



LADDEY, CLARK & RYAN, LLP

ATTORNEYS AT LAW

SPRING 2008 NEWSLETTER

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MANAGING EMPLOYEE LEAVE BENEFITS

An Overview of the Employers' Obligations Under the Federal and State Family Leave Acts

Including the Paid Family Leave Act Signed May 2, 2008

by Linda Day, Esq.



Employers have obligations that must be met each time an employee advises his employer of a serious medical condition, and/or requests a medical or family leave which might be covered by both the federal Family and Medical Leave Act, 29 USC 2611 et seq, "FMLA" and the New Jersey Family Leave Act, NJSA 34:11B-1 et seq, "NJFLA." These statutes have strict enforcement mechanisms including the establishment of a right to sue and the recouping of attorney's fees and costs for the successful plaintiff. The day to day implementation of these laws raises many complicated questions. When employers are unaware of the existence of these statutes and their companion regulations, navigating family and medical leave can be overwhelming.

The FMLA states that public and private employers with 50 or more employees must provide eligible public and private employees with twelve (12) weeks of unpaid, job protected leave. A leave may be taken all at once or intermittently. However, to qualify, employees must have worked for at least one thousand hours over a twelve month period preceding the leave request. The current FMLA states the employer is obligated to advise their employees of their rights under the Act. An employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

The most significant difference between the FMLA and the NJFLA is that the latter does not provide leave in the event of the employee's own serious illness. NJFLA only provides leave in two circumstances: birth or adoption of a child by the employee; and/or serious illness of a family member, a term which is quite broadly defined by the Act. It only allows 12 weeks protected leave in every 24 month period and applies to employers with 50 employees.

Although the language in the NJFLA provides that employers must continue to provide benefits while the employee is on leave, the extent to which the employer must continue to do so is dependent on whether certain federal statutes apply to the employer based on its size. Because the analysis is complicated, the employer is encouraged to consult with counsel to determine the extent of its obligations while its employees are out on NJFLA.

When both the FMLA and the NJFLA apply, the FMLA does not supersede any provision of state law which provides greater rights. Employers must be aware of and apply both statutes. If leave qualifies under both statutes, the leave runs concurrently.

Confusion can arise in reconciling the two statutes when a pregnant employee takes time off. A good idea is to remember that the NJFLA does not provide leave for the employee's own illness. Therefore, any time taken off before the birth of the baby is due to the employee's own medical condition. Such leave can only count against the FMLA time. Similarly, any time off due to physical disability associated with child birth counts only against the FMLA time.

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Auto Insurance - Am I Covered?

By Andrew Fraser, Esq. and Lauren McFadden, Esq.



A necessary evil, an expensive proposition, the bane of your existence - those terms can all describe auto insurance in New Jersey. Yet it is one area in which consumers are generally well advised not to

cut corners. Keeping premiums down by accepting minimal policy limits is generally not a good idea, and can be financially catastrophic in some cases. We know that from years of experience in representing drivers injured in auto accidents - particularly those who were unfortunate enough to be hit by uninsured or underinsured motorists.



Modest policy limits also come into play when an unknown or unidentified vehicle causes an accident - a car or truck that doesn't hit your car but somehow causes your car to hit, for instance, a guardrail.

In those cases your policy steps into the shoes of the uninsured motorist, or the driver of the unidentified vehicle.

The most recent reminder of the fact that New Jersey drivers should understand what their auto policies cover - and keep their policy limits at or near the maximum - was a particularly high-visibility auto accident. The details surrounding Gov. Corzine's auto accident included accounts of a pickup truck swerving and causing the governor's SUV to skid into a guardrail. That scenario, which happens thousands of times annually in this state alone, should be enough to convince penny-wise policy holders to pay slightly higher premiums for far better coverage.

"If you're the driver of a car which is in an accident caused by an unidentified vehicle, it's hugely important that you have good Uninsured Motorist coverage," says Andrew Fraser, who leads the two-person

personal injury litigation team at Laddey, Clark & Ryan. "If you're driven off the road but there was no vehicle-to-vehicle contact, whom do you sue? An incident like that triggers the Uninsured Motorist coverage on your own policy, which steps into the shoes of the unidentified vehicle's policy. And if you have the minimum - or anywhere near it - you have a big problem."

