34:11B-1 to 8

LEGISLATIVE HISTORY CHECKLIST

A: 34:11B-1 to 34:11B-8 "Family Leave Act"

WS OF: 1989 **CHAPTER:** 261

Bill No: S2035

Sponsor(s): DeFrancesco and others

Date Introduced: February 18, 1988

Committee: **Assembly:** Labor

Senate: Labor Industry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks

2R ENACTED

Date of Passage: **Assembly:** December 18, 1989

Senate: December 8, 1988

Date of Approval: January 4, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: **Assembly:** Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: Yes

Following were printed:

Reports: No

Hearings: No

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See newspaper clippings-attached:
"Family leave gains to protect workers," 12-19-89 Star.
"Assemby oks parental leave..." 12-19-90 Star Ledger.
"Family leave bill is approved," 12-22-89 New York Times.
"Family leave proposal goes to Governor..." 12-22-89 Star Ledger.
"Proposal authorizing parental leave waits for Kean's signature," 12-25-89 Courier-Post.
"Crisis medical leave asked for workers," 6-20-89 Star Ledger.
"Understanding NJ's family leave law," 1-15-90 Trenton Times.

See Attached:
Kean, Thomas, "The State's role in the implementation of infant care leave," in Zigler, Edward and Frank, Meryl, The Parental Leave Crisis, pp. 333-40.

T 331.25 P228 OR 331.25 PAR

Title 34.
Chapter 11B.(New)
LEAVES OF
ABSENCE
§§1-16 -
C.34:11B-1 to
34:11B-16
§17-Approp.
§18-Note to all
sections
§§1-16 - Note
to 10:5-6

P.L.1989, CHAPTER 261, *approved January 4, 1990*
1988 Senate No. 2035 *(Second Reprint)*

AN ACT to provide employees with newly-born or adopted children or seriously ill family members temporary leave from their employment, and guaranteeing job security and certain benefits during this leave, supplementing P.L.1945, c.169 (C.10:5-1 et seq.), and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited at the "Family Leave Act."

2. The Legislature finds and declares that the number of families in the State in which both parents or a single parent is employed outside of the home has increased dramatically and continues to increase and that due to lack of employment policies to accommodate working parents, many individuals are forced to choose between job security and parenting or providing care for ill family members. The Legislature further finds that it is necessary to promote the economic security of families by guaranteeing jobs to wage earners who choose to take a period of leave upon the birth 2[,] or2 placement for adoption 2[, or serious health condition]2 of a child or serious 2[illness] health condition2 of a 2[spouse or parent] family member2. The Legislature, therefore, declares that it is the policy of the State to protect and promote the stability and economic security of family units. The Legislature further declares that employees should be entitled to take a period of leave upon the birth 2[,] or2 placement for adoption 2[, or serious illness]2 of a child or serious 2[illness] health condition2 of a 2[spouse or parent] family member2 without risk 1[or] of1 termination of employment or retaliation by employers and without loss of certain benefits.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1 Senate SLI committee amendments adopted September 29, 1988.
2 Assembly ALA committee amendments adopted November 20, 1989.

3. As used in this act:

a. "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a parent who is

(1) under 18 years of age; or

(2) 18 years of age or older but incapable of self-care because of [1]a[1] mental or physical [1][handicap] impairment[1].

b. "Director" means the Director of the Division on Civil Rights.

c. "Division" means the Division on Civil Rights in the Department of Law and Public Safety.

d. "Employ" means to suffer or permit to work [1]for compensation[1], and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

e. "Employee" means a person who is employed [1]for at least 12 months[1] by an employer, with respect to whom benefits are sought under this act, for not less than 1,000 base hours during the immediately preceding 12-month period.

f. "Employer" means a person or corporation, partnership, individual proprietorship, joint venture, firm or company or other similar legal entity which engages the services of an employee and which [2]:

(1) With respect to the period of time from the effective date of this act until the 365th day following the effective date of this act,[2] employs [2][25] 100[2] or more employees for each working day during each of 20 or more calendar workweeks in the [2]then[2] current or immediately preceding calendar year[2];

(2) With respect to the period of time from the 366th day following the effective date of this act until the 1,095th day following the effective date of this act, employs 75 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; and

(3) With respect to any time after the 1,095th day following the effective date of this act, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year[2]. "Employer" includes the State, any political subdivision thereof,

and all public officers, agencies, boards or bodies.

g. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

h. "Parent" 2[1for the purpose of the birth, adoption or serious health condition of a child,1]2 means a person who is the biological parent, adoptive parent, foster parent, step-parent 2, parent-in-law2 or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child.

i. "Family leave" means leave from employment 1[, for the purpose of care,] so that the employee may provide care made necessary1 by reason of:

(1) the birth of a child of the employee;

(2) the placement of a child with the employee in connection with adoption of such child by the employee; 2or2

(3) the serious health condition of a 2[child] family member2 of the employee 2[; or

(4) the serious illness of 1[a] the1 spouse or 1a1 parent of the employee or the employee's spouse which renders the spouse or parent incapable of self-care because of 1a1 mental or physical impairment 1[that results in an inability to perform two or more activities of daily living]1]2.

j. 2"Family member" means a child, parent, or spouse.

k.2 "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours 1worked1 per workweek 1[or] but not for fewer than an employee's usual number of1 hours 1worked1 per workday 1, unless agreed to by the employee and the employer1.

