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## Rhode Island Enacts Paid Temporary Caregiver Leave Law

By John Doran and Shannon O'Connor

Rhode Island recently passed the Temporary Caregiver Insurance law which amended its Temporary Disability Insurance (TDI) program to provide employees with an additional leave benefit and wage replacement benefits during that leave. The law has two main components. First, all Rhode Island employers are required to provide at least four weeks of job-protected leave per year to employees to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent, or to bond with a newborn, adopted or foster child. Second, employees are eligible to receive payments through the TDI program while on leave. Rhode Island will join California and New Jersey as the only states that allow employees to receive state-sponsored short-term disability benefits even if the employee is not personally disabled.

### Summary of Law

Effective January 1, 2014, all Rhode Island employees will be entitled to receive four weeks of paid time off per year to care for certain specified family members. The program will be financed through employee payroll deductions and administered by the Department of Labor and Training (DLT). The Temporary Caregiver Insurance law expands Rhode Island's existing TDI program which requires employers to provide employees with time off to recover from a non-work related illness or injury. Now, employees will be able to collect TDI benefits in "any week in which he or she is unable to perform his or her regular and customary work" because he or she is: (1) bonding with a newborn child or a child newly placed for adoption or foster care; or (2) caring for a child, parent, parent-in-law, grandparent, spouse, or domestic partner who has a "serious health condition." The Temporary Caregiver Insurance law defines "serious health condition" as "any illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, residential healthcare facility, or continued treatment or continuing supervision by a licensed health care provider."

In order to receive TDI benefits, employees must both file an application with the DLT and provide their employer with written notice of their intent to take a leave of absence at least 30 days before the leave will begin. An employee's failure to provide notice may delay or reduce benefits, unless the leave was unforeseeable or the time of the leave changes due to unforeseeable circumstances. The precise form of the notice will be issued by the DLT at some point in the future.

Employees who take leave under the Temporary Caregiver Insurance law must be restored to the position they held upon the commencement of the leave or to an equivalent position. Employers must continue to provide health insurance to employees during the leave, but employees remain responsible for any employee-shared costs associated with the health insurance benefits.

Rhode Island employers also must provide notice of disability insurance benefits, including Temporary Caregiver leave, to every employee hired after January 1, 2014 and to every employee who takes potentially qualifying leave on or after January 1, 2014. Additionally, as required under TDI generally, employers are required to display a notice in the workplace explaining employees' rights and benefits under the law.

## Interaction with FMLA/RIPFMLA

While the federal Family and Medical Leave Act (FMLA) and the Rhode Island Parental and Family Medical and Leave Act (RIPFMLA) apply to employers with 50 or more employees, the new Temporary Caregiver Insurance law applies to all Rhode Island employers. If an employee is eligible for leave under both the FMLA/RIPFMLA and the Temporary Caregiver Insurance law, the leaves will run concurrently. However, situations could arise in which the leaves will not run concurrently, such as when an employee has not been employed long enough to be entitled to leave under the FMLA or RIPFMLA, or when the qualifying reason for leave under the Temporary Caregiver Insurance Law is not a qualifying reason for leave under the FMLA and/or RIPFMLA. In these situations, an employee could take four weeks of job-protected leave under the Temporary Caregiver Insurance law (for which the employee will receive TDI benefits) and then take 13 weeks of leave under the RIPFMLA (for which the employee will not receive TDI benefits) for a total of 17 weeks of leave in a single year. If FMLA leave did not happen to run concurrently with either of these leaves, the same employee also could be eligible for an additional 12 (or 26) weeks of FMLA leave after he or she exhausts leave under the RIPFMLA.

## Recommendations for Employers

While the DLT will release additional guidance over the next few months, employers can take steps now to prepare. Rhode Island employers should train Human Resource personnel on the requirements of the new Temporary Caregiver Insurance law. Employers should develop procedures for accepting the required written notice of intent to take Temporary Caregiver leave and have a policy in place for handling notices received less than 30 days before an employee's anticipated leave of absence is to begin, and for determining whether or not leaves under the new law will run concurrently with leave under the FMLA and/or RIPFMLA. While applications containing an employee's personal information will be sent to the DLT directly, employers should be mindful of their obligation to keep any information they receive regarding an employee's leave request confidential.

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