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New Jersey Rolls out Permanent Leave Law Expansions due to the COVID-19 Pandemic

Background

As the COVID-19 pandemic continues to affect organizations and individuals across the country (and most of the world), the federal government, individual states, and local municipalities have all sought ways to aid and support individuals impacted by the virus. In many cases, this aid and support have taken the form of temporary legislation and government programs. Recently, however, New Jersey has become one of the first US states to enact permanent legislative changes in response to COVID-19, including changes to the state's Earned Sick Leave Law, Family Leave Act, and Temporary Disability Benefits Law.

Summary

Effective March 25, 2020, New Jersey has rolled out legislation clarifying and expanding the state's Earned Sick Leave Law, Family Leave Act, and Temporary Disability Benefits Law. This

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legislative measure is collectively called S2304. While many other states have made similar changes during the ongoing state of emergency, it is important to note that S2304 is permanent and is designed to apply not only to COVID-19 but also to future epidemics and similar public health emergencies.

Here are the major changes included in S2304:

Earned Sick Leave Law:

First, S2304 expands New Jersey employees' right to use their accrued sick leave for the following reasons:

- The closure of the employee's workplace or their child's school or place of care due to the declaration of a state of emergency by the governor because of an epidemic or other public health emergency;
- The determination by the governor, the Commissioner of Health, or a health-care provider that the presence of the employee or their family member would pose a threat to the community based on the declaration of a state of emergency; or
- The employee or their family member are undergoing isolation or quarantine due to suspected exposure to a communicable disease on the recommendation, direction, or order of a health-care provider or authorized public official during the state of emergency.

All other sections of New Jersey's existing Earned Sick Leave Law remain unchanged and in effect.

Family Leave Act:

Second, during the declaration of a state of emergency by the governor or at the direction of the Commissioner of Health or other public health authority, the definition of the term "serious health condition" as used in New Jersey's Family Leave Act, is expanded and clarified to include:

- Illness due to an epidemic;
- Confirmed or suspected exposure to an epidemic illness; and
- Efforts to prevent the continued spread of the epidemic that require in-home care of a family member by the employee based on:
 - The determination by a health-care authority that the family member's presence in the community would pose a threat to others, and
 - The recommendation, direction, or order by the health-care authority that the family member be quarantined because of their confirmed or suspected exposure.

S2304 also limits employers' ability to deny family leave to "key" employees, which are defined as employees whose work is necessary to prevent grievous economic injury to the employer. This key employee exemption does not apply to leave requested because a family member has been quarantined at the direction of a public health authority, or because of the closure of the family member's place of care due to an epidemic.

Temporary Disability Benefits Law:

Finally, S2304 updates the terminology used in the state's Temporary Disability Benefits Law. The law's definition of both "serious health condition" and "sickness" have been expanded and clarified to include all the terms listed under the Family Leave Act section above.

Further, S2304 mandates that the typical seven-day waiting period for an illness be waived for an illness caused by an epidemic, and that benefits should be available starting with the first day of leave.

Employer Next Steps

- All New Jersey employers should review the S2304 legislation and update their leave policies to reflect this terminology.
- If you are unsure how this legislation will affect your current policies and practices, you may want to consult your legal counsel before taking any action.
- If you are a Full-Service or Virtual HR client and would like our help to update your policies, please [email us](#).

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