2[k.] l.2 "Serious health condition" means an illness, injury, impairment, or physical or mental condition 2[of a child]2 which 1[involves] requires:1

(1) inpatient care in a hospital, hospice, or residential medical care facility; or

(2) continuing medical treatment or continuing supervision by a health care provider.

4. An employee of an employer in this State subject to the provisions of this act shall be entitled to a family leave of 12 weeks in any 24-month period upon advance notice to the employer [2], unless the employer denies family leave to the employee pursuant to subsection h. of this section[2].

a. [2][This leave need not be taken consecutively, provided that the total time within which the nonconsecutive leave is taken does not exceed a 12-month period;

b.] In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

(1) The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

(2) The employee provides the employer with prior notice of the leave in a manner which is reasonable and practicable; and

(3) The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

b. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employer and the employee.

c.[2] Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption [2][;].[2]

[2][c. In the case of a child who has a serious health condition or a spouse or parent who has a serious illness, the leave may be taken intermittently [1]on a reduced leave schedule[1] when medically necessary;][2]

d. Family leave [1]required by this act[1] may be paid, unpaid, or a combination of paid and unpaid leave [1][, provided the total duration of the leave is not more than 12 weeks][1]. If an employer provides paid family leave for fewer than 12 workweeks, the additional weeks of leave added to attain the 12-workweek total [1]required by this act[1] may be unpaid [2][;].[2]

e. An employer may require that [1][a claim for] any period of[1] family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the director to be capable of providing adequate certification[2][;].[2]

(1) Where the certification is for the serious health condition of [2][the child of the employee or serious illness of a spouse or parent] a family member of the employee[2], the certification shall be sufficient if it states: (a) the date on which the serious health condition [2][or serious illness][2] commenced; (b) the probable duration of the condition [2][or illness][2]; and (c) the medical facts within the provider's knowledge regarding the condition;

(2) Where the certification is for the birth or placement of the child, the certification need only state the date of birth or date of placement, whichever is appropriate [2][;].

In any case in which the employer has reason to doubt the validity of the certification provided pursuant to paragraph (1) of this subsection, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided pursuant to paragraph (1) of this subsection, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.[2]

f. In any case in which the necessity for leave under this act is foreseeable, based upon an expected birth or placement of the child for adoption, the employee shall provide the employer with prior notice of the expected birth or placement of the child for adoption in a manner which is reasonable and practicable[2][;].[2]

g. No employee shall, during any period of leave taken pursuant to this section, perform services on a full-time basis for any person for whom the employee did not provide those services immediately prior to commencement of the leave.

[2]h. An employer may deny family leave to the employee if:

(1) The employee is a salaried employee who is among the highest paid 5% of the employer's employees or the seven highest paid employees of the employer, whichever is greater;

(2) The denial is necessary to prevent substantial and grievous economic injury to the employer's operations; and

(3) The employer notifies the employee of its intent to deny the leave at the time the employer determines that the denial is necessary.

(i) In any case in which the leave has already commenced at the time of the notification pursuant to paragraph (3) of subsection h. of this section, the employee shall return to work within 10 working days of the date of notification.[2]

5. An employee shall be entitled, at the option of the employee, to take this leave on a reduced leave schedule, except that [2][the]:

a. The[2] employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks [2][. The]; and

b. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employer and employee, if the leave is taken upon the birth or adoption of a healthy child.

The employee shall make a reasonable effort to schedule[2] reduced leave [2][shall be scheduled][2] so as not to disrupt unduly the operations of the employer and the employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a [2][child, or the serious illness of a spouse or parent] family member[2], in a manner which is reasonable and practicable. [2]Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled.[2]

6. An employer shall [1][inform current and new employees of the rights granted by this act] display conspicuous notice of its employees' rights and obligations pursuant to the provisions of this act, and use other appropriate means to keep its employees so informed[1].

7. An employee who exercises the right to family leave under section 4 of this act shall, upon the expiration of the [1][time period of][1] leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment. If during a leave [1]provided by this act[1], the employer experiences a [1]reduction in force or[1] layoff and the employee would have lost

their position [1][,] had the employee not been on leave, as a result of the reduction in force or[1] pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement [1][, had the employee not been on leave] where applicable[1], the employee shall not be entitled to reinstatement to the former or an equivalent position. The employee shall retain all rights under [1][a] any applicable[1] layoff and recall system, including a system under a collective bargaining agreement, as if the employee had [1][no] not[1] taken the leave.

8. [1]a.[1] During a leave taken under section 4 of this act, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee [1][is restored] returns to work[1] pursuant to section 7 of this act [1]or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner[1].

[1]b. During a leave taken under section 4 of this act, the employer shall provide any employment benefits that are not required to be maintained pursuant to subsection a. of this section pursuant to the employer's policy with regard to employment benefits for employees on temporary leave from employment.[1]

9. a. It shall be unlawful for any employer to interfere with, restrain or deny the exercise of, or the attempt to exercise, the rights provided under this act or to withhold the benefits provided for under this act.

b. It shall be unlawful for an employer to discharge or discriminate against an individual for opposing a practice made unlawful by this act.

c. It shall be unlawful for a person to discharge or discriminate against an individual because the individual:

(1) has filed a charge, or has instituted or caused to be instituted a proceeding, under or related to this act;

(2) has given or is about to give information in connection with an inquiry or proceeding relating to a right provided under this

act; or

(3) has testified or is about to testify in an inquiry or proceeding relating to a right provided under this act.

