NEW JERSEY: EMPLOYEE BENEFIT CONSIDERATIONS

Employers doing business in New Jersey (including those that have one or more employees working or living in the state) should be aware of the state's laws regarding continuation of health benefits, disability and family leave requirements, commuter benefits, extended dependent coverage up to age 31 ("DU31"), coverage of domestic partners and civil union partners, and annual reporting of minimum essential coverage (MEC) under the individual coverage mandate. Some of these laws apply when only one employee lives or works in New Jersey.

This publication focuses on the benefits compliance obligations that fall on employers. There are numerous state insurance laws that apply to carriers sponsoring fully insured plans. To the extent a state insurance law does not impose a compliance obligation on an employer, it is not covered in this publication. In addition, this publication is limited to employee benefit considerations and does not cover state tax laws, privacy laws, cybersecurity laws, or other employment law topics such as workers' compensation, employment discrimination, payroll practices, wage and hour laws, or short-term leave laws that provide job and/or benefit protections for one month or less.

Employers doing business in New Jersey must consider the state's unique laws, some of which apply when only one employee lives or works in New Jersey.

GROUP HEALTH PLAN REQUIREMENTS

New Jersey law requires that health policies and contracts issued in the state or that cover New Jersey residents comply with certain mandates. This publication covers several of the most important health benefit mandates. If New Jersey licensed the insurer that issued the policy and the insurer delivers the policy to New Jersey residents, then the policy is likely subject to New Jersey insurance regulations, including state mandated health benefits. Self-insured plans are typically exempt from state mandates.

Insurers are generally aware of state insurance regulations, so employers should consult with their insurer or attorney to determine whether state requirements apply to their plan(s).

State Continuation of Health Benefits ("Mini-COBRA") (Fully Insured Plans)

New Jersey's continuation of coverage rule (also known as "mini-COBRA") applies to fully insured group health policies issued to certain small employers in New Jersey. Though church plans are generally not subject to federal COBRA, church plans with up to 50 employees must comply with New Jersey mini-COBRA. New Jersey's mini-COBRA law requires continuation of medical coverage only (not stand-alone vision or dental). For purposes of New Jersey's mini-COBRA law, small employers are those that employed between two and 50 eligible employees during the preceding calendar year, with the majority of the workforce employed in New Jersey. The law does not apply to self-insured plans, and employees who qualify under federal COBRA are not eligible for coverage

under New Jersey's state continuation law. Some employers that are subject to New Jersey state continuation (i.e., employers with 20 to 50 employees) must also comply with federal COBRA. For information about federal COBRA, see the PPI publication **COBRA: A Guide for Employers**.

As with federal COBRA, employers are permitted to add an administrative fee, not to exceed 2%, to the cost of the mini-COBRA premium (employers may charge up to 150% of the premium for months 19 through 29 if the employee is determined disabled under the Social Security Act). The maximum duration of continuation coverage under New Jersey's mini-COBRA is 18 months for termination or reduction in hours; 36 months for divorce or legal separation, death of employee, or loss of dependent child status under the plan; and 29 months for an employee who is determined disabled under the Social Security Act at the time of termination of employment or at any time during the first 60 days of continuation of coverage.

There are additional differences between New Jersey state continuation and federal COBRA. New Jersey's state continuation:

- Does not require that continuation coverage be made available to the spouse of a former employee when the former employee becomes eligible for Medicare.
- Requires an election for continuation coverage be made within 30 days of a qualifying event.
- Requires that payment of the initial premium be made within 30 days of the election for continuation coverage.
- Includes domestic partners and/or civil union partners as qualified beneficiaries if such parties are eligible for coverage under the employer's medical plan. New Jersey continuation coverage rules allow domestic partners and civil union partners to make independent elections upon the death of a covered employee or upon dissolution of the partnership.

Employers must notify employees of their continuation coverage rights under New Jersey's mini-COBRA law when an employee terminates employment or otherwise loses coverage due to a reduction in hours. Employers must also remit premium payments from the employee/former employee to the carrier as part of the employer's regular premium payment.

