



## **New Jersey Family Leave Act Frequently Asked Questions (FAQs)**

The New Jersey Family Leave Act (NJFLA) is New Jersey's state law that provides job protection for family leave. It provides job protection for eligible employees of covered employers to care for a family member, or someone who is the equivalent of family. Though an eligible employee may be allowed to use paid time off during their job-protected leave, the NJFLA does not provide cash benefits during family leave. The Division on Civil Rights (DCR) has provided the answers below to frequently asked questions (FAQs) for employees and employers to learn more about their rights, benefits, and obligations under the NJFLA.

For more information about the NJFLA, we encourage you to review the [NJFLA law](#), [NJFLA rules](#) (beginning at N.J.A.C. 13:14-1.1), and our [NJFLA Fact Sheet](#). If you require legal advice on the NJFLA, please contact an attorney.

The purpose of these FAQs is to clarify and explain DCR's understanding of existing legal requirements in order to facilitate compliance with the NJFLA. These FAQs do not impose any new or additional requirements that are not included in the NJFLA, do not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the NJFLA. These FAQs do not provide legal advice and should not be treated as providing legal advice. Employees and employers with questions about the NJFLA are encouraged to speak with a qualified attorney to address their specific questions.

To find out how to file a complaint with DCR, [click here](#), visit <http://bias.njcivilrights.gov>, or call 1.833.NJDCR4U (1.833.653.2748).

Eligible employees could receive cash benefits through New Jersey Family Leave Insurance (NJFLI). Learn more at [myleavebenefits.nj.gov/fli](http://myleavebenefits.nj.gov/fli).

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## **I. NJFLA Basics**

### **1. What is the New Jersey Family Leave Act (NJFLA)?**

The NJFLA is New Jersey's state family leave law that 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.

### **2. When can an eligible employee take job-protected leave under the NJFLA?**

Under the NJFLA, an eligible employee of a covered employer generally can take up to 12 weeks of job-protected leave during a 24-month period for one of the following reasons:

- To care for or bond with a child, as long as the leave begins within one year of the child's birth or placement for adoption or foster care;
- To care for a family member, or someone who is the equivalent of family, with a serious health condition; or
- During a state of emergency:
  - 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.

When an employee returns to work, the law generally entitles them to return to the same employment position they held before taking leave.

### **3. Who is protected under the NJFLA as an “eligible employee”?**

To be eligible for the protections available under the NJFLA, a New Jersey employee must:

- Work full time or part time for a state or local government agency with at least one employee or work full or part time for a company or organization with 30 or more employees worldwide;
- Have been employed by the employer for at least one year;
- Have worked at least 1,000 hours during the preceding 12 months; and
- Be taking the leave for a reason covered by the NJFLA.

**4. Are employers required to compensate employees during job-protected leave taken under the NJFLA?**

Employers are not required to pay employees while they take leave under the NJFLA. Job-protected leave taken in accordance with the NJFLA may be unpaid, paid, or a combination. However, if an employee takes accrued paid leave during their leave, they must be paid for that time. If an employer provides paid family leave for fewer than 12 work weeks, the additional weeks of leave added to attain the 12-workweek total required by the NJFLA may be unpaid.

New Jersey Family Leave Insurance (NJFLI) provides cash benefits when workers need to care for a loved one or bond with a new child. New Jersey Department of Labor and Workforce Development (NJDOL) administers this program. Most New Jersey workers and employers are covered under NJFLI. There are earnings requirements to qualify for the cash benefits. Learn more at [myleavebenefits.nj.gov/fli](http://myleavebenefits.nj.gov/fli).

**5. Do employees have to use their accrued paid leave while taking job-protected leave under the NJFLA?**

Whether an employee is required to use their accrued paid leave during NJFLA leave is generally determined by the employer, but the employer must treat NJFLA leave in the same manner as similar leaves of absence.

Thus, if an employer has a policy or practice of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave under the NJFLA. If, by contrast, an employer has a policy or practice of allowing employees to take unpaid leaves without first using accrued paid leave, it cannot require employees to use up accrued paid leave while on family leave.

