

REFLECTIONS ON LEGISLATION

THE WORKER-FUNDED LEAVE ACT: THE TIME IS NOW TO HELP BUILD STRONGER FAMILIES WITH A MORE STABLE ECONOMY

*Assemblywoman Arline Friscia**

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I. Introduction

Working men and women are facing growing concerns of balancing work and family. Parents often times must work two or even three jobs just to sustain the cost of living in New Jersey.¹ Yet these parents realize the need to spend time with their children to ensure they receive a healthy start in life.² Countless studies have shown that

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¹ DIANA PEARCE, PHD AND JENNIFER BROOKS, THE REAL COST OF LIVING: THE SELF-SUFFICIENCY STANDARD FOR NEW JERSEY, 7 (Fall 1999). A single parent with one infant and one school aged child needs to earn an average of \$17.02 an hour to meet the basic needs of her family. *Id.* This is more than three times the state's minimum wage of \$5.15 per hour. *Id.*

² MARY E. FORSBERG, NJ POLICY PERSPECTIVE: PERSPECTIVE ON FAMILY LEAVE, July 2001, at 1.

parental involvement in an infant's life is essential to the development of cognitive learning and emotional skills.³ Sadly, the government has done little to help the families who need our help the most.

The United States, one of the wealthiest and most powerful nations in the world, is one of the only countries that does not provide paid family leave.⁴ In our thirst to be the financial giant of the world economy we have overlooked the need to give attention to the importance of families in our society. Paid family leave would allow families to work in a family friendly environment, keeping the employee both happy and productive.

New Jersey has traditionally led the nation in progressive legislation to help working families. In fact, New Jersey's law allowing parents to take unpaid leave was on the books four years before the Federal Medical and Family Leave Act. The problem is that the families who need this help the most are unable to take the leave due to a lack of financial assistance.⁵

My legislation is just the first step towards giving working class men and women the support they require in order to spend critical time at home with their children. In this paper I will briefly explain the New Jersey Family Leave Act and the Federal Medical and Family Leave Act, then I will discuss my legislation (A-228). I will also discuss the presence of paid leave globally and the viability of other options to provide parental leave benefits in New Jersey.

II. The New Jersey Family Leave Act and the Federal Medical Leave Act

In an effort to help working men and women spend more time with their children and aging parents, New Jersey enacted The New Jersey Family Leave Act in 1989.⁶ This law provides up to twelve weeks of

³ See ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD* 246 (Metropolitan Books 2001); TASK FORCE TO STUDY FAMILY LEAVE, U.S. DEP'T OF LABOR, *A WORKABLE BALANCE: REPORT TO CONGRESS ON FAMILY AND MEDICAL LEAVE POLICIES* 9 (1996), also see fn 25; Sharon Begley, *Your Child's Brain*, NEWSWEEK, Feb. 19, 1996, at 55.

⁴ CENTER FOR POLICY ALTERNATIVES, *PROGRESSIVE AGENDA: SUMMIT ON THE STATES* 52 (2000).

⁵ NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, *FAMILY LEAVE BENEFITS: A MENU OF POLICY MODELS FOR STATE AND LOCAL POLICY LEADERS* 3 (September 2001). In 2000, 78% of the people who needed but did not take family or medical leave said they could not afford to take the leave. *Id.*

⁶ Family Leave Act, N.J. STAT. ANN. 34:11B-1, *et. seq.* (West 1989).

unpaid leave in any twenty-four month period with job security and health benefits guaranteed during the leave for employees caring for a newborn or newly adopted child, or an ill immediate family member.⁷ The law applies to companies with fifty or more employees and to state and local government offices.⁸ In order to qualify for family leave, an employee must be employed for at least one year at their current job and for not less than 1,000 hours over the course of the year prior to leave.⁹

Four years later, President Clinton signed his first bill into law, the Family Medical Leave Act ("FMLA").¹⁰ This federal mandate also applies to private companies with fifty or more employees and to all federal and state government employers.¹¹ The federal law grants twelve weeks of unpaid leave within a twelve month period and qualified employees must have been employed at their current place of business for at least one year and have worked at least 1,250 hours during that year prior to leave.¹²

Upon signing this landmark legislation into law, Clinton remarked: "American workers will no longer have to choose between the job they need and the family they love."¹³ Although Clinton's dream of making work and family a workable balance succeeded for many families,¹⁴ the FMLA failed the families who need the most help.¹⁵ Those who have benefited from FMLA have not done so with a clear mind. "Millions of these workers [who took FMLA leave] were also worrying about their

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Family Medical Leave Act, 29 U.S.C. §2601(b)(1) (1994).

