



Employers Association of New Jersey

A nonprofit association serving employers since 1916

September 10, 2020

Joan Harrigan-Farrelly
Deputy Director, Women's Bureau
U.S. Department of Labor
200 Constitution Avenue NW
Room S-3002
Washington, DC 20210

RE: Request for Information; Paid Leave, RIN 1290-ZA03

Dear Ms. Harrigan-Farrelly,

The Employers Association of New Jersey (EANJ) submits the following comments to the Women's Bureau, U.S. Department of Labor, in response to the "Request for Information: Paid Leave" published in the *Federal Register* on July 16, 2020.

Founded in 1916, EANJ is trade association consisting of over 3,200 employers, both small and large, public and private, throughout New Jersey. For the past 104 years, EANJ has dedicated its resources to improving New Jersey's workplaces through improved employee relations and promoting dignity and respect in the workplace. Paid family leave promotes the welfare and equality of working families, especially working women.

In 2008, New Jersey became the second state in the nation to enact a Family Leave Insurance (FLI) program. Initially, the program offered up to six weeks of paid benefits to employees needing time off work to bond with a new child or care for a parent, spouse or child with a serious health condition. Funded entirely by employee payroll contributions, the program is administered by the NJ Department of Labor and Workforce Development (LWD) as an extension of its Temporary Disability Benefits program. In addition to withholding and submitting payroll contributions, NJ employers are required to conspicuously display a poster detailing the FLI program information and provide employees with a copy of a notice upon the occurrence of certain events.

Because of the broad definition of who is a covered individual under the FLI program, **virtually all employees working in the state are eligible for paid leave benefits under the program**¹. Despite the wide-spread availability of benefits, data published by LWD for years 2014 through 2017 shows that, on average, 32,605 claims for benefits were filed each year². In 2017, with more than 4-million workers estimated to be covered by state and private FLI plans, the amount of FLI claims filed by employees

¹ An eligible employee includes all workers covered by the NJ Unemployment Insurance Program who have worked 20 or more "base weeks" or earned \$10,000 or more in a "base year."

² EANJ analysis of New Jersey Department of Labor and Workforce Development, Office of Research and Information, *Family Leave Insurance Workload Summary Report*, for 2014 through 2017.

amounted to **less than one percent** of the private-sector workforce³. While NJ is at the forefront of the paid leave movement, we must consider how to remove obstacles preventing the remaining 99% of the workforce from taking advantage of these benefits as we strive to achieve health equity.

In August 2012, three years after implementation of NJ's FLI program, The Eagleton Center for Public Interest Polling at Rutgers University surveyed over 900 registered NJ voters to gauge their awareness of the NJ FLI program. Fewer than half of all residents knew the program existed or were aware of the extent of its provisions, even among those who were employed full-time and contributed to the program through payroll tax deductions.⁴

In April 2019, EANJ surveyed and interviewed a cross-section of 375 NJ businesses, both EANJ members and non-members, to evaluate their experiences with FLI. According to EANJ's survey results, most paid leave claims are filed by women, usually to care for newborn babies (89% of claims), and employees of larger employers file more claims than those from smaller firms⁵. This echoes data compiled by LWD where claims data heavily skewed female, primarily for baby bonding⁶. EANJ's survey reveals that uptake is particularly low among smaller employers. The survey shows that for employers with 49 or fewer employees, only 2 in 10 (20%) had a FLI claim within the last 12-months. This is an alarming statistic considering that NJ is a small employer state - **ninety-six percent (96%) of workers in NJ are employed by an employer with less than 50 employees**⁷.

Low uptake of benefits has been attributed to a number of factors, including low wage-replacement levels, low caps on earnings while on leave, limitation of 6 weeks of available benefits and lack of job protection⁸. In January 2019, the NJ Legislature passed paid family leave legislation which substantially expanded upon and enhanced the existing FLI program and directly addressed each of these factors. But these enhancements will have little-to-no impact on those working for the vast number of small employers who remain unaware of the program's existence and/or its application to their employees. To survive and thrive, small employers run lean and streamlined operations. Small employers don't have a designated human resource professional and often HR-type issues fall directly on the business owner, office administrator or bookkeeper, all of whom tend to wear

³ NJ Department of Labor and Workforce Development, Office of Research and Information. *Family Leave Insurance Workload Summary Report*, 2017.

⁴ White K, Houser L, Nisbet E. *Policy in Action: New Jersey's Family Leave Insurance Program at Age Three*. New Brunswick, NJ: Center for Women and Work, Rutgers University; 2013.
http://njtimetocare.com/sites/default/files/03_New%20Jersey%20Family%20Leave%20Insurance-%20A%20CWW%20Issue%20Brief.pdf

⁵ Employers Association of New Jersey, *Family Leave/Family Leave Insurance Survey Results*. April, 2019.
<https://www.slideshare.net/JohnJS/annual-meeting-presentation-2019>

⁶ In 2017, 76% of FLI eligible claimants were females under the age of 45 and 84% of total eligible claims that year were bonding claims. NJ Department of Labor and Workforce Development, Office of Research and Information, *Family Leave Insurance Workload Summary Report*, for 2014 through 2017.

⁷ New Jersey Department of Labor and Workforce Development, Division of Economic & Demographic Research – *Quarterly Census of Employment and Wages*, February 8, 2019.

