



FMLA

NEW JERSEY

Federal vs. New Jersey Family and Medical Leave Laws

SPECIAL NOTE: On May 2, 2008, the governor signed legislation that extends temporary disability benefits to provide that commencing July 1, 2009, eligible employees will be able to collect up to six weeks of paid time off during a leave of absence to care for a newborn or newly adopted child or a family member with a serious health condition. Eligible employees will be able collect up to two-thirds of their weekly salary during the leave period (capped at \$524) subject to a one-week waiting period. Commencing on January 1, 2009, benefits for this new law will be funded through new employee payroll taxes, estimated to be \$33 annually per employee.

	FEDERAL ELEMENTS	STATE ELEMENTS
Employer Covered	<p>Private Employers of 50 or more Employees in at least 20 weeks of the current or preceding year</p> <p>Public agencies, including state, local, and Federal Employers</p> <p>Local education agencies covered under special provisions</p>	<p>Public and private Employers of 50 or more Employees each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; includes the State, any political subdivision thereof, and all public offices, agencies, boards or bodies</p> <p>No special provision for education agencies</p>
Employees Eligible	<p>Worked for Employer for at least 12 months - which need not be consecutive; worked at least 1,250 hours for Employer during 12 months preceding leave; and employed at Employer worksite with 50 or more Employees or within 75 miles of Employer worksites with a total of 50 or more Employees</p>	<p>12 months with an Employer for not less than 1000 base hours during the immediately preceding 12 months</p> <p>No worksite proviso</p>
Leave Amount	<p>Generally, up to a total of 12 weeks during a 12-month period</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is service member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on temporary disabled retired list for serious injury or illness</p>	<p>12 weeks in any 24-month period</p> <p>No provision requiring spouses to share leave</p>



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	<p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition, or care for a covered servicemember with a serious injury or illness must be shared by spouses working for same Employer</p>	
Type of Leave	<p>Unpaid leave for birth, placement of child for adoption or foster care, to provide care for Employee's own parent (including individuals who exercise parental responsibility under state law), child, or spouse with serious health condition, or Employee's own serious health condition, or any qualifying exigency when Employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces in support of contingency operation, or to care for spouse, child, parent or next of kin who is service member undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on temporary disabled retired list for serious injury or illness</p>	<p>Birth, adoption placement, serious health condition of child, parent, parent-in-law, spouse, or civil union partner, but not for an employee's own health condition</p>
Serious Health Condition	<p>Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility; or, continuing treatment by a health care provider involving a period of incapacity: (1) requiring absence of more than 3 consecutive full calendar days from work, school, or other activities and involves a certain level of treatment; (2) due to a chronic or long-term condition for which treatment may be ineffective; (3) absences to receive multiple treatments (including recovery periods) for a condition that if left untreated likely would result in incapacity of more than 3 days; or (4) due to any incapacity related to pregnancy or for prenatal care</p> <p>Serious Injury or Illness: In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating</p>	<p>Similar to Federal provision, except for military member provisions</p>
Health Care Provider	<p>Doctors of medicine or osteopathy authorized to practice medicine or</p>	<p>No specific provision</p>



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	<p>surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the Employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States</p>	
Intermittent Leave	<p>Permitted for serious health condition and for care of servicemember when medically necessary, and for active duty leave. Not permitted for care of newborn or new placement by adoption or foster care unless Employer agrees</p>	<p>Similar to Federal provision, except for military leave provisions</p>
Substitution of Paid Leave	<p>Employees may elect or Employers may require accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of Employer's normal paid leave policies.</p>	<p>Family leave required by this Act may be paid, unpaid, or a combination of paid and unpaid leave</p> <p>If an employer provides paid family leave for fewer than 12 weeks, the additional weeks of leave added to attain the 12-workweek total required by this Act may be unpaid</p>
Reinstatement Rights	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment</p>	<p>Similar to Federal provision</p>
Key Employee Exception	<p>Limited exception for salaried Employees if among highest paid 10%, within 75 miles of worksites, restoration would lead to grievous economic harm to Employer, and other conditions met</p>	<p>Similar to Federal provision, except limited to Employees who are among the highest paid 5% or the seven highest paid Employees, whichever is greater</p>
Maintenance of Health Benefits During Leave	<p>Health insurance must be continued under same conditions as prior to leave</p>	<p>Similar to Federal provision</p>
Leave Requests	<p>To be made by Employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the Employee, subject to health care provider's approval, shall make a reasonable effort</p>	<p>Employee shall provide the employer notice of the expected leave in a manner which is reasonable and practicable</p>



	<p>to schedule it in a way that does not unduly disrupt Employer's operation</p> <p>If due to active duty of family member, notice as is reasonable and practicable</p>	
<p>Medical Certification May Be Required by Employer for:</p>	<p>Request for leave because of serious health condition or servicemember family leave</p> <p>To demonstrate Employee's fitness to return to work from medical leave where Employer has a uniformly applied practice or policy to require such certification</p> <p>Certification may be required by Employer for active duty or call to active duty in the Armed Forces of family member</p>	<p>Request may be made for circumstances of birth, adoption placement or because of serious health condition of family member</p> <p>No provision relating to certification of fitness to return to work</p>
<p>Executive, Administrative, and Professional Employees</p>	<p>Such individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an Employer, does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p>No specific provision</p>

Commissioner

New Jersey Dept. of Labor
1 John Fitch Plaza
13th Floor, Suite D
P.O. Box 110
Trenton, NJ 08625-0110
PH: 609-292-2323 Fax: 609-633-9271
Internet: www.state.nj.us/labor/index.html

Source: *Wage and Hour Division of the U.S. Government, Department of Labor, Employment Standards Administration; the federal Family and Medical Leave Act, as amended (enacted January 28, 2008); NJ Assembly Bill 873 (enacted May 2, 2008).*

This Chart is provided to you for general informational purposes only. It broadly summarizes state and federal statutes, but does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions of state offices of commissioners of insurance) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.

(JK 8/06, 1/09)