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Dear Editors,

This letter is written as an open "Letter to the Editor" for publication in the N.J. Law Journal. Copies will be provided to N.J. legislators and Gov. McGreevy.

The New Jersey Family Leave Act, N.J.S.A. 34:11B - 1, et. seq. should be amended by the N.J. Legislature, and signed by Gov. McGreevy, to correct a number of obvious defects which require remediation. These defects, and their proposed remedies, include:

(1) **Defect:** The failure of the New Jersey law to allow medical leave based upon the illness, injury or other medical needs of the employee, and not merely upon the needs of a family member, N.J.S.A. 34:11B-4.

Remedy: Amend the N.J. law to provide equal benefits for employees themselves whose illnesses or injuries require time off for medical treatment and cure as prescribed by physicians.

(2) **Defect:** The requirement, by definition, that the employee have been employed "for at least 12 months" "during the immediately preceding 12-month period", N.J.S.A. 34:11B-3(e), in order to qualify for leave; this provision excludes numerous worthy instances of such need by employees unprotected by the provisions of the N.J. law and/or comparable Federal FMLA, 29 U.S.C. 2601, et. seq., which has similar requirements.

Remedy: Reduce the 12-month requirement to six months.

(3) **Defect:** The requirement, also by definition, that an employer subject to the N.J. law be one employing 50 or more employees; this provision also leaves unprotected large numbers of worthy employees whose needs should and could be attended.

Remedy: Reduce the 50-employee requirement by half to 25.

(4) **Defect:** The failure of the both the N. J. FLA and the N.J. Law Against Discrimination, N.J.S.A. 10:5-1 and 10:5-4.1 to protect from discharge employees who are required to lose time from work due to medical conditions, illness or injury, and who are unprotected by Family Leave coverage under state or Federal law.

Remedy: Amend both laws to prohibit the discharge of employees who are terminated while absent from work due to disabling illness or injury, unless there is evidence of malingering or contrary medical orders by the treating physician.

We have now had 10 years of experience with the 1993 Federal FMLA, and 14 under the N.J. Law, during which time the fears and predictions of business organizations as to the dire consequences of such legislation have largely been shown to have been unfounded.

To the contrary, and especially since FLA and FMLA leaves for family member illness will most often be taken *without pay*, employers have apparently been able to accomodate -- and satisfy -- their manpower requirements in spite of the various exigencies which occur in the lives of employees, which may prevent them from working from time to time, wholly without regard to these acts. This is especially evident during the current period of significant unemployment.

One obvious result of the "gap" in the N.J. law noted above is that attorneys who bring suit for employees whose rights under the Federal FMLA may have been violated must obviously cite the Federal law, and must either bring the action in the U.S. District Court or be subject to removal of the case to the USDC by defendants, who almost always will do so.

Regardless of whether removal to the USDC provides any "advantage" to the defendant who removes an FMLA action, it is clear that the removal of such cases to Federal courts burden these courts with matters which could probably be handled more expeditiously at the state court level. This is especially true in counties which have routinely invoked the mediation system, which is not always available in the Federal system.

It is also probably true that the preparation and trial of cases in the Federal courts can be more expensive for both sides, for a variety of reasons, than in the state courts.

Moreover, it is quite illogical to maintain such a huge discrepancy in coverage between the N.J. and Federal laws, as exists today by New Jersey's exclusion from coverage of the very *employee whose absence for medical reasons places his/her job at risk.*

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