



FMLA New Jersey

Federal vs. New Jersey Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
Applicable laws	<p>The Family and Medical Leave Act (FMLA)</p>	<p>New Jersey has family and medical leave laws covering:</p> <ul style="list-style-type: none"> • Family and medical leave (contained in the New Jersey Family Leave Act); • Leave for victims of domestic violence or sexual assault (contained in the New Jersey Security and Financial Empowerment ("SAFE") Act; and • Earned paid sick leave, effective Oct. 29, 2018. <p>In addition, New Jersey has a paid family leave program that replaces the wages of workers who need to miss work to care for a family member or bond with a child. This program is part of the state's temporary disability insurance program. It is funded by employees through payroll deductions and administered by the New Jersey Department of Labor and Workforce Development.</p>
Covered employers	<p>Employers subject to the FMLA include:</p> <ul style="list-style-type: none"> • Private-sector employers with 50 or more employees in at least 20 weeks of the current or 	<p>Family and medical leave:</p> <ul style="list-style-type: none"> • <i>Before June 30, 2019:</i> Employers with 50 or more employees during at least 20 workweeks in the current

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	<p>preceding year;</p> <ul style="list-style-type: none"> Public agencies, including state, local and federal employers; and Local education agencies, including elementary and secondary schools (public and private). 	<p>or preceding calendar year.</p> <ul style="list-style-type: none"> <i>Effective June 30, 2019:</i> Employers with 30 or more employees during at least 20 workweeks in the current or preceding calendar year. <p>Domestic violence/sexual assault leave: Employers with 25 or more employees during at least 20 workweeks in the current or preceding calendar year.</p> <p>Earned paid sick leave: All employers. An employer with a paid leave policy (including, for example, vacation, paid time off and sick leave) that is at least as favorable to employees as the state’s earned paid sick leave requirements is not required to provide employees with additional paid sick leave. The employer’s policy must provide at least the same amount of paid leave and permit employees to use paid leave for the same purposes as required under the state’s earned paid sick leave law.</p>
Eligible employees	<p>To be eligible for FMLA leave, an employee must:</p> <ul style="list-style-type: none"> Have worked for the covered employer for at least 12 months (which need not be consecutive); Have at least 1,250 hours of service for the employer during the 12-month period immediately before the leave; and Work at a location within 75 miles of which the employer has 50 or more employees. 	<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"> Is a victim of domestic violence or sexual assault; or Has a child, parent, spouse, domestic partner, civil union partner, parent-in-law, sibling, grandparent, grandchild, or any other individual related by blood or with a close association with the employee that is equivalent to a family relationship, who is a victim of domestic violence

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		<p>or sexual assault.</p> <p>Earned paid sick leave: Any employee working in New Jersey. Employers may require employees to wait 120 calendar days after the employee’s hire date to use any earned paid sick leave.</p> <p>Certain employees are excluded from paid sick leave eligibility, including construction workers employed under a collective bargaining agreement, per diem health care workers and public employees who are provided with paid sick leave benefits.</p>
Leave amount	<p>In general, employees may take up to 12 weeks of FMLA leave during a 12-month period.</p> <p>Employees may take up to 26 weeks of leave during a single 12-month period to care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>Spouses who work for the same employer are limited to a combined total of 12 weeks of leave to care for a parent with a serious health condition, to care for a covered service member with a serious injury or illness, or following the birth, adoption or placement of a child.</p>	<p>Family and medical leave: Up to 12 weeks in any 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> <p>Earned paid sick leave: Employees accrue one hour of paid sick leave for every 30 hours worked, up to 40 hours per benefit year. Employers may limit employees’ paid sick leave use to 40 hours per benefit year.</p>
Type of leave	<p>Eligible employees may take unpaid leave under the FMLA for the following reasons:</p> <ul style="list-style-type: none"> • The birth of the employee’s newborn child; • The placement of a child with the employee for adoption or foster care; • A serious health condition that makes the employee unable to perform the functions of his or her job; 	<p>Family and medical leave: Unpaid leave for the following reasons:</p> <ul style="list-style-type: none"> • The birth of the employee’s child (including a child born pursuant to a gestational carrier agreement); • The placement of a child with the employee for adoption or foster care; or • A serious health condition of a family member of the employee. A family member includes a child, parent, parent-in-law, sibling, grandparent,