If an employer does not have an established policy or practice, an employee may use accrued paid leave as part of the family leave, but the employer cannot require use of the accrued paid leave as part of the leave if the employee decides they do not want to use it.

If an employer has different leaves of absence that are governed by different policies or practices regarding the use of accrued paid leave, the employer must treat family leave the same as the other leave of absence that most closely resembles family leave.

## **II. Eligibility for Family Leave Under the NJFLA**

### **6. Can an employee take job-protected NJFLA leave for their own disability?**

No, an employee cannot take job-protected leave under the NJFLA for their own disability. An employee can only take leave under the NJFLA to care for a family member. If an employee is eligible for job-protected leave under the federal Family and Medical Leave Act (FMLA), they may be able to take leave under the FMLA for their own disability. FMLA is enforced by the United States Department of Labor. Please visit <https://www.dol.gov/agencies/whd/fmla> for information about the federal FMLA.

Visit [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov) to learn more about New Jersey's Temporary Disability Insurance (TDI) program which provides cash benefits for one's own physical or mental health condition.

### **7. How is the requirement to have worked 1,000 hours in the past year calculated for an employee to be eligible under the NJFLA?**

One requirement for an employee to be considered eligible for the protections available under the NJFLA is that the employee must have worked at least 1,000 hours for their covered employer during the preceding 12-month period. The hours are calculated using the number of "base hours" an employee worked in the past year. "Base hours" means the hours of work for which an employee receives compensation and includes overtime hours for which an employee is paid additional or overtime compensation, hours for which an employee receives workers' compensation benefits, and hours an employee would have worked except for having been in military service. At the option of an employer, the employer may include hours for which an employee receives other types of compensation, such as administrative, personal leave, vacation, or sick leave, in the calculation of an employee's "base hours."

### **8. How is the requirement to have worked 1,000 hours in the past year calculated when the employee was placed on furlough or mandatory leave?**

For purposes of determining eligibility for leave time under the NJFLA, if an employer reduced operations because of a state of emergency, any time including up to a maximum of 90 calendar days during which a person is laid off or furloughed must be counted as time in which the person is employed.

To calculate the base hours per week during the layoff or furlough, the average number of hours worked per week during the rest of the 12-month period is added to the hours the employee worked while not on furlough or leave. An employee is eligible if their base hours, including hours considered working hours during a furlough or leave, are at least 1,000 for the past year. If the employee meets the 1,000-hour requirement, they may be entitled to job protection under the NJFLA when they are called back to work by their employer or later when they request leave, despite having been furloughed or laid off for part of the year.

For example, if an employer had to reduce its operations or close because of a COVID-19 pandemic state of emergency, up to 90 calendar days' worth of time during which an employee is furloughed by the employer must be counted towards the employee's 1,000-hour eligibility requirement. If the employee was furloughed for 60 calendar days (roughly eight and a half weeks) and worked an average of 20 hours per week during the rest of the 12-month period (roughly 43.5 weeks), their employer would add 170 hours (8.5 weeks x 20 hours) to the 870 hours (43.5 weeks x 20 hours) the employee worked during the rest of the 12-month period to determine whether the employee worked 1,000 hours in the previous year. The employee would meet the 1,000-hour requirement because they worked 1,040 hours in the previous year.

Likewise, if an employer had to reduce its operation or close because of a state of emergency due to a natural disaster, such as a hurricane, up to 90 calendar days' worth of time during which an employee is laid off by their employer must be counted towards the employee's 1,000-hour eligibility requirement. If the employee is being called back to work by their employer, the time the employee was laid off must be added to the time they worked the rest of the 12-month period. If the employee was laid off for 90 days (12.85 weeks) and worked an average of 15 hours a week the rest of the 12-month period, the employer would add 192.75 hours (12.85 weeks x 15 hours) to the 587.25 hours (39.15 weeks x 15 hours) to determine whether the employee worked 1,000 hours in the previous year. The employee would not meet the 1,000-hour requirement because they worked only 780 hours in the previous year.

