

## **WHAT IS NEW JERSEY FAMILY LEAVE INSURANCE?**

- A new law that extends the temporary disability benefits program, so as to provide to covered individuals family leave insurance benefits, of up to six weeks off a year with limited pay, to care for a family member with a serious health condition or to bond with a newborn or newly adopted child.
- New Jersey was the third state in the country to enact such a law, joining California and Washington, when Governor Corzine signed it into law on May 2, 2008.
- The Act does not confer leave entitlement, but a monetary benefit for which eligible employees may or may not file a claim.

## **WHAT EMPLOYERS ARE COVERED BY NEW JERSEY FAMILY LEAVE INSURANCE?**

- Employees of all private and governmental employees subject to the N.J. Unemployment Compensation Law are covered.
- No minimum number of employees is required (unlike the Family and Medical Leave Act and the New Jersey Family Leave Act).
- Even though a governmental employer has chosen not to elect coverage under the N.J. Temporary Disability Law, there is no such exemption under New Jersey Family Leave Insurance.

## **DOES THE PAID FAMILY LEAVE ACT COVER ALL EMPLOYEES?**

- It covers all employees who are eligible as defined by New Jersey's Unemployment Compensation Law.
- This means that an employee must have worked at least 20 weeks for a covered employer and have earned no less than 20 times the minimum wage (currently \$143/week) OR earned at least 1,000 times the minimum wage (currently \$7,200) in the one year prior to the leave.
- Employers may be covered under the State Plan, an approved private plan (through an insurer or union or employer approved self-insured private plan) providing benefits equal to the State Plan, or family leave benefits during unemployment, if the period of leave begins more than 14 days after the last day of work.

## **HOW MUCH LEAVE DOES THE NEW LAW PERMIT?**

- Beginning July 1, 2009, employees are eligible for up to six weeks continuous paid leave or 42 days during a 12 month period.
- The leave begins on the first day that the employee establishes the claim.

## **HOW MUCH PAY MAY AN ELIGIBLE EMPLOYEE RECEIVE?**

- Up to 2/3 of his/her “average weekly wage” (up to \$546/week for claims as of July 1, 2009), adjusted annually. The daily benefit rate is one-seventh of the weekly rate.

## **HOW DOES THE PLAN DETERMINE “AVERAGE WEEKLY WAGE?”**

- Divide the total wages earned with the most recent covered employer in the 8 weeks prior to the leave by 8 (weekly earnings must be at least 20 times the minimum wage). If the average weekly wage would be higher by including wages earned from all covered employers during the 8 weeks preceding the leave, those wages should be included in the calculation.
- If the individual has just returned from his/her own disability leave, the period of Family Leave Insurance is considered to begin at the beginning of the period for the individual’s own disability, not the beginning of the period of temporary Family Leave Insurance. If claimant received N.J. Temporary Disability Insurance (TDI), pregnancy disability benefits and then files a Family Leave Insurance claim to bond with a newborn, the weekly benefit amount is the same as the TDI benefit, provided the bonding claim immediately follows the TDI claim.

## **WHO PROVIDES THE FUNDING FOR THE FAMILY LEAVE INSURANCE PROGRAM?**

- It is totally employee funded. Beginning January 1, 2009 employers are required to withhold 0.0009 from employees’ taxable wages as defined in the Unemployment Compensation Law. This is the same wage upon which the withholding for unemployment compensation and temporary disability insurance is based (\$28,900 in 2009). The withholding rate increases to 0.0012 beginning in 2010. Employers do not contribute to the program.

## **UNDER WHAT CIRCUMSTANCES MAY AN EMPLOYEE REQUEST PAID FAMILY LEAVE?**

- To care for a family member with a serious health condition who is unable to care for himself or herself.
- To bond with a child during the first 12 months after the child's birth, if the covered individual or the domestic or civil union partner of the covered individual is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the covered individual.

### **IMPORTANT DEFINITIONS:**

- A "family member" is defined as a child, spouse, parent, domestic partner, or civil union partner. Siblings and other relatives are not covered.
- A "child" means biological, adopted, or foster child, stepchild or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual. Further, to be considered a child, he/she must be less than 19 years of age or be 19 years of age or older but incapable of self-care because of mental or physical impairment.
- A "parent of a covered individual" means a biological parent, foster parent, adoptive parent, or step-parent of the eligible employee or a person who was a legal guardian of the eligible employee when the eligible employee was a child. Step-parent means the person to whom the covered individuals' biological parent is either currently married or with whom the covered individuals' biological parent is current sharing a civil union.
- "Care" is defined by the New Jersey Family Leave Act, to mean, "but is not limited to physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services."
- "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:
  1. Inpatient care in a hospital, hospice, or residential medical care facility; or
  2. Continuing medical treatment or continuing supervision by a health care provider.

