

STATE HOUSE NEWS FOR FINANCE OFFICERS

February 22, 2019

PAID FAMILY LEAVE

On February 19th, Governor Phil Murphy signed into law **ASSEMBLY, No. 3957** (*Quijano D-20/Giblin D-34*)(*Sweeney D-3/Diegnan D-18*), which broadens the State's paid family leave law. In summary, the new law expands Temporary Disability Insurance (TDI) and Family Leave Insurance (FLI) benefits, establishes new administrative requirements for the TDI and FLI programs, and increases TDI and FLI payroll taxes.

In summary, the new law requires that for leave periods beginning on or after July 1, 2020, the amount of weekly FLI and TDI benefits will increase from 2/3 of a claimant's average weekly wage to 85% of that wage, subject to a maximum amount. The maximum will rise from 53% to 70% percent of the Statewide average weekly wage (SAWW) for all workers. Additionally, the maximum FLI benefit period will increase from 6 to 12 weeks during any 1-year period and the maximum intermittent FLI leave from 42 to 56 days. Moreover, the new law expands the family members for whose care individuals may receive FLI benefits during periods of leave from employment to siblings, grandparents, grandchildren, parents-in-law, and others related by blood or relationship equivalent to a family relationship; and, extends FLI benefits to individuals who take time off from work to assist a family member who is a victim of domestic or sexual violence.

The new law also facilitates access to FLI and TDI benefits by: 1) eliminating the 1-week waiting period before the payment of FLI benefits; 2) effective as of June 30, 2019, lowering from 50 to 30 employees the threshold at and above which employers must grant unpaid family leave to employees for up to 12 weeks in a 24-month period without terminating employment because of the leave; 3) no longer allowing employers to require that employees use all their paid leave, up to 2 weeks, before the payment of FLI benefits; and, 4) limiting to 2 weeks the amount of sick leave State and certain local government employees must use before receiving TDI benefits. Current law requires them to exhaust their entire sick leave first. The new law further increases the amount of payroll taxes that will be raised to pay for the benefit expansion and additional program administration expenditures; and, expands the wage base on which the taxes are imposed from 28 times to 107 times the SAWW. Employees will pay for the entire cost of the new law through increases in employee FLI and TDI wage tax assessments.

WATER AND SEWER BILLS

On February 7th, the Senate Budget and Appropriations Committee reported favorably **ASSEMBLY BILL NO. 109** (*DeAngelo D-14/Wimberly D-35*)(*Bucco R-25*), which would require a 30-day grace period to the accrual of interest on late water and sewer bill payments.

In summary, this legislation would provide for the deferral of interest accrual on balances owed, but not promptly paid by consumers, for water and sewer services. The bill would affect the accrual of interest on late payments made to governmental entities that sell and supply water, or that provide sewerage services to consumers in the State. These entities include municipal and county sewerage and utility authorities, municipally-operated utilities, utility authorities, and municipally-owned waterworks. The bill would further provide that when a payment for water or sewer services is owed by a consumer and is not paid when due, interest would accrue on only that part of the amount that is due and payable and that remains unpaid for 30 days following the established payment due date, as identified on the consumer's bill or other statement of water or sewer service usage. The bill would not apply to water and sewer services provided by public utilities while operating under the regulatory authority of the Board of Public Utilities.

GFOA of NJ is generally concerned that this legislation could result in a potential decrease in revenue for local water and sewerage authorities and certain municipalities as affected entities would likely experience revenue decreases equal to the difference between the amount of interest that would have accrued on the total balances of overdue water and sewer bills immediately following the payment due date, and the amount of interest that would accrue on the total balances of water and sewer bills that remain unpaid for 30 days following the payment due date. Current law generally requires sewerage and water authorities to impose interest of 1.5% on unpaid water or sewer bills immediately following the due date. A-109 is on Second Reading in the Senate and passed the Senate by a vote of 75-0 on March 26, 2018.

