

Client Alert **Employment and Labor**

Update: New Jersey Department of Labor Issues New Guidance on Recent Amendments to Temporary Disability and Family Leave Insurance

On July 10, 2026, Sills Cummis published a [Client Alert](#) that discussed recent updates to the New Jersey Temporary Disability Insurance (“TDI”) and Family Leave Insurance (“FLI”) anti-retaliation law. At that time, we noted that the amendment to this law appeared to add job protection rights for those employees receiving benefits under TDI (for their own health condition) or FLI (for care of a family member or bonding). Prior to this amendment, FLI and TDI generally were viewed as wage-replacement benefits that did not include any right to job protection.

Since these amendments became effective on July 17, 2026, the New Jersey Department of Labor has published new guidance on its website and via “Frequently Asked Questions.” The Frequently Asked Questions addressed to employers can be found [here](#). Further [guidance](#) confirms the New Jersey Department of Labor’s view that New Jersey employees have “expanded job protection when they need time off [from] work to care for themselves or loved ones.”

Within the published Frequently Asked Questions, the New Jersey Department of Labor provided some additional insights into this new job protection, which is tied to an employee’s receipt of TDI or FLI, whether from the State or through a private insurance plan. According to the published guidance from the New Jersey Department of Labor:

- The New Jersey Department of Labor specifies that under TDI and FLI, employees can receive:
 - “For their own health condition, up to 26 weeks of benefits with medical certification.”
 - “For caregiving and bonding leave,” the New Jersey Department of Labor noted that employees can receive “up to 12 weeks of benefits in a 12-month period.”
 - “For maternity (disability + bonding) leave, up to 22-24 weeks of benefits, and it could be more with complications.” Note that leave for pregnancy/

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bonding requires special consideration given that both types of benefits (disability and family leave insurance) and both federal and state leave statutes may apply consecutively, depending on the circumstances and timing.

- Based on the new guidance, upon return from leave where an employee is receiving TDI or FLI benefits, employers must restore the returning employee to the same position, or a position the same in pay, benefits, seniority, and other terms and conditions of employment.
- While the job protection is certainly new with the amendment, we note that the New Jersey Department of Labor Frequently Asked Questions contain the following guidance: “This is a separate job protection right from the reinstatement rights provided under the New Jersey Family Leave Act (NJFLA) and federal Family & Medical Leave Act (FMLA). Job protection under TDI/FLI applies to employees who qualify for TDI or FLI benefits during a period of unpaid leave, but where the leave is not covered under NJFLA or FMLA.”
- Further, the guidance also suggests that even if an eligible employee has already exhausted their NJFLA (up to 12 weeks of job protection in a 24-month period) or FMLA leave (up to 12 weeks of job protection in a 12-month period), that employee is still entitled to job protection if approved for FLI or TDI. Specifically, the New Jersey Department of Labor states: “If an employee has exhausted their NJFLA or FMLA job protection from a previous period of leave but is now receiving benefits again during a period of unpaid leave, they will still qualify for job protection under the TDI/FLI law.”
- The job protection applies to employees who were out on leave collecting TDI or FLI benefits as of July 17, 2026, even if the period of leave commenced prior to July 17.
- This job protection provision applies to employers of all sizes, and employees do not need to be working for the business for a specific amount of time before this job protection applies, if they are eligible for TDI/FLI benefits.
- The New Jersey Department of Labor has outlined restrictions on the use of PTO to supplement an employee’s TDI or FLI benefits. Specifically, the New Jersey Department of Labor states that employers can “provide supplemental benefits on top of TDI or FLI benefits received, including from a bank of PTO, so long as [the employer is] not using [its] PTO policy to meet the requirements of the Earned Sick Leave Law.” However, if an employer is “using [its] PTO policy to meet the requirements of the Earned Sick Leave Law, [the employer] cannot charge against the employee’s accrued PTO to supplement the employee’s benefits.” Essentially, this means that if an employer maintains one all-inclusive Paid Time Off (“PTO”) policy, which includes legally entitled sick time under the Earned Sick Leave Law, employees may not use PTO to supplement TDI or FLI benefits. On the contrary, if the employer provides PTO that is separate from the required sick time under the Earned Sick Leave Law, then that PTO time (and not any sick time under the Earned Sick Leave Law) may be used to

supplement an employee's pay while out on leave where benefits are covered by TDI/FLLI; however, in no event should payment exceed 100% of an employee's regular rate of pay.

Despite this additional guidance, many questions remain, including how these job protections will be enforced, whether this expansion of job protection creates a separate right to leave (as opposed to job protection), how these protections interact with reasonable accommodation/undue hardship analysis with respect to an employee's own health condition and whether the New Jersey Department of Labor's interpretation will be subject to any legal challenges. The New Jersey Department of Labor has expressed that it will continue to publish updates through [its website](#). In the meantime, employers should continue to consult with counsel to review employee situations on a case-by-case basis to determine eligibility for leave and job protection, and in view of the employer's policies, the applicable laws and any evolving guidance.

The Sills Cummis Employment and Labor Practice Group is available to assist. If you have any questions about how these changes affect your business, or would like assistance with updating leave policies, handbooks, or forms, in light of these changes, please contact one of our employment attorneys.

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