"The minimum," Fraser said, "is \$15,000, which is insufficient to cover the harms and losses associated with the vast majority of auto accident-related injuries."

The same issue arises if you are struck by a motorist who has little or no insurance. "Some people, for whatever reason - saving money on the premiums, lack of understanding, wishful thinking - go for the minimum or just above it," says Lauren McFadden, the other half of Laddey, Clark &

Ryan's personal injury litigation team.

"But higher limits - even at the cost of higher premiums - are worth it, especially if you are involved in an accident with an unidentified car or an underinsured or uninsured motorist," McFadden advises.

Check your auto insurance policy, particularly the first page, known as the Declaration Page. See what the limits are. Make sure you understand the coverage and the limits. The personal injury litigation team at Laddey Clark & Ryan, who have secured two of the highest personal injury verdicts in Sussex County history, are available to review your coverage.

Andy Fraser and Lauren McFadden can be reached at (973) 729-1880, or via e-mail at afraser@lclrlaw.com and lmcfadden@lclrlaw.com.

Meet Victor R. Jusino, Esq.



Laddey, Clark & Ryan is pleased to welcome Victor Jusino, Esq. to the Firm. Jusino brings with him substantial litigation experience, focusing his practice

primarily on the representation of clients in both civil and criminal matters. He has extensive experience in all aspects of civil and criminal practice, ranging from pre-trial negotiations to mediation and trial. He is a member of the bars in New Jersey and Pennsylvania.

Jusino is a graduate of Rutgers University School of Law-Newark, and served as Law Clerk to the Honorable Lewis J. Weinstein, J.S.C. in Morris County.

He then served as Assistant Prosecutor in both Morris and Essex counties. During those six years, Mr. Jusino tried numerous cases ranging from theft to murder. Prior to joining the Firm, Mr. Jusino served as a Senior Analyst for AIG in their excess casualty department. In that capacity, he directed the litigation and negotiated the resolutions of many multi-million dollar cases.

Jusino was hired by Laddey, Clark & Ryan in October and was appointed Prosecutor for the town of Newton in January. Drawing from his past experiences, Jusino is excited to make a difference in one of Sussex County's most historical towns.

Victor Jusino can be reached by phone (973) 729-1880, or by email at vjusino@lclrlaw.com.

IN THE NEWS

LOCAL ATTORNEYS HELP THEIR COMMUNITIES



Lawrence Supp, Esq. and Angelo Bolcato, Esq., are using their expertise in law to give back to their local communities. Both attorneys are members of the Warren County Habitat for Humanity, an organization which provides housing to families facing a housing crisis. The chapter is currently in the process of building a new two-family duplex in Harmony Township.

Supp helps out the chapter as a Grant Writer. Bolcato serves on the Habitat's Board of Directors, Site Selection Committee, and as assistant counsel.

Bolcato, a partner at Laddey, Clark & Ryan, specializes in municipal law and commercial transactions. Additionally, he is a Diplomat in New Jersey Local Government Law. Supp represents clients in contract and consumer fraud matters.

LOCAL LAWYER GOES FROM COURTHOUSE TO CLASSROOM

Michael Garofalo, Esq. has found his niche teaching a required legal, engineering and planning course to newly appointed planning and zoning board members around New Jersey. He has taught on behalf of both the New Jersey Planning Officials (NJPO) and Rutgers University. Garofalo has taught courses in Sussex, Warren, Morris, Somerset and Camden counties.

Garofalo is currently the attorney for the towns of Wantage, Stillwater and Walpack, as well as the Oxford Township Land Use Board and the Vernon Zoning Board.

ATTORNEY KEEPS TRADITIONS OF HIS IMMIGRANT FAMILY ALIVE



Andrew Fraser Esq. traded in his suit for his kilt as he helped commemorate the 249th birthday of Robert Burns, the Scottish national poet.

Fraser and his family emigrated from Scotland to Connecticut in 1964. His parents, George and Margaret Fraser, started Connecticut's first Scottish Society, in part to join the worldwide celebrations of Scottish National Poet, Robert Burns's birthday. Burns is most famous for the song we sing on December 31, "Auld Lang Syne."

