



PUBLIC ENTITY GUIDE TO THE NEW JERSEY AND FEDERAL FAMILY MEDICAL LEAVE ACTS

The Safety Director provides the following comparison of the [New Jersey Family Leave Act \(NJFLA\)](#) and the [Federal Family Medical Leave Act \(USFMLA\)](#). Both Acts are applicable to State, any political subdivision thereof, and all public offices, agencies, boards or bodies, regardless of number of employees.

General Description of Act

NJFLA: Allows eligible employees of covered employers to take up to 12 weeks of job-protected leave during a 24-month period to care for a family member or someone who is the equivalent of family.

Employers are NOT required to compensate employees during job-protected NJFLA leave.

- Leave may be paid, unpaid, or a combination.
- Employers MAY require employees to use their accrued paid leave while taking job-protected NJFLA leave.
 - If an employee takes accrued leave during their NJFLA leave, they must be paid.
 - The employer is required to treat NJFLA leave in the same manner as similar leaves of absence.
 - The employer must be consistent in their policies.

The NJFLA does not require employees to take all 12 weeks of their job-protected leave under the NJFLA at the same time. Employees can choose to take the leave all at once, or they can opt to take intermittent leave or take leave on a reduced leave schedule. Reduced leave schedule means leave scheduled for fewer than an employee's usual number of hours worked per workweek but not for fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer.

* NJ Family Leave Insurance can provide cash benefits when workers need to care for a loved one.

USFMLA: Provides eligible employees up to 12 workweeks of unpaid, job-protected leave in a 12-month period (26 weeks to care for a serious injury/illness to a family servicemember), while they take leave to care for a family member or take leave for their own disability.

Eligible employees may take up to 12 workweeks of leave in a 12-month period for the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly placed child
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care
- For a serious health condition that makes the employee unable to perform the essential functions of their job, including incapacity due to pregnancy and for prenatal medical care, or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active-duty status.

Employees needing intermittent/reduced schedule leave for foreseeable medical treatments must work with their employers to schedule the leave so as not disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

Requires group health benefits to be maintained during the leave as if employees continued to work.

Overlap of Leave Time (NJFLA / USFLA)

Where an employee takes leave for a reason covered by both the NJFLA and the USFMLA, the leave counts against the leave time they are entitled to under both laws.

- For example, the NJFLA provides leave to care for a family member with a serious health condition, and the USFMLA also provides leave for that reason. Under this example, since the leave is taken for a purpose covered by both the NJFLA and the USFMLA, the leave simultaneously counts against the employee's leave time under both laws. An employee who takes six weeks of leave to care for a family member with a serious health condition would use six of their 12 weeks in a 24-month period under the NJFLA and six of their 12 weeks in a 12-month period under the USFMLA.

Where an employee takes leave for a reason that is not covered by both the NJFLA and the USFMLA, the leave counts only against the leave time they are entitled to under the law that covers that leave.

- For example, the USFMLA provides leave for an employee's own disability, but the NJFLA does not provide leave for an employee's own disability. In this example, since the leave is taken for a purpose that is only covered by the USFMLA, the leave would not count against the employee's leave time under both laws. Instead, the leave would only count against the employee's leave time under the USFMLA. An employee who takes six weeks of leave for their own disability would use six of their 12 weeks in a 12-month period under the USFMLA but would use none of their 12 weeks in a 24-month period under the NJFLA.

If an employee is pregnant or just had a baby, they can take up to 12 weeks for pregnancy and recovery from childbirth under the USFMLA, and you can then take an additional 12 weeks of NJFLA leave to bond with or care for your baby after your doctor certifies you are fit to return to work or you have exhausted your USFMLA leave (whichever is earlier). Any parent may take leave under the NJFLA to bond with or care for a newborn or a child just placed for adoption or foster care.

If an employee first takes USFMLA leave under federal law because of their own disability, the employee would be entitled to an additional 12 weeks of leave within a 24-month period under the NJFLA if their reason for taking such leave is covered under the NJFLA.

