

## New Jersey Expands Paid Family Leave Laws to Cover More Employers, Double Leave Time, Increase Uses, and Raise Benefits

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On February 19, 2019, New Jersey Governor Phil Murphy signed into law [A 3975](#) (“the Act”), which significantly expands the state’s various family leave and benefits laws and makes them more consistent with one another. Among other changes, here are the Act’s “top ten” revisions to current law:

1. extends the Family Leave Act to employers who have 30 or more employees (from employers with 50 or more employees);
2. increases the period of time during which an employee may take leave on a reduced schedule (in full-day increments) to 12 consecutive months (from 24 weeks);<sup>[1]</sup>
3. increases New Jersey Family Leave Insurance (“FLI”) benefits for intermittent leave from 42 days to 56 days within a 12-month period;<sup>[2]</sup>
4. no longer requires the employer’s consent to take intermittent or reduced-schedule Family Leave Act leave following the birth or placement of a child;
5. extends FLI benefits to 12 weeks per year (from six weeks);
6. eliminates the employer’s option to require employees to use two weeks of paid time off (“PTO”) before becoming eligible for FLI benefits, and permits employees to use PTO before using FLI, without diminishing their FLI entitlement;
7. expands FLI to provide benefits to employees on Security and Financial Empowerment Act (“SAFE Act”) leave (e.g., leave arising from domestic violence or a sexually violent offense);
8. increases the amount of weekly FLI benefits an employee may receive, while reiterating that FLI (including the increases) is wholly funded by employee contributions;
9. broadens and unifies the definitions of “parent” and “family member” under the Family Leave Act, FLI, and the SAFE Act; and
10. applies the FLI’s notification requirements to the Family Leave Act, and relaxes certain SAFE Act notification requirements.

Although the Act takes effect immediately, certain amendments will not become effective until later this year or next year. The following describes the revisions in more detail and provides a timeline for their enactment.

### Expanded Employer Coverage Under the Family Leave Act



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Beginning June 30, 2019, the Family Leave Act applies to employers with 30 or more employees, as opposed to employers with 50 or more employees. This lowered threshold means that smaller employers will also be required to provide up to 12 weeks of job-protected Family Leave Act leave in a 24-month period to eligible employees. Employers should remember that:

- in determining whether an employer is obligated to provide Family Leave Act leave, all of the employer's employees are counted (not just those working in New Jersey); and
- even if a New Jersey employee is not entitled to job-protected leave under the Family Leave Act (e.g., because the employer has fewer than 30 employees), the employee may nevertheless be entitled to FLI benefits.

## **Extended and Increased FLI Benefits**

Effective July 1, 2020, the Act increases the amount and availability of FLI benefits in several significant ways, including by:

- doubling the number of weeks an employee may receive FLI benefits, from the current six-week maximum to 12 weeks in a 12-month period;
- increasing the number of days an employee may receive FLI benefits for leave taken intermittently, from the current 42 days to 56 days;
- extending the availability of FLI benefits to employees taking certain SAFE Act leave (as discussed below); and
- increasing the maximum weekly wage rate for FLI benefits from two thirds of an employee's pay (currently capped at \$650 per week) to 85 percent of wages.<sup>[3]</sup>

Effective July 1, 2019, the Act also eliminates the seven-day waiting period for payment of FLI benefits.

## **Extended Period of Family Leave Act Reduced-Schedule/Intermittent Leave and Increased Employee Scheduling Flexibility**

Effective immediately, the Act expands the period of time over which an employee can work an intermittent or reduced-schedule leave, from 24 weeks to 12 consecutive months. Additionally, the Act removes the mandate that employees obtain their employer's consent before taking intermittent leave for the placement of, or to bond with, a new child. (Note: Such consent was never required for a leave to care for a seriously ill family member, when medically necessary.)