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	<ul style="list-style-type: none"> • To care for the employee’s spouse, child or parent who has a serious health condition; • Any qualifying exigency arising out of the fact that the employee’s spouse, child or parent is a military member on covered active duty (or call to covered active duty status); or • To care for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	<p>grandchild, spouse, domestic partner, civil union partner, or any other individual related by blood or with a close association with the employee that is equivalent to a family relationship.</p> <p>Domestic violence/sexual assault leave: Unpaid leave to:</p> <ul style="list-style-type: none"> • Seek medical attention for, or to recover from, physical or psychological injuries; • Obtain services from a victim services organization; • Obtain psychological or other counseling; • 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; • Seek legal assistance or remedies, including preparing for or participating in any related civil or criminal legal proceeding; or • Attend, participate in or prepare for a related criminal or civil court proceeding. <p>Earned paid sick leave: Employees must be permitted to use up to 40 hours of paid sick leave per benefit year for any of the following reasons:</p> <ul style="list-style-type: none"> • Preventive medical care for the employee or for diagnosis, care, treatment or recovery from an employee’s mental or physical illness, injury or other adverse health condition; • Time off needed for the employee to care for his or her family member during diagnosis, care, treatment or recovery from the family member’s mental or physical illness, injury or other adverse health condition or for

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		<p>the family member’s preventive medical care;</p> <ul style="list-style-type: none"> • Time off needed due to the employee, or an employee’s family member, being a victim of domestic or sexual violence to allow the victim to obtain certain services, including medical attention, counseling or legal services; • Time off when the employee cannot work due to the closure of the employee’s workplace or the closure of the employee’s child’s school or place of care due to a public health concern; or • Time off to attend certain school-related conferences, meetings or functions for the employee’s child. <p>“Family member” is defined very broadly under the paid sick leave law.</p>
Serious health condition	<p>An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Serious health conditions may include:</p> <ul style="list-style-type: none"> • An overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with the overnight stay; • A period of incapacity of more than three consecutive full calendar days that involves a certain level of treatment from a health care provider; • A period of incapacity due to (or treatment for) a chronic serious health condition; • A period of incapacity which is permanent or long-term due to a condition for which treatment may be ineffective; • Absences to receive multiple 	<p>Family and medical leave: Similar to federal FMLA</p> <p>Domestic violence/sexual assault leave: No provision.</p> <p>Earned paid sick leave: No provision.</p>

	FEDERAL ELEMENTS	STATE ELEMENTS
	<p>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</p> <ul style="list-style-type: none"> Any incapacity related to pregnancy or for prenatal care. <p>Incapacity means inability to work, or inability to attend school, or perform other regular daily activities due to the serious health condition.</p>	
Intermittent leave	<p>Employees are entitled to take FMLA leave on an intermittent or reduced schedule basis:</p> <ul style="list-style-type: none"> When there is a medical need for this type of leave for an employee’s own serious health condition; To care for a spouse, parent or child with a serious health condition; or To care for a covered service member with a serious injury or illness. <p>An employee is also entitled to use intermittent or reduced schedule leave for qualifying exigencies.</p> <p>An employee is not entitled to take intermittent leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care unless the employer agrees to the arrangement.</p>	<p>Family and medical leave: Intermittent leave is permitted when taking leave to care for a family member with a serious health condition or taking leave following a foster care placement, birth or adoption of a child.</p> <p>Leave to care for a family member with a serious health condition may be taken on a reduced-schedule basis for up to 12 consecutive months for any one period of leave.</p> <p>Domestic violence/sexual assault leave: Leave may be taken intermittently in intervals of no less than one day.</p> <p>Earned paid sick leave: Employers are free to establish the increments of paid sick leave use. However, an employer may not establish an increment of paid sick leave use that exceeds the employee’s scheduled shift.</p>
Substitution of paid leave	<p>An eligible employee may choose, or an employer may require the employee to substitute, accrued paid leave for unpaid FMLA leave. Substitute means that the accrued paid leave will run concurrently with the unpaid FMLA leave. An employee’s ability to substitute accrued paid leave is</p>	<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 above, New Jersey provides family leave insurance benefits</p>

