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Labor & Employment News

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Employees Need Not Use Magic Words in Requesting Family/Medical Leave, Rather Employer Has Duty to Inquire

Ila Bhatnagar, Esquire

On March 29, 2004, in Hutchens v. Board of Review, 368 N.J. Super. 9 (App. Div. 2004), the Appellate Court held that the employee plaintiff, who proceeded pro se, was entitled to New Jersey Family Leave Act ("FLA") protection even though it was unclear to the employer that she was requesting such leave because she did not specifically ask for it. The court held that it was incumbent upon the employer to inquire further if there was any doubt as to whether the employee was requesting leave protected under a state or federal law.

In Hutchens, the employee claimed that she had requested time off from her job as a receptionist in order to care for her ill parents. The employer contended that she left her job voluntarily without good cause attributable to work "because of a family problem" and deemed her to have resigned. Hutchens claimed her understanding was that she was exercising protected family medical leave rights. She subsequently filed for unemployment benefits and was denied based on the employer's claim she had voluntarily resigned. Hutchens appealed administratively and then to the Appellate Division, which reversed the denial of unemployment benefits.

Finding the federal regulation implementing the Family Medical Leave Act ("FMLA") to be illustrative as to the FLA, the court held that, "the employee need not expressly assert rights under the FMLA or even mention the FMLA . . . . " The court emphasized that if there is "any ambiguity in the employee's request for leave, the burden shifts to the employer to determine if the leave requested is FMLA qualifying by inquiring further." Expressing sympathy for employees in these predicaments, the court reiterated that "employees are not required to possess encyclopedic knowledge of their legal rights in order to invoke the benefits of family leave but rather, the court should focus on the employer and its obligations." This decision is consistent with prior decisions of the federal courts interpreting the FMLA.

Therefore, once an employee expresses a desire

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Nonunion Employees Again Lose Weingarten Rights

Jacqueline R. Barrett, Esquire

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In NLRB v. Weingarten, 420 U.S. 251 (1975), the United States Supreme Court held that union employees were entitled to request the presence of a union representative and/or co-worker during any investigatory interview which may reasonably result in disciplinary action being imposed upon the employee. These rights have commonly been referred to as "Weingarten rights." Several years later, in Materials Research Corp., 262 NLRB 1010 (1982), the National Labor Relations Board ("NLRB") extended Weingarten rights to nonunion employees.

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Nonunion Employees Again Lose Weingarten Rights

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Since 1982, the NLRB and federal courts have issued inconsistent decisions as to whether Weingarten rights should be extended to nonunion employees. As recently as 2000, in Epilepsy Foundation of Northeast Ohio, 221 NLRB 676 (2000), the NLRB upheld the rights of nonunion employees in this regard.

However, on June 9, 2004, in IBM Corp, 341 NLRB 148 (2004), the NLRB held that nonunion employees are not entitled to Weingarten rights. In IBM Corp., the employer denied the request of three IBM employees, who were not represented by a union, to have a co-worker present during interviews related to the employer's investigation of a female employee's allegations of sexual harassment. The employees subsequently filed an NLRB charge alleging their rights had been violated. The NLRB administrative law judge initially held that the employer's denial of the request violated Section 8(a)(1) of the NLRA. The employer appealed and a majority of the Board reversed the decision in a 3-2 vote and held that employees in a nonunion workplace are not entitled to representation during a disciplinary interview. The Board explained,

> *the years after the issuance of Weingarten have seen a rise in the need for investigatory interviews, both in response to new statutes governing the workplace and as a response to terrorist attacks on our country. Employers face ever-increasing requirements to conduct workplace investigations pursuant to federal, state and local laws, particularly laws addressing workplace discrimination and sexual harassment. We are especially cognizant of the rise in the number of instances of workplace violence, as well as the increase in the number of incidents of corporate abuse and fiduciary lapses. Further, because of the events of September 11, 2001, and their aftermath, we must now take into account the presence of both real and threatened attacks. Because of these events, the policy considerations [expressed in prior decisions] have taken on a new vitality. Thus . . . . we hold that the Weingarten right does not extend to the nonunion workplace.*

The Board also emphasized that in a nonunion setting, the co-workers have no obligation to represent and/or safeguard the interest of the entire bargaining unit, there is no legally defined collective interest to represent, there is no defined group with any common interests and no collective bargaining contract by which to determine the parties' rights. As such "a coworker has neither the legal duty nor the personal incentive to act in the same manner as a union representative." The Board noted that co-workers cannot redress the imbalance of power between employers and employees, co-workers do not have the same skills as union representatives and that the presence of a co-worker during interviews may compromise the confidentiality of information. For all these reasons and based on the "changing patterns and complexities of industrial life," the NLRB held that "on balance, the right of an employee to a coworker's presence in the absence of a union is outweighed by an employer's right to conduct a prompt, efficient, thorough, and confidential workplace investigations. It is our opinion that limiting this right to employees in unionized workplaces strikes the proper balance between the competing interests of the employer and employees."