As used in this definition, "continuing medical treatment or continuing supervision by a health care provider" means:

1. A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
  - i. Treatment two or more times by a health care provider; or
  - ii. Treatment by a health care provider on one occasion, which results in regimen of continuing treatment under the supervision of a health care provider;
2. Any period of incapacity due to pregnancy, or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
4. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

### **CAN EMPLOYEES RECEIVE FAMILY LEAVE INSURANCE BENEFITS IF THEY WORK PART TIME?**

- Yes, as long as they meet the other eligibility requirements. Family Leave Insurance is a wage loss protection program that provides partial wage replacement regardless of whether a claimant works full-time or part-time. However, an employee cannot receive Family Leave Insurance benefits and work part time.

## **IS A CLAIMANT REQUIRED TO TAKE FAMILY LEAVE INSURANCE ALL AT ONCE?**

- If leave is to care for a seriously ill family member, the leave may be taken during one continuous period, up to a maximum of six weeks, or intermittently up to a 42 day maximum, in intervals of not less than one day, in a 12-month period.
- If to bond with a newborn or newly adopted child, leave must be taken during one continuous period of time of seven days or more, unless the employee and employer have agreed to an intermittent schedule. This is something which could be negotiated.
- All bonding leave must be taken during the 12-month period immediately following the birth or adoption of the child.

## **MAY AN EMPLOYEE RECEIVE PAID FAMILY LEAVE COMPENSATION DURING INTERMITTENT LEAVE TO CARE FOR A FAMILY MEMBER?**

- Yes, employees may receive compensation during intermittent leave to care for a sick family member in which case an employee is entitled to 42 days.
- The total time within which the leave is taken must not exceed 12 months.
- The need for intermittent leave must be supported by a medical certification.
- Leave should be scheduled so as not to unduly disrupt the operations of the employer.

## **MAY AN EMPLOYEE RECEIVE PAID FAMILY LEAVE COMPENSATION DURING INTERMITTENT LEAVE TO CARE FOR A NEWBORN OR ADOPTED CHILD?**

- Leave for the care of a newborn or newly adopted child must be continuous, for at least seven days, unless the employer and employee agree that benefits are to be received in non-consecutive weeks, or the negotiated contract provides otherwise.
- If the employer consents to intermittent leave, it must disclose the agreement to the State.

## **WHAT DOCUMENTATION IS REQUIRED TO DEMONSTRATE THE “SERIOUS HEALTH CONDITION” OF A FAMILY MEMBER?**

- Medical certification, included as part of the application for benefits, which states the date the condition began (if known), the expected duration, medical facts regarding the condition, a statement that the condition warrants the participation of the employee, and an estimate of the amount of time care will be needed.
- For intermittent leave, the medical certification must state that intermittent leave is medically necessary, its expected duration, and the dates of any planned medical treatment.

## **MAY THE STATE OR PRIVATE PLAN REQUIRE ADDITIONAL MEDICAL EVALUATIONS?**

- The State or private plan may require that the family member with a serious health condition be examined by a State or private plan designated health care provider not more than once a week at State or private plan expense at a reasonable time and place.
- A family member’s refusal to submit to an examination shall disqualify a claimant from benefits, except benefits already paid.

## **WHAT IF AN EMPLOYEE ON FAMILY LEAVE INSURANCE BECOMES DISABLED?**

- An individual may not simultaneously receive benefits for Family Leave Insurance in conjunction with any other disability benefits (or any unemployment compensation).
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- Thus, an employee who becomes disabled and eligible for disability benefits while on paid family leave would no longer be eligible for paid family leave benefits.

## **WHAT ARE THE EMPLOYER’S NOTIFICATION OBLIGATIONS?**

- Post a notice of benefits in a conspicuous place within 30 days once it is issued by the Commission of Labor.
- Provide the notice to all new employees, to employees who request leave and may be eligible for benefits under this law, and to any employee who requests a copy.

