

## Additional COVID-19 Benefits for New Jersey Employees

By Vanessa M. Kelly, Esq.  
Clark Hill PLC  
Princeton, NJ  
[vkelly@clarkhill.com](mailto:vkelly@clarkhill.com)  
609.785.2926

On April 14, 2020, Governor Murphy signed Senate Bill 2374 into law which amends both the New Jersey Family Leave Act (NJFLA) and the New Jersey Family Leave Insurance Law (NJFLI). S-2374 expands NJFLA rights for emergency situations such as those present with COVID-19. The Amendments are retroactive to March 25, 2020. As a reminder, the NJFLA applies to employers with 30 or more employees, regardless of whether all those employees work in the State of New Jersey. S-2374 also expands the definition of an employee's "own disability" to include COVID-19 related issues for the purpose of temporary disability leave (NJTDL).

### **NJFLA Amendments**

Under the Amended NJFLA, eligible employees may now take protected unpaid leave for up to 12 weeks during a 24-month period where:

- A state of emergency is declared by the Governor or Public Health Authority;
- Relating to an "epidemic," a "known or suspected exposure to a communicable disease,"
- Requiring a covered employee to care for a family member because:
  - A child's school or place of care has been closed due to epidemic or public emergency;
  - A family member is subject to a mandatory quarantine order as a result of illness cause by an epidemic or where the family member's exposure would jeopardize the health of others; or
  - A family member is in voluntary self-quarantine as recommended by a health care provider or public authority as a result of suspected exposure to a communicable disease.

An employer may request a certification issued by a school, care provider, public health authority, public official or health care provider to verify the need for leave. Only limited information need be provided, such as date and reason for school/child care facility closure; date of public health determination of quarantine or other prophylactic measures; date of recommendation from health care provider and medical facts regarding the condition. Also, an employer may not deny NJFLA leave to a highly compensated employee if leave is taken for COVID (epidemic/state of emergency) reasons. Lastly, the leave may be taken on an intermittent basis.

### **NJFLI Amendments**

S-2374 also expands the definition of “family temporary disability leave” in the NJFLI to now include leave taken to care for a family member relating to COVID-19. In a state of emergency declared by the Governor or Health Authority, family temporary disability leave now includes “an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent the spread of the communicable disease” requiring the employee to provide in-home care or treatment of the family member where:

- a healthcare provider or the commissioner or other public health authority has determined that the presence in the community of the family member may jeopardize the health of others; and
- the recommendation, direction, or order of the provider or authority requires that the family member be isolated or quarantined as a result of suspected exposure to a communicable disease.”

In effect, the NJFLI will provide wage replacement benefits for up to 6 weeks (12 weeks effective July 1, 2020) for the reasons listed above. Furthermore, a seven-day waiting period does not apply to COVID-19-related disability benefits.

### **Temporary Disability Insurance (NJTDI) Amendments**

In event of a state of emergency declared by the Governor or Health Authority, disability now includes “an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of the communicable disease,” which requires in-home care or treatment of an employee where:

- a health provider, the Commissioner, or other Health Official determines that the presence of the employee in the community may jeopardize the health of others; and
- a health care provider or health authority recommends or orders the employee be isolated or self-quarantined as a result of a suspected exposure to a communicable disease.

Under these conditions, an employee may be eligible for NJTDI.

As a reminder, these amendments are not temporary in nature and as such, employers may want to consider updating policies to include these additional eligibility criteria in their NJFLA, NJFLI and NJTDI policies.