10. The penalty for an employer violating this act is, in addition to other relief or affirmative action provided by law, not more than $2,000.00 for the first offense [1]and not more than $5,000.00 for the second and each subsequent offense[1], to be recovered in a summary civil action in the name of the Attorney General and collected pursuant to "the penalty enforcement law" N.J.S.2A:58-1 et seq.

11. Any person may initiate suit in Superior Court or file a complaint with the division on either an individual or class basis. In addition to the remedies provided in section 16 of P.L.1945, c.169 (C.10:5-17), the aggrieved party may be awarded punitive damages in an amount not greater than $10,000.00 except that in the case of a class action or a director's complaint the total amount of punitive damages shall not exceed $500,000.00 or 1% of the net worth of the defendant, whichever is less. In determining the amount of punitive damages, the court [1]or director[1] shall consider, among other relevant factors, the amount of compensatory damages awarded, the amount of civil penalty to be paid by the employer, the frequency and persistence of the violation of this act by the employer, the resources of the employer, the number of persons adversely affected by the violation, and the extent to which the employer's failure to comply with this act was intentional.

12. In an action or complaint brought under this act, the prevailing party may be awarded reasonable attorneys' fees as part of the cost, provided however, that no attorneys' fees shall be awarded to the employer unless there is a determination that the action was brought in bad faith.

13. Family leave granted under this act is in addition to, and shall not abridge nor conflict with, any rights pursuant to the [1][Temporary] "Temporary[1] Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

14. [2][Except as provided by [1][sections] section[1] 4, 5 [1][and] ,[1] 7 [1]or 8[1] of this act, no provision of this act shall excuse noncompliance with a collective bargaining agreement or other employment benefit program or a plan in effect on the date of

enactment of this act [1][, nor] .[2] No provision of this act shall be deemed to[1] justify an employer in reducing employment benefits provided by the employer [2]or required by a collective bargaining agreement[2] which are in excess of those required by this act. [2]Nor shall any provision of this act, or any regulations promulgated to implement or enforce this act, be construed to prohibit the negotiation and provision through collective bargaining agreements of leave policies or benefit programs which provide benefits in excess of those required by this act. This provision shall apply irrespective of the date that a collective bargaining agreement takes effect.[2]

[2]15. a. The director shall provide reports to the Governor, the President of the Senate and the Speaker of the General Assembly, each of which reports shall describe the actual or potential costs, impact or benefits of this act on businesses which have:

(1) Not less than 100 employees;

(2) Less than 100 employees but not less than 75 employees; and

(3) Less than 75 employees but not less than 50 employees; and

(4) Less than 50 employees.

Each report shall also indicate the total number of employees in each of the categories indicated above, the total number of employees in each category to which the provisions of this act apply and the total number of employees from each category who utilize the benefits under this act.

b. The first report shall be provided not later than the end of the second year following the effective date of this act. The second report shall be provided not later than the end of the fourth year following the effective date of this act. Thereafter, a report shall be provided on an annual basis.[2]

[2][15.] 16.[2] The director shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), deemed necessary for the implementation and enforcement of this act.

[2][16.] 17.[2] There is appropriated from the General Fund to the Division on Civil Rights within the Department of Law and Public Safety, the sum of $60,000.00 to effectuate the purposes of this act.

[2][17.] 18.[2] This act shall take effect on the 120th day after enactment.

be paid by the employer, the frequency and persistence of the violation of this act by the employer, the resources of the employer, the number of persons adversely affected by the violation, and the extent to which the employer's failure to comply with this act was intentional.

12. In an action or complaint brought under this act, the prevailing party may be awarded reasonable attorneys' fees as part of the cost, provided however, that no attorneys' fees shall be awarded to the employer unless there is a determination that the action was brought in bad faith.

13. Family leave granted under this act is in addition to, and shall not abridge nor conflict with, any rights pursuant to the Temporary Disability Benefits Law," P.L. 1948, c. 110 (C. 43:21-25 et seq.).

14 Except as provided by sections 4, 5 and 7 of this act, no provision of this act shall excuse noncompliance with a collective bargaining agreement or other employment benefit program or a plan in effect on the date of enactment of this act, nor justify an employer in reducing employment benefits provided by the employer which are in excess of those required by this act.

15. The director shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), deemed necessary for the implementation and enforcement of this act.

16. There is appropriated from the General Fund to the Division on Civil Rights within the Department of Law and Public Safety, the sum of $60,000.00 to effectuate the purposes of this act.

17. This act shall take effect on the 120th day after enactment.

SPONSORS' STATEMENT

This bill is designated the "Family leave Act." It provides that employees with newly-born, adopted, or seriously ill children or an ill parent or spouse may, upon advance notice to the employer, take leave from employment for the care of a family member for a period not to exceed 12 weeks during any 24-month period. Although family leave need not be taken consecutively, the total

time within which it is taken cannot exceed 12 months. In the case of a newly-born or adopted child, leave may be commenced at any time within one year of the date of birth or placement for adoption. The bill applies to employers with 25 or more employees and includes public as well as private sector employers. Leave can be paid, unpaid or a combination of paid and unpaid leave.