## **WHEN MUST AN APPLICATION FOR BENEFITS BE FILED?**

- An application for benefits must be filed with the State or private plan within 30 days after the commencement of a period of family leave, unless it can be shown that it was not reasonably possible to furnish notice sooner, and the notice was furnished as soon as reasonably possible. If notice or proof is not furnished, the claim is reduced and limited to the period commencing 30 days prior to receipt of the notice or proof of family leave.

## **WHERE CAN AN INDIVIDUAL OBTAIN AN APPLICATION FOR CLAIM BENEFITS?**

- Application forms are available by visiting the Department of Labor and Workforce Development's website at [www.nj.gov/labor](http://www.nj.gov/labor), by telephoning TDI's Customer Service Section at (609) 292-7060, or by writing to the Division of Temporary Disability Insurance, P.O. Box 387, Trenton, New Jersey, 08625-0387.

## **IF MY CHILD WAS BORN OR PLACED FOR ADOPTION PRIOR TO JULY 1, 2009, CAN I BE ELIGIBLE TO CLAIM BENEFITS?**

- Yes, provided the child was born or placed for adoption within a year of the claim for benefits and all of the other eligibility requirements are met.

## **IS A CLAIMANT ELIGIBLE TO CARE FOR A SICK RELATIVE WHO IS OUT OF STATE OR OUT OF THE COUNTRY?**

- Yes, provided the medical certificate is properly completed and establishes a need for care.

## **WHAT NOTICE MUST EMPLOYEES PROVIDE EMPLOYERS WHEN REQUESTING FAMILY LEAVE INSURANCE TO CARE FOR A SICK FAMILY MEMBER?**

- Must provide prior notice in a “reasonable and practicable manner” unless an emergency or unforeseen circumstances preclude doing so.
- Must provide 15 days notice for intermittent leave to care for a family member with a serious health condition unless an emergency or unforeseen circumstances preclude doing so. Unlike failure to provide timely notice to the employer in connection with bonding leave, there is no reduction in benefits for any other untimely notice to an employer.
- Employees should try not to unduly disrupt business operations when requesting such leave.
- Employer notice need not be in writing nor contain any particular elements other than that the employee intends to take “family leave” as defined under the Act.
- This is notice to the employer of receipt of a monetary benefit, not the taking of leave. Regarding leave, the employee is still required to provide any notice mandated by the employer’s policy, collective bargaining agreement, the FMLA, or NJFLA.

## **WHAT NOTICE MUST EMPLOYEES PROVIDE EMPLOYERS WHEN REQUESTING FAMILY LEAVE INSURANCE TO CARE FOR A NEWBORN OR NEWLY ADOPTED CHILD?**

- The employee must provide 30 days notice prior to taking bonding leave in connection with the birth or adoption of a child.
- Failure to provide such notice will reduce benefits to the employee by two weeks, unless the time of the leave is unforeseeable, or changes for unforeseeable reasons.



## **WHAT IS THE IMPACT OF FAMILY LEAVE INSURANCE ON DOMESTIC PARTNERSHIPS AND CIVIL UNIONS?**

- Domestic partners and civil union partners may now take paid leave to care for each other or for the other's newborn or newly adopted child:
  - the definition of "family member" includes domestic partner or civil union partner.
  - the definition of "child" includes the child of a domestic partner or civil union partner.
- California is the only other state which provides paid leave for same sex partners.

## **MUST AN EMPLOYEE WHO IS TAKING NJFLA OR FMLA COVERED LEAVE TO CARE FOR A SERIOUSLY ILL FAMILY MEMBER OR TO BOND WITH A NEWBORN OR NEWLY ADOPTED CHILD ALSO FILE A CLAIM FOR FAMILY LEAVE INSURANCE BENEFITS FOR THAT SAME PERIOD OF LEAVE?**

- No. The law does not compel an employee to file a claim for Family Leave Insurance benefits at any given time, although there may be a legal advantage for doing so. The law states that an individual who is entitled to leave covered under the NJFLA or FMLA must "take" any Family Leave Insurance benefits "concurrently with leave taken pursuant to the NJFLA or the FMLA." This may be misconstrued by some to mean that when an employee requests and is granted permission by his or her employer to take leave from work to care for a seriously ill family member or to bond with a newborn or newly adopted child and where such leave is covered under the NJFLA or the FMLA, the employee must also apply for Family Leave Insurance benefits for the same period of leave. However, the purpose of the concurrent leave provision is not to compel an employee to apply for Family Leave Insurance benefits at any given time, but rather to ensure that the law which established the Family Leave Insurance program does not confer upon employees an additional six weeks of leave entitlement beyond the 12 weeks of unpaid leave to which such employees are entitled under the NJFLA and FMLA. The Family Leave Insurance benefits program does not confer upon employees leave entitlement, but rather, establishes a monetary benefit for which employees may file a claim either with the State or with the private plan provider.

