



April 17, 2020

**Re: Amendments to New Jersey Earned Sick Leave Law, Family Leave Act, and Temporary Disability Benefits Law to Address COVID-19**

At MetLife, we have been monitoring the evolving situation regarding the COVID-19 and how newly enacted New Jersey State legislation may impact our customers' benefit plans and obligations for employees working in the State of New Jersey. We are reaching out to you regarding the enacted amendments to New Jersey law and what it may mean for you and your workforce.

On March 25, 2020, the New Jersey State legislation passed amendments to multiple leave and benefit laws to address issues relating to COVID-19, including the New Jersey Earned Sick Leave Law ("ESL"), Family Leave Act ("FLA"), and Temporary Disability Benefits Law, which Governor Phil Murphy signed into law the same day. The amendments expand the qualifying events available under the ESL, FLA, Temporary Disability Insurance ("TDI"), and Family Leave Insurance ("FLI") programs to individuals and their family members who are quarantined or isolated due to exposure or suspected exposure to a communicable disease, including COVID-19, during a state of emergency declared by the Governor or public health authority. In this regard, Governor Murphy declared a state of emergency on March 9, 2020. These amendments are effective immediately. **On April 14, 2020, Governor Murphy enacted further amendments to the FLA, TDI, and FLI, which expanded the qualifying reasons for leave under the FLA and made technical corrections to the TDI and FLI programs. These additional amendments are effective immediately and retroactive to March 25, 2020.** Attached to this letter is a summary of these amendments, along with some FAQs regarding the amendments.<sup>1</sup>

**What Does This Mean For You and Your Workforce?**

- If you have a TDI Private Plan with MetLife, MetLife will automatically expand your existing TDI policies and plans to provide benefits as required by the amended law. MetLife is prepared to support your employees' TDI claims using the same processes in place today. You should also reach out to the state or your FLI administrator, since MetLife does not administer the FLI program at this time.
- If MetLife administers your leaves of absence under the unpaid FLA, we are here to assist you in updating your MetLife supported leave program. Please note this is separate than the paid FLI which MetLife does not administer.
- Understanding that this is an evolving situation, we will work with you to operationalize any changes as quickly as possible. We are here to assist you in any way we can, including the communication of any such changes to your workforce.

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<sup>1</sup> **We have made some updates to this letter since its initial release to address recent legislative amendments. The new information in this letter is highlighted in bold and red font so you can clearly see the relevant updates.** Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.

- Consult with your legal counsel to help create a legally compliant plan that works best for you and your employees.
- Continue monitoring federal, state, and local legislation for additional changes that could impact your obligations as an employer to provide leave and benefits to your employees. MetLife is monitoring federal and state legislation as well and will continue to provide you with updates after they become available.

We understand that you may have questions about COVID-19 and the impact on your workforce. To help support our customers, we created a dedicated page on our website to keep track of the rapidly moving and evolving challenges for our customers. For up-to-date information, visit the MetLife microsite at <https://www.metlife.com/covid-19-update-ceo-faq/> or reach out to any member of your Account Team.

## Summary of the Amendments to New Jersey Law

As previously mentioned, the recently enacted legislation in New Jersey amends the FLA, ESL, TDI, and FLI programs to address COVID-19 related issues. All of these amendments are effective immediately and there is no sunset period in the law.

### Family Leave Act (FLA)

**With respect to the FLA program (which provides unpaid, job protected leave to eligible employees for qualifying reasons), the amended law amends the definition of “serious health condition” to include an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, when one of the following events occur:**

- **the in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency; or**
- **the issuance by a public health authority of a determination, including by mandatory quarantine, requiring responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member may jeopardize the health of others; or**
- **the recommendation of a health care provider or public health authority that a family member voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member would jeopardize the health of others.**

This enhanced definition of “serious health condition” only applies during a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority. Notably, Governor Murphy declared a state of emergency on March 9, 2020. **The amended law also allows employers to require certification for these leave reasons and describes the types of acceptable certification.**

**In addition, the amended law provides that employees may use these new leave reasons intermittently if the employee (1) provides the employer with prior notice of the leave as soon as practicable and (2) makes a reasonable effort to schedule the leaves so as not to unduly disrupt the operations of the employer and, if possible, provide the employer, before the intermittent leave begins, with a regular schedule of the day or days of the week on which the intermittent leave will be taken.**

There are no other **material** modifications to FLA, nor does the amended law add a paid component to the unpaid leaves of absence under the FLA. Any order of isolation or quarantine may not be self-imposed, but must come from either a healthcare provider or a public health authority.

