



**EMPLOYERS ASSOCIATION OF NEW JERSEY**

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Mr. LoCassio:

The Employers Association of New Jersey wishes to submit the following comments and requests for clarification on the proposed readoption with amendments of N.J.A.C. 13:14; Rules Pertaining to the Family Leave Act.

**13:14-1.2 Definitions**

- Under the NJFLA, an eligible employee is “any individual employed by the same employer in the State of New Jersey for 12 months or more...” Must this 12-month period of employment be consecutive?
- The definition of “serious health condition” is being expanded to be more consistent with the federal FMLA definition. We suggest that medical certification which an employer may require in support of the leave also be modified to incorporate that amplification.

Law: 34:11B-4(e)(1) where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states (a) the date on which the serious health condition commenced (b) the probable duration of the condition; and (c) the medical facts within the provider’s knowledge regarding the condition;

A simple note from a health care provider stating the above may not necessarily give enough information for an employer to determine that a serious health condition exists. (e.g. whether “continuing treatment is being provided) We suggest the “medical facts within the provider’s knowledge” include a statement that the condition does meet the qualifications of a serious health condition as defined in the regulations.

This should help clarify any uncertainty regarding the certification, which will benefit both employer and employee by, in many cases, eliminating the need for time-consuming and costly second and third medical opinions.

#### **13:14-1.4(d) Terms of leave**

- This new provision allows for an employer to select from 4 ways to calculate the 24 month period in which leave may be taken. If the employer does not make a selection, the option most beneficial to the employee will be used. What method must the employer use to notify employees of the selection made? Is the employer now required to develop a policy regarding their NJFLA obligations?

#### **13:14-1.14 Notices to employees**

- This new provision states that if the employer has no written policies, manuals or handbooks, it must provide written guidance to an employee concerning rights and obligations under the act. Does this obligation apply only when an employee requests a leave, or should such information be supplied to all employees? Is the employer now required to develop a policy regarding their NJFLA obligations? Would the official DCR poster suffice? If not, what additional information must be included? Will the Division be supplying suggested language?

#### **13:14-1.6(a)(1) Relation with other laws**

- A new example is provided where an eligible employee is on disability leave for 10 weeks for the birth of a child. This time would only count against her federal FMLA entitlement. If the employee chooses to remain on leave for two more weeks, using her two remaining weeks of federal leave to care for the newborn, may the employer also assign that time as counting against her NJFLA entitlement since she is absent for a reason covered by both laws? We understand that the leave may count simultaneously when the reason is covered by both laws; our question seeks clarification as to whether the employer may automatically assign such time as NJFLA or must the employee make a specific request?

#### **13:14-1.6(c) Relation with other laws**

- In this section, an example is used where an employee had no federal FMLA leave entitlement, is disabled and receiving benefits under the TDB law, but may begin her 12 weeks of NJFLA to care for a newly born child. In such a case, may the employer automatically assign such time as NJFLA or must the employee make a specific request? (Failure of the employee to make a timely request for NJFLA could result in termination of employment, as no other job protection may exist)

We appreciate this opportunity to provide comment. Should you need any additional information on these comments, please contact the undersigned at (973) 758-6800.

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