



The New Jersey Family Leave Act

What Rights Do I Have If I Need To Take Time Off From Work To Care For A Close Family Member?

Under the New Jersey Family Leave Act, certain employees are entitled to take leave without losing their jobs as long as the following conditions are met:

Employer - The employer must have at least 50 employees who have been working for at least 20 weeks during the current or previous year. When counting the number of employees, all of the employer's employees, whether located in New Jersey or not, are included.

Employee - The employee who wants to take leave must have worked for that employer for one year and must have worked at least 1,000 hours, including paid overtime hours, during the 12 months immediately prior to taking the leave.

Exception - An employer may deny leave to employees whose base salaries are within the highest 5% of all employees if their absence would have a substantial negative effect on the business. The same is true for the seven most highly paid employees. The employer must provide proper notice to these employees that they fall into this category.

What Circumstances Entitle Me To Take Family Leave?

The New Jersey Family Leave Act permits leave to be taken for:

- The care of a newly born or adopted child, as long as leave begins within one year of the date the child is born to or placed with the employee; or
- The care of a parent, child under 18, spouse, or civil union partner who has a serious health condition requiring in-patient care, continuing medical treatment or medical supervision. The Family Leave Act considers parents to be: in-laws, step-parents, foster parents, adoptive parents or others having a parent-child relationship with an employee.

How Much Leave Am I Entitled To?

Each eligible employee may take up to 12 weeks of continuous leave during a given 24-month period.

When caring for a family member with a serious health condition, an employee may take leave that is not

continuous, for example, an intermittent leave or a reduced work schedule. Sometimes an employer's approval is necessary for this type of arrangement if the leave is taken in connection with the birth or adoption of a child.

What Notice Has To Be Given To The Employer?

An employee must give the employer 30 days notice before taking Family Leave, except when emergent circumstances require the employee to begin Family Leave sooner. In emergent circumstances, the employee should give the employer as much notice as possible.

Can I Take Family Leave If I Am Also Entitled To Disability Leave?

New Jersey Family Leave is separate from any leave an employee may take for his or her own disability.

Is The New Jersey Family Leave Act Identical To The Federal Family And Medical Leave Act?

They are similar, but there are some differences. Some of the differences are:

- Unlike the New Jersey Family Leave Act, federal law **does** allow an employee to use leave time for his or her own medical condition.
- While the state law provides for 12 weeks of leave in a given 24-month period, federal law provides for 12 weeks of eligible leave within a period of 12 months.
- The New Jersey FLA applies to companies with 50 or more employees worldwide. The federal FMLA applies to all employers with 50 or more employees within 75 miles of each other.

In situations where a leave is provided by both the New Jersey Family Leave Act and the federal Family and Medical Leave Act (i.e., family leave), the employee is entitled to only up to 12 weeks of leave, in a 12 month period to care for a family member or newly born or adopted child.

A leave granted due to the employee's disability is covered only by the federal FMLA and may be followed by an additional leave for the care of a family member under the New Jersey Family Leave Act.

What Am I Entitled To When I Return To Work?

The employee is generally entitled to the same position held before the leave.

Exception: If the original position is no longer available when the employee returns, the employer must offer an equivalent position in terms of pay, benefits and status.

Layoff: If a layoff occurred while the employee was on leave, the employee retains the same rights as if no leave had been taken.

Can My Employer Require Proof Of Eligibility As A Condition Of Leave?

The employer is entitled to request verification of the qualifying condition, such as a doctor's certification that a serious health condition exists. In other words, a medical certification may be required, but an employer cannot require an employee to certify that he/she is eligible for family leave. This is the employer's responsibility.

What Should I Do Next?

When the parties are unable to resolve a dispute themselves, the law provides specific relief under the Family Leave Act.

Administrative remedy:

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the Family Leave Act (FLA). If you believe that you have been denied leave to which you are entitled under the FLA or treated unfairly because you have exercised your rights under the FLA, please visit or phone us at the Division on Civil Rights office closest to where you live or where the discrimination occurred. Our addresses and phone numbers are at the end of this fact sheet, or visit us on the web at www.NJCivilRights.gov.

A complaint must be filed with the New Jersey Division on Civil Rights within 180 days of the denial of leave or other adverse employment action. An initial evaluation will be conducted to determine if you state a claim for relief under the FLA. If so, the Division will prepare a complaint for you to sign and then the Division will conduct an investigation into your allegations. If the investigation shows enough evidence to support your complaint (known as probable cause), and your complaint cannot be settled, a hearing will be held in the Office of Administrative Law. You may choose to retain a private attorney to represent you at the hearing, or a lawyer will be provided to prosecute the case on behalf of the New Jersey Division on Civil Rights. At the conclusion of the hearing, the Director of the Division on Civil Rights will make a final decision as to whether unlawful denial of leave or other adverse employment action has been proven and, if so, what remedies should be awarded to the complainant. Other than fees for a private attorney, if applicable, there is no cost to the individual for these services.

Judicial Remedy:

In the alternative, you may file a complaint in New Jersey Superior Court alleging a violation of the FLA. Individuals usually hire an attorney to represent them in a Superior

Court action. A party cannot file both with the Division on Civil Rights and in Superior Court. A Superior Court action must be filed within two years of the denial of leave or other adverse employment action.

What Remedies Are Available?

A prevailing complainant may be entitled to the leave time that was denied. A complainant may also be entitled to damages for pain, humiliation, and emotional distress caused by the employer's actions; restoration of employee benefits that the complainant would have received but for the employer's actions; out-of-pocket expenses incurred as a result of the denial of leave; punitive damages in an amount up to \$10,000; and reasonable attorney's fees if the complainant was represented by counsel.

In addition, the Division may impose penalties on the party who violated the FLA of up to \$2,000 for the first violation, and up to \$5,000 for a second or subsequent violation. These penalties are payable to the State, not the complainant.

Remember, it's against the law for anyone to retaliate against you because you have exercised your rights under the New Jersey Family Leave Act.



NJ Office of the Attorney General

CIVIL RIGHTS

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the law. To file a complaint, contact or visit the office nearest you:

South Shore Regional Office:

1325 Boardwalk, Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401
Phone: **(609) 441-3100** • Fax: (609) 441-3578

Southern Regional Office:

5 Executive Campus, Suite 107
Cherry Hill, NJ 08034
Phone: **(856) 486-4080**

Northern Regional Office:

31 Clinton Street, Newark, NJ 07102
Phone: **(973) 648-2700** • Fax: (973) 648-4405

Central Regional Office:

140 East Front Street / P.O. Box 090
Trenton, NJ 08625-0090
Phone: **(609) 292-4605** • Fax: (609) 984-3812

Visit our web site at **www.NJCivilRights.gov**