## **9. What is a “state of emergency”?**

For purpose of the NJFLA, a state of emergency is a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

## **10. Does an employee have to live in New Jersey or complete all of their work in New Jersey to be considered an “eligible employee” under the NJFLA?**

To be considered an eligible employee, an employee does not have to live in New Jersey or complete all of their work in New Jersey. Whether an employee qualifies as an eligible employee for NJFLA purposes depends on a variety of factors, including, but not limited to, the following:

- Whether an employee works in New Jersey;
- Whether an employee's base of operations, or the place from which such work is directed and controlled, is in New Jersey;
- How frequently an employee conducts work outside of New Jersey;
- Whether there is an understanding between an employee and their employer as to what state the employment is based in; and
- An employee's tax and benefit treatment. For instance, if an employee pays into the New York unemployment system rather than the New Jersey unemployment and disability system, the employee is generally considered a New York employee for purposes of taxation and benefits. In those circumstances, there is likely an understanding between the

employer and employee that the employee is considered a New York employee, and New York law would apply instead of New Jersey law.

These are only some of the factors that would be considered by DCR in determining whether a person who files a complaint under the NJFLA is a New Jersey employee. Employees and employers are encouraged to discuss what state law should apply to an employee regarding family leave if that is not clear.

**11. How is the 24-month period in which an eligible employee can take job-protected leave calculated?**

Employers decide how to calculate the 24-month period for leave. Employers may choose from the following four methods, as long as an employer notifies employees of the chosen method, gives employees 60 days of notice if the method will change, and applies the same method consistently:

- The calendar year;
- Any fixed leave year, such as a fiscal year or a year starting on an employee's anniversary date;
- The 24-month period measured forward from the date an employee's first leave under the NJFLA begins; or
- A rolling 24-month period measured backward from the date an employee uses any leave under the NJFLA.

### **III. Definitions Under the NJFLA**

#### **12. Which employers are considered “covered employers” and are required to provide job protection under the NJFLA?**

A “covered employer” includes a person or corporation, partnership, individual proprietorship, joint venture, firm or company, or other similar legal entity that engages the services of an employee and that employs 30 or more employees for each working day during each of 20 or more calendar work weeks in the current calendar year or the last calendar year.

Employers considered a “covered employer” under the NJFLA also include: the State of New Jersey; any political subdivision of the State of New Jersey, meaning any unit or agency of government deriving its authority directly or indirectly from the State of New Jersey; and all public offices, agencies, boards, or bodies with at least one employee. This list of “covered employers” includes, but is not limited to, cities, counties, municipalities, townships, authorities, or other public corporations, instrumentalities, or entities with at least one employee created by the State, mandated by constitution, or created by an act of the Legislature. School districts and boards of education are also “covered employers” for purposes of the NJFLA.

Employers that do not meet the definition of a “covered employer” are not obligated to provide job-protected leave to their employees under the NJFLA. However, such employers may provide their employees with the protections afforded to eligible employees under the NJFLA if they wish to do so.

#### **13. Does an employer have to be headquartered in New Jersey to be considered a “covered employer”?**

No. An employer’s headquarters does not have to be in New Jersey for it to be considered a “covered employer” under the NJFLA.

#### **14. What is the definition of “care” under the NJFLA?**

Under the NJFLA, an eligible employee may take job-protected leave to “care” for a family member or someone who is the equivalent of family. “Care” means, but is not limited to, 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.

**15. What is the definition of “child” under the NJFLA?**

Under the NJFLA, “child” means a biological, adopted, foster child, resource family child, stepchild, legal ward, or child of a parent, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier.

**16. What is the definition of “parent” under the NJFLA?**

Under the NJFLA, “parent” means a person who is a biological parent, adoptive parent, foster parent, resource family parent, step-parent, parent-in-law, or legal guardian; a person who became a parent pursuant to a valid written agreement with a gestational carrier; a person who has a “parent-child relationships” with a child as defined by law; or a person who has sole or joint legal or physical custody, care, guardianship, or visitation with a child.