In addition to the 12-week leave period, the bill provides job security for those employees returning from family leave by requiring that they be restored to their former position or to one with equivalent status, benefits, pay and other terms and conditions of employment, unless their postion would have been subject to the good faith operation of a bona fide layoff and recall system during the leave period. In addition, the bill requires the continuation of health insurance coverage during the duration of the leave period as if the employee had not taken leave.

Among the various enforcement mechanisms provided in the bill is penalty collection pursuant to "the penalty enforcement law," under which an employer found to have violated the act may be fined not more than $2,000.00 for the first offense and not more than $5,000.00 for each subsequent offense. In addition, a person may file suit in Superior Court or a complaint with the Division on Civil Rights in the Department of Law and Public Safety on either an individual or class basis. An employer found to have engaged in unlawful discrimination in violation of the provisions of the bill may be held liable for compensatory damages and punitive damages, up to $10,000.00 in individual cases and the lesser of $500,000.00 or 1% of the defendant's net worth in class actions, as well as attorneys' fees.

The Division on Civil Rights in the Department of Law and Public Safety is charged with the administration and enforcement of the provisions of the bill. $60,000.00 is appropriated to the division to effectuate the purposes of the bill.

LABOR AND EMPLOYMENT

Civil Rights

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

[FRIST REPRINT]

SENATE, No. 2035

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 20, 1989

The Assembly Labor Committee reports favorably Senate Bill No. 2035 [1R] with committee amendments.

As amended, this bill provides that employees with a newly-born, adopted, or seriously ill child or an ill parent or spouse may take family leave from employment for a period not to exceed 12 weeks during any 24-month period. Although family leave need not be taken consecutively, the total time during which nonconsecutive leave may be taken is not to exceed a 12-month period for each serious health condition episode. In the case of a newly-born or adopted child, leave may be commenced at any time within one year of the date of birth or placement by adoption and, in the case of a healthy child, may not be taken nonconsecutively without the employer's agreement.

As amended, the bill's application to employers is phased in over four years. In the first year after enactment, the bill would apply to employers with 100 or more employees, in the second and third years after enactment, employers with 75 or more employees, and in the forth year and thereafter, the bill would apply to employers with 50 or more employees. Exempt from the bill are salaried employees who are among an employer's seven highest paid employees or among the highest paid 5% of the employer's employees, in any case where providing the leave would cause substantial and grievous economic injury to the employer's operations.

The bill provides job security for employees who return from family leave by requiring that they be restored to their former position or to one with equivalent status, benefits, pay and conditions of employment, unless the employee would have been laid-off during the leave period. The bill also requires the employer to continue group health insurance coverage and health benefits to the

employee and the employee's dependents during the leave period or until the date on which the employee's coverage would have expired had the employee not been on leave. The bill requires that other employee benefits be provided or accrued during the leave period in a manner consistent with the employer's policy regarding employment benefits provided employees on temporary leave.

The bill permits an employer to require medical certification of the serious health condition of a child or serious illness of a parent or spouse in support of family leave. As amended, the bill gives the employer the option of requiring a second medical opinion and a third, binding, medical opinion, if the previous opinions conflict and the employer and employee agree on a health care provider to give the third opinion. An employee may not take a new full-time position during the period of leave. In the case of nonconsecutive leave which is taken to care for an ill family member, the employee must give prior notice and make a reasonable effort to schedule the leave in a nondisruptive manner. The bill requires that any leave taken on a reduced leave schedule to care for an ill family member be taken in increments of not less than one usual workday unless the employer agrees otherwise.

Among the various enforcement mechanisms provided in the bill is penalty collection pursuant to "the penalty enforcement law" under which a violator of the provisions of the bill may be fined not more than $2,000 for the first offense and not more than $5,000 for each subsequent offense. In addition, a person may file suit in Superior Court or a complaint with the Division on Civil Rights in the Department of Law and Public Safety on either an individual or class basis. Violators of the provisions of the bill may be held liable for compensatory damages, punitive damages and attorneys' fees.

The Division on Civil Rights in the Department of Law and Public Safety is charged with the administration and enforcement of the provisions of the bill. $60,000 is appropriated to the division for implementation.

As amended, the bill requires the director of the Division on Civil Rights in the Department of Law and Public Safety to provide reports on the impact of the bill on employers and employees to the Governor and Legislature.

The committee amendments:

1. Change the bill's applicability provision from applicability to

employers with 25 or more employees to the phased-in schedule detailed above;

2. Exempt from the bill salaried employees who are among an employer's seven highest paid employees or among the highest paid 5% of the employer's employees;

3. Require that the total time during which nonconsecutive leave may be taken is not to exceed a 12-month period for each serious health condition episode;

4. Require that the employee provide notice to the employer and the scheduling of the leave be the least disruptive possible for the employer in the case of nonconsecutive leave which is taken to care for an ill family member;

5. Give the employer the option of requiring additional medical opinions;

6. Permit intermittent leave only if the employer agrees in cases of leave due to the birth or adoption of a healthy child;

7. Clarify that the provisions of the bill not be deemed to impose a ceiling on benefits provided to employees under a collective bargaining agreement or employer policy; and

8. Require impact reports to the Governor and Legislature.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 2035

with Senate committee amendments

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STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 1988

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate Bill No. 2035, designated the "Family Leave Act."