¹¹ *Id.*

¹² *Id.* The 1,250 hours a year is "the equivalent of just over 31 40-hour weeks." See Forsberg, *supra* note 2, at 4.

¹³ Clinton remarks on signing the Family and Medical Leave Act of 1993, 1 PUB. PAPER 49 (Feb. 5, 1993).

¹⁴ U.S. Dep't of Labor, Balancing the Needs of Families and Employers: The Family and Medical Leave surveys, 2000 Update, Statement from Alexis M. Herman, Secretary of Labor, available at <http://www.dol.gov/asp/fmla/main2000.htm> (last visited Oct. 12, 2001)(stating "over 35 million covered and eligible workers have benefited from taking leave for family and medical reasons since 1993").

¹⁵ *Id.* at 2.2. In the 18-month period prior to the 2000 survey, about 3.5 million people . . . needed to take leave without being able to take it. *Id.* 77.6 percent of those who needed leave cited their inability to afford leave as the reason for not taking leave. *Id.* at 2.2.4. Finally, 87.8 percent of need-leavers said they would have taken leave had they had the ability to receive some pay. *id.*

pay check. In fact, the number one worry, cited by more than half of leave takers, was about having enough money to pay bills. The survey found that more than one-third of employees received no pay during their longest leave and that nearly two out of every five leave takers had to cut their leave short due to lost pay.”¹⁶

Realizing that many hard-working Americans were failing their families at home to keep food on the table, President Clinton continued to push for more expansive coverage for families by ordering the United States Department of Labor to implement a rule allowing states to utilize their unemployment funds to provide up to twelve weeks of paid leave for the care of a newborn or newly adopted child.¹⁷ The U.S. Department of Labor made the new policy official on June 13, 1999, spurring several states to introduce legislation to provide compensation to families who need to take leave.¹⁸

III. A-228: Provisions and Costs¹⁹

A-228 provides up to twelve weeks of unemployment insurance (“UI”) benefits for a worker taking leave to spend time with a newborn or newly adopted child (“birth and adoption” or “BAA” benefits) during the first twelve months following the birth or adoption.²⁰

¹⁶ *Id.*

¹⁷ Regulations for Birth and Adoption Unemployment Compensation, 20 C.F.R. § 604 (1999).

¹⁸ Cheye Calvo, *Parental Leave as Unemployment*, STATE LEGISLATURES MAGAZINE, Oct./Nov. 2000, at 27.

¹⁹ Since the initial drafting of this article, the Worker-Paid Leave Act has seen some revisions. The Worker Paid Leave Act (Paid Family Leave Act) A-1892, 210th N.J. Leg. (2002). These revisions are encompassed in a new bill that is anticipated to be considered in the Assembly Labor Committee in March 2002. *Id.* The new bill (A-1892) will meet the same policy objectives as discussed within, with some improvements. *Id.* The bill now provides four weeks of paid leave for an individual to care for a sick family member and eight weeks of BAA leave. *Id.* The total anticipated cost is \$130 million that will be drawn from the TDI fund. *Id.* Furthermore, although we still believe that the Business and Industry Association has overstated the negative impact of the legislation on small businesses, the bill has provided a compromise position in an attempt to alleviate the concerns of small business owners. The bill now allows small businesses with nine or fewer employees to opt-out of the paid family leave program. *Id.* The new legislation requires all employers to provide notice to their employees that this program is available to them, or in the case of those who opt-out to notify their employees that they have opted-out. *Id.* Finally, the bill requires that a study commission be established to study the effectiveness of the law and analyze the effect it has on small business in New Jersey. *Id.*

²⁰ The Worker Paid Leave Act (Paid Family Leave Act) A-228, 210th N.J. Leg. (2000)[hereinafter *A-228*].