For more information, see:

NJ Advisory Bulletin on State Continuation of Coverage

The New Jersey Small Employer Health Benefits Program Buyer's Guide

Continuation Coverage in the Event of Total Disability (Fully Insured Plans)

Separate from mini-COBRA, New Jersey has a Continuation Coverage in the Event of Total Disability law that extends continuation of coverage rights for employees whose employment terminates due to "total disability." This Total Disability Continuation law only applies to fully insured plans issued in NJ. Specifically, if covered employees have been enrolled for at least three months prior to termination, they may continue coverage (medical, dental, vision, or prescription drugs) for themselves and their dependents for the duration of their disability. For this purpose, disability is defined as "completely unable, due to sickness or injury or both, to engage in any and every gainful occupation for which the person is reasonably fitted by education, training, or experience."

Employees may be charged up to the group rate (but expressly without an administrative fee) for the continued coverage and must make an election within 31 days after the date the coverage would otherwise terminate. Note that an employee's Medicare eligibility or entitlement does not limit the right to continue group coverage under this law.

For more information, see:

The New Jersey Small Employer Health Benefits Program Buyer's Guide

New Jersey Dependent Under 31 ("DU31") (Fully Insured Plans)

DU31 is a New Jersey law that applies to fully insured plans issued in New Jersey regardless of the size of the employer. DU31 allows children older than the dependent child age limit in a parent's group health plan (e.g., 26 years old) to elect coverage until age 31 if certain other eligibility criteria are met. The DU31 law applies to medical, vision, and prescription drug coverage but does not apply to dental coverage.

DU31 election rights allow a dependent "young adult" to continue existing coverage when they reach the age limit on a parent's coverage or to become covered again under a parent's group health plan if the young adult had coverage on the parent's plan at any point in the past. This means that a young adult may establish and reestablish eligibility and make a DU31 election multiple times before their 31st birthday.

Dependent eligibility under DU31 requires a young adult to meet all the following criteria:

- Must be 30 years of age or younger and must reside in New Jersey or, if not residing in New Jersey, must be a full-time student at an accredited public or private institution of higher education.
- Must be unmarried (or without a domestic partner or civil union partner) and without dependents.
- Must not be covered under another group or individual health plan or entitled to Medicare benefits.

The DU31 law does not require employers to contribute to the premium for any covered young adult on their plan. A young adult who elects the DU31 continuation coverage is responsible for the full applicable premium, plus a 2% administrative fee.

For more information, see:

Coverage of Young Adults in New Jersey Up to Age 31

Small Employer Health Insurance (Fully Insured Plans)

New Jersey state law does not require small employers (those with one to 50 employees) to offer health insurance to their employees. Federal requirements for small health plans, such as the requirement to provide essential health benefits (EHB), apply to small employer health plans issued in New Jersey when such coverage is offered, as does the prohibition against discrimination or exclusion based upon preexisting conditions.

New Jersey's Small Employer Health (SEH) Program imposes two requirements on insurers to ensure that small employers:

- Have access to small group health benefits plans without regard to the occupation of the group or the health status of any of the group's members.
- Have the ability to renew the coverage from year to year regardless of the group's claims experience or any changes in the health status of the group's members.

Additionally, the SEH Program restricts insurer use of small group participation requirements, employer contribution requirements, preexisting condition limitation provisions, and factors related to rates for health benefits plans offered to small employers.

For more information, see:

Small Employer Health (SEH) Program

Domestic Partner/Civil Union Health Coverage Laws (Fully Insured Plans)

New Jersey insurance law requires that any benefit coverage offered by a plan to an employee's spouse must also be offered equally on the same terms and conditions to an employee's civil union partner under the New Jersey Civil Union Act. This Act, implemented in February 2007, established "civil unions" for couples of the same sex, granting partners in civil unions generally all of the same benefits, protections, and responsibilities under the law as are granted to spouses. Once enacted, the Civil Union Act amended the Domestic Partnership Act of 2004 so that only unrelated different- or same-sex couples age 62 and older can enter into domestic partnerships on and after February 19, 2007. The Domestic Partnership Act allows (but does not require) employers to offer coverage for domestic partners. Both Acts apply to fully insured plans issued in New Jersey regardless of the size of the employer. The law does not apply to self-insured plans.

