

April 2008 / Special Alert

A legal update from Dechert's Labor and Employment and Employee Benefits and Executive Compensation Groups

## New Jersey Legislature Passes Paid Family Leave Bill

The New Jersey Legislature, on April 7, 2008, gave final approval to a bill that would make New Jersey just the third state in the nation to offer employees paid family leave to care for seriously ill family members, newborns, or newly adopted children. New Jersey Governor Jon S. Corzine is expected to sign the bill into law in the near future. If signed, individuals working in New Jersey would be eligible for paid family leave beginning on July 1, 2009.

Since the 1990s, the New Jersey Family Leave Act (NJFLA) and the federal Family and Medical Leave Act (FMLA) have required New Jersey employers with 50 or more employees to offer their employees up to 12 weeks of unpaid leave to care for a newborn, a newly adopted child, or a family member with a serious health condition. The NJFLA and FMLA protect the jobs of employees who take covered leave, but the statutes do not mandate that employees be paid while they are on leave.

The paid family leave bill does not alter an employee's rights under the NJFLA or the FMLA. Instead, the legislation allows workers taking unpaid leave under the NJFLA or FMLA to receive limited pay under New Jersey's existing Temporary Disability Benefits Law. In addition, the legislation allows individuals working for employers who are not subject to the NJFLA or FMLA, i.e., employers who have fewer than 50 employees, to receive pay when they must care for a new child or a seriously ill family member.

The paid family leave bill provides employees with up to six weeks of paid leave to assist seriously ill family members who are receiving inpatient care in a medical facility or who are un-

dergoing continuing medical treatment by a health care provider. Like the NJFLA, and in contrast to the FMLA, the paid family leave bill does not cover leave taken by an employee to deal with his or her own serious health condition. Paid leave to care for family members can be taken in a single continuous period or, when medically necessary, on an intermittent basis. Leave taken on an intermittent basis may not exceed a total of 42 days per year. Workers are also entitled to six weeks of paid leave to care for a child within the first twelve months of the child's birth or placement for adoption with the worker's family. The bill requires leave for birth or adoption of a child to be taken in a single continuous period of time unless the employer agrees to allow non-consecutive weeks of leave. As under the NJFLA, covered family members include an employee's domestic partner or civil union partner.

Employees are required to schedule leave to care for sick family members in a manner that minimizes disruption of the employer's business operations, when possible. If intermittent leave is needed, employees must give their employer at least 15 days notice unless an emergency or other unforeseen circumstance precludes prior notice. As to leave for birth or adoption of a child, employees must give their employer at least 30 days notice if the need for leave is foreseeable.

Employees seeking paid family leave benefits will be required to apply in the same manner as employees seeking disability pay under New Jersey's Temporary Disability Benefits Law. Employees may receive two-thirds of their weekly salary up to a maximum benefit of \$524

per week, based upon current temporary disability benefit levels. The average weekly benefit paid is expected to total about \$415. The New Jersey Office of Legislative Services estimates that approximately 38,000 workers will file paid family leave claims every year with an annual cost of over \$90 million to the State. The revenue to fund such a sizeable paid family leave program will be generated through a new payroll tax imposed solely on employees. The tax is projected to cost each employee about \$33 a year. The bill requires employers to begin collecting this new payroll tax on January 1, 2009.

Although the paid family leave bill provides for partial wage protection, the bill does not directly provide job protection for individuals who take leave. The legislation expressly states that employees are not entitled to reinstatement to their former position following leave, and are strictly prohibited from pursuing any action against employers who refuse reinstatement. Employers subject to NJFLA or FMLA, i.e., those with 50 or more employees, will nevertheless have an obligation to reinstate their employees. Both the NJFLA and the FMLA provide job protection to employees taking covered leave.

The only other states to have adopted paid family leave legislation are California and Washington. In 2004, California passed a law that, like New Jersey, allows workers to take up to six weeks of paid leave. In 2007, Washington passed a law that permits workers to take five weeks of paid family leave effective October 2009.

Employer groups in New Jersey vigorously opposed passage of paid family leave for a variety of reasons, including the workplace disruption that may be caused as additional workers seek to take advantage of the new paid leave feature. In addition, New Jersey is currently in a fiscal crisis and will need to borrow additional sums to cover the start-up costs of the program.

To date, the New Jersey Department of Labor (DOL) has not published regulations to guide employers when implementing the provisions of the paid family leave bill. Employers should seek the advice of legal counsel if they have any questions or concerns regarding the legislation.

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## Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at [www.dechert.com/employment](http://www.dechert.com/employment) or [www.dechert.com/employeebenefits](http://www.dechert.com/employeebenefits).

**Alan D. Berkowitz**  
Philadelphia  
+1 215 994 2170  
[alan.berkowitz@dechert.com](mailto:alan.berkowitz@dechert.com)

**Ian Downes**  
Philadelphia  
+1 215 994 2346  
[ian.downes@dechert.com](mailto:ian.downes@dechert.com)

**Jerome A. Hoffman**  
Philadelphia  
+1 215 994 2578  
[jerome.hoffman@dechert.com](mailto:jerome.hoffman@dechert.com)

**David F. Jones**  
Philadelphia  
+1 215 994 2822  
[david.jones@dechert.com](mailto:david.jones@dechert.com)

**Paul S. Kimbol**  
Philadelphia  
+1 215 994 2603  
[paul.kimbol@dechert.com](mailto:paul.kimbol@dechert.com)