The weekly benefit amount paid under the bill for birth and adoption leave is the same as the weekly amount for regular UI benefits. Also, both are subject to the same one-week waiting period, and both reduce the weekly benefit amount by any payments made to the worker during the leave period by the worker's employer.²¹ The maximum weekly BAA benefit rate is \$429 per week in 2000 and would be available to all workers covered under the UI system.²² However, the average benefit paid to employees under the BAA benefit would be \$285 per week.²³ The wages paid would be completely covered by the State without an employer contribution.²⁴

The bill requires that leave benefits be taken during a single continuous period of time, unless the employer and worker agree to a leave taken in non-consecutive weeks.²⁵ Moreover, leave benefits are reduced by two weeks if the worker fails to give the employer at least thirty days notice of the leave, unless the failure is due to unforeseeable circumstances.²⁶ This will ensure that no business is left without sufficient time to prepare for the absence of the worker.

This bill, based on model legislation proposed by the U.S. Department of Labor, represents a long overdue modernization of the UI system.²⁷ New Jersey's existing UI law, like the UI laws of many other states, provides a number of precedents for providing UI benefits to workers unavailable for work under certain circumstances, including jury duty, approved job training, or a temporary layoff with an expectation of a return to work.²⁸ This overhaul of the UI system makes it better able to serve the needs of the growing number of working families who rely on the incomes of more than one wage earner and who need income replacement for involuntary unemployment caused by family necessities outside of the workplace.

Currently, less than 44,500 individuals per year are anticipated to

²¹ *Id.*

²² OFFICE OF LEGISLATIVE SERVICES, MEMORANDUM: *ESTIMATE OF UTILIZATION AND COST OF BIRTH AND ADOPTION (BAA) BENEFITS UNDER ASSEMBLY BILL, NO. 3049* 2 (Feb. 13, 2001)[hereinafter *Legislative Services*].

²³ AFL-CIO, PAID FAMILY LEAVE Q & A SHEET, 2 (2000).

²⁴ ASSEMBLY DEMOCRATIC OFFICE, 2001 DEMOCRATIC LEGISLATOR'S BRIEFING MATERIALS: LABOR, 1 (CD-ROM 2001).

²⁵ A-228.

²⁶ *Id.*

²⁷ 20 C.F.R. §604 (2001).

²⁸ N.J. STAT. ANN. 43:21-1 *et seq.*

receive BAA benefits.²⁹ Several cost estimates have been provided on this legislation, for instance, the US Department of Labor has estimated that the average period of leave for an employee under this bill would be 4.89 weeks; whereas, the New Jersey Office of Legislative Services' estimated 8.6 weeks.³⁰ These discrepancies in the duration of leave have led the U.S. Department of Labor to anticipate that providing UI benefits for workers taking birth and adoption leave would cost \$42.3 million per year in New Jersey.³¹ Yet, the New Jersey Office of Legislative Services predicts the cost to be \$89.7 million to \$101.1 million.³² The annual cost of BAA benefits, based on the highest cost estimates of \$101.1 million, would be less than one-tenth of the cost of regular UI benefits in 1998 or \$1,123.5 million.³³

"In New Jersey, state leaders calculated that 'Baby UI' would entail no extra cost at all for up to five years, because it could be paid for by tapping the state's surplus funds accumulated in the booming economy."³⁴ However, even without a surplus, policy-makers put the price tag at about 50 cents per covered employee per week.³⁵

The bill also provides that BAA benefits are not charged to individual employer accounts.³⁶ This means that all the funds used to provide employees with these benefits are being paid for out of the employees' portion of unemployment insurance taxes. Employers will not be required to support the fiscal burden of this legislation. As a further safeguard to protect the UI fund and ensure that employer taxes are not increased, the bill allows the Commissioner of Labor to limit the amount of benefits expended in any given year if the amount exceeds \$130 million.³⁷ Considering that the UI fund has an estimated reserve of \$700 million that would have to be spent prior to triggering an increase in employer UI contributions, there is little concern that BAA benefits would drain the UI fund.³⁸

²⁹ *Legislative Services, supra* note 21, at 2.

