

# NEW JERSEY STATE AFL-CIO

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## PAID FAMILY LEAVE INSURANCE FACT SHEET

The bill (A-873 of 2008 – Prime Sponsors: Sen. Sweeney, Sen. Buono, Assemblyman Albano, Assemblywomen Oliver & Greenstein and Assemblyman DeAngelo) was signed into law by Governor Jon S. Corzine in May 2008. It extends the state's existing Temporary Disability Insurance Program to provide insurance benefits to most New Jersey workers when they take time off to care for newborn and newly adopted children or sick family members.

### Who is Eligible?

The vast majority, but not all employees are eligible for benefits, regardless of the size of your employer. This includes workers who are employed by a small business with 50 or less employees. The only workers that are exempt from receiving benefits are federal employees and workers that are exempt from paying Unemployment Insurance contributions, such as the self-employed and independent contractors.

Workers who have been employed for 20 weeks in New Jersey during 52 weeks preceding leave are eligible, keeping in mind the above exemptions.

### How Does a Worker Apply for Benefits?

The New Jersey Department of Labor and Workforce Development is developing an application form that will be available after June 1, 2009. The form will be available via the internet at <http://lwd.state.nj.us/labor/fli/fliindex.html> or by telephoning 609-292-7060. This number can also be called to answer questions about the program. Private plans will develop their own forms. Applications will not be accepted prior to the July 1, 2009 program start date. Employees can receive case specific information by e-mailing the department at: [fli@dol.state.nj.us](mailto:fli@dol.state.nj.us)

### For What Reasons Can Employees Take Paid Leave?

To care for a newborn, within 12 months of birth, or to care for a newly adopted child, within 12 months of placement, or to care for a family member with a serious health condition. Eligible family members are spouses, civil union partners, domestic partners, parents or children. Paid Family Leave cannot be used to care for yourself if you get sick.

### What is the Length of Leave Allowable?

Permits up to six weeks of leave for workers to provide care for a sick family member or care for a newborn or newly adopted child. Employees receive six weeks for “any one period” of family leave or 42 days with respect to “any one period” of family leave taken on an intermittent basis to care for a sick family member. This occurs during any 12 month period.

### **What is the Benefit?**

Allows workers to receive no more than two-thirds of their weekly pay, up to a maximum weekly benefit of approximately \$546 in 2009 (the amount is indexed annually according to the State Average Weekly Wage).

### **How is it Funded?**

The program is 100% funded by employee contributions through a payroll deduction on the first \$28,900 earned (2009 level). The deduction would amount to a maximum of approximately \$33 a year or 64 cents a week. The benefit requires no contributions from employers.

### **When Can Workers Apply?**

Employee payroll deductions began on January 1, 2009, and benefits will become available on July 1, 2009.

### **Are Workers Guaranteed Their Jobs after the Leave is Over?**

Small businesses (less than 50 employees) have the option to replace employees receiving FLI benefits. This provision is consistent with the Federal Medical Leave Act (FMLA). Small businesses do not have to hold jobs open and provisions in the law allows small businesses to fill a worker's position with a permanent replacement without running the risk of being sued. Jobs are retained for employers with 50 or more employees.

### **Are Their Protections Against Fraud?**

The law prevents fraudulent claims by using measures contained in the Temporary Disability Benefits Law, including criminal penalties and increased fines for those who improperly claim benefits. Employers receive notice when benefits are claimed and have the right to appeal eligibility determinations.

### **How is the Benefit Coordinated with the FMLA and NJFLA?**

Ensures benefits would run concurrently with any leave provided under the New Jersey Family Leave Act and the federal Family and Medical Leave Act - not consecutively.

### **My Collective Bargaining Agreement (CBA) Has a Paid Family Leave Provision. How does that effect my use of the State Paid Family Leave Program?**

Because CBA provisions on this issue vary drastically, please consult with your union. Your CBA agreement may grant you additional benefits.

### **Can Employees Use the Benefit Intermittently?**

The law offers employees the option to receive benefits intermittently creating a flexible arrangement to meet the needs of both employees and employers.