PROPERTY TAX ASSESSMENT STUDY COMMISSION

On February 14th, the Assembly State and Local Government favorably reported and second referenced the Assembly Appropriations Committee **ASSEMBLY, No. 4826** (*Mazzeo D-2*), which would establish the "Property Tax Assessment Study Commission."

In summary, the Commission would examine the State's current real property tax assessment practices, which include the Gloucester County model under the "Property Tax Assessment Reform Act" and the Monmouth County model under "Real Property Assessment Demonstration Program." The Commission would study, analyze, and consider all issues related to real property assessment in the State, which would include: the role of the county government in the real property assessment process; the use of technology in the assessment of real property and in the

assessment appeal process, with the goal of developing Statewide standards and practices for the use of technology to set and maintain real property assessments; the means by which to improve the accuracy and reliability of real property assessments and the assessment appeal process, which would include whether to statutorily require that all real property assessments be maintained at no less than 100% of assessed to true value in every year; and, an analysis of the assessment practices in Gloucester and Monmouth counties, which would include an analysis of the efficacy of the real property assessment calendar currently in use in Gloucester and Monmouth counties, and whether either calendar should be implemented statewide.

The Commission would be required to issue a report of its findings and recommendations to the Governor and the Legislature no later than 12 months after the Commission organizes and would include the following 9 members: the Director of the Division of Taxation in the Department of the Treasury; 4 members appointed by the Governor, which would a representative of NJAC, a representative of NJLM, a representative of the Gloucester County Board of Taxation, and a representative of the Monmouth County Board of Taxation; 2 public members appointed by the President of the Senate, one of whom shall have experience in the assessment of residential real property, either as a municipal assessor or as an employee of a revaluation company operating in the State; and 2 public members appointed by the Speaker of the General Assembly, one of whom shall have experience in the assessment of commercial real property, either as a municipal assessor or as an employee of a revaluation company operating in the State. The companion version **SENATE, NO. 3345** (*Cryan D-20*) is currently in the Senate Community and Urban Affairs Committee awaiting consideration.

EMPLOYEE WAGE INFORMATION

On February 14th, the Assembly Labor Committee favorably reported **ASSEMBLY, NO. 3413/SENATE, NO. 1791** (*Johnson D-37*)(*Weinberg D-37*), which would require employers to disclose certain wage information to employees. In summary, this legislation would require employees to provide employees with a statement of earnings and the following information: the employee's gross earnings; the employee's net earnings; the employee's rate of pay; and, the number of hours worked by the employee during the pay period if relevant to the employee's wage calculation. A-3413/S-1791 is on Second Reading in the General Assembly and passed the Senate by a vote of 37-0 on September 27, 2018.

SET ASIDE OF PUBLIC WORKS FUNDS

On February 14th, the Assembly Labor Committee favorably reported **ASSEMBLY, NO. 4817/SENATE, NO. 368** (*Verrilli D-15/Reynolds D-15*)(*Rice D-28/Turner D-15*), which would authorize political subdivisions to set aside .5% of public works funds to recruit and train women and minorities and promote local hiring. In summary, this legislation would provide that any political subdivision of the State may elect to retain or transfer to the

Department of Labor and Workforce Development an amount equal to .5% of the portion of any public works contract of the political subdivision for the: recruitment and training of women and minorities in the construction industry; or, for the purpose of providing incentives or otherwise facilitating a local hiring and employment program. A-4817/S-368 is on Second Reading in the General Assembly and passed the Senate by a vote of 37-0 on September 27, 2018.

NJ COURT'S MAJOR RULING ON DISABILITY PAYMENTS FOR VOLUNTEER FIREFIGHTERS

Colleen O'Dea, NJ Spotlight, February 20, 2019

Volunteer firefighters who are injured are entitled to disability payments in New Jersey even if they do not have a full-time, paying job when they are hurt, a unanimous state Supreme Court decided in a case that could have implications for 30,000 emergency service volunteers and that could increase municipal costs. In a case involving 17-year Bridgewater volunteer firefighter Jennifer Kocanowski, the court ruled on Tuesday that the lack of regular, paid employment does not preclude an emergency services member from collecting temporary disability, overruling a workers' compensation judge and the Appellate Division.