³⁰ 64 F.R. 67972-01 (1999); *Legislative Services, supra* note 22, at 2.

³¹ 64 F.R. 67972-01 (1999).

³² *Legislative Services, supra* note 22, at 2.

³³ *Id.* at 4.

³⁴ Betty Holcomb, National Partnership for Women & Families, *Why Americans Need Family Leave Benefits: And How They Can Get Them*, at 7 (2001).

³⁵ *Legislative Services, supra* note 22, at 2.

³⁶ A-228.

³⁷ *Id.*

³⁸ Forsberg, *supra* note 2, at 7.

The greatest benefit of the BAA UI plan is that *all* workers qualify.³⁹ Since all employees pay into the UI fund, all employees are eligible for leave regardless of the size of the business they work for. The U.S. Department of Labor regulations explicitly state that any state wishing to implement a BAA UI plan must not discriminate against any specific employee based on the number of individuals employed at his workplace.⁴⁰

IV. A Global Perspective

New Jersey no longer stands alone in its quest to provide paid family leave to its states residents. In fact, twenty-four states are currently considering paid family leave legislation.⁴¹ Nineteen states have held hearings on the bills, nine have passed bills out of committee and four have approved bills in the House that are pending in the Senate.⁴² In Massachusetts, Governor Jane Swift has publicly announced that she intends to make paid leave a priority of her administration.⁴³ These positive steps forward are encouraging, however, the nation's failure to enact such legislation puts us far behind our neighbors around the world.

The United States has taken its working men and women for granted, forcing individuals to choose work over family. While remaining a global superpower, the United States has allowed itself to lag behind almost every other industrialized nation in the world in terms of offering paid leave.⁴⁴ "No other women or children in the industrialized world are forced to live under these conditions, which child development experts agree are deplorable, if not down right harmful."⁴⁵ Forcing parents to stay in the workplace during the developmental stages of their child's life causes irreparable harm to the child, yet the United States offers no incentive for parents to stay home.

"Of the 130 countries that offer family leave, only three countries – the United States, Ethiopia and Australia – do not provide any pay

³⁹ A-228.

⁴⁰ 20 C.F.R. §604 .

⁴¹ Press Bulletin, National Partnership for Women & Families Bulletin, Family Leave Benefits Campaign Measures Progress in 2001, at 1 (July 17, 2001).

⁴² *Id.*

⁴³ Ellen, J. Silberman, *Time out: Swift Set to Unveil Ambitious Parental Leave Plan*, BOST. HER., Aug. 21, 2001, at 1.

⁴⁴ Holcomb, *supra* note 34, at 5.

⁴⁵ Crittenden, *supra* note 3, at 259.

during leave.”⁴⁶ While the rest of the world recognizes the need to provide financial support to men and women who choose to stay home with their new child, the United States, with all its wealth, snubs its nose at the working class and stands with the poverty stricken State of Ethiopia in not offering paid leave. Ethiopia certainly has an excuse for failing to provide paid leave for its citizens, since many of the nation’s people are starving. We have no such excuse.

“In Western Europe . . . there is an agreement among men and women that mothers deserve time with their newborns without having to quit their jobs and take severe cut in their family income. Paid parental maternity leave for several months to a year is the norm.”⁴⁷ These countries realize that the time spent today with a child can prevent a lifetime of health and educational problems.

Within the first year of a child’s life he develops motor development, emotional control, vision, social skills, vocabulary and second language.⁴⁸ The initial experiences of a child are essential to his future development. These early experiences will determine “whether the child grows up to be intelligent or dull, fearful or self assured, articulate or tongue-tied. Early experiences are so powerful, says pediatric neurobiologist Harry Chugani of Wayne State University, that they can completely change the way a person turns out.”⁴⁹

V. Cheers and Jeers

No good idea comes without criticism. Although the New Jersey Business and Industry Association and the Chamber of Commerce have claimed that this legislation would mean the end of small businesses in New Jersey, all proof points elsewhere.