## Earned Sick Leave (ESL)

As for the ESL, existing law allows employees to use up to 40 hours of fully paid sick leave during a benefit year for a qualifying reason. The amended law modifies two of these pre-existing qualifying reasons and adds a third qualifying reason. The amended law does not provide for any additional time allotment for ESL. More specifically, the amended law modifies two of the following pre-existing qualifying reasons (amendments in bold):

| <b>Old ESL Qualifying Reason</b>   | <b>New ESL Qualifying Reason</b>  |
|--|---|
| Closure of the employee’s workplace, or the school or place of care of a child of the employee by order of a public official due to an epidemic or other public health emergency                   | Closure of the employee’s workplace, or the school or place of care of a child of the employee by order of a public official <b>or because of a state of emergency declared by the Governor</b> due to an epidemic or other public health emergency   |
| Issuance by a public health authority of a determination that the presence in the community of the employee or family member in need of care by the employee would jeopardize the health of others | <b>Declaration of a state of emergency by the Governor</b> or issuance by a <b>health care provider or the Commissioner of Health</b> or other public health authority of a determination that the presence in the community of the employee or family member in need of care by the employee would jeopardize the health of others |

In addition, the ESL adds the following qualifying reason for which an employee may request fully paid sick leave from their employer:

During a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others.

As previously mentioned, on March 9, 2020, Governor Murphy declared a state of emergency. The amended law does not otherwise alter the requirements of the ESL. Employers should review their existing sick leave or paid time off plans with their legal counsel to assess if they need to make any modifications or if the updated qualifying reasons under the amended New Jersey law are already covered within their leave options.

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

Finally, with respect to the TDI and FLI benefit programs, the amended law adds the following qualifying events to the definitions of **“disability”** and **“compensable disability”** (for TDI) and **“family temporary disability leave”** and **“serious health condition”** (for FLI) under existing law:

- Employee experiences an illness caused by an epidemic of a communicable disease (TDI);
- Employee has a known or suspected exposure to a communicable disease (TDI);
- Employee makes efforts to prevent the spread of a communicable disease (TDI); and
- Employee is caring for a family member subject to the first 3 qualifying events (FLI).

A qualifying employee will have access to TDI immediately, after fully paid sick leave is exhausted under ESL if opted. Similar to the new qualifying event available under the ESL, the new qualifying events for TDI and FLI benefits apply during a declaration of a state of emergency by the Governor or public health authority, where the employee or family member is subject to a recommendation or order of quarantine or isolation issued by a healthcare provider or public health authority that the presence of the employee or family member in the community may jeopardize the health of others because the employee or family member is suspected to be exposed to a communicable disease.

As previously mentioned, an employee now has access to fully paid ESL for the same COVID-19-related qualifying reason. Thus, to the extent an employee has any ESL time remaining, the employee may opt to exhaust their ESL time, and receive their full pay, prior to requesting TDI or FLI at partial wage replacement.

The expanded benefits do not apply to employees who voluntarily self-quarantine. Rather, an employee needs either a recommendation or order from a healthcare provider or a public health authority, such as the New Jersey Department of Health. We are seeking further guidance on the application of an order by the Department of Health or public health authority to determine if the order needs to be directed to a specific individual or if it may be applied more broadly. The amended law also removes the elimination period for TDI benefits paid in connection with the applicable expanded qualifying events.

All other provisions of the Temporary Disability Benefits law remain unchanged, including eligibility requirements, benefit duration, benefit amount, and benefit maximum.

### **Frequently Asked Questions (FAQs)**

#### **Do I need to have a new policy with MetLife to provide the expanded NJ TDI benefit?**

A. No. Your existing NJ TDI policy will be expanded for the new benefit. All of MetLife's NJ TDI policies have a 'conformity with the law' provision which allows us to immediately implement the expanded benefits based on your existing coverage. If MetLife administers your self-insured TDI program, MetLife is prepared to process TDI claims in accordance with the recent amendments.

#### **Does the expanded NJ TDI program mandate benefit eligibility if the employee is self-quarantined?**

A. No. The NJ TDI benefits apply only when there is an order or recommendation by a healthcare provider or public health authority (such as the New Jersey Department of Health) that the employee or family member's presence in the community may jeopardize the health of others and when there is a recommendation or order that the employee or family member be isolated or quarantined as a result of suspected exposure to a communicable disease.

#### **What happens if a state of emergency is not declared?**

A. The expanded definitions under the amendments to the NJ TDI program only apply during a state of emergency declared by the Governor, Commissioner of Health, or other public health authority.

**How much wage replacement benefit is available to my employees through NJ TDI?**

- A. Through June 30, 2020, claimants are eligible to receive up to two-thirds (2/3) of their average weekly wage, up to a maximum of \$667 per week. As of July 1, 2020, claimants will be eligible to receive up to 85% of their average weekly wage, and the maximum weekly benefit increases to \$881 per week. Employers should note that the sick leave benefits under the ESL are higher than the NJ TDI benefits, assuming the same qualifying reason applies to both.

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