If an employee takes USFMLA leave because of their own disability and then an event occurs that enables the employee to take leave under the NJFLA, that event does not convert the USFMLA leave under federal law to a leave under the NJFLA. For as long as the employee continues to be eligible for USFMLA leave under federal law based on their own disability, the leave does not simultaneously count against the employee's NJFLA leave.

Breastfeeding & Lactation Considerations

NJFLA: New Jersey requires employers to provide reasonable accommodations to breastfeeding employees which include reasonable break times and a private place to pump, other than a toilet stall, near the employee's work area under the NJ Law Against Discrimination. There is no age limit on the child who is being provided the milk.

USFMLA: Employers to provide reasonable break time for an employee to express breast milk for their nursing child for one year after the child's birth each time such employee has need to express the milk. Employees are entitled to a place to pump at work, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

Eligible Employee

NJFLA: Someone working full- or part-time for a government agency who has been employed by the employer for at least one year; and has worked at least 1,000 hours during the preceding 12 months.

- i. Any time, up to a maximum of 90 calendar days, during which a person is laid off or furloughed by an employer due to that employer curtailing operations because of a declared state of emergency shall be regarded as time in which the person is employed for the purpose of determining eligibility for leave time under this act. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked for the 12-month period.

USFMLA: An employee is eligible if they work for a covered employer for at least 12 months, have at least 1,250 hours of service with the employer during the 12 months before their USFMLA leave starts.

Giving Notice to Employer

NJFLA: Notice to employer is required. An employer can require that notice be in writing. But employees must be allowed to provide oral notice in emergent circumstances.

- i. Except where emergent circumstances warrant shorter notice, when taking leave to care for or bond with a child, an employee must provide their employer with at least 30 days' notice to take consecutive leave and at least 15 days' notice to take intermittent or reduced leave.
- ii. Except where emergent circumstances warrant shorter notice, when taking leave to care for a family member with a serious health condition, an employee must provide their employer with notice in a reasonable and practicable manner to take consecutive leave, and at least 15 days' notice.
- iii. Except where emergent circumstances warrant shorter notice, when taking leave to provide care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, an employee must provide their employer with notice in a reasonable and practicable manner to take consecutive leave and as soon as is practicable to take intermittent or reduced leave. In emergent circumstances, employees must provide the employer with as much notice as possible.

An employer may require an employee who requests family leave to sign a form of certification:

- i. For the birth of a child or the placement of a child with the employee for adoption or foster care, the certification needs to state the date of birth or the date of placement.
- ii. For the care for a family member because of that family member's serious health condition, the certification shall state the date on which the serious health condition commenced, the probable duration of the condition, and the medical facts within the healthcare provider's knowledge
- iii. For the care for a family member because of an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the certification should be issued by a school, place of care for children, public health authority, or public official

USFMLA: Employees must provide written or oral notice of their need for USFMLA leave. In general, an employer may require that employees comply with the employer's usual and customary policies for requesting leave, unless unusual circumstances prevent the employee from doing so. Generally, an employee must give at least 30 days advance notice of the need to take USFMLA leave when they know about the need for the leave in advance and it is possible and practical to do so.

Denying Request for Leave

NJFLA: Employers can only deny a valid leave request by an eligible employee if 3 conditions are satisfied:

1. The employee is a salaried employee who is among the highest paid 5% of the employees of the employer or the seven highest paid employees of the employer, whichever is greater; and
2. The employer can demonstrate that allowing the leave would cause a substantial and grievous economic injury to the employer's operations; and
3. The employer notifies the employee of its decision to deny the leave when that decision is made.

USFMLA: There is not a specific section when an employer may deny a USFMLA request except that an employer may deny the request if it does not meet the guidelines.

Definition of 'CARE'

NJFLA: Physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services.

- To care for or bond with a child, providing the leave begins within one year of the child's birth or placement for adoption, foster care, or valid written agreement between employee and gestational carrier
- To care for a family member, or someone who is the equivalent of family with a serious health condition; or
- During a declared state of emergency by the Governor or President:
 - To care for a family member, or someone who is the equivalent of family, who has been isolated or quarantined because of suspected exposure to a communicable disease; or
 - To provide required care or treatment for a child if their school or place of care is closed by order of a public official due to an epidemic of a communicable disease or other public health emergency.