The Commission of Family and Medical Leave found that more than ninety percent of small business experienced little or no increase in their costs due to family leave.⁵⁰ The most recent U.S. Department of Labor surveys reported that 94.4 percent of employees return to work for the same employer after taking their longest family leave saving

⁴⁶ Center for Policy Alternatives, *supra* note 4, at 52.

⁴⁷ Ann Crittenden, *Mother Power: Toward a New Feminist Agenda on Family*, STAR LEDGER, June 24, 2001.

⁴⁸ Begley, at 58.

⁴⁹ *Id.* at 56.

⁵⁰ TASK FORCE TO STUDY FAMILY LEAVE, U.S. DEP’T OF LABOR, A WORKABLE BALANCE: REPORT TO CONGRESS ON FAMILY, MEDICAL LEAVE POLICIES, xvii (1996)[hereinafter *Task Force*].

companies money on retraining and recruitment of new employees.⁵¹ In fact, seventy-seven percent of businesses report financial savings due to decreased turnover and many businesses report a positive effect on morale due to the availability of leave.⁵²

Some businesses also fear employees taking frivolous leave, by taking advantage of paid time off. However, this is absurd considering that the average weekly benefit is \$285.⁵³ Although this money will certainly be helpful in allowing parents take the leave they require to care for their new child it certainly is not enough to entice anyone to stay at home longer than they need to. Furthermore, since this is a benefit paid by the state, small businesses would be saving the costs associated with paying an employee's regular salary while they are on leave. This would free up company funds to allow the employer to hire temporary workers or pay overtime to those covering the employee's duty while on leave.

There are far more voices supporting family leave than opposing. A coalition of nearly thirty-five organizations have banded together in an effort to advocate on behalf of paid family leave.⁵⁴ These organizations have been joined by the editorial boards of several newspapers. *The Philadelphia Inquirer* and *The Home News and Tribune* are only a few of the local newspapers that have endorsed the idea of creating a paid family leave program.⁵⁵

The voting public has also made their intentions on this issue loud and clear. "In 1998, the National Partnership for Women and Families found that eighty-two percent of women and seventy-five percent of men favored the idea of developing a new insurance program that would give families some income when a worker takes family or medical leave."⁵⁶ This support has continued to be "equally

⁵¹ U.S. DEP'T OF LABOR, BALANCING THE NEEDS OF FAMILIES AND EMPLOYERS: THE FAMILY AND MEDICAL LEAVE SURVEYS, § 4.4, 2000 UPDATE.

⁵² *Id.*

⁵³ AFL-CIO, *supra* note 23, at 2.

⁵⁴ 34 groups joined together on January 29, 2001 in a press conference in Trenton, New Jersey to announce their support for A-228. Some of the groups included: NJ AFL-CIO, NJEA, CWA, Citizen Action, FOP, NJ NOW, and the National Partnership for Women and Families.

⁵⁵ *Historic First for Jersey: State Should Approve a Bill to Provide Paid Leave to Parents With New Children*, Editorial, THE PHILA. INQ., Feb. 26 2001; *Paid Family Leave is Good Business*, Editorial, HOME NEWS & TRIB., Feb. 16, 2001.

⁵⁶ Holcomb, *supra* note 34, at 6.

enthusiastic” according to several surveys reported in 2000.⁵⁷ Furthermore, the public is supportive of using a pre-existing fund to create a paid leave program. “79% of Americans favor providing family leave benefits through expanding Unemployment Insurance (“UI”) or Temporary Disability Insurance (“TDI”).”⁵⁸ In addition, those surveyed believe that “Birth and adoption UI (“Baby UI”) advances the goals of UI by increasing attachment to the labor market, especially for low-income working families.”⁵⁹

Experts also agree that paid family leave is essential. “The American Academy of Pediatrics notes that infants (whether biological, adopted or foster children) are particularly vulnerable during the first few months of life, and require the active involvement of a parent or primary caregiver in the nurturing process . . . For parents to fulfill these important development needs, time off from work is often needed.”⁶⁰