For two people to establish a civil union in New Jersey, they must satisfy all of the following criteria:

- Be of the same sex.
- Not be a party to another civil union, domestic partnership, or marriage.
- Be at least 18 years of age (parental consent required for under 18 but older than 16).

For two people to register as domestic partners in New Jersey, the couple must meet all of the following criteria and file the Affidavit of Domestic Partnership with a Local Registrar of Vital Statistics.

- The parties can be the same sex or different sexes.
- Both parties must be 62 years of age or older.
- Share a common residence.
- Jointly responsible for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property.
- Not be party to a marriage or civil union recognized by New Jersey law or a member of a domestic partnership with another individual, nor have legally terminated another domestic partnership within the last 180 days.
- Not related by blood or affinity up to and including the fourth degree of consanguinity.
- Choose to share each other's lives in a committed relationship of mutual caring.

Employers generally have discretion to define domestic partners as they choose, provided their definition is not more restrictive than the prevailing definition in a state or municipality where the employer operates. Employers should ensure that their domestic partner certification practices are reasonably consistent with those for other family members (such as spouses and children). For example, employers that do not request relationship documentation (e.g., a marriage certificate) from married employees should not make domestic partner coverage conditional upon submission of evidence of the domestic partnership.

The cost of coverage for a registered domestic partner or civil union partner and any applicable dependents is not subject to New Jersey income tax withholding. However, the federal government does not recognize domestic partners as spouses eligible for tax-favored benefits. Thus, if the domestic partner is not the employee's tax dependent, the cost of coverage is subject to federal taxation.

For further information about domestic partner benefits considerations, including best practices for establishing eligibility, certifying domestic partnerships, and calculating and processing domestic partner cost of coverage imputed income, see the PPI publication **Domestic Partner Benefits: A Guide for Employers**.

For more information, see:

Division of Taxation, Civil Union Act

Registration of Civil Unions

Registration of Domestic Partnerships Bulletin 07-04

State Individual Mandate Reporting Requirements (Fully Insured and Self-Insured Plans)

Largely in response to Congress reducing the federal ACA individual mandate penalty to $0 (effective beginning 2019), several states passed their own individual mandates that include employer reporting requirements. The New Jersey Health Insurance Market Preservation Act requires every New Jersey resident to obtain health insurance, have a valid exemption (generally based on income/cost-related factors), or make a Shared Responsibility Payment to the state. Most basic health coverage satisfies state requirements, including insurance plans through an employer, Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and NJ FamilyCare. Plans that provide only limited benefits, such as vision or dental plans, do not satisfy the state's individual coverage mandate.

To ensure compliance, the Act requires insurers, employers, government agencies, multiemployer plans, and other entities that provide health insurance to submit required information returns annually to New Jersey that report on individuals' health insurance coverage. Employers with self-insured group health plans must report to the New Jersey Division of Taxation regarding each primary enrollee who was a New Jersey resident and to whom the plan provided minimum essential coverage (MEC) in all or part in the prior calendar year. Employers with fully insured plans should contact their insurers to confirm that they are filing the required information timely with the New Jersey Division of Taxation on behalf of the plan sponsors. If an insurer does not file the required information on time, the employer is responsible for the filing.

Generally, employers that file federal Forms 1094/1095-B or 1094/1095-C may use those forms for purposes of New Jersey reporting as follows:

- Small self-insured employers: Form 1095-B
- Large self-insured employers: Form 1095-C
- Fully insured employers (small or large): either Form 1095-B/C or NJ-1095, if the carrier does not file on behalf of the plan
- The deadline for furnishing Forms 1095-B/C to the state and primary enrollees generally follows the IRS deadline for ACA reporting. Thus, employers must send this required information by March 2 following the reporting year. (Note that the March 2 deadline shifts to March 1 in leap years, as the date corresponds to a permanent 30-day extension of the original January 31 deadline for furnishing ACA reporting forms to employees.)