**Is Intermittent Paid Family Leave Allowed to Care for A Sick Relative?**

Yes, as long as the total time within leave is taken does not exceed 12 months, as supported by medical certification as to medical necessity and also providing at least 15 days prior notice, absent emergency or unforeseen circumstances. Employer consent is not required.

**Is Intermittent Paid Family Leave Allowed To Care for Newborn or Adopted Child?**

Yes, but only with the approval of the employer.

**How Much Notice Must Employees Provide?**

To care for a sick relative and for consecutive leave, prior notice must be provided “in a reasonable and practical manner” absent emergency or unforeseen circumstances. For intermittent leave, prior notice must be given 15 days, absent emergency or unforeseen circumstances.

To Care for Newborn or Adopted Child, prior notice must be given 30 days ahead and failure to provide required notice will result in loss of two weeks worth of benefits, unless due to unforeseeable circumstances

**Is a Medical Certification Required?**

Yes, when leave is requested to provide care to a sick family member.

If intermittent leave is taken, it must also state that it is medically necessary, explain the expected duration and if the leave is due to medical treatment, the dates of the treatment.

**Is There a Waiting Period for Paid Leave Benefits?**

Yes, there is a one week waiting period. The waiting period applies to the payment of benefits, not the “start date” of the leave.

For example, in the case of an emergency to care for a sick family member, as long as the proper notice is given, the employee does not have to wait one week to get time off under the law.

Also, if you take three or more consecutive weeks of leave, you will get the first “waiting week benefit” paid. If you take less than three weeks, you will not get the “first waiting week” paid.

An employer must allow an employee to use their own fully paid sick or vacation time for the one week period if requested.

**Can Paid Family Leave Benefits be Provided through a Private Plan?**

Yes, just like TDI benefits. The application for private plans is developed by employers. The law specifies what type of information can be requested by the employer. Private plans must have benefit levels that are equal to the state plan. Furthermore, eligibility requirements under a state plan cannot be more stringent than eligibility requirements for the public plan and a private plan cannot charge employees more than what the state plan costs.

### **Can the Employer Deny a Paid Family Leave Benefit Request?**

The State (or private plan) determines whether to grant Paid Family Leave benefits and the employer may challenge that determination by the same appeal procedures applicable to TDI appeals.

### **What are an Employer's Notice Obligations?**

Employers must conspicuously post notice of Paid Family Leave Rights, using a form issued by the DOL and also must provide a written copy of the notice to each employee within 30 days after the DOL issues it. A written copy must be provided to each employee at time of hiring and also must provide written notice whenever an employee notifies the employer of need for leave and also must provide written notice upon the first request of the employee.

### **Are there Penalties for Filing a False Claim?**

Yes, \$250 fine for each false statement made to get benefits and a \$1,000 fine for violations with intent to defraud the State.

### **I Work in Another State, but I Live in New Jersey. Am I eligible for Paid Family Leave?**

No. The benefit is employer based, not employee based. This is consistent with Unemployment Insurance and Temporary Disability Benefits. If you live in another state, but work in New Jersey, you are eligible.

### **Can an Employer Require the Use of Paid Time Off?**

The employer may (they are not required to under the law) require employees to first use two weeks sick, vacation or other fully paid time off accrued under company policy before using Paid Family Leave. If your sick or vacation days are not fully paid for by the employer, they cannot require the employee to use them first.

Example: An employee has 15 fully paid vacation or fully paid sick days per year and is seeking to take six consecutive weeks off under Paid Family Leave. The employer's policy is to require the employee to use "the first two weeks" of their paid vacation or paid sick days.

Under this scenario, the employee would get full pay for the first two weeks and those two weeks would be deducted from that year's vacation or sick time. The employee would then receive the next four weeks of pay at 2/3 of their salary, up to the allowable maximum.

The employer may allow, but cannot require, that employees use more than two weeks of fully paid vacation or fully paid sick days – or to use all available sick, vacation or other fully paid time off accrued under company policy before using Paid Family Leave. This would result in higher monetary compensation for the employee.

If the employee does not have paid vacation or paid sick days or other fully paid time off, then the employer cannot require them to use unpaid vacation or sick days for the first two weeks.