NJDOL Expands Leave Protections: New Guidance Links TDI and FLI Benefits to Job Protection

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The New Jersey Department of Labor and Workforce Development ("NJDOL") has issued new guidance confirming its position that employees who receive Temporary Disability Insurance ("TDI") or Family Leave Insurance ("FLI") benefits are entitled to job protection, even when they are ineligible for leave under the federal Family and Medical Leave Act ("FMLA") or the New Jersey Family Leave Act ("NJFLA"). This guidance, in the form of frequently asked questions ("FAQs") and an announcement, represents a significant expansion of job protection obligations for New Jersey employers of all sizes.

Background

On January 17, 2026, then-Governor Phil Murphy signed A3451 into law (P.L. 2025, Chapter 279), enacting the most sweeping overhaul of New Jersey's leave protections in years. While much of the attention focused on changes to the NJFLA, including reduced employer size thresholds and faster employee eligibility, the legislation also amended the TDI and FLI statute directly. The amendments provide that any employee collecting TDI or FLI benefits "shall, upon expiration of the leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment." Historically, TDI and FLI were viewed as wage replacement benefits, not a mechanism for providing job protection.

The NJDOL subsequently published information and FAQs on its website, making clear that this reinstatement right applies as of July 17, 2026, and constitutes a job protection right that is separate from the reinstatement rights already provided under the NJFLA and FMLA.

Summary of the NJDOL's Guidance

The NJDOL's guidance establishes that TDI/FLI job protection is a separate and independent right from the reinstatement protections under the NJFLA or FMLA. It applies specifically to employees who qualify for TDI or FLI benefits during a period of unpaid leave but whose leave is not already covered under the NJFLA or FMLA.

Unlike the NJFLA (which, as amended, now applies to employers with **15 or more** employees) and the FMLA (which applies to employers with **50 or more** employees within a 75-mile radius), there are no minimum employer size requirements or employee work history requirements for TDI/FLI job protection to apply. Eligibility depends solely on whether the employee qualifies for TDI or FLI benefits based on recent earnings.

To qualify for benefits in 2026, an employee must have worked 20 weeks while earning at least $310 per week, or earned a combined total of $15,500 in the base year. Because these earnings may come from a ***prior*** employer, new employees could qualify for job-protected leave from their first day on the job with a new employer, even though they would not yet meet the NJFLA's three-month/250-hour eligibility threshold or the FMLA's twelve-month/1,250-hour standard.

The potential duration of job protection for an employee receiving TDI or FLI benefits could be far greater than what the FMLA or NJFLA provide. Employees may receive up to 26 weeks of TDI benefits for their own health conditions and up to 12 weeks of FLI benefits for caregiving and bonding leave. Job protection covers the duration of benefits received.

Notably, the guidance states that job protection applies to employees receiving TDI or FLI benefits as of July 17, 2026, even if the leave commenced before that date. Additionally, while an employee is awaiting a benefits determination, employers must assume the employee will be eligible and protect their job until a contrary determination is made. The guidance further provides that employees who receive TDI or FLI benefits through an employer's private insurance plan (which must be approved by the Division of Temporary Disability and Family Leave Insurance before it becomes effective), instead of the State Plan providing these benefits, are also entitled to job protection.

The guidance does not reference any undue hardship or business necessity exception that would permit an employer to permanently replace an employee receiving extended TDI/FLI benefits, creating significant operational challenges, particularly for small businesses.

Open Legal Questions

Despite the NJDOL's definitive posture, several significant legal questions remain unresolved. The NJDOL's FAQs constitute agency guidance, not formal rulemaking. The NJDOL's website itself acknowledges that "[f]ormal rulemaking may change policies, procedures, and forms once finalized."

Additionally, the Temporary Disability Benefits Law, the source of TDI/FLI benefits, provides, "the Legislature does not intend that the policy of providing benefits during family temporary disability leave be construed as increasing, reducing or otherwise modifying any entitlement of a worker to return to employment or right of the worker to take action under the provisions of the 'Family Leave Act.'" N.J.S.A. 43:21-26. Furthermore, the recent amendment provides, "nothing in this section or any section of [Temporary Disability Benefits Law] shall be construed as increasing, reducing or otherwise modifying any entitlement provided to a worker by the provisions of the 'Family Leave Act,' . . . to be restored to employment by the employer after a period of family temporary disability leave." N.J.S.A. 43:21-55.2(a). Therefore, there is a clear conflict between the amendment language creating job protection and these provisions of the statute, resulting in uncertainty over the legislature's intent.

Questions also remain regarding how TDI/FLI job protection interacts with other employment laws, including the Americans with Disabilities Act's ("ADA") reasonable accommodation requirements, and whether employers may request additional medical documentation beyond what is required for the TDI/FLI benefits determination. Unlike the ADA, the TDI/FLI job protection right as described in the NJDOL's guidance does not appear to include any undue hardship or business necessity exception.

The Road Ahead for Employers

The NJDOL's guidance represents a paradigm shift in New Jersey's leave landscape. For decades, TDI and FLI functioned solely as wage replacement programs with no attendant job protection obligation. The NJDOL's interpretation raises the question of whether the amendments created a freestanding leave entitlement with reinstatement rights that, in many respects, exceed those provided by the FMLA and NJFLA.

New Jersey employers, regardless of size, should treat this guidance as an immediate compliance priority and take steps to ensure their leave policies, management training, and operational plans reflect these expanded obligations. For small employers, the potential for extended job-protected absences may require contingency staffing plans, cross-training, or the use of temporary workers.

For more information about the NJDOL's guidance or New Jersey leave law compliance, please contact the authors or any attorney in the firm's Labor & Employment Practice Group.