## **Broadened Definitions**

The Family Leave Act and FLI have each had their own definitions of "parent," "child," and "family member," and the SAFE Act never defined these terms. Effective immediately, the Act broadens the definitions and makes them consistent across all of these statutes, as follows:

- "Family temporary disability leave" (for the purpose of receiving FLI benefits) means leave taken by a covered individual to:
- participate in providing care for the individual's family member, made necessary by the family member's serious health condition;
- be with a child during the first 12 months after the child's birth, adoption, or foster care placement, if the individual, or the domestic or civil union partner of the individual, is a biological parent of the child, or is a parent of the child pursuant to a valid gestational carrier agreement; or
- engage in activities for which unpaid leave may be taken under the SAFE Act on the individual's own behalf, if the individual is a victim of an incident of domestic violence or a sexually violent offense, or to assist a family member who has been a victim of such an incident.

*Note:* The Family Leave Act does *not* provide leave for an employee's own serious health condition. If an individual who is a victim of an incident of domestic or sexual violence receives benefits for a disability resulting from the violence, such leave is regarded as temporary disability insurance ("TDI") leave and not as family temporary disability leave.<sup>[4]</sup>

- “Family member” means a sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, or parent of a covered individual, or any other individual related by blood to the employee, and any other individual who has a close association that “is the equivalent of a family relationship” with the employee.
- “Parent of a covered individual” means a biological parent, foster parent, adoptive parent, resource family parent, parent-in-law, or step-parent of the covered individual, or a person who was a legal guardian of the covered individual when the covered individual was a child, or who became the parent of the child pursuant to a valid written agreement between the parent and a gestational carrier.
- “Child” means a biological, adopted, or foster child, a stepchild or legal ward of a covered individual, a child of a domestic or civil union partner of the covered individual, a resource family child, or a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier. Further, the amended definition of “child” eliminates the 18-years-of-age maximum for most children to be covered under the Family Leave Act and FLI. A parent now will be entitled to Family Leave Act leave and FLI income replacement benefits to care for a covered child, regardless of the child’s age or self-care capabilities.

## **Notice by the Employee**

### ***Continuous Leaves***

Existing law remains intact for leave taken on a continuous (rather than an intermittent or reduced-schedule) basis to care for a seriously ill family member. That is, when possible, the employee must (i) provide the employer with notice of the leave in a “reasonable and practicable manner” and (ii) make a reasonable effort to schedule the leave so as not to unduly disrupt the employer’s operations.

Similarly, the notice requirements of the law remain unchanged when the continuous leave is for the care of a child after birth, adoption, or foster care placement. The employee is required to give at least 30 days’ notice of the intent to take leave, except when unforeseen circumstances prevent such notice.

### ***Intermittent Leaves***

The Act requires employees who take intermittent or reduced-schedule leave<sup>[5]</sup> to care for either (i) a family member with a serious health condition or (ii) a child after birth, adoption, or foster care placement to:

- provide the employer with at least 15 days’ notice “before the first day on which benefits are paid” for the intermittent or reduced-schedule leave, unless it is not possible to do so; and
- make “a reasonable effort” to:
  - schedule the leave so as not to unduly disrupt the employer’s operations; and
  - “if possible,” prior to commencing the leave, provide the employer with a schedule of the day(s) of the week on which the employee will be taking leave.

## **Use of Paid Time Off**

The Act eliminates the employer’s option to require that employees use two weeks of PTO before becoming eligible for FLI benefits. Employees, however, may opt to use PTO, where available, before using FLI, and may do so without diminishing their FLI entitlement.

Notably, the recently-enacted Paid Sick Leave Law requires employers to provide up to 40 hours of paid leave annually to be used for, among other things, purposes covered by the SAFE Act. However, the new Act prohibits employers from mandating that employees use PTO during unpaid SAFE Act leave, though employees may elect to do so.

## **Other Provisions**

### ***Prohibition Against Retaliation by Non-Reinstatement***

The Act bolsters the prohibition on discrimination and retaliation against employees who exercise their rights to FLI (or TDI) by adding a provision that bars employers from retaliating against employees “by refusing to restore the employee following a period of [FLI or TDI] leave.” While the Act does not create a right to reinstatement under the FLI as exists under the Family Leave Act, as a practical matter, the risks of refusing to reinstate an

employee have been heightened. Accordingly, employers should be prepared to show a legitimate business reason for a decision not to reinstate (e.g., failure to return to work following leave or job elimination).