The bill provides that employees with a newly-born, adopted, or seriously ill child or an ill parent or spouse may take family leave from employment for a period not to exceed 12 weeks during any 24-month period. Although family leave need not be taken consecutively, the total time during which nonconsecutive leave may be taken is not to exceed a 12 month period. In the case of a newly-born or adopted child, leave may be commenced at any time within one year of the date of birth or placement by adoption. The bill applies to employers with 25 or more employees and includes public as well as private sector employers. Leave can be paid, unpaid or a combination of paid and unpaid leave.

In addition to the 12-week leave period, the bill provides job security for those employees returning from family leave by requiring that they be restored to their former position or to one with equivalent status, benefits, pay and other terms and conditions of employment, unless, during the leave period the employee would have lost the position because of a reduction in force or been laid-off pursuant to the good faith operation of any applicable bona fide layoff and recall system. The bill also requires the employer to continue group health insurance coverage and health benefits to the employee and the employee's dependents as if the employee had not taken leave during the duration of the leave period or until the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner. The amendments clarify that the provision and accrual of other employee benefits during the leave period be pursuant to the employer's policy with regard to employment benefits provided employees on temporary leave.

The bill, as amended, contains provisions designed to assure that family leave is taken at such times and in such a manner as is

consistent with the bill's intent and with minimum disruption to the workplace. The principle provisions of this nature include: (1) requiring that in order to qualify for family leave the employee must be a paid employee who has worked for their present employer for a period of at least 12 months and has worked at least 1,000 base hours during the immediately preceding 12-month period; (2) permitting an employer to require medical certification of the serious health condition of a child or serious illness of a parent or spouse in support of family leave; (3) requiring that an employee provide prior notice of the expected birth or adoption of a child in a manner which is reasonable and practicable; (4) precluding an employee from taking a new full-time position during the period of leave; and (5) requiring that any leave taken on a reduced leave schedule to care for an ill family member be taken in increments of not less than one usual workday unless the employer and employee agree otherwise.

Among the various enforcement mechanisms provided in the bill is penalty collection pursuant to "the penalty enforcement law" under which an employer found to have violated the act may be fined not more than $2,000.00 for the first offense and not more than $5,000.00 for each subsequent offense. In addition, a person may file suit in Superior Court or a complaint with the Division on Civil Rights in the Department of Law and Public Safety on either an individual or class basis. An employer found to have engaged in unlawful discrimination in violation of the provisions of the bill may be held liable for compensatory damages and punitive damages (up to $10,000.00 in individual cases and the lesser of $500,000.00 or one percent of the defendant's net worth in class actions), as well as attorneys' fees.

The Division on Civil Rights in the Department of Law and Public Safety is charged with the administration and enforcement of the provisions of the bill. $60,000 is appropriated to the division for implementation.

In addition to the amendments discussed above, the committee made several technical and clarifying amendments, including permitting employers to satisfy the bill's notice requirement by posting conspicuous notice and clarifying that the family leave provided pursuant to the bill is not to be deemed to impose a ceiling on benefits provided to employees under any applicable union contract or employer policy.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

SENATE BILL NO. 2035 (Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 15 of the Constitution, I am attaching to Senate Bill No. 2035 (Second Reprint) at the time of signing it my statement of the items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

This bill provides that employees in the State with newly born or adopted children or seriously ill family members shall be entitled to a family leave of 12 weeks in any 24-month period, with job security and employment benefits guaranteed during the leave. After a four-year phase-in period, the protections of this legislation will apply to all businesses of more than 50 employees and will thus cover nearly three-quarters of the workforce in the State. In addition, the bill appropriates $60,000 to the Division on Civil Rights to effectuate its purposes.

While I strongly endorse this bill and its objective of establishing a leave policy that permits employees to meet the special needs of their families, I cannot support the $60,000 appropriation to the Division on Civil Rights. In this period of fiscal constraint, agencies throughout State government will be required to fulfill their statutory mandates within existing appropriations. Because the State is unable to commit additional fiscal resources to the Division to administer this new program, the Division will be constrained to implement this worthwhile legislation with its current staff and within its current budget.

Accordingly, I herewith append the following statement of objections to the sums, or parts thereof, appropriated by this bill:

Page 1, Title, Line 5:	Delete ", and making an appropriation"
Page 9, Section 17, Lines 35-38:	Delete in its entirety
Page 9, Section 18, Line 39:	Delete "18" insert "17"

Respectfully,

GOVERNOR

Attest:

Chief Counsel

S-2387, sponsored by Senator Christopher Jackman, D-Hudson. The bill allows qualified corporations to act as fiscal agents and transfer agents.

S-1980, sponsored by Senator Raymond Lesniak, D-Union. The bill clarifies the law that permits nonprofit corporations to provide certain immunity from liability to trustees and officers.

S-402, sponsored by Senator John Lynch, D-Middlesex. The bill permits the mayors of Newark, Jersey City, Paterson and Elizabeth to appoint members of boards, authorities or commissions with the advise and consent of the governing body.

The bills are effective immediately unless otherwise noted.

The Governor also exercised his line-item veto on the following measures, which become law except for their vetoed portions:

S-2035/A-2678, sponsored by Senator Donald DiFrancesco, R-Union, and Assemblywoman Stephanie Bush, D-Essex. The bill provides that any employee in the state with newly born or adopted children or seriously ill family members shall be entitled to a family leave of 12 weeks in any 24-month period with job security and employment benefits guaranteed.

Citing concerns about the state's finances, the Governor vetoed a provision in the bill appropriating $60,000 to the state Division on Civil Rights to effectuate the law.

