

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3975

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 3975, with committee amendments.

The bill, as amended by the committee, revises the laws concerning family leave, pregnancy temporary disability leave, family temporary disability leave, and domestic or sexual violence safety leave.

The bill expands the maximum total benefits payable to any eligible individual for periods of family temporary disability leave (often referred to as family leave insurance, or “FLI”) and periods of disability covered under Temporary Disability Insurance (“TDI”) related to pregnancy and recovery from childbirth. The bill also increases the maximum length of time for which FLI benefits will be paid from six to 12 weeks during any 12-month period. In cases of intermittent leave, the maximum FLI leave is increased from 42 days to 84 days. The bill increases the amount of weekly benefits for FLI leave and TDI pregnancy leave from two-thirds of a claimant’s average weekly wage to 90 percent of that wage, subject to a maximum amount, which the bill increases from 53 percent of the State average weekly wage (“SAWW”) for all workers to 100 percent of the SAWW. The bill provides that the costs of all of those increases in benefits will be borne exclusively through increases in worker contributions, without any increases in employer contribution rates.

The bill expands the family members for whom individuals covered under the FLI law may receive paid benefits during periods of leave from employment to care for to include siblings, grandparents, grandchildren, parents-in-law, and others related by blood or relationship equivalent to a family relationship, and expands the “Family Leave Act” (“FLA”) and the “NJ SAFE Act” to include the same groups. The bill provides that FLI benefits may be taken by a covered individual while taking time off from work, pursuant to the NJ SAFE Act, to assist a family member who is a victim of domestic or sexual violence.

The bill amends the FLA and the FLI law to provide an employee who becomes a parent of a child pursuant to a gestational carrier agreement with the same rights to unpaid and paid family leave as

those laws currently provide to an employee who is a parent of a newborn child.

The bill provides that FLI benefits, with FLA protections, in cases of birth, placement in foster care, or adoption may be taken on an intermittent basis, if the individual provides the employer with prior notice not less than 15 days before the first day on which benefits are paid, unless unforeseen circumstances preclude prior notice. The individual must make a reasonable effort to schedule the leave to not disrupt employer operations and, if possible, to provide a regular schedule of the days, days of the week, or weeks of the intermittent leave.

The bill eliminates the one-week waiting period for FLI benefits in all cases and limits the amount of accrued sick leave that certain public employees may be required to use before receiving TDI benefits.

The bill provides that an employer may not retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee took or requested any TDI or FLI benefits, except that not reinstating an employee after a period of FLI benefits is not to be regarded as retaliation in the case of an employer who is exempt from the FLA because the employer has less than 30 employees. The bill provides various remedies in cases of such retaliation, and applies existing penalties of the TDI law to employers who fail to provide the notifications and disclosures at the time and in the manner required by the TDI and FLI laws. If the failure causes a delay in benefit payments, the employer is required to pay the claimant an added amount equal to the benefits due from the time that the notification or disclosure was required until the benefit payments commence.

The bill also requires the division to implement goals for the timely determination and payment of TDI and FLI benefits. For TDI benefit claims, the goals specified by the bill set minimum percentages of initial claims to be completed within specified time spans as follows: 40 percent within seven days, 75 percent within 14 days, 85 percent within 21 days, and 90 percent within 28 days. For FLI benefit claims, the goals specified by the bill set the minimum percentages at 80 percent within seven days, 85 percent within 14 days, 90 percent within 21 days, and 95 percent within 28 days.

The bill requires the issuing of annual reports regarding efforts to attain those goals. Each report is required to include data regarding: claims completed within the stated goal periods; claims received with insufficient information causing delays in benefit payment and any related fines, penalties or payments to claimants; personnel processing TDI and FLI claims and related administrative costs; along with an evaluation of the causes of any failures to meet the goals, and a plan to correct them, including any needed increase in personnel, any enforcement or educational measures, or improvements in data processing and other administrative services and equipment. The

plans should specify any increase needed to implement the plan in the estimate made pursuant to the TDI and FLI laws of the amounts needed to provide the cost of administration of TDI and FLI benefits. The commissioner is required to use that increased estimate in setting the rate of TDI and FLI worker taxes. The bill allocates \$1.2 million to education and outreach efforts for the programs, of which not less than \$600,000 would be allocated to contracts with community-based organizations.

The bill directs the department to disseminate information about the rights and responsibilities of employers and employees regarding FLI benefits, and allows it to contract with community-based organizations to assist.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. Limit to two weeks the amount of accrued sick leave certain public employees may be required to use before receiving TDI benefits, with the further limitation that they may not be required to use their last week of accrued sick leave before receiving TDI benefits;
2. Permit a worker with more than one employer to receive FLI benefits for leave taken from one employer while continuing other employment so long as the worker does not increase the amount of any other employment during the time of leave;
3. Extend FLA protections to individuals allowed by the bill to take FLI benefits on an intermittent basis, including in cases of placement in foster care;
4. Extend FLA protections to domestic partners;
5. Specify that, when benefits are provided to a worker providing care for an individual whose close association is equivalent to a family relationship, the worker is expected to give evidence of that association;
6. Specify that the limit on the administration expenses for the TDI and FLI programs of 0.1% is applied to the current TDI tax base, not on the bill's new FLI tax base;
7. Remove the one week waiting period before receiving FLI benefits; and
8. Change the effective date of the bill to January 1, 2019.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill will result in a significant annual increase in State Disability Benefits Fund (SDBF) revenue collections and expenditures.

The OLS estimates that SDBF expenditures will rise due to an increase in the payment of FLI benefits and TDI benefits in case of pregnancy and recovery from childbirth, as well as potential increase in benefit users, resulting from the provisions of the bill.

The OLS estimates that if the benefit increases of the bill had been in effect in 2018, FLI benefits would have increased by more than \$200 million and FLI pregnancy benefits by more than \$50 million.

The OLS notes that the Department of Labor and Workforce Development may incur indeterminate costs associated with certain reporting and other administrative requirements under the bill.

The OLS further notes that the bill may result in an indeterminate annual increase in State revenue due to the collection of penalties from employers who fail to provide the department with certain information regarding an employee's claim.

The benefits and costs associated with the FLI program are funded entirely through an additional assessment on workers' wages subject to TDI taxes. The OLS notes that any increase in FLI benefit payments, along with the associated administrative costs, resulting from the bill will be funded through these employee taxes and not through any assessment on employers.