## **WHAT ARE THE MINIMUM EARNINGS REQUIRED FOR AN EMPLOYEE TO BE ELIGIBLE FOR FAMILY LEAVE INSURANCE BENEFITS?**

- In order to have a valid claim for Family Leave Insurance benefits, a claimant must have had at least 20 calendar weeks in covered New Jersey employment in which he/she earned \$143 or more (called “base weeks”), or have earned \$7,200 or more in such employment during the “Base Year” period. The “Base Year” is the 52 weeks immediately before the week in which the family leave began. Only covered wages earned during the base year period can be used in determining a claim.

## **IS THERE A WAITING PERIOD BEFORE FAMILY LEAVE INSURANCE BENEFITS CAN BE PAID?**

- Yes. The first seven consecutive days of a claim is called the waiting period. If benefits are payable for any period during each of the three consecutive weeks following the waiting period, then benefits are also payable for the first week.
- In the case of intermittent family leave, if a single period of family leave is taken to provide care for a family member with a serious health condition, Family Leave Insurance benefits are payable with respect to the first day of leave taken after the waiting period and each subsequent day of leave during that period of family leave. If benefits become payable on any day after the first three weeks in which leave is taken, then benefits will also be payable for any leave taken during the waiting period.
- *Exception:* There is no additional seven-day waiting period for a Family Leave Insurance claim for benefits to bond with a newborn when the Family Leave Insurance claim is for the period immediately following a Temporary Disability Insurance (TDI) pregnancy-related claim.

## **IS THERE A MINIMUM NUMBER OF DAYS THAT AN EMPLOYEE MUST CLAIM TO USE THE BENEFITS?**

- No. The law only establishes a maximum leave time of six weeks in a 12-month period. Leave must be in intervals of not less than one day.

**IF A CLAIMANT RECEIVES SIX WEEKS OF FAMILY LEAVE INSURANCE BENEFITS TO BOND WITH A NEWBORN AND THEN HAS A PARENT BECOME SERIOUSLY ILL LATER IN THE YEAR, CAN A NEW CLAIM BE FILED SINCE THE LEAVE WOULD BE FOR A DIFFERENT REASON?**

- No. Claimants are limited to six weeks of benefits within a 12-month period regardless of the reason for the leave. If the maximum entitlement was not paid for the bonding claim, a new claim could be filed during the 12-month period to care for a seriously ill family member. The claimant would be eligible to receive the balance of the maximum entitlement, although may be subject to an additional waiting period.

**HOW IS THE 12-MONTH PERIOD DETERMINED?**

- Twelve-month period means, with respect to an individual who establishes a valid first claim for Family Leave Insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim. Twelve months later the individual may file a new claim, assuming all other eligibility requirements are met.

**CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO USE PAID TIME OFF DURING THE PERIOD THE EMPLOYEE IS CLAIMING FAMILY LEAVE INSURANCE BENEFITS?**

- Yes. An employer may require a claimant, during a period of family leave, to use up to two weeks of paid sick leave, paid vacation time or other leave at full pay. In a unionized environment, this option must be negotiated and does not relieve employers of any collective bargaining provisions with respect to paid time off. Employees are permitted to apply this time to the waiting period. When required to use paid leave for up to two weeks at full pay, the Employer may within a reasonable period of time, request that the State (or private plan) reduce the maximum family insurance leave benefits during the 12-month period, by the number of days of leave at full pay required by the Employer to be used and actually paid to the claimant. If this request is not made, the State or private plan shall not reduce the claimant's maximum family leave insurance benefits during the 12-month period by the number of days of leave at full pay paid by the Employer.

## **CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO USE MORE THAN TWO WEEKS OF PAID TIME OFF DURING THE PERIOD THE EMPLOYEE IS CLAIMING FAMILY LEAVE INSURANCE BENEFITS?**

- No. Although the employer may “require” the claimant, during a period of family leave, to use up to two weeks of paid sick leave, vacation time or other leave at full pay, the employer may only “permit” and may not require the claimant, to use more than two weeks of paid sick leave, vacation time, or other leave at full pay. Anything paid over two weeks, shall not reduce the claimant’s family leave insurance entitlement nor may the claimant receive family leave insurance benefits during this period.