Furthermore, “studies show that children who have frequent contact with their fathers as well as their mothers learn different patterns on how to solve challenges in life. They are less afraid of strangers. I believe they are going to be more flexible in different situations and have wider emotional and social repertoire.”⁶¹ Experts also agree that paid leave “would do more to improve infant care, increase family income, enhance fathers’ emotional ties to their offspring and promote economic equality between husbands and wives than almost any other single measure.”⁶²

VI. Other Options

I am currently researching the viability of moving the funding source from the UI fund to the TDI fund. New Jersey is one of five states that established a TDI fund just after World War II to help tie those who were sick after the war to the labor-force.⁶³ Through both

⁵⁷ *Id.*

⁵⁸ Center for Policy Alternatives, *supra* note 4, at 52.

⁵⁹ *Id.*

⁶⁰ *Task Force*, *supra* note 50, at 9 fn 25.

⁶¹ Crittenden, *supra* note 47, at 246 (quoting Goran Swedin an obstetrician and family therapist who is the head of maternal and child health care at Ostersed County Hospital in Sweden where she runs a training program for new fathers).

⁶² *Id.* at 259.

⁶³ MICHELE I. NAPLES, FAMILY LEAVE FOR LOW-INCOME WORKING WOMEN: PROVIDING PAID LEAVE THROUGH TEMPORARY DISABILITY INSURANCE THE NEW JERSEY CASE, October 2001, at 2.

employee and employer contributions, a dedicated fund was created in New Jersey to support workers who need to take a temporary leave from their job due to their own health.⁶⁴ New Jersey TDI currently provides ten weeks of paid maternity leave for women.⁶⁵

Recent studies show that adding the cost of BAA to TDI would cost \$30 for each covered worker.⁶⁶ This calculates to less than 1.5 cents per hour.⁶⁷ Furthermore, “more than one out of every five workers with family income under \$20,000 use public assistance to support themselves while on leave.”⁶⁸ By implementing a plan that pays families while they are on leave would “reduce the number of people applying for welfare/workfare and other social programs such as food stamps and housing subsidies and shift some people from unemployment insurance to TDI.”⁶⁹ This would actually achieve a net savings, rather than a fiscal burden.⁷⁰

VII. Conclusions

Paid Family Leave is most important for low-income families. These men and women are least likely to have paid vacation or sick time and are least likely to take advantage of FMLA.⁷¹ “[F]rom 1990-96, the majority of US workers either had no paid sick leave or had it only intermittently.”⁷² During these years, seventy-six percent of poor working adults lacked paid sick leave and sixty-three percent of these adults did not have paid vacation leave during a portion of this time span.⁷³ “American mothers are guaranteed only three months’ maternity leave without pay – forcing most working mothers to return to their jobs within a few weeks after giving birth, because they can’t afford to take

⁶⁴ *Id.* at 3.

⁶⁵ The Temporary Disability Act, N.J. STAT. ANN. § 43:21-25 *et seq.*

⁶⁶ Naples, *supra* note 63, at 4.

⁶⁷ This is calculated by taking \$30 per year divided by 2000 hours a year or 40 hours a week 50 weeks a year.

⁶⁸ *Task Force*, *supra* note 50, at 225 (quoting views of Ellen Bravo, Commissioner).

⁶⁹ Naples, *supra* note 63, at 5.

⁷⁰ *Id.*

⁷¹ Holcomb, *supra* note 34, at 3. One third of all Americans who are above the poverty line – and two-thirds of the working poor – lack [paid sick leave or paid vacation days], according to Jody Heymann, director of the Harvard University Center for Society and Health. *Id.*

⁷² *Id.*

⁷³ *Id.*

three months off without a pay check.”⁷⁴

The U.S. Department of Labor found that those who make more money tend to take more leave under FMLA. “Salaried employees, more highly educated employees, unionized employees, men and those with higher levels of household income are most likely to receive wage replacement; the employees least likely to receive wage replacement are . . . non-salaried workers and non-union workers. . . employees who have never been married, those in the lowest income and education groups and Latino and [African American] employees are most likely to be unpaid during leave.”⁷⁵

Sadly, millions of Americans cannot afford to take leave and “one of every five low income leave-takers, are actually forced onto public assistance to make ends meet.”⁷⁶ The poor are once again victimized by their financial circumstances. They are unable to take advantage of programs that will allow them to spend time at home to ensure their child is off to a healthy start.