S-2881, 2906, sponsored by Senators Walter Rand and Daniel Dalton, both D-Camden, Senator Lawrence Weiss, D-Middlesex, and C. Louis Bassano, R-Union. The bill establishes safety standards for retail gasoline stations and prohibits self-service pumping of gasoline.

Citing concerns about the state's finances, the Governor vetoed a provision appropriating $95,0000 to the state Department of Labor to enforce the ban.

- more -

EDITED BY EDWARD F. ZIGLER
AND MERYL FRANK

The Parental Leave Crisis

Toward a National Policy

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policy that strikes a balance between the needs of employers and the needs of employees and their families. Employers who have parental leave policies have found that such leaves represent a low-cost benefit that increases morale and productivity and decreases absenteeism, tardiness, and employee turnover. Their experience also demonstrates that parental-leave policies are workable and cost-effective.

Finally, the Family and Medical Leave Act meets the requirements of a national leave policy and its passage would allow the United States to continue the American tradition of improving working conditions by addressing the needs of its new, diverse work force. In addition to expanding employment policies to meet the demands of the country's new demographics, the Family and Medical Leave Act would establish public policy that would shake loose the static model of the American family where the father works and the mother stays at home and replace it with a vibrant, dynamic model. American workers need more flexible work options if the gap between work and home is to be bridged. Public policy must no longer allow job security or economic security to be traded against the needs of the family. Instead, the public and private sector must work together to pass public policy such as family leave legislation that can support families in their effort to cope with economic pressures without sacrificing their family's stability.

TWENTY

The State's Role in the Implementation of Infant Care Leave

GOVERNOR THOMAS H. KEAN

New Jersey is what sociologists call a "Bellwether" state, in the forefront of the economic and social challenges facing the United States. Our high population density, location, and diverse economy force us to solve many problems before other states even become aware of them. In no area is this more true than in the area of family policy, and quality, accessible day care and flexible employment schedules are only two of the major issues in this area for the 1980s and 1990s. The overall goals of New Jersey family policy are very simple: to provide incentives to keep families together and growing and to promote flexibility and productivity in the workplace. Although we still have a way to go, I believe other states can learn from New Jersey's experience.

Maternity

Working women in New Jersey who are pregnant can approach childbirth secure in the knowledge that the state is trying to ease the initial financial crunch and emotional burden of leaving work to give birth. New Jersey is one of only five states which provide temporary disability benefits to employees who become disabled outside of the workplace. Under the New Jersey Temporary Disability Benefits Law, pregnancy is treated like any other medically justifiable condition that prevents an employee from performing his or her job. As a result, a pregnant employee is entitled to receive partial wage replacement.

Evolution of the Law

This law evolved in response to a combination of forces. When New Jersey first enacted the State Temporary Disability Benefits Law in 1948,

pregnancy leave was treated as a unique category that provided minimum benefits. This law was amended to eliminate discrimination based on gender when the federal Pregnancy Discrimination Act (PDA) of 1978 was passed. The federal PDA required employers in every state that had temporary disability programs to extend short-term disabilty benefits to cover pregnancy or childbirth just as any other medically disabling condition. The PDA, however, did not require that short-term disability benefits be made available in states where it did not exist previously.

Although the PDA did little to change childbirth and childcare policies throughout the nation, it had an immediate impact on New Jersey's relatively generous disability policy. Prior to the enactment of this federal legislation, state law provided women with only eight-weeks for pregnancy disability. In order to comply with the PDA, pregnancy had to be treated like any other short-term illness, and a longer disability became available. In effect, pregnant women were to receive the same job consideration and cash benefits as male colleagues who suffered heart attacks or other disabling medical conditions.

Benefits Package

The maximum period for which employees may receive Temporary Disability Insurance (TDI) is twenty-six weeks, but an individual's eligibility period may be much shorter if her medical condition improves enough so that she is able to return to work before the end of twenty-six weeks. All claims for TDI are evaluated in terms of a medical doctor's diagnosis of the individual's disabling condition and prognosis for successfully returning to work.

In order to be eligible for TDI benefits, an employee must have worked at least twenty weeks and earned more than $76 each week during that year, or have earned a total of $4,300 for that year. Once a person is approved for TDI, she can receive two-thirds of her average weekly wage. The amount of the TDI benefit is determined by averaging the individual's weekly earning during the eight weeks immediately preceding the beginning of the disability. The maximum weekly benefit is set at $200, which equals approximately 53% of the statewide average weekly wage.

Temporary Disability Insurance Fund

This liberal benefits package is paid for by both employee and employer contributions. As with unemployment compensation, almost all organizations that employ one or more persons and that earn at least $1,000 annually must contribute to the state's TDI fund, or they must carry an approved private plan for temporary disability. Both employee and employer must contribute 0.5% of an individual's earnings, as long as the maximum individual contribution does not exceed $53.50. In essence,

Table 20.1. Temporary Disability Insurance Trust Fund Data: 1980–1985 (Millions of Dollars)

Calendar Year	Balance at End of December	Net Contributions[a]	Assessments[b]	Interest Earned	Average Tax Rate[c]	Net Benefits Paid
1980	$ 94.3	$116.5	$20.9	$7.6	0.90%	$127.8
1981	107.8	127.6	19.1	4.9	0.86%	136.0
1982	116.3	137.0	20.0	5.9	0.93%	138.7
1983	127.1	150.0	16.8	4.3	0.90%	145.5
1984	124.6	174.6	3.1	4.0	0.93%	164.7
1985	75.1[d]	193.4	5.1	7.7	1.0 %	184.5

Source: New Jersey Department of Labor Division of Planning and Research, November 1986.

