

CLIENT ALERT

May 2008

New Jersey Becomes Third State to Require Paid Family Leave

On May 2, 2008, despite strong opposition by business associations and employers throughout the State of New Jersey, Governor Jon Corzine signed legislation extending the State's existing temporary disability insurance program to entitle employees working in the State to receive up to six (6) weeks of paid leave per year after the birth or adoption of a child or to take care of a seriously ill relative.

Under the new legislation, any employee seeking paid family leave must provide his or her employer with at least 30-days advanced notice unless unforeseen. The employee would also have to submit to the State an application for such benefits supported by a certification from a health care provider. If eligible, the employee would receive two-thirds of his or her regular weekly pay up to a maximum weekly benefit of \$524.00 per week. Those benefits would be paid to the employee by the State following a waiting period of seven (7) consecutive days. The employer may require the employee to take up to two (2) weeks of available sick and vacation time at full pay (one (1) week of which would be used to cover the seven (7)-day waiting period), which would count towards the total paid family leave to which an employee is entitled.

The new benefit will be fully funded through employee payroll deductions on the first \$27,700.00 earned by employees, with a maximum annual contribution of \$33.00 per employee per year. Employees' contributions by way of payroll deductions will begin on January 1, 2009. The paid family leave benefits will be available to all employees in the State, effective July 1, 2009.

Currently, the federal Family and Medical Leave Act (“FMLA”) and the New Jersey Family Leave Act (“NJFLA”) entitle employees to twelve (12) weeks of unpaid family leave. Employers with fewer than fifty (50) employees are exempt from those Acts. The new paid family leave insurance legislation applies to all employers regardless of the number of workers it employs.

Beginning July 1, 2009, an employee of an employer having fifty (50) or more employees, who needs a leave of absence following the birth or adoption of a child or to take care of a seriously ill relative, may apply for unpaid leave under the FMLA and the NJFLA, and may apply for paid leave under the new legislation. Once approved, the paid family leave benefits would run concurrently (not consecutively) with any leave provided to the employee under the FMLA and/or the NJFLA. Thus, the new legislation does not extend the length of the leave provided under the FMLA and the FLA; it runs at the same time as the FMLA and/or NJFLA leave. The employer, however, under the FMLA and the FLA would have to hold open the employee’s job.

Under the new legislation, employers with less than fifty (50) employees, to which the FMLA and the NJFLA do not apply, have no obligation to hold the employee’s job open during the paid family leave, and can permanently replace the employee without running the risk of being sued.

Employers should also be advised that similar to the FMLA and the NJFLA, the employee has the option to receive the paid family leave benefits on an intermittent basis and, thus, is not required to take all six (6) weeks of paid leave at once. Intermittent leave may be taken at one (1)-day intervals.

If you have questions regarding the new paid family leave legislation, please contact John K. Bennett and Michael A. Shadiack at Connell Foley LLP (973) 535-0500.