	FEDERAL ELEMENTS	STATE ELEMENTS
	determined by the terms and conditions of the employer’s normal leave policy.	to eligible employees. Domestic violence/sexual assault leave: An eligible employee may elect to use, or an employer may require the employee to use, 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. Earned paid sick leave: Leave is paid at the employee’s regular rate of pay, with the same benefits that the employee normally earns.
Reinstatement rights	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.	Family and medical leave: Similar to the federal FMLA. 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. Earned paid sick leave: Employers are prohibited from counting an employee’s permitted paid sick leave absence as an absence that will result in discipline, discharge, demotion, suspension or loss or reduction in pay or any other adverse action. Employers may not retaliate or discriminate against an employee who requests or uses paid sick leave under the law, or the employer’s own paid leave policy.

	FEDERAL ELEMENTS	STATE ELEMENTS
Key employee exception to reinstatement rights	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 met.	<p>Family and medical leave: Employer may deny family leave to salaried employees among highest paid 5 percent or seventh highest paid employees, whichever is greater, if denial is necessary to prevent substantial and grievous economic injury to employer’s operations.</p> <p>Domestic violence/sexual assault leave: No provision.</p> <p>Earned paid sick leave: No provision.</p>
Maintenance of health benefits during leave	Health insurance must be continued under same conditions as before 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"> • Rescind or reduce employment benefits accrued prior to date leave is taken; or • Rescind or reduce employment benefits, unless based on changes that would have occurred if employee continued work without taking leave. <p>Earned paid sick leave: Employees using paid sick leave must be provided same benefits they are normally provided.</p>
Leave requests	<p>An employee must give at least 30 days’ advance notice of the need to take FMLA leave when he or she knows about the need for the leave in advance and it is possible and practical to do so.</p> <p>For planned medical treatment, the employee must consult with his or her employer and try to schedule the treatment at a time that minimizes the disruption to company operations.</p> <p>When the need for leave is unexpected, the employee must provide notice as</p>	<p>Family and medical leave: Employee must give 30 days’ advance notice to the employer for bonding leave, unless the leave is unforeseeable. For leave to care for a family member with a serious health condition, employee must give advance notice of the leave in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance precludes advance notice.</p> <p>Domestic violence/sexual assault leave: Employee must provide the employer with advance written notice</p>

	FEDERAL ELEMENTS	STATE ELEMENTS
	<p>soon as possible and practical.</p>	<p>when the need for leave is foreseeable, as far in advance as is reasonably practical under the circumstances.</p> <p>Earned paid sick leave: When the need to use paid sick leave is foreseeable, an employer may require its employees to provide advance notice of up to seven calendar days prior to the use of leave.</p> <p>When the need to use paid sick leave is not foreseeable, employees must provide the employer with notice as soon as practicable, if the employee has been notified of the requirement to do so.</p>
Certification requirement	<p>An employer may require an employee to submit a certification to support the employee’s need for FMLA leave when the leave request is for:</p> <ul style="list-style-type: none"> • The employee’s serious health condition; • The serious health condition of the employee’s parent, spouse or child; or • Military family leave (qualifying exigency leave or leave to care for a covered service member with a serious illness or injury). <p>An employer may also, in certain circumstances, require a fitness-for-duty certification at the end of the employee’s leave as a condition to returning the employee to the job.</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> <p>Earned paid sick leave: If an employee uses paid sick leave for three or more consecutive days, an employer may require reasonable documentation that the leave is being used for a reason permitted under the law. Any documentation obtained by the employer must be kept confidential.</p> <p>Employers may discipline employees who use paid sick leave for a purpose other than those specifically permitted under the law.</p>
Statutes	<p>29 U.S.C. § 2601.</p>	<p>NJ ST § 34:11B (family and medical leave)</p> <p>NJ ST § 34:11C (domestic violence/sexual assault leave)</p> <p>NJ ST § 34:11D (earned paid sick leave)</p>