“[T]he poor are affected first and worse because they have both the most substantial problems and the most limited resources.”⁷⁷ These families often lack medical benefits, they lack the ability to send their children to pre-school and they live in neighborhoods that often cannot afford to provide community programs for their children. If we were to allow these parents to spend the crucial first weeks of a child’s life at home with the child, the child is more likely to have a better start both in health and education.

We need to enact A-228 to level the playing field for all families. Rich or poor, all parents should have the opportunity to spend time at home with their new child.

⁷⁴ Crittenden, *supra* note 47, at 258-259.

⁷⁵ *Task Force*, *supra* note 50, at xxi.

⁷⁶ Center for Policy Alternatives, *supra* note 4, at 52.

⁷⁷ JODY HEYMANN, *THE WIDENING GAP: WHY AMERICA’S WORKING FAMILIES ARE IN JEOPARDY – AND WHAT CAN BE DONE ABOUT IT* 117 (Basic Books 2000).

ASSEMBLY, NO. 228**STATE OF NEW JERSEY****210TH LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

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SYNOPSIS

Authorizes payment of unemployment benefits during leave related to birth and adoption.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 2/1/2002)

AN ACT authorizing unemployment compensation during leave related to birth and adoption and supplementing chapter 21 of Title 43 of the Revised Statutes.

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

1. For the purposes of this act:

“Child” means an individual who is less than 19 years old.

“Parent” means a biological parent of a newborn child or an individual who adopts a child or is responsible for the child pending adoption by the individual.

“Placement for adoption” means the time when a parent adopts a child or becomes responsible for a child pending adoption by the parent.

“Qualified leave of absence” means a period of leave taken by an individual from work with an employer to be with a child to whom the individual is a parent during the first 12 months after the child’s birth or placement for adoption with the individual, including any portion of the period during which the individual is paid by the employer, except that the “qualified leave of absence” shall not include any period for which the individual receives benefits under the “Temporary Disability Benefits Law,” P.L.1948, c.110 (C.43:21-25 et seq.) or compensation under subsection a. of R.S.34:15-12.

2. With respect to an individual’s benefit year commencing on or after July 1, 2001:

a. An individual shall not, during any week that the individual is on a qualified leave of absence, be denied, or be deemed ineligible for, benefits pursuant to R.S.43:21-4 or R.S.43:21-5 for leaving work voluntarily, for not being available for work, or for failing to actively seek, apply for, or accept work.

b. An individual shall be required to meet the requirements of subsection (e) of R.S.42:21-4.

c. Benefits paid to the individual during any week of a qualified leave of absence shall be paid at an amount equal to the individual’s weekly benefit rate as determined pursuant to subsection (c) of R.S.43:21-3, less any remuneration or other payment made to the individual by an employer of the individual during that week in excess of 20% of that weekly benefit rate.

d. The individual shall be eligible for 12 weeks of benefits during a

qualified leave of absence with respect to any one birth or adoption.

3. a. All of the leave taken by an individual with respect to any one birth or adoption for which benefits are paid pursuant to this act shall be taken during a qualified leave of absence and for a single continuous period of time, except that the employer of the individual shall have the option of permitting the individual to take the leave during non-consecutive weeks in a manner mutually agreed to by the employer and the individual and disclosed to the division by the employer. The individual shall provide the employer with notice of the qualified leave of absence not less than 30 days before the leave commences, unless it commences while the individual is receiving unemployment benefits other than benefits provided pursuant to this act, in which case the individual shall notify the division. The amount of benefits shall be reduced by two times the weekly benefit amount if the individual does not provide notice to an employer as required by this section, unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons. The waiting period of one week required pursuant to subsection (d) of R.S. 43:21-4 shall apply in the manner indicated by that subsection to benefits paid pursuant to this act one time with respect to any one birth or adoption.

b. An individual shall not simultaneously receive benefits pursuant to this act and any other unemployment benefits. The amount of benefits paid to an individual pursuant to this act shall be counted toward the maximum amount of total unemployment benefits an individual may receive during a benefit year pursuant to subsection (d) of R.S. 43:21-3.

c. No employer's account shall be charged for benefits paid during a qualified leave of absence pursuant to this act.