The dissenting Board members opined that "Today, American workers without unions, the overwhelming majority of employees, are stripped of a right integral to workplace democracy."

In short, for now, nonunion employees have lost the protections of Weingarten rights. The bare majority of the deciding votes in IBM Corp., as well as the history of the NLRB in wavering on this issue, leaves open the possibility that nonunion employees may some day recover such rights. Although employers are now free to deny requests of nonunion employees for representation during disciplinary interviews, employers should be aware that these rights may later be restored.

Employees Need Not Use Magic Words . . .

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to take a leave from work which is anyway related to caring for oneself or a close family member (such as a parent, child or spouse) with a serious medical condition, or the birth or adoption of a child, a prudent employer should take affirmative steps to inquire further as to the specific details of the basis for the leave requested, in order to avoid an FLA or FMLA violation. Employers should make certain such an inquiry and the information provided by the employee is documented in the employee's personnel file. Large employers need to educate supervisors and managers to be aware of such issues and refer any matters to the human resource personnel to ensure proper inquiry and documentation. The failure to do so may subject even a well-meaning employer respectful of an employee's privacy to administrative violations and fines and penalties of $2,000 to $10,000. In addition, the employer risks exposure in a civil action for wrongful termination.

Appellate Division Affirms Private Employer's Right to Require Drug Testing Based on Reasonable Suspicion

By: Christine P. O'Hearn, Esquire

New Jersey has long approved of random employee drug testing for safety sensitive positions. In addition, New Jersey has permitted, subject to certain restrictions, drug testing based upon reasonable suspicion based on the employer's need to monitor and control drug use among employees. The question of what constitutes sufficient reasonable suspicion has often been debated by the courts. In Negron v. Jersey City Medical Center, Slip. Op. A-2847-02T5 (June 29, 2004), the Appellate Division re-affirmed the employer's right to conduct employee drug testing based upon reasonable suspicion and the breadth of the discretion provided to employers to do so.

In Negron, the plaintiff was employed as a security guard for the defendant hospital for fourteen years. During the course of his employment, plaintiff received favorable performance evaluations describing his performance as above average and/or outstanding. He received commendations, salary increases and a promotion to the position of assistant security supervisor. Approximately one month after his most recent favorable performance evaluation, plaintiff's supervisor noticed that plaintiff began acting in a bizarre and erratic manner. His speech was fast, he abruptly switched from one subject to another, his nose was constantly running, his eyes were watery and he grinded his teeth. His behavior was noted to be inappropriate at times. Other managers reported similar incidents and stated that it appeared plaintiff was under the influence of drugs and/or alcohol. Plaintiff was described as less energetic, not completing his work on time, distant and secluded and that he had lost weight. Some commented he looked shabby in his appearance.

The hospital had a drug and alcohol policy that did not require random drug testing, however, it did permit drug and alcohol testing based upon reasonable suspicion. Plaintiff was familiar with the hospital's drug policy. Based on the above, the employer requested that plaintiff submit to a drug and alcohol test. He was advised he would be terminated if he refused to do so and/or if he tested positive. Plaintiff refused to take the test and stated he would not do so unless the testing was required of all security personnel. As a result, he was terminated.

Plaintiff sued his employer alleging wrongful termination in violation of public policy and/or invasion of privacy. He claimed there was no basis or reasonable suspicion for the requirement of a drug test. He claimed he had never used drugs and that he was simply suffering from stress related to family problems. A physician employed by the hospital testified on plaintiff's behalf that he never observed plaintiff acting inappropriately or behaving in a way suggestive of drug or alcohol influence. He further claimed the allegations against him were retaliatory for his prior complaints regarding certain improper incidents involving hospital supervisors.

