



# FMLA

# NEW JERSEY

## Federal vs. New Jersey Family and Medical Leave Laws

*Note: On July 13, 2013, New Jersey enacted the New Jersey Security and Financial Empowerment Act (New Jersey SAFE Act) to provide leave for victims of domestic violence or sexual assault. The New Jersey SAFE Act took effect on Oct. 1, 2013.*

|                           | FEDERAL ELEMENTS  | STATE ELEMENTS   |
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| <b>Employers Covered</b>  | <p>Private employers that have 50 or more employees during 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>In addition to the federal FMLA, New Jersey has leave laws regarding (1) family and medical leave (contained in the New Jersey Family Leave Act) and (2) leave for victims of domestic violence or sexual assault (contained in the New Jersey Security and Financial Empowerment Act, or New Jersey SAFE Act).</p> <p>Family and medical leave: Public and private employers that have 50 or more employees during at least 20 workweeks in the current or preceding calendar year.</p> <p>Domestic violence/sexual assault leave: Public and private employers that have 25 or more employees during at least 20 workweeks in the current or preceding calendar year.</p> |
| <b>Employees Eligible</b> | <p>An employee who worked for the employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for the employer during 12 months preceding leave; and was employed at a worksite with 50 or more employees within 75 miles of worksite.</p> | <p>Family and medical leave: An employee who worked for the employer for at least 12 months and worked at least 1,000 hours during the 12-month period before the leave.</p> <p>Domestic violence/sexual assault leave: An employee who worked for the employer for at least 12 months and worked at least 1,000 hours during the 12-month period before the leave AND who:</p> <ul style="list-style-type: none"> <li>• Is a victim of domestic violence or sexual assault; or</li> <li>• Has a child, parent, spouse, domestic partner or civil union partner that is a victim of domestic violence or sexual assault.</li> </ul>  |
| <b>Leave Amount</b>       | Generally, up to a total of 12 weeks  | Family and medical leave: Up to 12 weeks in any  |

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|   | <p>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 a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>  | <p>24-month period. No provision requiring spouses to share leave.</p> <p>Domestic violence/sexual assault leave: Up to 20 days in any 12-month period.</p>  |
| <b>Type of Leave</b>                                      | <p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>• Birth of employee's newborn child;</li> <li>• Placement of child with employee for adoption or foster care;</li> <li>• Providing care for employee's parent, child or spouse with serious health condition;</li> <li>• Employee's own serious health condition;</li> <li>• 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; or</li> <li>• Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul> | <p>Family and medical leave: Paid or unpaid leave for:</p> <ul style="list-style-type: none"> <li>• Birth of the employee's child;</li> <li>• Placement of a child with the employee for adoption; or</li> <li>• Serious health condition of child, parent, parent-in-law, spouse or civil union partner.</li> </ul> <p>Domestic violence/sexual assault leave: Unpaid leave to:</p> <ul style="list-style-type: none"> <li>• Seek medical attention for, or to recover from, physical or psychological injuries;</li> <li>• Obtain services from a victim services organization;</li> <li>• Obtain psychological or other counseling;</li> <li>• Participate in safety planning, temporarily or permanently relocate or take other actions to increase safety from future domestic/sexual violence or to ensure economic security;</li> <li>• Seek legal assistance or remedies, including preparing for or participating in any related civil or criminal legal proceeding; or</li> <li>• Attend, participate in or prepare for a related criminal or civil court proceeding.</li> </ul> |
| <b>Serious Health Condition/Serious Injury or Illness</b> | <p><b>Serious Health Condition:</b><br/>Illness, injury, impairment, or</p>   | <p>Family and medical leave: Similar to federal FMLA, except no military member provisions.</p>  |

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|  | <p>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 due to:</p> <ul style="list-style-type: none"> <li>• A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>• A chronic, serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></p> <p>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 (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in</p> | <p>Domestic violence/sexual assault leave: No provision.</p> |
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|                             | the line of duty on active duty) and that manifested itself either before or after the member became a veteran (NOTE: covered service member leave for veterans became effective on <b>March 8, 2013</b> ; visit the <a href="#">DOL website</a> for more information)   |   |
| <b>Health Care Provider</b> | Doctors of medicine or osteopathy authorized to practice medicine or 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, Massachusetts; 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. | No provision  |
| <b>Intermittent Leave</b>   | <p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>  | <p>Family and medical leave: Intermittent leave is permitted when taking leave to care for a family member with a serious health condition in intervals of at least one week, taken in separate periods of time, if medically necessary due to a single qualifying reason.</p> <p>Leave on a "reduced-leave schedule" is permitted when taken to care for a family member with a serious health condition for up to 24 weeks. Only one reduced-schedule leave may be taken during any 24-month period, and employees must take any remaining leave time as either:</p> <ul style="list-style-type: none"> <li>• A single block of time; or</li> <li>• Intermittent leave.</li> </ul> <p>Intermittent or reduced-schedule leave is not permitted for the birth or adoption of a child who does not have a serious health condition, unless the employer and employee agree.</p> <p>Domestic violence/sexual assault leave: Leave</p> |