⁸ New Jersey Policy Perspective. *Boosting Families, Boosting the Economy: How to Improve New Jersey's Paid Family Leave Program*. April 27, 2017.
<https://www.njpp.org/reports/boosting-families-boosting-the-economy-how-to-improve-new-jerseys-paid-family-leave-program>

many hats and none of whom likely have a background in employment law or knowledge of HR best practices.

EANJ's experience is that most employers want to "do the right thing" when it comes to their employees. This intention is balanced against their need to run their business and get work done. Many employers underestimate the benefits of FLI on their businesses and overestimate the burden it will have on their operations. However, EANJ's April 2019 FLI survey illustrates a low administrative burden of administering FLI with 40% of employers responding that administering an FLI claim took less than 1 hour, and 43% responding that FLI administration took 1-2 hours, as noted by Robert Asaro-Angelo, NJ's Commissioner of Labor, in his testimony before Congress on December 10, 2019 citing the EANJ survey.⁹

A 2011 study by Ruth Milkman and Eileen Appelbaum demonstrates the low disruption to employers whose employees use family leave insurance. In their survey of California employers with fewer than 50 employees, 88.8% of employers reported that Paid Family Leave (PFL)¹⁰ had either a "positive effect" or "no noticeable effect" on business productivity. 91.1% of employers reported a "positive effect" or "no noticeable effect" on business profitability or performance.¹¹ 92.2% of employers surveyed reported a "positive effect" or "no noticeable effect" on employee turnover. 98.9% of employers witnessed PFL as having a "positive effect" or "no noticeable effect" on morale. 86.9% of total employers found that PFL did not generate "any cost increases" and 8.8% experienced cost savings, due to reduced employee turnover and reduced benefit costs when employees used PFL rather than, or in combination with, other forms of time off.¹²

FLI's expansion included \$1.2 million to expand awareness and outreach efforts to promote the program's availability of paid family leave. LWD has launched MyLeaveBenefits (<https://myleavebenefits.nj.gov/>), a website to help workers and employers to better understand and navigate the FLI program. While employee outreach is essential, there is an equal, if not greater need, to focus education initiatives on the employer community – to raise awareness of the benefits to be attained and ensuring employer "buy-in" and cooperation. Small employers need to understand how access to paid leave impacts them specifically; they need access to model policies to guide them; they need strategies for managing the absence and getting the job done during an employee's absence; they need experts to field their specific questions; they need to understand that men have equal access to these benefits; and they need to realize paid family leave has little to no negative effect on business. Of the 270,000 business establishments in the state, 96% employ 50 or fewer employees; 81% of that

⁹ United States House Committee on Oversight. *Examining the Need for Comprehensive National Paid Family and Medical Leave*. December 10, 2019. (statement of Robert Asaro-Angelo, Commissioner, New Jersey Department of Labor and Workforce Development). Approx. 51 minute mark.

https://www.youtube.com/watch?v=2OZywgVL4ag&feature=emb_logo

¹⁰ California Paid Family Leave (PFL) provides partial pay to employees taking time off to care for seriously ill family members or bond with new children. It does not offer job protection. Employment Development Department of the State of California. *About Paid Family Leave*. Accessed December 31, 2019.

https://www.edd.ca.gov/disability/about_pfl.htm.

¹¹ Appelbaum and Milman. *Leaves That Pay: Employer and Worker Experiences with Paid Family Leave in California*. January 2011. <http://cepr.net/documents/publications/paid-family-leave-1-2011.pdf>.¹³ Ibid.

¹² Rossin-Slater M. *Maternity and Family Leave Policy*. In *The Oxford Handbook of Women and the Economy*. Oxford University Press; 2018.

cohort employ nine employees or less, with more than half employing two employees¹³. According to a national small business owner survey, the main reasons that they started their businesses had more to do with working from home or being their own boss¹⁴. When asked how big they wanted their business to grow, most stated maybe a few employees. Small business owners simply do not view themselves as employers. As such, they routinely deny or are unaware of the applicability paid family leave. As such, the biggest barrier is reaching these small businesses.

However, we do know that most small employers have a modest understanding that the minimum wage and child labor requirements of the Fair Labor Standards Act apply to them. They also make good faith efforts to comply with mandatory payroll taxes. They have a general understanding that there are penalties for violating these laws and that there may be remedies for workers who have been cheated out of overtime, for example. In short, a family leave benefit would need to be given the same status as a wage to achieve the same level of conscientious awareness, as opposed to something discretionary or superfluous.

In conclusion, while paid leave provides for a necessary benefit to allow for employees to balance work-family demands, a significant lack of awareness, particularly within the small employer community, has led to extraordinary low uptake of benefits among workers. Any comprehensive national policy on paid leave should take into account the lesson learned here in New Jersey and consider how to ensure equal access for all.

Respectfully submitted,

Employers Association of New Jersey

¹³ NJ Private Sector Worksites Covered by Unemployment Insurance by Industry Sector and Average Employment Size Group, Third Quarter 2018.

<https://app.powerbigov.us/view?r=eyJrIjoiYWlwMzIIZTMtYTQyMy00M2NjLWFhOGEtZDY1NWQ2MDRIZjRhli%20widCI6IjUwNzZjM2QxLTM4MDItNGI5Zi1iMzZhLWUwYTQxYmQ2NDJhNyJ9>

¹⁴ Hurst, E. & Pugsley, B. *What Do Small Businesses Do?* University of Chicago Booth School of Business. 2011.