The Appellate Division first noted that plaintiff was "clearly employed in a safety sensitive position" as he was employed in a supervisory position in a community medical center and was responsible to ensure the safety of employees, patients and staff members. The court explained "[a] private employer can require compliance with an announced drug policy upon reasonable suspicion." The Court held that the employer's alleged "invasion" of the employee's privacy by requesting a drug test was "neither substantial nor highly offensive." The court noted the employer sought to maintain the plaintiff's privacy by offering him a private setting in which to provide a urine sample and subsequently offering reinstatement even after his termination if he would undergo testing. The court held that the plaintiff had failed to provide any evidence that his right to privacy outweighed the public interest in hospital safety and security.

This decision illustrates the nature of an employee's behavior and/or conduct in the workplace which may form the basis of reasonable suspicion to require an employee undergo drug testing. Of course, the more persuasive the employer can argue that the employee is involved in a safety sensitive position, the more latitude the court will likely provide to the employer. In cases where the employee is clearly not in a safety sensitive position (for example, a clerical worker), the court is likely to require a higher threshold of proof in order to sustain the employer's adverse action based on the employee's refusal to submit to testing. While the reasonable suspicion standard can be subjective, an employer should be certain to document the comments and observations of supervisors and co-employees prior to requesting the drug test so as to have an adequate foundation to support its reasonable suspicion. An employer who fails to produce evidence to support the reasonable suspicion precipitating the request to submit to a drug test, risks exposure to a civil suit by the employee for wrongful termination in violation of public policy and/or invasion of privacy.

New Jersey Supreme Court Issues Decision on Key Aspects of New Jersey Law Against Discrimination

Christine P. O'Hearn, Esquire

The New Jersey Supreme Court addressed two key aspects of the New Jersey Law Against Discrimination ("NJLAD") in Tarr v. Ciasulli, 181 N.J. 70 (2004), 2004 WL 1765499. First, the Court addressed the standard by which a plaintiff must establish claims of emotional distress sufficient to warrant recovery under the NJLAD. Second, the Court addressed the standard for individual liability under the NJLAD.

In Tarr, the female plaintiff was employed by an auto dealer as a finance manager. She filed suit against the corporation as well as the owner of the dealership, individually, under the NJLAD alleging she was sexually harassed and subject to a hostile work environment. At trial, plaintiff testified regarding offensive conduct which she endured from a group of male employees. In its decision, the Court explained "at various times the employees would refer to women in a demeaning gutter slang that we need not repeat here." Plaintiff testified that pornographic material was left in plain view of other employees; employees drew sexually explicit pictures on envelopes which were transmitted to her; employees made sexual gestures and discussed their sexual genitals in detail and escapades with various women; one or more employees propositioned her to have sex in a broom closet; and statements were made regarding her physical appearance including an occasion where it was suggested that she loosen her blouse in order to sell a warranty to a customer.

Plaintiff testified that her supervisor witnessed much of the above conduct but took no action. Plaintiff was so uncomfortable in the workplace that she resigned in July 1995. Shortly thereafter, she returned because she needed a job and was assured that the situation had improved. Plaintiff testified that upon her return, the sexual harassment continued and, therefore, she resigned again.

Plaintiff testified that as a result of the harassment she was embarrassed, humiliated, wanted to crawl under her desk, cried on her way home from work on a regular basis, etc. She presented no expert testimony regarding her alleged emotional distress.

At the close of plaintiff's case at trial, the court dismissed plaintiff's claim of emotional distress and held that plaintiff was merely "temporarily upset" and such claims were not sufficient to warrant recovery for emotional distress. The jury was instructed that plaintiff could only recover economic losses. The trial court also dismissed plaintiff's claims against the owner personally finding insufficient evidence to sustain personal liability. The jury found that plaintiff was subject to sexual harassment but that she suffered no economic loss. Plaintiff subsequently appealed.

The New Jersey Supreme Court first analyzed the issue of emotional distress damages in NJLAD cases. The Court explained that for a common law cause of action for intentional infliction of emotional distress a plaintiff must establish "intentional and outrageous conduct" and emotional distress that is "so severe that no reasonable person could be expected to endure it." Relying upon the history and legislative intent of the NJLAD, the Court held that a lower evidentiary standard is applicable in NJLAD cases. The statutory language of the NJLAD, which is to be broadly construed, states in part,

> *The Legislature further finds that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm. The personal hardships include: economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment controversies; relocation, search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career, education, family and social disruption; and adjustment problems, which particularly impact on those protected by this [A]ct. Such harms have, under the common law, given rise to legal remedies, including compensatory and punitive damages. The Legislature intends that such damages be available to all persons protected by this [A]ct and that this [A]ct shall be liberally construed in combination with other protections available under the laws of this State.*

N.J.S.A. 10:5-3. The Court noted that prior cases have permitted recovery of emotional distress damages without expert testimony. The Court also relied upon federal cases which have repeatedly held under federal civil rights statutes that a plaintiff may recover damages in a discrimination and/or harassment case for claims of anxiety, stress, sleeplessness, humiliation, loss of self-respect, insomnia, etc. without expert testimony.