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|   |   | may be taken intermittently in intervals of no less than one day.   |
| <b>Substitution of Paid Leave</b>                     | 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>Family and medical leave: Leave may be paid, unpaid, or a combination of paid and unpaid leave. If the employer provides paid family leave for fewer than 12 weeks, the additional weeks of leave added to attain 12 weeks may be unpaid. As noted below, New Jersey provides family leave insurance benefits to eligible employees.</p> <p>Domestic violence/sexual assault leave: An eligible employee may elect to use, or an employer may require the employee to use, his or her accrued paid vacation leave, personal leave or medical or sick leave while taking domestic violence/sexual assault leave. If an employee requests leave for a reason covered by both the SAFE Act and the New Jersey Family Leave Act or the federal FMLA, the leave will count simultaneously against the employee's entitlement under each respective law.</p> |
| <b>Reinstatement Rights</b>                           | Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.   | <p>Family and medical leave: Similar to federal FMLA.</p> <p>Domestic violence/sexual assault leave: Employer may not discharge, harass or otherwise discriminate or retaliate (or threaten to discharge, harass or otherwise discriminate or retaliate) against an employee with respect to the compensation, terms, conditions or privileges of employment on the basis that the employee took or requested domestic violence/sexual assault leave.</p>   |
| <b>Key Employee Exception to Reinstatement Rights</b> | Limited exception for salaried employees if, among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions are met. | <p>Family and medical leave: Similar to federal FMLA, except limited to salaried employees who are among the highest paid 5 percent or the seventh highest paid employees, whichever is greater.</p> <p>Domestic violence/sexual assault leave: No provision.</p>   |
| <b>Maintenance of Health Benefits During Leave</b>    | Health insurance must be continued under same conditions as prior to leave.   | <p>Family and medical leave: Similar to federal FMLA.</p> <p>Domestic violence/sexual assault leave: Employer may not:</p> <ul style="list-style-type: none"> <li>• Rescind or reduce any employment benefits accrued prior to the date leave is taken; or</li> <li>• Rescind or reduce any employment benefits, unless it is based on changes that would have occurred if an employee</li> </ul>   |

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|  |  | continued to work without taking the leave.   |
| <b>Leave Requests</b>  | <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 to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p> | <p>Family and medical leave: Employee must give 30 days' advance notice to their employer, unless notice is not feasible because of an emergency. In the case of emergency, the employee must give notice that is reasonable and practicable.</p> <p>Domestic violence/sexual assault leave: Employee must provide employer with advance written notice when the need for leave is foreseeable, as far in advance as is reasonably practical under the circumstances.</p> |
| <b>Certification Requirement</b>                             | <p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>                | <p>Family and medical leave: Employer may require that any period of family leave be supported by certification from a health care provider.</p> <p>Domestic violence/sexual assault leave: Employer may require documentation from employees to substantiate the need for leave.</p>   |
| <b>Executive, Administrative, and Professional Employees</b> | <p>These 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>   | No provision  |
| <b>Statutes</b>  | 29 USC 2601  | <p>NJ ST § 34:11B (family and medical leave)</p> <p>NJ ST § 34:11C (domestic violence/sexual assault leave)</p>   |

**SPECIAL NOTE:** New Jersey provides up to six weeks of family leave insurance benefits for eligible employees who take time off from work to care for a newborn child, a child placed for adoption or a family member with a serious health condition. The weekly benefit rate is calculated at two-thirds of the employee's weekly salary during the leave period, up to the maximum amount payable. Benefits are funded through employee payroll taxes. More information on New Jersey's family leave insurance program is available at: <http://lwd.state.nj.us/labor/fli/fliindex.html>.

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*Sources: The federal FMLA, Department of Labor Regulations under the federal FMLA and New Jersey Statutes*

*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 in this Chart to your employee benefits plans.*

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(8/06; BK 11/13)