[a]Includes employer and employee contributions.
[b]State and private plan employers are assessed a percentage of taxable wages paid to cover the costs of program administration.
[c]Includes 0.5% employee tax and experience rated employer taxes.
[d]In April 1985, $50 million was transferred from the disability insurance to the unemployment insurance trust fund under the terms of P.L. 1984, Chapter 24.

the employer's contribution to the TDI fund is based on the first $10,700 earned by each employee.

All the evidence I have reviewed shows that the state mandate to require organizations employing one or more persons to participate in the TDI program has not caused a significant economic strain on employers. The maximum employer contribution of $53.50 per year is a small price to pay to guarantee an employee partial wage replacement in the event that she becomes physically unable to work. In fact, the employer contribution is considered an important investment in an employee's future well-being.

The State Treasurer has authority over the TDI fund. The Treasurer has the statutory authority to consult with the Secretary of State, the Labor Commissioner, the Director of the Division of Unemployment and Disability, and the State Comptroller to manage the fund to assure favorable growth, without jeopardizing cash reserves. The following chart illustrates that the steady growth of the TDI program has not adversely affected the fiscal stability of the TDI fund.

In addition to the State TDI program, private employers may opt to organize their own plans. Private TDI plans may be insured on their own, by an insurance company, a union welfare fund, or a labor-management welfare fund. The State Division of Unemployment and Disability In-

surance must authorize all private plans. The Division has a commitment to employees to assure that they receive at least as many benefits as those provided by the state.

TDI Recipients: A Profile

The greatest number of women join the labor force between the ages of twenty and thirty-four, which is at the time in their life when they are most likely to become pregnant. According to the New Jersey Department of Labor, 31% of the women filing for TDI earn between $10,000 and $15,000 per year, and only 3% earn $25,000 or more. The partial wage replacement provided by the TDI program fosters the economic survival of low- and middle-income women who wish to bear children.

Over one-half of all women under the age of 35 who filed for TDI benefits claimed pregnancy or a related condition as the reason for their leave. Overall, 17% of all TDI claims paid by the state in fiscal year 1985 were pregnancy-related. In table 20.2 a complete breakdown of the distribution of claims according to morbitity, an average amount paid per claim in each medical category, and duration of the temporary disability is provided.

Among female TDI recipients, pregnancy claims paid higher benefits than other morbidities because it often takes women ten or more weeks before their medical condition has improved sufficiently to enable them to return to work. The *average* pregnancy claimant in 1985 is shown in table 20.3: someone who received weekly benefits of $133 over an average disability period of seventy-four days.

PARENTAL LEAVE

Even though New Jersey is generous in granting paid disability leave to virtually all working women who are physically unable to work after pregnancy, there is no state policy protecting women who are not ready to leave their infants and jump back into work after the physical toll of their pregnancy dissipates. To close this gap, legislation has been introduced in New Jersey to expand job protection to men and women who want to take time off from work to care for their young child.

Modeled after Congresswoman Patricia Schroeder's bill, the Parental Leave Act (New Jersey Senate Bill No. 2392) proposed by State Senator Donald DiFrancesco, would allow mothers and fathers to take a twenty-six-week leave to care for newly born, adopted, or seriously ill children. Under this Act, parents would be allowed to take paid, unpaid, or a combination of paid and unpaid leave, as long as the total leave does not exceed twenty-six weeks in any two-year period. The leave may also

Table 20.2

Morbidities	Distribution TDI Claims	Average Amount Paid Per Claim		Average Number of Days Per Claim	
		Male	Female	Male	Female
Infectious and Parasitic Disease	3%	$725	$721	34.2	36.4
Neoplasms	5	1,644	1,219	74.1	61.2
Allergic, Endocrine, Metabolic and Nutritional Diseases	2	836	892	36.6	45.2
Diseases of Blood and Blood Forming Organs	*	685	715	29.8	35.0
Mental, Psychoneurotic and Personality Disorders	4	1,133	1,178	55.8	60.1
Nervous System and Sense Organs	3	1,190	1,235	54.9	65.8
Circulatory System	9	1,685	1,221	76.4	65.0
Respiratory System	7	746	509	33.7	26.0
Digestive System	8	987	956	45.1	51.0
Genito-urinary System	4	1,039	751	49.5	38.8
Pregnancy and Complications of Childbirth	**17**	–	**1,367**	–	**70.9**
Skin and Cellular Tissue	1	789	631	37.9	33.7
Bones and Organs of Movement (including back problems)	7	1,434	1,296	65.6	68.3
Congenital Malformations	*	*	*	*	*
Other Ill-defined and Unknown Causes	6	1,359	1,076	62.7	55.3
Accidents, Poisoning, and Violence	24	1,096	1,170	58.6	58.9
Totals	100	$15,348	$14,937	55.5	58.9

Source: New Jersey Department of Labor.
*Less Than One Percent
Note: Data derived from sample selected in July 1984 and from the universe of claims paid between July 1983 and June 1984.

Table 20.3: New Jersey Temporary Disability Insurance Program Claims for Pregnancy and Related Complications (State Plan)

	July 1983–June 1984	Calendar Year 1985
Number of Claims	19,652	19,851
Average Total Days Paid	70.9	70.8
Average Amount Paid Per Claim	$1,367	$1,491*
Average Weekly Benefit	$133.16	$147.62*

Source: New Jersey Department of Labor.