### **Penalty for Failure to Post Required Notices**

The Act explicitly extends the law’s penalty provisions to include penalties for failure to post and distribute mandated notices and disclosures.

### **Timeline of the Effective Dates of the Amendments**

The following table outlines milestone dates for compliance:

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<b>Effective Date</b>	<b>Applicable Provisions</b>
February 19, 2019	<ul style="list-style-type: none"><li>• The Act (A 3975) is signed into law and becomes effective, except as noted below. Thus, effective immediately:<ul style="list-style-type: none"><li>◦ The definitions of “family temporary disability leave,” “parent of a covered individual,” “child,” and “retaliation” are expanded;</li><li>◦ FLI benefits apply to employees taking certain SAFE Act leaves;</li><li>◦ An employee may work intermittently or on a reduced-schedule basis during a period of 12 consecutive months;</li><li>◦ An employee need not obtain his or her employer’s consent to take intermittent or reduced-schedule leave to bond with a child;</li><li>◦ An employer may no longer require that employees use two weeks of PTO before becoming eligible for FLI benefits;</li><li>◦ Employees who take intermittent or reduced-schedule leave must provide employers with only 15 days’ notice; and</li><li>◦ Employers are subject to penalties for failure to post required notices.</li></ul></li></ul>
June 30, 2019	<ul style="list-style-type: none"><li>• The Family Leave Act applies to employers with 30 or more employees.</li></ul>
July 1, 2019	<ul style="list-style-type: none"><li>• The seven-day waiting period for FLI benefits is eliminated.</li><li>• Employees are entitled to 12 weeks of FLI benefits in a 12-month period.</li></ul>
July 1, 2020	<ul style="list-style-type: none"><li>• Employees are entitled to 56 days of FLI benefits for intermittent leave.</li><li>• The maximum weekly wage rate for FLI benefits increases to 85 percent of wages (capped at \$860 per week).</li></ul>

### **What Employers Should Do Now**

As many of the Act’s provisions are effective immediately, and as smaller employers will become subject to the Family Leave Act for the first time in just a few months, all covered employers should promptly:

- Review and revise—and, if newly covered by the Family Leave Act, prepare—procedures, policies, and handbook leave provisions that are compliant with the Act. Among other things, employers should, as applicable:
  - revise the definitions of persons covered by the laws;
  - add SAFE Act reasons to the list of purposes for which FLI benefits are available;

- amend employee notification procedures;
  - eliminate any requirements to use PTO for SAFE Act leave, or up to two weeks of paid leave for other FLI purposes; and
  - eliminate the requirement that Family Leave Act leave for the birth or placement of child be consecutive.
- Update NJ Family Leave Act and NJ Family Leave Insurance Act posters and notices, when issued.
  - Train human resources staff and supervisors on changes made to the company's practices and policies as a result of the Act, such as the broadened definitions of who is covered under the Act and the expanded ban on retaliation.

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## ENDNOTES

[1] The Act defines "reduced leave schedule" as "leave scheduled for fewer than an employee's usual number of hours worked per workweek but not for fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer."

[2] The Act does not define "intermittent leave"; however, the Family Leave Act regulations define "intermittent leave" as "a nonconsecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12 month period."

[3] The maximum benefit is set annually by the New Jersey Department of Labor according to statutory formula. FLI is funded wholly by employee payroll deductions; no part of FLI benefits are funded by employer contributions.

[4] The Act also extends TDI leave to 12 weeks.

[5] Although as a technical matter, intermittent leave and reduced-schedule leave are defined differently for Family Leave Act purposes, as a practical matter, the terms are often used interchangeably. Accordingly, for ease of administration and prudence, employers should use the same notice and scheduling requirements for both.

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