**17. What is the definition of “family member” under the NJFLA?**

Under the NJFLA, “family member” means a child, 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 shows to have a close association with the employee that is the equivalent of a family relationship. The definition is very broad. It includes people who are related by marriage and blood to an employee, as well as 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.

**18. How is “serious health condition” defined under the NJFLA?**

Under the NJFLA, “serious health condition” means an illness, injury, impairment, or physical or mental condition which requires:

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

As used in this definition, “continuing medical treatment or continuing supervision by a health care provider” means:

- A period of incapacity (inability to work, attend school, or perform regular daily activities due to a serious health condition, treatment of that condition, and recovery from that condition) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - Treatment two or more times by a health care provider; or
  - Treatment by a health care provider on one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
- Any period of incapacity due to pregnancy;
- Prenatal care;

- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
- A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke, or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by, a health care provider; or
- Any period of absence to receive multiple treatments (including any period of recovery from those treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

#### **IV. Protections Afforded by the NJFLA**

##### **19. Can an employer deny job-protected leave under the NJFLA to an eligible employee?**

An employer generally cannot deny job-protected leave under the NJFLA to an eligible employee. However, the NJFLA provides a narrow exception for an employer to deny leave to an eligible employee. An employer can deny a leave request under the NJFLA by an eligible employee only if three conditions are satisfied:

- (i) The employee is a salaried employee who is among the highest paid five-percent of the employees of the employer or the seven highest paid employees of the employer, whichever is greater;
- (ii) The employer can demonstrate that allowing the leave would cause a substantial and grievous economic injury to the employer's operations; and
- (iii) The employer notifies the employee of its decision to deny the leave when that decision is made.

If the employee is already on leave at the time the employer notifies the employee that the employer is denying the leave request, the employee must return to work within 10 working days.

The limited exception permitting an employer to deny a leave request does not apply when the leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of a communicable disease during a state of emergency declared by the Governor or when leave for such reasons is indicated to be needed by the Commissioner of Health or other public health authority.

Thus, an employer cannot deny a leave request from an eligible employee if the employee is requesting leave during a state of emergency or the leave is indicated to be needed by the Commissioner of Health or other public health authority and the leave is:

- 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 (including COVID-19); 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 (including COVID-19) or other public health emergency.

##### **20. When can an employee take job-protected NJFLA leave related to pregnancy or recovery from childbirth?**

The NJFLA provides job-protected leave to care for a family member with a serious health condition, including a family member with a pregnancy-related disability or a family member recovering from childbirth. For example, an employee can take leave under the NJFLA to care for a pregnant family member who is on bed rest before their due date or to care for a family member who is recovering from childbirth.

The employee can also take leave to care for or bond with the newly born child if it is the employee's child. When an eligible employee's child is born or a child is placed with the employee for adoption or foster care, the employee generally can take up to 12 weeks of job-protected leave during a 24-month period to care for or bond with the child, as long as the leave begins within one year of the child's birth or placement.

The NJFLA, however, does not provide job-protected leave for an employee's own disability, including a pregnancy-related disability and recovery from childbirth. An employee can only take leave under the NJFLA to care for a family member. If an employee is eligible for job-protected leave under the federal Family and Medical Leave Act (FMLA), they may be able to take leave under the federal law for their own pregnancy. This may include time before their due date and generally includes at least six weeks after a vaginal birth or eight weeks after a C-section to recover. This time does not count against the employee's 12 weeks of NJFLA leave because it is taken under the federal law for their own disability. This is true despite the fact that the employee may also be caring for their newborn, which is a reason an employee can take leave under the NJFLA.

If a pregnant or postpartum worker is not eligible for time off under the federal FMLA for their own health needs, they may be entitled to time off as a reasonable accommodation under the New Jersey Law Against Discrimination (LAD) or the federal Pregnant Workers Fairness Act (PWFA). Please visit <https://www.dol.gov/agencies/whd/fmla> for information about the federal FMLA, <https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/know-the-law/> for information about the LAD, and <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act> for information about the federal PWFA.

