ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4927

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Assembly Appropriations Committee reports favorably an Assembly Committee for Assembly Bill No. 4927.

This committee substitute revises the law concerning family leave, temporary disability and family temporary disability leave, and domestic or sexual violence safety leave.

The bill expands the maximum total benefits payable to any eligible individual for a period of family temporary disability leave (or family leave insurance, "FLI"), and expands the length of time for which benefits will be paid. The bill increases the maximum number of weeks of benefits for a period of FLI leave, for any 12-month period, to 12 weeks from the current six weeks. In cases of intermittent leave, the maximum leave is increased from 42 days to 84 days. The bill increases the amount of weekly benefits from two-thirds of a claimant's average weekly wage to 90 percent of that wage, subject to a maximum amount, which the bill increases from 53 percent of the State average weekly wage ("SAWW") for all workers to 78 percent of the SAWW.

The family members for whom an individual may receive FLI benefits to care for are expanded by the bill to include siblings, grandparents, grandchildren, and parents-in-law. Currently, family members for whom an individual may use FLI benefits are limited to children, spouses, domestic partners, civil union partners, or parents of the individual.

The bill also expands the "Family Leave Act" ("FLA") and the "NJ SAFE Act" to include siblings, grandparents, grandchildren, and parents-in-law. Additionally, the bill provides that FLI benefits may be taken by a covered individual while taking time off from work, pursuant to the NJ SAFE Act, to assist a family member who is a victim of domestic or sexual violence.

The bill amends the FLA and the FLI law to provide an employee who becomes a parent of a child pursuant to a gestational carrier agreement with the same rights to unpaid and paid family leave as those laws currently provide to an employee who is a parent of a newborn child.

The bill provides that FLI benefits with respect to a birth or adoption may be taken on an intermittent basis, if the individual provides the employer with prior notice not less than 15 days before the first day on which benefits are paid, unless unforeseen circumstances precludes prior notice. The individual must make a reasonable effort to schedule the leave to not disrupt employer operations and, if possible, to provide a regular schedule of the days, days of the week, or weeks of the intermittent leave.

The bill amends the FLA to make its provision of unpaid leave apply to employers with 20 or more employees, instead of the current threshold of 50 or more employees.

The bill also provides that an employer may not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee took or requested any TDI or FLI benefits. Not reinstating an employee after a period of FLI benefits would not be regarded as retaliation in the case of an employer who is exempt from the FLA because the employer has less than 20 employees. The bill provides for various remedies in cases of such retaliation, and applies existing penalties of the TDI law to employers who fail to provide the notifications and disclosures at the time and in the manner required by the TDI and FLI laws. If the failure causes a delay in benefit payments, the employer is required to pay the claimant an added amount equal to the benefits due from the time that the notification or disclosure was required until the benefit payments commence.

The bill also requires the division to implement goals for the timely determination and payment of TDI and FLI benefits. For TDI benefit claims, the goals specified by the bill set minimum percentages of initial claims to be completed within specified time spans as follows: 25 percent within seven days, 65 percent within 14 days, 75 percent within 21 days, and 85 percent within 28 days. For FLI benefit claims, the goals specified by the bill set the minimum percentages at 50 percent within seven days, 75 percent within 14 days, 85 percent within 21 days, and 95 percent within 28 days.

The bill requires the issuing of annual reports regarding efforts to attain those goals. Each report is required to include data regarding: claims completed within the stated goal periods; claims received with insufficient information causing delays in benefit payment and any related fines, penalties or payments to claimants; personnel processing TDI and FLI claims and related administrative costs; along with an evaluation of the causes of any failures to meet the goals, and a plan to correct them, including any needed increase in personnel, any enforcement or educational measures, or improvements in data processing and other administrative services and equipment. The plans should specify any increase needed to implement the plan in the estimate made pursuant to the TDI and FLI laws of the amounts needed to provide the cost of administration of TDI and FLI benefits.

The commissioner is required to use that increased estimate in setting the rate of TDI and FLI worker taxes.

Finally, the bill directs the Division of Temporary Disability Insurance to disseminate information about the rights and responsibilities of employers and employees regarding family temporary disability benefits, and allows it to contract with community based organizations to assist.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the Assembly Committee Substitute for Assembly Bill No. 4927 will result in a significant annual increase in expenditures from the Family Leave Insurance (FLI) Account within the State Disability Benefits Fund (SDBF) due to an increase in the payment of FLI benefits, as well as a potential increase in benefit users, resulting from the provisions of the bill. Under the bill's provisions, all eligible FLI claimants will receive a minimum 35 percent increase in FLI benefits upon the enactment of the substitute.

The OLS estimates that the 35 percent increase of the weekly FLI benefit amount may result in an average weekly cost increase per claim of approximately 40 percent, because certain claimants with weekly earnings larger than 53 percent of the State average weekly wage may receive as much as a 47 percent increase in benefits due to the provisions of the substitute that increase the maximum weekly FLI benefits. Furthermore, the OLS estimates that doubling the maximum duration of FLI benefits may increase FLI benefit payments by 90 percent. This increase assumes that all FLI bonding claimants, which accounted for nearly 84 percent of claims in CY 2016, and only a portion of the FLI family care claimants, who on average take only four weeks of FLI leave, will double the duration of their leave upon the enactment of the substitute.

In CY 2016, the gross FLI benefits paid to claimants totaled $88.7 million. As such, under the substitute, the OLS estimates that the gross FLI benefits in CY 2016 could have risen to approximately $236.0 million, a $147.3 million increase from the actual gross benefits paid.

The OLS notes that this adjustment does not account for any increase in expenditures from the SDBF due to increases in the number of benefit users which may be caused by the availability of higher benefits, longer duration of benefits, the expansion of certain job protection provisions, or the expansion of certain eligibility provisions as provided under the substitute. At this time, the OLS is unable to quantify the number of benefit users such provisions may add to the FLI program. The OLS further notes that the Department of Labor and Workforce development may incur indeterminate costs associated with certain reporting requirements of the substitute, offset by the collection of penalties established under that bill that require employers to provide the department with certain information regarding an employee's claims.

The benefits and costs of the FLI program are funded entirely through an additional assessment on workers' wages subject to TDI taxes. The OLS notes that any increased FLI benefit payments, along with the associated administrative costs, resulting from the bill will be funded through these employee taxes and not through any assessment on employers.

The average tax rate for employees under the FLI program from CY 2015 to CY 2018 (using the Department of Labor and Workforce Development's CY 2018 estimate) is 0.09 percent. Assuming a $147.3 million increase in gross FLI benefits as presented in the above analysis, it is possible that the employee FLI tax rate may increase to 0.24 percent upon the enactment of the substitute. The rate of FLI taxes for employees is applied to all wages of a worker up to 28 times the Statewide average weekly wage, or $33,500 in CY 2017. Assuming a 0.24 percent tax rate, the maximum FLI tax to be paid by an employee in CY 2017 would be $80.40. The actual maximum FLI tax paid by an employee in CY 2017 is $34. Even with this increase, the total maximum worker tax rate for FLI and TDI combined, 0.46 percent, would be less than the maximum worker tax rate for TDI alone, 0.5 percent that was in effect before FLI was enacted in 2008. Under the provisions of the substitute, the maximum annual tax for a worker for FLI and TDI combined would be $155.40, less than the maximum annual tax of $168 that would have been imposed based on the 0.5 tax rate from TDI alone before FLI was enacted.