*The maximum weekly benefit rate was one-half of the statewide average weekly wage (SAWW) in the second preceding calendar year prior to October 1, 1984. Effective that date, it rose to fifty-three percent of the SAWW. The maximum weekly benefit was $158 during 1983, $170 from January 1 to September 30, 1984, $180 between October 1, 1984 and December 31, 1984, $189 in 1985, $200 for 1986 and will increase to $213 in 1987.

take the form of a reduced working schedule in which one or both parents reduce their usual number of hours at the workplace.

The flexibility of this approach is promising. New Jersey's small businesses, which rely on women for almost half of their staffing needs and can least afford to lose trained staff members, would be in a position to craft a workable arrangement to accommodate the needs of both the parents and the business. An employer and employee could arrange a flexible work schedule and compensation package within the legislative guidelines of S–2392.

Job Security

This legislation is vitally important because it communicates the concern of public officials that the business community has failed, for the most part, to respond to the needs of parents in the work force. Family policies, nevertheless, are also part of the economic issue. American businesses need to initiate company policies that promote employee productivity and loyalty if they are to compete in the global economy.

This legislation is revolutionary because it requires an employer to provide job security to employees on parental leave. Although the idea of guaranteeing an employee who takes time off for infant care with an equivalent position upon return to work is anathema to many American employers, it is a widely accepted notion abroad. The proposed legislation would guarantee a person on leave an equivalent position—in terms of seniority, benefits and pay—upon return. The key to the success

of this legislation is to devise workable enforcement mechanisms so that individuals who take parental leave are indeed offered equivalent positions when they reenter the workforce.

One example of the degree to which employee loyalty can be improved by providing job security to those on parental leave is demonstrated by the experience of New Jersey-based pharmaceutical giant, Merck Incorporated. Merck grants its employees two parental leave options: a six-month childcare leave with full job security, or eighteen-months leave with the chance to return to the same or similar position if an opening exists. Temporary workers are hired during some employees' parental leaves, while other divisions opt to pool an employee's responsibilities during her childcare leave. By providing this generous childcare leave, Merck shows an interest in the well-being of its employees. The job-security provision is cited by managers and employees as an important reason for Merck's reputation as a company with intense employee loyalty.

Need for Change

New Jersey, in fact, is home to some progressive corporate giants and smaller business ventures that have helped reduce the pressure on working parents to choose between career growth and having a family. But while many companies have been responsive to the needs of the changing work force, industry still has a long way to go before company policies accommodate all women's professional and personal needs. Developing new childcare programs, philosophies, and service networks to meet the needs of working parents and their families is indeed one of the foremost challenges of the coming decade.

DAY CARE

New Jersey has been a national leader in responding to the flood of employee demands for day care. In May 1986 we opened the Al Wurf Day Care Center, the first state-owned and operated day-care facility in the country. This model program serves thirty children. The projected cost for staffing and leasing the facility for the first year is $349,000, but this cost is expected to decrease to $200,000 in subsequent years as the center's start-up costs are absorbed. In spite of the high operational costs to open a first-rate center, I am convinced that employer-sponsored day care is a great investment. Indeed, I am encouraged by the initiative and care exhibited by this center's eight staff members. The price for these services is kept affordable. The amount an employee contributes is determined on a sliding fee basis, ranging from $25 to $50 per week. When one sees the difference in attitudes displayed by working parents

and their children who are enrolled in a successful day-care operation, one realizes that the investment in quality day care far outweighs the cost.

Day Care In the Private Sector

Government-sponsored day care is not enough. The public and the private sector must work together to provide affordable, accessible, quality day care. The strength of the modern family, the health and welfare of children, and the ability of employers to retain skilled staff members all depend on child care. I am impressed by the growing number of employers who have built on-site childcare facilities, hired off-site facilities, or provided employees with vouchers. Tax incentives, greater employee loyalty, less absenteeism, tardiness, and turnover, and increased productivity have shown many executives that day care is a good investment. To aid businesses in starting to include child care as part of their benefits package, New Jersey has an officially appointed day-care liaison with industry.

Since I was elected to my first term (November 1981), the number of business-sponsored or supported childcare programs in New Jersey has increased by more than 325 percent. New Jersey-based Hoffman-La-Roche's day-care center is a model on-site corporate facility. Employees with children between the ages of two-and-a-half and seven years old can drop their children off on their way to work. The sixty participants are placed in one of five classrooms with other children in similar stages of social, emotional, and educational development. The center's staff reevaluates each child's language, cognitive, and self-help skills on a regular basis to ensure proper classroom placement. The children benefit from daily exposure to art, reading, math, and creative play that the center offers. Both parents and employers have expressed satisfaction with the arrangement. I hope the success of Hoffman-La-Roche and New Jersey's sixty other employer-sponsored day-care programs will spur other business organizations to follow suit.

Conclusion

For 200 years, the family has been the stable foundation of our country. Today we must adjust public and private policy to accommodate the changing needs of the modern family. Our policy must encourage families to stay together and provide a stable atmosphere for child rearing. We must keep pace with the changing needs and changing demographics of the work force by bringing issues like the need for child care and parental leave to the forefront of the agenda of public and private sector policymakers.

PART VII

Recommendations and the Future