Once the employee's healthcare provider clears them to return to work, meaning they no longer need to be on leave for their own disability, the employee can use any leave they are eligible for under the NJFLA. This includes taking leave to care for or bond with their newly born child.

## **21. When can an employee take job-protected NJFLA leave related to COVID-19?**

If an eligible employee's family member, or someone who is the equivalent of family, has COVID-19 or is isolated or quarantined because of suspected exposure to COVID-19, the employee can take job-protected leave to take care of them under the NJFLA. The same is true if an eligible employee's child's school or place of care is closed due to the COVID-19 epidemic.

- An employee cannot take leave under the NJFLA based on their own COVID-19 diagnosis, but they can use accrued Earned Sick Leave. The New Jersey Earned Sick Leave law is enforced by the New Jersey Department of Labor and Workforce Development (NJDOLE). Learn more at [mysickdays.nj.gov/](https://mysickdays.nj.gov/).

- If an employee is eligible for job-protected leave under the federal Family and Medical Leave Act (FMLA), they may be able to take leave under the FMLA for their own physical or mental illness. This includes COVID-19. FMLA is enforced by the United States Department of Labor. Please visit <https://www.dol.gov/agencies/whd/fmla> for information about the federal FMLA.
- New Jersey’s Temporary Disability Insurance (TDI) program provides cash benefits for one’s own physical or mental health condition. This includes COVID-19. Learn more at [myleavebenefits.nj.gov/tdi](http://myleavebenefits.nj.gov/tdi).
- An employer may also be required to provide a leave of absence for an employee’s own disability if it does not impose an undue hardship on the employer.

## **22. Are federal employees protected by the NJFLA?**

No. Federal employees are not protected by the NJFLA. However, they may be eligible for job-protected leave under the federal Family and Medical Leave Act (FMLA), the federal job protection law for family leave. DCR does not enforce the FMLA. Please visit <https://www.dol.gov/agencies/whd/fmla> for information about the FMLA.

## **23. Can an employer place limitations on the use of job-protected NJFLA leave if two or more employees are related and take leave for the same reason?**

No. An employer may not place limitations on the use of leave under the NJFLA if there are two or more employees who are related and request family leave for the same reason. For example, an employer cannot require two or more family members to share their NJFLA leave for the birth of a child or taking care of a sick family member. If an employer has more than one eligible employee from the same family, the employer must grant family leave to the employees at the same time if they request it, unless the employer is otherwise authorized to deny one or more of the employees leave under the NJFLA.

## **24. Do employees have to take all 12 weeks of leave under the NJFLA at one time?**

No. 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—called consecutive or continuous leave—or they can opt to take intermittent leave or take leave on a reduced leave schedule.

Consecutive or continuous leave means leave that is taken without interruption based upon an employee’s regular work schedule, and does not include breaks in employment in which an employee is not regularly scheduled to work. For example, when an employee is normally scheduled to work from September through June and is not scheduled to work during July and August, a leave taken continuously during May, June, and September is considered a consecutive leave.

Intermittent leave means leave due to a single qualifying reason, taken in separate periods of time, rather than one continuous period. Intermittent leave may be scheduled in increments of hours, days, or weeks. (For purposes of the NJFLA, a “qualifying reason” means either the serious health

condition of a specific family member, the birth or placement of a child with the employee for adoption or foster care, or the provision of 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.) For example, a parent would request intermittent leave if they must accompany their minor child for medical procedures and provide recovery care related to that procedure for one week every month over the course of 12 months.

Leave taken on a reduced leave schedule means leave due to a single qualifying reason that is 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. For example, where an employee works 40 hours over 5 days a week but requests to work only 3 days a week in order to provide care for a family member those days, the employee is taking leave on a reduced leave schedule.

Intermittent or reduced leave must be taken within a 12-month period if the leave is taken in connection with a single serious health condition episode or a single declaration of a state of emergency by the Governor or indication by the New Jersey Commissioner of the Department of Health or other public health authority. If intermittent leaves are taken in connection with more than one serious health condition episode, those leaves must be taken within a consecutive 24-month period, or until such time as the employee's 12-week family leave entitlement is exhausted, whichever is shorter.