For further information about the individual mandate reporting requirements for New Jersey and other states, see the PPI publication **State Individual Mandate Reporting Requirements**.

For more information, see:

New Jersey Employer Reporting Requirement

Health Benefit Coverage Mandates (Fully Insured Plans)

Each state prescribes a list of health benefits that must be covered under policies issued in that state. For a list of New Jersey's health benefit mandates, see **New Jersey-Mandated Health Benefits**.

As described above, insurers are generally aware of state insurance regulations, so employers should contact their insurer for more information on health benefit coverage mandates that apply to their group policy.

STATUTORY LEAVE LAWS

Temporary Disability Insurance (TDI) and Family Leave Insurance (FLI)

The New Jersey Division of Temporary Disability and Family Leave Insurance has two separate mandatory leave programs that apply to the majority of employers with at least one employee working in New Jersey. Temporary Disability Insurance (TDI) provides leave to qualified New Jersey employees who have to stop working due to their own physical or mental health condition or other disability unrelated to their work. TDI applies to all private sector employers. Local governments, including school districts, are not required to participate but can opt in voluntarily. All private and public sector employers with at least one employee working in New Jersey must provide leave benefits through Family Leave Insurance (FLI), which provides cash benefits for time off to bond with a newborn, a newly adopted child or newly placed foster child, or to provide care for a seriously ill or injured family member.

TDI is funded by both employee and employer contributions, whereas FLI is funded exclusively by employee contributions. TDI and FLI rates are expressed as a percentage of employee wages, capped at the state's employee taxable wage base; they are set by the state and adjusted annually. The maximum weekly benefit amount for both TDI and FLI is 85% of an employee's average earnings (based on the first four quarters of the previous five completed quarters), up to the maximum weekly benefit rate set for the calendar year in which the leave commences.

Although TDI and FLI do not provide job protection and health benefit continuation rights, federal FMLA, New Jersey Family Leave Act (FLA), and/or the Security and Financial Empowerment Act (SAFE) may provide job protection and health benefit continuation rights during the leave if it runs concurrently and where qualified. Importantly, the definition of a covered family member under New Jersey FLI is much broader than the federal FMLA definition. For example, any non-blood-related individual with whom an employee has the equivalent of a family relationship is considered a covered "family member" under New Jersey FLI. In this case, federal FMLA would not apply (and therefore would not run concurrently).

For an overview of state-mandated disability insurance and paid family and medical leave laws in New Jersey and other states, see the PPI publication **Quick Reference Chart: Statutory Disability & Paid Family and Medical Leave Programs**.

For more information, see:

TDI Information for Employers

FLI Information for Employers Employer

Toolkit

Private Plan Information for Employers

New Jersey Family Leave Act (NJFLA)

The New Jersey Family Leave Act (NJFLA) is New Jersey's version of FMLA. This regulation applies to private employers with 30 or more employees worldwide and all state and local government agencies regardless of size.

Employees are eligible for NJFLA leave if they have:

- Worked for a covered employer for at least 12 months.
- Worked at least 1,000 hours during the immediately preceding 12-month period (in contrast to the 1,250 hours requirement under federal FMLA).

NJFLA leave provides eligible employees with up to 12 weeks of continuous unpaid leave within a 24-month period for any of the following qualified reasons:

- To care for or bond with a child (within one year of the child's birth or placement for adoption or foster care).
- To care for a family member, or someone who is the equivalent of family, with a serious health condition or who has been isolated or quarantined because of suspected exposure to a communicable disease during a state of emergency.
- To provide required care or treatment for a child during a state of emergency if their school or place of care is closed by order of a public official due to an epidemic of a communicable disease (including COVID-19) or other public health emergency.