Since the purpose of the NJLAD is "the eradication of the cancer of discrimination", the Court held that victims who assert claims under the NJLAD are entitled to recover for "mental anguish, embarrassment, and the like, without limitation to severe emotional or physical ailments." The court concluded by stating,

> *In sum, we are satisfied that compensatory damages for emotional distress, including*

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> *humiliation and indignity resulting from willful discriminatory conduct, are remedies that require a far less stringent standard of proof than that required for a tort-based emotional distress cause of action. We hold that in discrimination cases, which by definition involve willful conduct, the victim may recover all natural consequences of that wrongful conduct, including emotional distress and mental anguish damages arising out of embarrassment, humiliation, and other intangible injuries.*

The Court then addressed, in a case of first impression, the standard of proof required for individual liability under the NJLAD. N.J.S.A. 10:5-12a prohibits unlawful employment practices and unlawful discrimination by an employer. An employer "includes all persons as defined in subsection a .... unless otherwise specifically exempt under another section of [the NJLAD], and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies." N.J.S.A. 10:5-5e. Subsection a. defines "[p]erson" as "one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries." N.J.S.A. 10:5-5a. Under a plain reading of these definitions an individual supervisor is not defined as an "employer" under the NJLAD. Nevertheless, it is unlawful "[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [under the LAD]," N.J.S.A. 10:5-12e, and such conduct may result in personal liability. While there had been previous decisions from the lower courts of New Jersey and the federal courts, interpreting these statutory provisions, the decisions were inconsistent with respect to the proof required. The Court adopted the Restatement of Torts 876 (b) definition in interpreting the terms “aid’ and “abet” under the NJLAD and held that

> *in order to hold an employee liable as an aider or abettor, a plaintiff must show that (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and (3) the defendant must knowingly and substantially assist the principal violation. .... To assess whether a defendant provides substantial assistance to the principal violator. Factors [to be considered] are: (1) the nature of the act encouraged, (2) the amount of assistance given by the supervisor, (3) whether the supervisor was present at the time of the asserted harassment, (4) the supervisor's relations to the others, and (5) the state of mind of the supervisor.*

Here, the Court held that there was no evidence that the owner aided and abetted the employees in sexually harassing plaintiff. There was no evidence that the owner encouraged the harassment, assisted the harassers or that he was even present when it occurred. The Court explained that “at best, the record discloses that [the owner] as the supervisor in the network of auto dealerships negligently supervised his employees. That is insufficient to conclude that he provided substantial assistance to the wrongdoers to impose personal liability....” As a result, the Court affirmed the dismissal of all claims against the owner personally.

In short, Tarr is a mixed bag for employers and employees. On one hand, the Court’s rulings related to the lesser standard required for recovery of emotional distress damages favors employees. On the other hand, the Court’s affirmance of the dismissal of the claims against the individual defendant is favorable to employers and individual supervisors and sets the standard to establish such liability in the future which, absent active involvement by the individual, will likely result in dismissal of claims against individuals personally in many cases.

Overview and Comparison of Federal Family and Medical Leave Act and New Jersey Family Leave Act