**25. Can an employee get their position back when they return from job-protected leave under the NJFLA?**

Yes, 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 system under a collective bargaining agreement, as if the employee had not taken the leave.

**26. Can an employee work for another employer while on job-protected NJFLA leave?**

An employee on family leave cannot work full time for another employer during leave, unless the employee had the second job in place prior to requesting the leave. An employee may continue part-time employment that started before the employee's family leave at the same number of hours that the employee was regularly scheduled before the leave. An employer may not maintain a policy or practice that prohibits the employee from being employed part time during family leave.

**27. Are employers prohibited from discriminating against employees in granting NJFLA benefits?**

Yes. An employer cannot discriminate against an employee in granting NJFLA benefits based on a protected characteristic. For example, an employer cannot discriminate based on gender by granting family leave to only women employees but not to employees of other genders. Similarly, an employer cannot discriminate regarding NJFLA benefits based on race, religion, disability, and other protected classes. Please find more information about protected characteristics and the New Jersey Law Against Discrimination (LAD) [here](#).

**28. Can an employer retaliate against an employee for asking about or taking job-protected leave under the NJFLA?**

No, the NJFLA prohibits an employer from retaliating against an employee for taking or inquiring about family leave. For example, an employer cannot fire or demote someone for taking leave under the NJFLA, or for asking if they are eligible to take leave under the NJFLA.

## V. How to Request Leave Under the NJFLA

### **29. When must an employee provide notice to their employer about taking leave under the NJFLA?**

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.

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 to take intermittent or reduced leave.

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.

### **30. How must an employee provide notice to their employer about taking NJFLA leave?**

An employer can require that notice be in writing. But employees must be allowed to provide oral notice in emergent circumstances. It is enough for an employee to alert their employer that they need time off for a reason covered by NJFLA. An employee does not have to use any specific words or mention "family leave" or "NJFLA." An employee's written or verbal communication must alert the employer that the employee needs time off for a reason covered by the NJFLA.

### **31. May an employer require a certification for job-protected leave under the NJFLA?**

Yes, an employer may require an employee who requests family leave to sign a form of certification attesting that the employee is taking family leave in connection with the birth of a child or the placement of a child with the employee for adoption or foster care; to care for a family member because of that family member's serious health condition; or to 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, whichever is applicable. Any employee who refuses to sign the certification may be denied the requested leave.

The information an employer may require the employee to provide as part of the certification varies depending on the qualifying reason for family leave:

- *Where family leave is for the birth of a child or the placement of a child with the employee for adoption or foster care:* The employer may require that the period of family leave be supported by a certification that states the date of birth or date of placement, whichever is appropriate.

- *Where family leave is for a serious health condition of a family member:* The employer may require that the period of family leave be supported by a certification that states the approximate date on which the serious health condition commenced, the probable duration of the condition, and the medical facts within the provider's knowledge showing that the family member's health condition meets the criteria of a serious health condition. In any case in which the employer has reason to doubt the validity of the certification, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the health condition. The opinion of the third health care provider will be considered final and will be binding on the employer and the employee.
- *Where family leave is to care for a family member who is isolated or quarantined:* The employer may require that the period of family leave be supported by a certification with the following information depending on the qualifying reason for the leave:
  - When a health care provider or public health authority recommends that a family member in need of care by the employee voluntarily undergo self-quarantine, the employer may require a certification stating the date of the recommendation, the probable duration of the condition, and medical or other facts within the health care provider or public health authority's knowledge regarding the condition; or
  - When a public health authority issues a determination requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee would jeopardize the health of others, the employer may require a certification stating the date of issuance of the public health authority's determination and the probable duration of the determination.
- *Where family leave is to provide in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, where such closure is by order of a public official due to an epidemic or other public health emergency:* The employer may require that the family leave be supported by certification from the school or place of care that states the date on which the closure started and the reason for such closure.

An employer, however, may not require an employee to sign or otherwise submit a form of certification attesting to additional facts beyond those listed immediately above, including the employee's eligibility for family leave.