USFMLA:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Qualifying exigency leave - For certain reasons related to a family member's foreign deployment, and
- Military caregiver leave – When the family member is a current servicemember or recent veteran with a serious injury or illness.

Definitions of 'Family', 'Child', 'Son' and 'Daughter'

NJFLA: The definition is broad and includes people who are related by marriage and blood to an employee, and other people who are not biologically or legally related but are the equivalent of family to the employee, such as a close loved one. An employee does not need to live with a person for them to be considered a family member. It includes a child, stepchild, legal ward, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood or marriage to the employee, and any other individual that the employee has a close association, equivalent of a family relationship.

Definitions of 'Family', 'Child', 'Son' and 'Daughter'

USFMLA: Spouse means a husband or wife as defined or recognized in the state where they were married, including in a common law marriage or same-sex marriage. Spouse also includes a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This does not include "parents-in-law."

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age.

For a parent to take USFMLA leave for a child who is 18 or over, the son or daughter must:

- Have a disability as defined by the ADA at the time the leave is to commence,
- Be incapable of self-care because of the disability,
- Have a serious health condition and need care because of the serious health condition.

Serious Medical Conditions

NJFLA: An illness, injury, impairment, or physical or mental condition which requires:

- In-patient care in a hospital, hospice, or residential medical care facility; or
- Continuing medical treatment or continuing supervision by a health care provider.

USFMLA: Serious health conditions that qualify for FMLA leave are:

- Conditions requiring an overnight stay in a hospital or other medical care facility
- Conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment
- Chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year
- Cancer, organ donation, PTSD, and substance abuse that require on-going treatment
- Pregnancy (including prenatal medical appointments, incapacity from morning sickness, and medically required bed rest).

Returning to Work

NJFLA: An employee generally must be restored to the position they held immediately before starting leave.

- If that position has been filled, the employer must reinstate the employee to an equivalent position of seniority, status, employment benefits, pay, and other terms and conditions of employment.
- If an employer experiences a reduction in force or layoff while an employee is on family leave and the employee would have lost the employee's position due to the reduction in force or layoff had the employee not been on leave, the employer does not have to reinstate the employee to the former or an equivalent position. The employee, however, will retain all rights under any layoff and recall system, including any collective bargaining agreement, as if the employee had not taken the leave.

Returning to Work

USFMLA: Employees are entitled to return to their same or an equivalent job at the end of their FMLA leave. If not returned to the same job, a nearly identical job must:

- Offer the same shift or general work schedule, and be at a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance);
- Involve the same or substantially similar skills, duties, responsibilities, authority, and status;
- Include the same general level of skill, effort, responsibility and authority;
- Offer identical pay, including equivalent premium pay, overtime and bonus opportunities, or other payments, and any unconditional pay increases that occurred during USFMLA leave; and
- Offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.).

Additional References

NJFLA: [NJ DOL NJ Family Leave Act webpage](#)

USFMLA: [US DOL USFMLA webpage](#)

US DOL: [USFMLA Interpretive Guidance](#)

Insurance

New Jersey Family Leave Insurance:

- Provides cash benefits to employees who are unable to work to bond with a new child, care for a family member with a physical or mental health condition, or handle matters related to domestic or sexual violence.

New Jersey Temporary Disability Insurance program:

- An employee may be eligible to receive cash benefits when they cannot work due to a non-work-related illness or injury under TDI. Temporary Disability Insurance provides cash benefits to New Jersey workers who have to stop working due to a physical or mental health condition or other disability unrelated to their work. New Jersey Department of Labor and Workforce Development administers TDI.
- To qualify for Temporary Disability Insurance in 2024, you must have worked 20 weeks earning at least \$283 weekly or have earned a combined total of \$14,200 in the base year.
- An employee taking leave under the NJFLA retains all rights under TDI. Similarly, an employee's receipt of disability benefits or other compensation does not affect their right to take leave under the NJFLA while receiving such benefits.

For More Information

This material is not intended to serve as legal advice. Any questions concerning the applicability of the NJFLA or the federal FMLA to a specific situation should be referred to your municipal or county attorney. NJMEL members may also consult the [MEL EPL Hotline](#) for guidance through their designated representatives.

