LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3975

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JANUARY 29, 2019

SUMMARY

Synopsis: Revises law concerning family leave, temporary disability and family temporary disability leave, and domestic or sexual violence safety leave.

Type of Impact: Annual expenditure and revenue increases to the State Disability Benefits Fund.

Agencies Affected: Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	CY 2020	CY 2021	CY 2022
State Expenditure Increase	$139,700,000 to $182,800,000	$278,200,000 to $364,500,000	$278,200,000 to $364,500,000
State Revenue Increase	$171,200,000 to $225,100,000	$309,700,000 to $406,800,000	$278,200,000 to $364,500,000

- The Office of Legislative Services (OLS) estimates that the bill, once its changes in benefits and taxes are fully phased in starting in calendar year (CY) 2022, will result in an annual increase in State Disability Benefits Fund (SDBF) revenue collections and expenditures ranging from $278.2 million to $364.5 million, including $277.0 million to $363.3 million for expanded family leave insurance (FLI) and temporary disability insurance (TDI) benefits and $1.2 million for increased administrative costs. The OLS notes that, starting in the second year following implementation, the bill may increase the Department of Labor and Workforce Development's (DOLWD) administrative costs further due to fulfilling the requirements regarding the timely determination and payment of benefits and the production of certain annual reports.

- The FLI and TDI benefit expansion will take effect on July 1, 2020. As a result, the OLS projects that CY 2020 expenditure and revenue increases will equal 50 percent of the estimated full-year impacts.

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- The estimated CY 2020 and CY 2021 revenue increases include the build-up of SDBF reserves for the additional FLI and TDI benefit payments, as required by existing statutes.

- The OLS notes that employees will pay for the entire cost of the bill through increases in employee FLI and TDI wage tax assessments.

BILL DESCRIPTION

The bill expands TDI and FLI benefits, establishes new administrative requirements for the TDI and FLI programs, and increases TDI and FLI payroll taxes.

For leave periods beginning on or after July 1, 2020, the amount of weekly FLI and TDI benefits is to increase from two-thirds of a claimant's average weekly wage to 85 percent of that wage, subject to a maximum amount. The maximum, in turn, is to rise from 53 percent to 70 percent of the Statewide average weekly wage (SAWW) for all workers.

The maximum FLI benefit period increases from six to 12 weeks during any one-year period and the maximum intermittent FLI leave from 42 to 52 days. Moreover, the bill expands the family members for whose care individuals may receive FLI benefits during periods of leave from employment to siblings, grandparents, grandchildren, parents-in-law, and others related by blood or relationship equivalent to a family relationship. FLI benefits are also extended to individuals who take time off from work to assist a family member who is a victim of domestic or sexual violence.

The bill facilitates access to FLI and TDI benefits by: a) eliminating the one-week waiting period before the payment of FLI benefits; b) lowering from 50 to 30 employees the threshold at and above which employers must grant unpaid family leave to employees for up to 12 weeks in a 24-month period without terminating employment because of the leave; c) no longer allowing employers to require that employees use all their paid leave, up to two weeks, before the payment of FLI benefits; and d) limiting to two weeks the amount of sick leave State and certain local government employees must use before receiving TDI benefits, whereas current law requires them to exhaust their entire sick leave first.

The bill establishes new penalties for violations of the TDI and FLI laws. Specifically, employers who fail to provide certain notifications and disclosures as required will be fined up to $1,000 and in certain cases imprisoned for up to 90 days. In addition, the bill prohibits employer retaliation against an employee for taking or requesting TDI or FLI benefits, except that employers with fewer than 30 employees are not required to reinstate an employee after a period of FLI leave. The civil fine for the first act of prohibited retaliation ranges from $1,000 to $2,000 with each subsequent violation resulting in a fine not to exceed $5,000.

Furthermore, the DOLWD must implement goals for the timely determination of TDI and FLI benefit eligibility and amounts, and issue an annual report regarding efforts to attain those goals. The report must contain specific recommendations regarding any increased funding needed to achieve the goals and modernize the administration of the TDI and FLI programs. The department is to include the recommended funding increases in setting the annual rate of TDI and FLI taxes.

In addition, the bill allocates $1.2 million annually to education and outreach efforts for the TDI and FLI programs, requires the DOLWD to publish an annual report on these efforts, and expands other existing TDI and FLI reporting requirements.

The bill increases the amount of payroll taxes that is to be raised to pay for the benefit expansion and additional program administration expenditures, and expands the wage base on which the taxes are imposed from 28 times to 107 times the SAWW. The benefit increases and higher administrative costs are to be charged exclusively to workers. The

DOLWD sets the annual TDI and FLI assessment rates according to existing statutory formulae that consider estimated annual benefit payments, estimated administrative costs, and any unexpended account balances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill, once its changes in benefits and taxes are fully phased in starting in CY 2022, will result in an annual increase in SDBF revenue collections and expenditures ranging from $278.2 million to $364.5 million, including $277.0 million to $363.3 million for increased benefits and at least $1.2 million for increased administrative costs. Starting in the second year following implementation, this bill may lead to an additional increase in the DOLWD's administrative costs due to the fulfillment of the bill's requirements regarding the timely determination and payment of benefits and the production of certain annual reports.