"The extrinsic evidence and legislative history decidedly indicate the Legislature intended to increase temporary disability coverage for volunteer firefighters injured in the course of performing their duties when it enacted the current" law, wrote Justice Walter Timpono for the court. He added that the law "authorizes all volunteer firefighters injured in the course of performing their duties to receive the maximum compensation permitted, regardless of their outside employment status at the time of injury." This decision could have a wide impact. According to a recent investigative report from the state comptroller's office, New Jersey had 30,372 volunteer firefighters as of last March. Most of these are likely employed but there are also an unknown number who are retired from work or otherwise unemployed.

Jennifer Cottell, an attorney with Capehart & Scatchard of Mount Laurel who represented Bridgewater, said the court's ruling could also apply to rescue squad workers and a number of other types of local volunteers. The ruling could wind up raising the cost of premiums for municipalities, which pay an insurer or self-insure for worker's compensation. "Once the underwriters get word of this decision, municipalities are going to see a huge increase in their costs for coverage," Cottell said. Kocanowski was a member of the Finderne Fire Department in Bridgewater when, in March 2015, she and other volunteer firefighters responded to a multi-alarm fire in nearby Franklin Township, according to court papers. While carrying equipment, she slipped on ice, suffering numerous bone fractures, ligament tears, nerve damage and other injuries to her right leg and foot and her back. Kocanowski had two surgeries, physical therapy and other medical treatments but continues to suffer from back, leg and foot issues and can drive only very short distances.

For most of the time while she was volunteering, Kocanowski also had paid work, including as a nanny and a home healthcare aide. She stopped working in October 2013 to care for her ill father, who died a month later. Kocanowski took a six-month leave of absence from firefighting following his death to care for her ill mother and settle her father's estate. She returned as a volunteer to the department in July 2014 but did not resume paid work. Nine months after her injury, Kocanowski filed for temporary disability and/or medical benefits and requested the state maximum weekly disability payment, which was \$855 per week at the time, because she was an injured volunteer firefighter. Bridgewater opposed the application, saying that since Kocanowski was not employed at the time of the accident, she was not entitled to disability benefits.

The workers' compensation judge agreed with the township, deciding in March 2016 that New Jersey case law required a person to be receiving a salary in order to receive disability benefits, which is meant as a wage replacement. An appeals panel agreed, ruling that "there first must be an entitlement by the volunteer to payment of temporary benefits. That payment depends on proof of lost wages." State workers' disability compensation was first required by a 1911 law, according to court papers. In 1931, the Legislature required municipalities to provide compensation for volunteer firefighters based on their salary in private employment or the pay they had last received if they were unemployed. The statute was amended in 1952 and today it is more vague, requiring that compensation for injury or death of firefighters and numerous other types of volunteers "Be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized."

Timpone wrote in the decision that while the "language is unclear, we find its legislative history indicates a strong intent to provide temporary disability coverage to volunteer firefighters at the maximum compensation provided for in the Act." The decision holds that the amended law "was intended to grant all volunteer firefighters the maximum compensation allowed, regardless of current or previous income." Cottell said she was "really shocked" by the court's choice to interpret unclear statutory language, rather than suggesting lawmakers draft new legislation to clarify their intent. "It is clear that the temporary disability benefit has always been a wage replacement," Cottell said. "Miss Kocanowski was not working. She was not receiving income. The law was not meant to give people income if they weren't already receiving it."