Issue	FMLA	NJFLA	Most Favorable to Employees
Employers covered	Employs 50 or more employees during at least 20 weeks of current or preceding calendar year (includes public agencies and public and private schools without regard to the number of employees).	Employs 50 or more employees for each work day during 20 or more calendar workweeks in current or immediately preceding calendar year, including State, political subdivisions, and public offices, bodies and agencies (includes employees outside of the state for purposes of counting).	Comparable, except under federal, no numerical restriction for public agencies and public schools.
Employees eligible	Worked for employer at least 1,250 hours in preceding 12 months and employed for 12 months overall; employed at worksite by employer with 50 or more employees within 75 miles of site.	Worked for employer at least 1,000 hours in preceding 12 months and employed for at least 12 months overall.	New Jersey
Amount of Leave	12 weeks during 12 month period. Spouses entitled only to a combined total of 12 weeks for the birth or placement of a child or to care for a parent. Each spouse may make up the remainder of the 12 week entitlement with leave for other purposes.	12 weeks during 24 month period. No reduction in leave for spouses working for same employer. Leave under New Jersey FLA is in addition to and apart from disability leave.	Federal, except for leave sharing requirements for spouses and disability leave.
Circumstances Warranting Leave	Birth, adoption, or foster care; to care for parent, child, or spouse with serious health condition; or employee's own serious health condition.	Birth or adoption; serious health condition of parent, parent of spouse, child or spouse.	Federal for coverage of an employee's own serious health condition. New Jersey for coverage of in-laws.
Serious Health Condition	Illness, injury, impairment, or physical mental condition involving incapacity or treatment connected with impatient care in hospital, hospice, or residential medical-care facility; or continuing treatment by or under supervision of a health care provider involving: (1) incapacity or absence of more than 3 days from work, school, or other activities; (2) chronic or long-term condition incurable or so serious if not treated would result in incapacity of more than 3 days; or (3) prenatal care.	Illness, injury, impairment, or physical or mental condition which requires inpatient care in a hospital, hospice, or residential medical treatment or continuing medical treatment or supervision by a health care provider.	Comparable.
Timing of Birth or Placement	Leave for birth or placement of child must be completed within 1 year after birth or placement.	Entitlement to leave for birth or placement of child may begin anytime within 1 year of event.	New Jersey

Overview and Comparison of Federal Family and Medical Leave Act and New Jersey Family Leave Act

Issue	FMLA	NJFLA	Most Favorable to Employees
Health Care Provider	Doctors of medicine or osteopathy authorized to practice medicine or surgery in the State; podiatrist, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law; or, Christian Science practitioners listed with the first Church of Christ Scientist in Boston, Massachusetts.	Any person licensed under Federal, State, or local law, or the laws of a foreign nation, to provide health services, or any other person who has been authorized to provide health care by licensed health care providers.	Federal
Intermittent or Reduced Leave	Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees. Employees must make a reasonable efforts not to disrupt the employer's operations. No limit on the amount of leave that may be taken on a reduced or intermittent basis. May be taken in units as small as the employer's payroll system uses to account for use of leave.	Permitted for serious health condition when medically necessary. Not permitted for birth or adoption unless employer agrees. Employees must make reasonable efforts not to disrupt the employer's operations. Limits the amount of leave that may be taken on a reduced or intermittent basis. Intermittent leave lasts at least a week but less than 12. Reduced leave employee works less than usual number of hours per week, but not per day, unless agreed. Employer not required to permit reduced leave in increments of less than 1 day.	Comparable Federal as far as smallest increments that may be taken.
Transfer of Employee During Intermittent or Reduced Leave	Provides that during intermittent or reduced leave, an employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, has equivalent pay and benefits, and which better accommodates recurring periods of leave than the regular position. Under certain circumstances, school districts may require instructional employees on intermittent or reduced leave to choose between taking an uninterrupted block of time, or transferring to an alternative position.	Statute silent regarding the transfer of an employee on reduced or intermittent leave to an alternative position.	New Jersey
Amount of Reduced Leave	No statutory restrictions.	May not exceed 24 consecutive weeks and may be utilized only once during 24 month period.	Federal

Overview and Comparison of Federal Family and Medical Leave Act and New Jersey Family Leave Act

Issue	FMLA	NJFLA	Most Favorable to Employees
Substitution of Paid Leave	Employee may elect or employer may require accrued paid leave to be substituted in some cases. No limit on substituting paid vacation or personal leave. Employee may not substitute paid sick, medical, or family leave for any situation not covered by employer's leave plan.	Existing policy governs the use of accrued paid leave. If there is no policy regarding the use of accrued paid leave, the employee may opt to use, but the employer may not unilaterally substitute paid leave.	New Jersey
Reinstatement Rights	Must restore to same or equivalent position in all terms, conditions, responsibilities, and benefits. Reinstatement not required where employee would have been laid off during leave.	Similar	Comparable
Maintenance of Health and Other Benefits During Leave	During leave, group health insurance must be maintained. No obligation to maintain other benefits such as life insurance, disability etc., although these benefits must resume upon employee's return, without any penalty, waiting period, or additional condition. Leave many not result in forfeiture of any accrued benefits. If employee fails to return to work,	During leave, the employer must maintain group health insurance at same level, as well as any other benefits (life, disability, sick, annual leave, pensions) that are maintained for employees on temporary leave. This provision has been found to be preempted by ERISA for any employee welfare benefits plan regulated under ERISA.	Federal law as it relates to health benefits. New Jersey as it relates to other benefits.
Key Employees	Leave may be denied to highest paid 10% of employees if restoration would cause grievous economic hard. Key employees may not be denied leave, but may be denied reinstatement. Must notify key employee of status and offer reasonable opportunity to return from FMLA.	Leave may be denied to highest 5% of employees or one of the 7 highest paid employees, whichever is greater, if leave would lead to substantial and grievous economic injury to employer. May revoke after leave granted. Employee has 10 days to return.	New Jersey in most cases.
Employee Notice Prior to Leave	Employee must provide 30 days notice for all foreseeable events. (Where not foreseeable, notice is to be given within 2 business days). Leave may be denied for failure to provide written notice. In cases of serious health condition, notice to be	Employee must provide 30 days notice of birth or adoption, and 15 days notice for serious health condition (in cases of emergencies, notice to be given as soon as practicable), written notice may be required by policy.	Comparable