BENEFIT COSTS

The OLS estimates that the bill will increase annual FLI and TDI benefit payments by a range of $277.0 million to $363.3 million starting in CY 2021. Because the benefit expansion will not take effect until July 1, 2020, CY 2020 benefit payments are projected to equal 50 percent of the estimated full-year impact, or $138.5 million to $181.6 million.

The OLS model considers changes in the following variables. First, the bill raises weekly benefits for both FLI and TDI claims from 66.7 percent to 85.0 percent of a worker's average weekly wage up to a maximum amount, which the bill increases from 53 percent of the SAWW ($651 per week in CY 2019) to 70 percent of the SAWW ($860 per week in CY 2019).

Second, the bill increases the maximum duration for FLI benefits from six weeks to 12 weeks. While the benefit expansion makes it probable that the average FLI leave period will rise, not every claimant will take advantage of the 12-week maximum period. For instance, 12 percent of FLI benefits are currently paid to workers taking time to care for family members, and those claims have an average duration of four weeks out of the six available weeks, suggesting that these workers may not take 12 weeks of FLI leave if the bill is enacted.

Finally, the OLS estimates that lowering from 50 to 30 employees the threshold at and above which employers must grant protected unpaid family leave to employees will increase usage of FLI benefits by eight percent.

This estimate does not factor in the extent to which the higher weekly benefit rates and the education and outreach efforts mandated by the bill may cause individuals to file for FLI and TDI benefits who under current law would not do so. The OLS notes, however, that any increase in the number of claimants is likely to be diminished by the fact that many high-income workers historically have been provided the highest rates of fully-paid leave by their employers.

ADMINISTRATIVE COSTS

The bill will increase annual FLI and TDI administrative expenditures by at least $1.2 million. The bill requires the expenditure of $1.2 million annually for FLI and TDI education and outreach efforts. The bill may also increase DOLWD administrative costs starting in the second year of implementation to fulfill the requirements regarding the timely determination and payment of TDI and FLI benefits, and the production of certain annual reports. If the DOLWD attempted to meet the goals by restoring program staffing to the level of 2008, when the speed of determinations was closest to the goals, the number of program personnel would have to grow from 125 to 170, an increase of 36 percent. The OLS, however, does not include such an increase of personnel in its estimate because of possible alternative approaches the department may implement to meet the claims processing goals, such as the increased use of automation in claims processing and the use of data currently available from the unemployment insurance program's automated wage data systems, instead of making time-consuming requests of employers for wage information after claims are made.

REVENUE COLLECTIONS

Employee Wage Tax Revenue: The OLS estimates that the bill will increase annual FLI and TDI wage tax collections by a range of $278.2 million to $364.5 million starting in CY 2022. Additional wage tax collections in CY 2020 are projected to range from $171.2 million to $225.1 million, reflecting the mechanics of existing statutory TDI and FLI revenue determination calculations and the July 1, 2020 effective date for the benefit expansion. Additional wage tax collections in CY 2021 are projected to range from $309.7 million to $406.8 million, reflecting the mechanics of existing statutory revenue determination calculations.

The FLI program is funded entirely through an assessment on workers' wages, the rate of which is set by the DOLWD annually to cover anticipated program expenditures and a reserve requirement. The assessment equals the rate which is projected to generate contributions equal to 125 percent of estimated annual FLI benefits plus 100 percent of estimated administrative costs, reduced by any unexpended prior-year account balances. The same method is used to set the TDI tax rate, except that the assessment amount for TDI benefits is 120 percent of estimated benefits.

CY 2017 employer and employee contributions to the TDI program totaled $436.0 million ($259.0 million by employers and $177.0 million by employees), and the DOLWD estimated combined CY 2018 contributions at $417.9 million ($267.8 million by employers and $150.1 million by employees). Employers do not contribute to the FLI program. CY 2017 employee FLI contributions totaled $108.6 million with the DOLWD projecting CY 2018 collections at $106.0 million. The bill charges all of the increases in benefits and administrative costs to employee TDI and FLI wage taxes.

Penalty Collections: The OLS estimates that the bill may result in an indeterminate annual increase in SDBF revenues from penalties collected for violations established in the bill. This bill applies existing TDI law penalties to employers who fail to provide notifications and disclosures as required under the TDI and FLI laws, and imposes additional penalties for certain employers who retaliate against employees for taking or requesting TDI or FLI benefits. The OLS cannot determine the number of violations that employers may commit under the bill and, therefore, the amount of penalty revenue that may be generated.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).