4. Whenever the total amount of benefits paid pursuant to this act during any calendar year exceeds \$130 million and the Commissioner of Labor determines that that amount of benefits is large enough to result in a decrease of the unemployment compensation Fund Reserve Ratio sufficient to cause an increase in the contribution rates of employers pursuant to R.S.43:21-7(c)(5)(E), the commissioner may prohibit additional individuals from beginning to receive benefits

pursuant to this act for the remaining portion of that calendar year. Benefits paid pursuant to this act shall continue for any individual who is already receiving the benefits at the time that the commissioner imposes a prohibition pursuant to this section.

5. Each employer shall conspicuously post, in a place or places accessible to all employees in each of the employer's workplaces, notification, in a form approved by the commissioner, of the benefits available pursuant to this act.

6. The provisions of this act shall be implemented in a manner which is in compliance with the requirements of any applicable federal law or regulation adopted by the United States Department of Labor.

7. The commissioner shall, not later than December 31, 2004, issue a report to the Governor and the Legislature evaluating the impact of the provisions of this act on:

a. Participating workers and their families, including the amount of leave taken by workers and the ability of participating workers to retain employment and sustain their attachment to the workforce;

b. Employers, including savings from reduced employee turn over;

c. The public, including savings from reductions in the number of people receiving public assistance; and

d. Unemployment compensation fund balances and reserve ratios.

8. This act shall take effect immediately.

STATEMENT

This bill provides up to 12 weeks of unemployment insurance (UI) benefits for a worker taking leave to spend time with a newborn or newly-adopted child of the worker during the first 12 months following the birth or adoption.

The weekly benefit amount paid under the bill for birth and adoption (BAA) leave is the same as the weekly amount for regular UI benefits, is subject to the same one-week waiting period, and is reduced by any payments made to the worker during the leave period by the worker's employer. The leave period does not include any period in which a worker receives benefits for temporary disability.

The bill requires that BAA leave benefits be taken during a single continuous period of time, unless the employer and worker agree to leave taken on non-consecutive weeks. The BAA leave benefits are reduced by two weeks if the worker fails to give the employer at least 30 days notice of the leave, unless the failure is due to unforeseeable circumstances. BAA leave benefits are counted toward an individual's maximum total UI benefits permitted during a benefit year.

This bill, based on model legislation proposed by the U.S. Department of Labor, represents a long overdue modernization of the UI system, making it better able to serve the needs of the growing number of working families who rely on the incomes of more than one wage earner and need income replacement for involuntary unemployment caused by family necessities outside of the workplace, as well as unemployment caused by layoffs. It will strengthen family bonds and help working parents to strengthen their attachment to the workforce, bringing New Jersey up-to-date with the worker income security systems of most nations, including every industrialized nation outside of the United States. New Jersey's existing UI law, like the UI laws of many other states, provides a number of precedents for providing UI benefits to workers unavailable for work under certain circumstances, including jury duty, approved job training, or a temporary layoff with an expectation of a return to work.

The U.S. Department of Labor has estimated that providing UI benefits for workers taking birth and adoption leave would cost \$42.3 million per year in New Jersey. Because this bill does not charge individual employer UI accounts for these benefits, and because the current balance of the UI fund is approximately \$700 million higher than the balance which would trigger an increase in UI taxes for all employers, it is unlikely that this bill would cause increased UI costs for any employer in the foreseeable future. As a further safeguard, that bill provides that if the amount of BAA benefits paid during a calendar year exceeds \$130 million and the Commissioner of Labor finds that the amount of benefits paid is large enough to increase the UI Fund Reserve Ratio sufficiently to increase employer UI tax rates, the commissioner

may prohibit additional individuals from beginning to receive BAA benefits for the rest of the year.