

**ATTORNEY-CLIENT PRIVILEGED****MEMO**

TO: New Jersey Asphalt Pavement Association

FROM: Brian S Montag  
Laura Scully

DATE: March 24, 2020

RE: COVID-19-Related Issues for New Jersey Employers

The COVID-19 pandemic has created a wide range of issues for employers. Below are some key items for New Jersey employers to consider with respect to labor and employment laws.

**1. Layoffs**

New Jersey law requires certain employers with 100 or more full-time employees to provide 60-days advance notice in the event of a mass layoff or transfer or termination of operations in certain circumstances. If certain employees are not provided sufficient notice, they may be entitled to severance pay.

Federal law requires certain employers to provide 60 days' notice prior to a plant closing or mass layoff. The law applies to employers with 100 or more employees, excluding part time, or 100 or more employees, including part time, who work a combined total of at least 4,000 regular hours per week.

**2. Employee Protections**

Under a recently enacted New Jersey law, during the current State of Emergency (declared by the Governor in Executive Order 103) employers are prohibited from terminating or otherwise penalizing an employee if: (a) the employee requests or takes time off from work, (b) the request is based on a written or electronically transmitted recommendation from a medical professional licensed in New Jersey, and (c) the recommendation includes that the employee take time off from work for a specified period of time because the employee has, or is likely to have, an infectious disease which may infect others at the employee's workplace.

In addition, employees may be protected under federal and state laws prohibiting disability discrimination and requiring reasonable accommodations for disabilities. Keep in mind that such laws impact what questions you may ask of employees related to their health.

The New Jersey Conscientious Employee Protection Act (CEPA) prohibits an employer from taking any retaliatory action against an employee because the employee has engaged in certain whistleblowing actions.

### **3. Employee Benefits**

New Jersey created a “Temporary Lost Wage Unemployment Program” to allow individuals affected by the coronavirus disease pandemic to recoup actual lost wages due to absence from work under certain circumstances related to COVID-19. The bill has passed both houses of the legislature, but has not been signed by the Governor yet.

Depending on the particular circumstances, employees may be entitled to earned sick leave, unemployment insurance benefits, temporary disability/family leave insurance, and/or workers’ compensation. The New Jersey Department of Labor has issued the following chart summarizing the circumstances under which such benefits may be available: in [English](#), and in [Spanish](#).

### **4. Paid Sick Leave<sup>1</sup>**

The federal Families First Coronavirus Response Act (FFCRA) requires employers with fewer than 500 employees to provide employees with expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 2, 2020 through December 31, 2020.

Under New Jersey’s Earned Sick Leave Law, most employees have a right to accrue up to 40 hours of earned sick leave per year. However, “employee’ does not include an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement . . .” N.J.S.A. 34:11D-1.

### **5. Handling COVID-19-related health issues**

Guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Employers should therefore continue to follow the most current information on maintaining workplace safety. Notably, employers should also:

- Inform and remind employees of everyday precautions that help prevent the spread of COVID-19.
- Provide training to employees regarding appropriate workplace protocols.
- Create employer protocols in response to suspected cases of COVID-19 in the workplace.
- Create employer protocols in response to confirmed cases of COVID-19 in the workplace.

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<sup>1</sup> Regarding unpaid leave, under the Family and Medical Leave Act (“FMLA”), an employee who tests positive for COVID-19 would likely qualify as having a “serious health condition.” The federal FMLA guarantees unpaid, job-protected leave for eligible workers at businesses with at least 50 employees who have a serious health condition. Also, the New Jersey Family Leave Act covers employers with 30 or more employees (regardless of location). Employees who have been employed by the company for at least 1 year (and have worked at least 1,000 hours in the past 12 months), can generally take up to 12 weeks of job-protected, unpaid leave during any 24-month period. This leave is available, for example, to care for a family member, or someone who is the equivalent of family, with a serious health condition.