

COVID-19 DOESN'T DISCRIMINATE AND NEITHER SHOULD YOUR EMPLOYER:

NJ Workers are protected against COVID-19 related discrimination at work.



myworkrights.nj.gov

BACKGROUND

On March 20, Governor Murphy signed a new law that prohibits an employer from firing or otherwise punishing an employee who requests time off or takes time off from work based on a medical professional's determination that the employee has, or is likely to have, COVID-19. The law only applies during the COVID-19 Pandemic and related Public Health Emergency and State Emergency.

The New Jersey Department of Labor and Workforce Development ("NJDOL") has issued regulations to implement the new law. **N.J.A.C. 12:70 – Prohibited COVID-19 Related Employment Discrimination** explains who is protected by this new law, what protections they are entitled to, what remedies are available to those workers whose rights have been violated, and what penalties may be imposed against employers when they violate the new law.

HOW THE LAW WORKS

Who is covered by the law?

- All employees: Full-time, part-time, and temporary employees working in the private and public sector.
- What about independent contractors/gig workers?
 - If you are properly classified as an independent contractor, the law doesn't apply to you.
 - Misclassification is the practice of illegally and improperly classifying workers as independent contractors, rather than employees.
 - It could be that your employer isn't treating you as an employee when they actually should under NJ law.
 - If you think you are misclassified and that your employer has violated this law, then you should file a claim with the NJDOL's Division of Wage and Hour Compliance. A Wage Collection Referee will use the state's "ABC Test" to determine whether you have been misclassified.



When does the law apply?

- The law applies to employers' actions during the declared Public Health Emergency and State of Emergency declared by Governor Murphy concerning the COVID-19 pandemic.
- Actions taken by employers after the Public Health Emergency and State of Emergency are lifted, will not be covered.

What does it mean that my employer can't discriminate against me because I have requested or taken time off from work because of a medical professional's recommendation?

- They can't fire you for taking protected leave under the law.
- They can't punish you in any other way with regard to the terms and conditions of your employment. For example, your employer cannot reduce your pay or your benefits. The terms and conditions of your employment must remain the same when you come back.

What's protected leave under the law?

- Protected leave means the time you take off from work based on a medical professional's determination that you have, or are likely to have, COVID-19.

What's the process to confirm diagnosis?

- You are feeling unwell and consult a medical professional. This can take any form: in-person or any other means the medical professional makes available to you.
- The medical professional determines that you have, or likely have, COVID-19 and tells you to stay home for a certain amount of time.
- The medical professional gives or sends you a written or electronic recommendation that confirms the diagnosis.
- Ask the medical professional to provide the length of time you should stay at home, including the start and end date, in the recommendation.
- The written or electronic recommendation is evidence that you are eligible for job protection under the law for the duration recommended by your doctor.
- The last step is to notify your employer: provide them a copy of the recommendation.

What is meant by "medical professional"?

- Any physician (doctor), physician assistant, advanced practice nurse, or registered nurse who is appropriately licensed to work in New Jersey.



What should I expect when I return to work?

- **Option 1:** You come back to your old job with the same level of seniority, employment benefits, pay, and other terms and conditions of employment.
- **Option 2:** Your employer had to fill your position to meet the needs of the business. If that's the case, your employer must give you an equivalent job with the same level of seniority, employment benefits, pay, and other terms and conditions of employment.

What if my employer has a layoff while I am out on protected leave?

- If you would have lost your position if you had not been on leave as a result of a reduction in force or because of the good faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, then the law does not entitle you to reinstatement.
- Even though you will not be entitled to reinstatement under the law, you will retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if you had not taken the protected leave.

What if I get fired, retaliated against, or otherwise penalized because I'm home caring for someone who has COVID-19?

- P.L. 2020, c.9 does not protect an employee from discrimination on this basis; however you may be entitled to protection under the New Jersey Earned Sick Leave Law, New Jersey Family Leave Act, or Federal Families First Coronavirus Response Act. Visit mysickdays.nj.gov, njcivilrights.gov, and dol.gov for more information.

What if my employer fires, retaliates against, or otherwise penalizes me when they get the written or electronic recommendation or later while I'm still out?

- Firing, retaliating against, or otherwise penalizing you would be illegal and that would give you the right to:
 - File a claim with the NJDOL's Division of Wage and Hour Compliance, which may get you a hearing before a Wage Collection Referee. You can file an online claim here: <https://wagehour.dol.state.nj.us/default.htm>
 - Or: File a lawsuit against your employer directly in the New Jersey Superior Court.

What happens if I file a claim with NJDOL?

- A NJDOL representative will review the initial claim and enter a claim and case number.
- An attorney for NJDOL will then attempt to resolve the matter through an informal conciliation process. You may be contacted to provide additional information and a letter may be sent to the employer.
- If the employer refuses to reinstate you or otherwise resolve the matter in that manner, the matter will be sent to the Division of Wage and Hour Compliance, which will serve the employer with a Summons & Complaint and commence a hearing before a Wage Collection Referee.



What happens if NJDOL or the New Jersey Superior Court determine that my employer violated P.L. 2020, c. 9?

- The NJDOL Commissioner or the Court would have the authority to require that you be reinstated to a similar position with equivalent terms and conditions as before you left.
- The employer may be required to pay a \$2,500 penalty for each violation.

When should I file my claim or lawsuit?

- As soon as possible.

How do I file a claim with the NJDOL's Division of Wage and Hour Compliance?

- You can file here both in English and Spanish: <https://wagehour.dol.state.nj.us/default.htm>

How do I file a lawsuit in New Jersey Superior Court?

- A step-by-step explanation of this process is available here: https://www.njcourts.gov/forms/10553_cmplt_supcrt.pdf

NJDOL Protects Refugee and Immigrant Rights

The New Jersey Department of Labor and Workforce Development (NJDOL) is committed to serving all of New Jersey's workers and businesses to advance labor standards in our state. NJDOL offers free services to all people regardless of their immigration status. These services include investigating potential violations of labor standards, bringing enforcement actions against employers who violate the law to obtain backpay and other restitution for workers, and conducting outreach to workers and businesses.

If you have questions about your rights, contact NJDOL at wage.hour@dol.nj.gov or www.myworkrights.nj.gov.



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