## **HOW DOES THE RECEIPT OF PAID TIME OFF DURING THE PERIOD AN EMPLOYEE IS CLAIMING FAMILY LEAVE INSURANCE BENEFITS AFFECT THE AMOUNT OF BENEFITS THAT CAN BE PAID?**

- Family Leave Insurance benefits will not be paid for any day the employee receives wages or other paid time off at full pay. Additionally, when an employer requires the claimant to use paid time off at full pay, the employer may within a reasonable and practicable time request that the claimant’s maximum Family Leave Insurance benefit entitlement during the 12-month period be reduced by the number of days of leave at full pay up to two weeks (14 days) required by the employer to be used by the claimant. The employee is permitted to take the fully-paid leave during the required waiting period.

## **ARE FAMILY LEAVE INSURANCE BENEFITS REDUCED OR DENIED WHEN THE CARE PROVIDER/CLAIMANT IS RECEIVING BENEFITS FROM ANOTHER SOURCE?**

- Yes. Family Leave Insurance benefits are not payable for any period the claimant/care provider is receiving New Jersey Temporary Disability Insurance Benefits, Unemployment Compensation Benefits, Workers’ Compensation Benefits, or benefits from a disability or cash sickness program or similar law of any state or the federal government including, but not limited to, Social Security Disability benefits.

## **HOW ARE FAMILY LEAVE INSURANCE BENEFIT PAYMENTS TREATED FOR TAX PURPOSES?**

- Family Leave Insurance benefits must be included as income for Federal Income Tax purposes. Claimants will receive a Form 1099-G, certain government payments, showing the amount of benefits paid. Claimants should contact the IRS or their tax advisor to obtain additional information. Any paid sick, vacation, or other leave substituted for a portion of the first two weeks is fully taxable. For state tax purposes, Family Leave Insurance benefits are not taxable under the New Jersey Gross Income Tax.

## **CAN AN EMPLOYEE OPT OUT OF THE FAMILY LEAVE INSURANCE PROGRAM?**

- No. Family Leave Insurance is a component of the New Jersey Temporary Disability Benefits Law. Coverage and employee contributions are mandatory.

## **IS A FAMILY LEAVE INSURANCE CLAIMANT'S JOB PROTECTED?**

- No. The Act does not provide employees any job protection upon returning from leave. Small employers, who are not subject to the FMLA or FLA (50 or less employees) may permanently replace an employee on paid leave.
- This means that an employee receiving payment for leave who is terminated will not have a claim against the employer under Family Leave Insurance, including a claim for breach of an implied provision of the employment agreement, wrongful discharge in violation of public policy, or any other common law or tort claim for discharge in connection with receipt of *this* benefit.
- All unionized employees retain any just cause protections in the collective bargaining agreement and/or any Civil Service provisions if applicable. Employees receiving leave benefits in connection with any absence covered by the FMLA or NJFLA, are subject to the job protections in those enactments.

## **CAN AN EMPLOYER DENY AN EMPLOYEE PAID LEAVE BENEFITS?**

- No. While the employer chooses whether to grant leave, as with disability benefits, the state (or private plan) determines whether an employee is eligible for compensation while the employee is out on leave.
- Either an employer or an employee may appeal the State's or private plan's determination of whether an employee is entitled to benefits, similar to appeal rights under TDI.

## **WHAT ARE THE CONSEQUENCES FOR AN EMPLOYER'S FAILURE TO COMPLY?**

- The penalties for misrepresentations, fraud, and other violations regarding both the existing temporary disability benefits program and the paid family leave program are \$250 per statement or non-disclosure.
- The penalties for other willful violations are \$500 and additional penalties for violations with intent to defraud the program are not more than \$1,000.

## **HOW DOES FAMILY LEAVE INSURANCE IMPACT PRIVATE DISABILITY PLANS?**

- The legislation itself does not require any changes to existing private plans.
- Private plans may cover temporary disability benefits, paid family leave benefits, both or neither.
- Employers using an insurer provided or self-insured private plan may not charge more, lower benefits, or impose tighter eligibility rules than authorized under the State plan.

## **CAN A CLAIMANT USE FAMILY LEAVE INSURANCE BACK-TO-BACK WITH TDI CLAIM FOR PREGNANCY?**

- Yes, with no additional waiting period, as long as application is made immediately after recovery from a pregnancy related disability.