Overview and Comparison of Federal Family and Medical Leave Act and New Jersey Family Leave Act

Issue	FMLA	NJFLA	Most Favorable to Employees
Employee's Certification	The law contains no provision for requiring an employee's own certification.	Permits employer to require signed certification from employee attesting to reasons for leave. If required, leave may be denied for failure to provide.	Federal
Employment During Leave	Statute is silent.	Full-time employment prohibited. DCR Regulations state certain part-time employment permitted.	Federal
Employer's Obligation to Notify Employees of Rights Under Act	Stringent requirements, including display of DOL Notice, distribution of written guidelines, and once provided sufficient information to apprise FMLA qualifying event, employer must give written notification of employee's rights and obligations. May not designate FMLA leave after the fact unless meet strict requirements.	Display conspicuous notice of employee rights and obligations and use other appropriate means to keep employees informed. Employee need only provide sufficient information to reasonably apprise of FLA qualifying event in order to impose statutory obligations.	Federal
Remedies	Damages equal to wages, salary, employment benefits, or other compensation denied or lost; or if no losses have been sustained, any actual losses (i.e., cost of providing care up to a sum equal to the employee's pay for 12 weeks); interest; liquidated damages unless employer demonstrates it acted in good faith with a reasonable belief it was not violating the law; appropriate equitable relief, such as reinstatement or promotion. DOL authorized to investigate and bring suit. Employee may maintain private right of action. Statute of limitations is two years, but three years for willful violation.	All equitable and compensatory remedies available under New Jersey Law Against Discrimination, including compensatory damages and reinstatement with back pay and attorneys' fees. Penalties against the employer of up to $2,000 for the first offense and up to $5,000 for each subsequent offense. Punitive damages in private actions up to $10,000 per person, but in class actions or complaints by Director of Division on Civil Rights, up to the lesser of $500,000 or 1% of defendant's net worth. Aggrieved party may file administrative complaint with Division on Civil Rights or institute a civil action in state court.	New Jersey

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Around the Firm . . . .

Jeffrey R. Johnson has joined the firm as an associate and will concentrate his practice in commercial and personal injury litigation. Prior to joining the firm, Mr. Johnson served as a judicial law clerk to the Honorable Frank M. Lario, Jr., of the Superior Court of New Jersey in Camden County, and also served as an Assistant District Attorney for the Philadelphia District Attorney's Office.

Louis R. Lessig, Esquire is co-chairing the Conference Committee and the Legislative Committee for Tri-State Human Resource Management Association. Mr. Lessig will be speaking at a seminar entitled "Misunderstood Wages and Hours: Working With the Revised Fair Labor Standards Act" for the Garden State Council at their 13th Annual Garden State Conference and Expo for Human Resource Professionals on **November 9, 2004**. In May 2004, Mr. Lessig moderated a seminar for the Camden County Bar Association featuring the Honorable M. Allan Vogelson entitled, "Appearing Before the Chancery Court."

In June 2004, **Shawn C. Huber, Esquire** moderated a seminar for the Camden County Bar Association entitled, "Jury Selection Strategies: What You Need to Know and Must Know" which included the Honorable William J. Cook, **William M. Tambussi, Esquire** and Jeffrey Zucker, Esquire as speakers.

Michelle A. Carter, Esquire, will be moderating a seminar for the Camden County Bar Association on October 23, 2004 entitled, "Best Practices Update 2004" featuring the Honorable John A. Fratto, Presiding Judge, Civil Division, and Jennifer Perez, Civil Division Manager, Camden County.

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