But the decision cites the important role volunteer firefighters play in a state where most municipalities do not have a paid fire department. "The Legislature has long sought to encourage that role by providing certain protections and exemptions for volunteer firefighters," the decision states. "In recognition of the protections and benefits the Legislature has created for volunteer firefighters, our courts have liberally construed the Workers' Compensation Act to provide coverage for volunteer firefighters." It cites two past decisions beneficial to volunteer firefighters seeking compensation: In one, a volunteer playing for a department's baseball team was deemed to have been injured "in

the line of duty,” while in the other, a 93-year-old who had no paid employment at the time was considered to have been performing a “public fire duty” when he was injured while tending the stove at the firehouse.

“It would be incongruous and inconsistent, after years of expanding protections and exemptions for volunteer firefighters, for the Legislature to abruptly limit the class of volunteer firefighters who qualify for temporary disability from any volunteer firefighter who had ever been employed to only volunteer firefighters employed at the time of injury,” the decision states. The ruling sends the case back to the state Division of Workers’ Compensation to award Kocanowski the \$855 weekly benefit retroactively. The only compensation Kocanowski had received to date had been \$125 per week from the Finderne Fire Department for one year after the accident. Cottell said this could have wide-ranging implications. An unemployed college student, for instance, could volunteer for a few hours a weekend with the fire department, suffer an injury, and wind up receiving the maximum workers’ compensation, which is currently \$921. “This is going to be a problem for municipalities,” she said. “I think municipalities are going to drive the Legislature to fix it.”

MEASURE TO KEEP ‘DIRT BROKERS’ OUT OF RECYCLING INDUSTRY MOVES UP, SLOWLY

Tom Johnson, NJ Spotlight, February 19, 2019

Fears that organized crime could infiltrate recycling sector prompt progress on tough licensing law that would include some background checks. An eight-year struggle to close loopholes to keep bad actors out of the recycling sector is moving closer to winning legislative approval.

The legislation S-1683, spurred by a 2011 report by the State Commission of Investigation into illegal dumping of toxic-tainted soil and debris, cleared the Senate Environment and Energy Committee last week. Long debated, the latest version of the bill won backing from the SCI, the attorney general’s office, state Department of Environmental Protection, and recycling sector, all of whom had expressed some reservations about the legislation in the past.

Those concerns mostly revolved around expanding the scope of a tough licensing law for the solid- and hazardous-waste industry to segments of the recycling sector. The original SCI report — amplified by follow-up studies — documented schemes in which contaminated fill and construction debris were dumped as clean fill. “In recent years, the same type of mob figures who once infiltrated the garbage industry are now exploiting the ever-expanding recycling industry,” said Sen. Bob Smith, the chairman of the committee and a sponsor of the bill. “The illicit disposal of contaminated materials under the façade of recycled materials creates a real threat to public safety and the health of the environment,” he added. “It’s an environmental threat that requires a law enforcement response.” The changes to the bill limit the scope of facilities required to perform background checks under the licensing law, by exempting recyclable materials

such as metal, glass, paper, and plastic containers — as well as construction debris shipped to state-approved facilities.

But it would require any business engaged in providing soil- and fill-recycling services to register with the state DEP and ultimately obtain a recycling license from the attorney general's office. It also would extend background checks to a broader range of people involved in the sector, including salespeople, consultants, and brokers. "We think we now have a pretty good bill," said Smith (D-Middlesex), whose committee had previously held three other hearings on other versions of the measure. "This is an important piece of legislation," agreed Lee Seglem, executive director of the SCI. "The commission is alarmed that these very serious problems have persisted."

The SCI first detailed problems in the industry in a report that uncovered contaminated fill and construction debris were used by a so-called dirt broker to shore up a bluff in Old Bridge, abutting Raritan Bay. Old Bridge was left to clean up the mess with a projected cost of as much as \$400,000.00. On Thursday, Vernon Township Mayor Harry Shortway urged the committee to amend the bill to deal with a problem in that community, where neighbors have sought unsuccessfully to end the dumping of truckloads of dirt and debris on a residential property. The township has fined the owner more than \$75,000.00, but has been unable to stop the unauthorized dumping. The legislation now heads to the Senate Budget and Appropriations Committee.