## **CAN INDIVIDUALS WHO ARE UNEMPLOYED FILE FOR FAMILY LEAVE INSURANCE BENEFITS?**

- Yes. If a claimant applies for Family Leave Insurance benefits more than 14 days after his/her last day of work, benefits may be payable under the provisions of the Family Leave Insurance Benefits During Unemployment Program. Individuals claiming benefits under this program must meet all the eligibility requirements of the Unemployment Compensation Laws, but are not required to establish availability for work.
- If eligible, benefits are paid for full weekly periods starting from Sunday through Saturday. There is no provision to pay for intermittent days under the Family Leave Insurance Benefits During Unemployment Program.

## **HOW DOES THIS NEW LAW INTERACT WITH THE FMLA AND THE NJFLA?**

- For purposes of entitlement to time off only, paid leave taken under Family Leave Insurance runs concurrently with leave taken under the FMLA and/or NJFLA whenever applicable.
- This means that leave taken under the new law will not provide employees with an additional six weeks of leave within a 12-month period, beyond the employee's FMLA and/or NJFLA entitlement. However, granting of FMLA or NJFLA leave does not obligate an individual to apply for Family Leave Insurance benefits.

## **WHAT ARE THE ELIGIBILITY DIFFERENCES BETWEEN THE LEAVE LAWS?**

- Family Leave Insurance: The employee must have earned 20 times the minimum wage over the previous 20 weeks (currently \$143/week) or \$7,150 over the previous year.
- FMLA: The employee must have worked 1,250 hours in the preceding 12 months, and there are requirements regarding requisite number of employees for coverage.
- NJFLA: The employee must have worked 1,000 hours in the preceding 12 months, and there are requirements regarding requisite number of employees for coverage..

## **HOW IS LEAVE UNDER THE FAMILY LEAVE INSURANCE ACT SIMILAR TO LEAVE UNDER THE FMLA/NJFLA?**

- Each statute requires Medical Certifications.
- Each statute allows for leave to care for a family member with a serious health condition or to care for a newborn or newly adopted child.
- Family Leave Insurance and the NJFLA use the same definitions of “serious health condition” and “care.”

## **WHAT ARE KEY DIFFERENCES BETWEEN THE FAMILY LEAVE INSURANCE ACT AND THE FMLA/NJFLA?**

- Family Leave Insurance provides covered individuals a monetary benefit, not leave entitlement.
- Only the FMLA allows the employee to take time off to care for him/herself.
- Only the NJFLA includes “parent-in-law” in the definition of “family member” so paid leave is unavailable to care for a parent-in-law under the Family Leave Insurance Act.
- Unlike the FMLA and NJFLA, the Family Leave Insurance Act does not provide for continuation of health benefits while on leave. To the extent leave is concurrent, health benefits continue.
- Family Leave Insurance provides compensation while an employee is on leave, whereas FMLA and NJFLA provide for leave, without regard to compensation.
- Family Leave Insurance and FMLA require that leave to care for a newborn or newly adopted child must be completed within 12 months of the birth or adoption.
- The NJFLA allows leave to care for a newborn or newly adopted child to begin at any time within the 12 month period following the birth or adoption.
- Unlike the FMLA or NJFLA, the Family Leave Insurance Benefits program does not provide job protection, establishing an individual’s right to be returned to employment upon completion of leave, although that right may be protected under the Union contract, Civil Service, or if the individual is concurrently on FMLA or NJFLA for the same matter.



## **WHAT SHOULD EMPLOYERS DO TO ENSURE COMPLIANCE WITH THE PAID FAMILY LEAVE ACT?**

- Update written policies and procedures, including employee handbooks.
- Update new hire orientation materials.
- Update employment and labor postings.
- Train managers and supervisors to ensure their awareness of employee's rights and their obligations in responding to requests for leave.
- Obtain, post, and timely distribute required notices.

## **WHAT IS IMPACT ON COLLECTIVE BARGAINING?**

- Nothing in the law nullifies any existing contractual provisions, prevents new provisions providing more generous leave, affording employees greater rights to select which kind of leave to use, or ordering which different kinds of leave are used.
- Certain restrictions permitted by the law may have to be negotiated with the Union before implemented by employers.

## **WHAT IS IMPACT ON SCHOOL EMPLOYEES?**

- School employees who are not employed during the summer months are ineligible to obtain Family Leave Insurance Benefits during that period of time.