NJFLA requires employers to continue an employee's health benefits at the same level and same cost as if the employee were still actively at work and provide job protection during the entirety of the approved leave. NJFLA can be taken continuously or intermittently in full day increments; note that electing to take leave intermittently reduces the benefit to a maximum of 56 days.

Where applicable, NJFLA runs concurrently with federal FMLA and/or New Jersey FLI; however, unlike federal FMLA, NJFLA does not cover an employee's own serious health condition. Consequently, an employee may be entitled to take up to 12 weeks of federal FMLA leave for their own serious health condition and separately take 12 weeks of NJFLA leave to care for a family member in a 12-month period. Similarly, an employee can take up to 12 weeks for pregnancy and recovery from childbirth under federal FMLA, and then take an additional 12 weeks of NJFLA leave to bond with or care for their newborn after the doctor certifies the employee is fit to return to work or has exhausted their FMLA leave (whichever is earlier).

For more information, see:

NJFLA Fact Sheet

OTHER LEAVE LAWS

New Jersey does not have any other state or local leave laws that provide more than one month of paid or unpaid leave entitlement. Note that short-term state and local employment leave laws that provide one month or less of leave are outside the scope of this publication. Short-term employment leave protections may include paid sick leave, bereavement leave, reproductive loss leave, jury duty leave, organ donor leave, crime victim leave, or PTO laws, among others. Employers should consult with their human resources consultant or employment law counsel to ensure their leave, PTO, and other personnel policies satisfy all applicable state and local employment laws.

OFFER OF RETIREMENT PLAN

In 2019, the state enacted the New Jersey Secure Choice Savings Program, a state-sponsored payroll deduction IRA for New Jersey employees who are not offered a qualified retirement plan benefit through their employer. The program was launched on June 30, 2024. Employers that have 25 or more employees in New Jersey, have been in business for at least two years, and do not offer a qualified retirement program are required to register for RetireReady NJ. While eligible employers must register, individual employees may opt out of the program. Neither the state nor employers contribute to the program.

For employers with 40 or more employees, the deadline to register is September 15, 2024. For employers with 25-39 employees, the deadline to register is November 15, 2024. If an eligible employer has a qualified retirement program, the employer must certify their exemption from the program with the state of New Jersey. A qualified retirement program may include a 401(k) or 403(b) plan, a defined benefit plan, or a Simple Employee Pension (SEP), among others.

For more information, see:

RetireReady NJ

New Jersey Secure Choice Savings Program

COMMUTER BENEFITS

Employers with 20 or more employees (whether employed in New Jersey or not) must offer their New Jersey employees the opportunity to utilize a pre-tax Qualified Transportation Fringe Benefit under IRC Section 132(f) covering commuter highway vehicle and mass transit expenses. The benefit must be offered to all New Jersey employees as defined under the state's unemployment compensation law, including part-time employees. Covered employers must allow covered employees to elect up to the maximum pre-tax benefit amount provided by federal law. For further information about federal qualified transportation plan limits, see the PPI publication **Employee Benefits Annual Limits**.

The pre-tax fringe transportation benefit covers expenses such as transit passes, commuter highway vehicle travel, and parking costs at park-and-ride lots. The state law does not apply to employees covered by a collective bargaining agreement in effect on March 1, 2019, nor does it apply to employees of the federal government who are eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit required by
the state.

The Commissioner of Labor and Workforce Development is authorized to issue citations to employers that fail to abide by the New Jersey pre-tax transportation fringe benefit mandate. An employer will have 90 days to offer a pre-tax transportation fringe benefit before the civil penalty is imposed. After 90 days, the penalty is $250 for a first violation, and another $250 for each subsequent violation.

For more information, see:

Governor's Statement

SUMMARY

Employers with one or more employees who work or live in New Jersey should be well informed about the range of benefit requirements that pertain to such employees.

RESOURCES

New Jersey-Mandated Health Benefits

PPI BENEFIT SOLUTIONS