (HCP) or the Commissioner of Health or other public health authority (both are referred to as a "PHA") of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.
- During a Governor SOE *or* upon the recommendation, direction or order of a HCP or a PHA or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the HCP or authority that the presence in the community of the employee or family member would jeopardize the health of others.

(Unpaid) Family Leave Act

The new amendments to unpaid Family Leave Act add a category of reasons when eligible employees can take up to 12 weeks of unpaid job protected leave in a 24-month period. Now, in addition to leave the birth or placement of a child and leave to care for a family member with a serious health condition, the law now creates a right to leave during a Governor SOE or when indicated to be needed by a PHA, related to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease ("Epidemic-Related Leave"). The new Epidemic-Related Leave is available in the following circumstances:

This content is not to be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization meets requirements.

Covered Leave Reason	Statutory description
School/Place of Care closure	Employee must provide in-home care or treatment of the employee's child due to the closure of the school or place of care of the child by order of a public official due to the epidemic or other public health emergency.
Care for family member subject to quarantine order	Employee must provide care for a family member after the issuance by a PHA of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease, because the presence in the community of the family member would jeopardize the health of others.
Care for family member advised to self-quarantine	Employee must care for a family member because of a recommendation of a HCP or PHA that the family member must voluntarily undergo self-quarantine because of suspected exposure to a communicable disease because the presence in the community of that family member would jeopardize the health of others.

The amendments provide that the certification of the need for the Epidemic-Related Leave will be sufficient if it is from a school, place of care for children, PHA, public official or HCP and if it contains the following:

- (1) for leave because of the closure of a school or place of care, the date on which the closure of the school or place of care of the child of the employee commenced and the reason for such closure;
- (2) for leave to care for a family member subject to a quarantine order, the date of issuance of the quarantine order and the probable duration of the quarantine order and
- (3) for leave to care for a family member who has been advised to self-quarantine, the date of the recommendation, the probable duration of the condition, and the medical or other facts within the HCP's or PHA's knowledge regarding the condition.

The amendment also provides that the employer cannot deny this new category of Epidemic-Related Leave to a "key employee."

The amendments provide that the new Epidemic-Related Leave may be taken intermittently if: (1) the covered individual provides the employer with prior notice of the leave as soon as practicable; and (2) the covered individual makes a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, prior to the commencement of the intermittent leave, with a regular schedule of the day or days of the week on which the intermittent leave will be taken.

Expansion of temporary disability insurance (TDI) and family leave insurance (PFI)

Under the TDI and PFI laws, an employee is eligible for up to 26 weeks of TDI for their own disabling accident or sickness and up to 12 weeks of PFI to care for a family member with a serious health condition. S2304/2374 expand the definition of accident and sickness as well as disability for purposes of TDI and serious health condition for purposes of PFI to include an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of the employee (TDI) or a family member (PFI) of the employee due to:

- The issuance by a HCP or a PHA of a determination that the presence of an employee or family member (as applicable) may jeopardize the health of others; and

- The recommendation, direction or order of the HCP or PHA that the employee or family member (as applicable) be isolated or quarantined because of suspected exposure to the communicable disease.

Like the recent expansions to the NY statutory disability and statutory paid family leave benefits, this expansion appears to be limited to individualized circumstances in which the health of the employee or the family member necessitates quarantine or isolation upon recommendation by other a HCP or PHA.

The amendment also provides that any covered claims for the temporary disability benefit resulting from this newly expanded epidemic claim reason will not be subject to a benefit waiting period. Rather, benefits for disability benefits will start on the first day of the disability.

New law prohibiting adverse action against an employee who requests or takes time off from work because of COVID-19.

On March 20, 2020, Governor Murphy signed A3848 which provides that during a Public Health Emergency or Governor SOE because of COVID-19, an employer may not terminate or otherwise penalize an employee if the employee requests or takes time off from work based on the written or electronically transmitted recommendation of a medical professional licensed in New Jersey that the employee take that time off for a specified period of time because the employee has, or is likely to have, an infectious disease which may infect others at the employee's workplace. The Act further provides that an employer may not refuse to reinstate the employee to employment in the position held when the leave commenced with no reduction in seniority status, employment benefits, pay or other terms and conditions of employment. Regulations were adopted at the same time as A3848 make clear that if an employer experiences a reduction in force or layoff during the leave and the employee would have lost their position had the employee not been on leave the employee is not entitled to reinstatement. The regulation is contained in NJ ADC 1:70-1.3.

Revisions to State Warn Act.

On April 14, 2020, Governor Murphy signed S2353 which is an amendment to New Jersey's WARN Act with the intention of providing relief to employers who need to conduct mass layoffs as a result of COVID-19. The amendment excludes from the definition of mass layoff a circumstance where layoffs are necessitated by, among other things, a national emergency. Since the COVID-19 pandemic has been declared a national emergency, mass layoffs that are necessitated by the pandemic should no longer trigger the New Jersey WARN Act's advance notice and/or severance requirements. The bill also delays the effective date of the WARN Act until the 90th day following the termination of the state of emergency declared in Governor Murphy's 3/9/20 Executive Order.

*You may also know this as your Temporary Disability Benefits (TDB) administered by Sun Life.

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