The Scottish group started by Fraser's parents has many facets, including the Mystic Highland Pipe Band and the Mystic Scottish Country Dancers. This year marked the 25th anniversary of the group, and the group made a special point of honoring Fraser's parents.

Fraser practices personal injury litigation on behalf of seriously injured individuals.

Personal Injury Cases of Note

Laddey, Clark & Ryan secured a settlement for a motorcyclist who was struck by a car. The man suffered extensive leg injuries requiring multiple surgeries, skin grafts and physical therapy. The personal injury team was able to secure the SUV operator's maximum insurance policy limit for the motorcyclist. However, this settlement was not enough to cover all of the expenses for the physical recovery of the victim, so the LC&R team is now pursuing the under-insurance motorist coverage to maximize coverage for the motorcyclist's claim.



A minor was struck by a minivan while he was in a crosswalk heading back to the high school after participating in sports. The driver of the minivan was distracted by her baby at the time of the accident. The boy suffered multiple fractures as well as internal injuries, and was hospitalized for over three weeks. Laddey, Clark & Ryan successfully negotiated with the driver's insurance company, and the boy received the policy's maximum limit.



A woman shopping in a department store with her 2 year old child was struck by 50 pounds of storage containers, which had fallen seven feet as she was bending down for an item on the bottom shelf. The woman was knocked unconscious and suffered herniated disks in her neck, while the containers narrowly missed the baby in the cart. After a successful pre-trial motion, the court concluded that the store was solely responsible for the woman's injuries, and the jury need only decide the value of the injury. This matter was settled prior to trial.



A woman was a passenger in a rental car operated by her boyfriend. They were struck in the rear by an uninsured motorist from New Hampshire, a state in which automobile insurance is not required by law. Laddey, Clark & Ryan pursued her insurance carrier for uninsured motorist benefits. The woman, who suffered a knee injury, received a substantial settlement from both the rental car company and her own insurance company.

Litigation on behalf of individuals as well as public and private entities is the cornerstone of the work we do at Laddey, Clark & Ryan, LLP. Our recent results stand for that commitment.

Employers' Obligations Under Family Leave Acts

...continued from page one

Once the employee is released from disability, then the twelve (12) weeks allowed under the NJFLA (to care for the child) will begin to run. At that point, any remaining time under the FMLA will run concurrently. In such circumstances, an employee may be able to take up to twenty-four (24) weeks of combined leave.

Leave under the FMLA is unpaid unless the employee elects or the employer requires, the use of accrued paid leave such as vacation, personal time, or paid sick time. Leave under the NJFLA is also unpaid, but only until July

1, 2009. On May 2, 2008, Governor Corzine signed the Paid Family Leave Act. This new legislation amends New Jersey's Temporary Disability Insurance Law. Commencing on July 1, 2009, employees may take up to (6) weeks partially paid but unprotected leave in the event of a birth, adoption of a child or serious family illness. The Act will apply to all employers regardless of the number of employees. Funding for family leave will come from employee wage deductions of about \$33.00 per year. While paid family leave is "unprotected," a discharge *in retaliation* for exercising the right to take paid leave would seem to violate the clear public policy set forth in the legislation in favor of allowing even employees of small businesses to take leave to care for a sick family member

without financial hardship. Therefore, an employer may still be vulnerable to a retaliatory discharge claim.

The many family leave acts and the changes in employee leave laws present a continuing challenge to employers that requires continued vigilance.

The Private Employment Law Group at Laddey, Clark and Ryan are knowledgeable in the family and medical leave Acts. Our knowledge and experience can serve to streamline your implementation of all three Acts and actually save you money in attorneys' fees.

Linda Day can be reached at (973) 729-1880, or via e-mail at lday@lclrlaw.com.

DUO NAMED SUPER LAWYERS

Richard Clark and Andrew Fraser have been named Super Lawyers by New Jersey Monthly Magazine. The Magazine has released its 2008 list of the top lawyers in the state, as recognized by their peers. The selection process is rigorous, and includes surveying 35,000 practicing lawyers, who vouch for lawyers they have personally seen in action. This is Clark's fourth consecutive nomination and Fraser's third.

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