**32. Does an employee or their employer have to apply to the State or notify the State when an employee is planning to take leave under the NJFLA?**

No. There is no application process or required reporting through the State to take leave under the NJFLA. The State does not provide model forms for NJFLA employee requests or certifications of leave.

## **VI. The NJFLA and other New Jersey or Federal Laws**

### **33. What is the difference between the NJFLA and the New Jersey Family Leave Insurance (NJFLI) program?**

The NJFLA provides eligible employees with job protection while they take leave to care for a family member. The NJFLA does not provide paid cash benefits. The NJFLA is enforced by DCR.

New Jersey Family Leave Insurance (NJFLI) provides cash benefits when workers need to care for a loved one or bond with a new child. New Jersey Department of Labor and Workforce Development (NJDOL) administers this program. Most New Jersey workers and employers are covered under NJFLI. There are earnings requirements to qualify for the cash benefits. Learn more at [myleavebenefits.nj.gov/fli](http://myleavebenefits.nj.gov/fli).

### **34. Can an employee receive job protection under the NJFLA and cash benefits under the NJFLI at the same time?**

Yes, an employee who is eligible for both the NJFLA and NJFLI can generally take job-protected leave and receive cash benefits at the same time while on leave.

### **35. What is the difference between the NJFLA and the federal Family and Medical Leave Act (FMLA)?**

The NJFLA is the New Jersey state law that provides eligible employees with up to 12 weeks of job protection in a 24-month period while they take leave to care for a family member and is enforced by DCR. The FMLA is the federal law that provides eligible employees with 12 weeks of job protection in a 12-month period while they take leave to care for a family member or take leave for their own disability and is enforced by the United States Department of Labor. Please visit <https://www.dol.gov/agencies/whd/fmla> for information about the federal FMLA.

### **36. Does an employee's family leave simultaneously count against the leave time to which they are entitled under the NJFLA and the FMLA?**

Where an employee takes leave for a reason covered by both the NJFLA and the FMLA, 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 FMLA also provides leave for that reason. Under this example, since the leave is taken for a purpose covered by both the NJFLA and the FMLA, 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 FMLA.

Where an employee takes leave for a reason that is not covered by both the NJFLA and the FMLA, the leave counts only against the leave time they are entitled to under the law that covers that leave. For example, the FMLA 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 FMLA, 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 FMLA. 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 FMLA, but would use none of their 12 weeks in a 24-month period under the NJFLA.

If you are pregnant or just had a baby, you can take up to 12 weeks for pregnancy and recovery from childbirth under the FMLA, 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 FMLA 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.

**37. How is leave time calculated if an employee first takes FMLA leave under federal law because of their own disability and then requests to take leave under the NJFLA?**

If an employee first takes FMLA 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. For example, if an employee first takes FMLA leave under federal law because of their own disability related to pregnancy or childbirth, the employee would be entitled to an additional 12 weeks of leave within a 24-month period under the NJFLA to care for a newly born child. Under this example, if an eligible employee is on FMLA leave under federal law while pregnant for four weeks and is on FMLA disability leave under federal law following childbirth for an additional six weeks to recover from childbirth, those 10 weeks that the employee is on disability leave count against the employee's federal FMLA leave time only, and the employee retains the full 12 weeks of leave time under the NJFLA to care for the newborn.

**38. How is leave time calculated if an employee is on leave for their own disability under the federal FMLA and then an event occurs that enables the employee to take leave under the NJFLA?**

If an employee takes FMLA leave under federal law 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 FMLA leave under federal law to a leave under the NJFLA. For as long as the employee continues to be eligible for FMLA leave under federal law based on their own disability, the leave does not simultaneously count against the employee's leave time under the NJFLA. For example, if an employee is on disability leave under the FMLA and then a family member becomes seriously ill while they are still on disability leave, they may continue to take disability leave under the FMLA for as long as they are eligible. They will not use leave time under the NJFLA during this time, despite the fact that they may be taking leave for their own disability and also caring for the seriously ill family member.

**39. Does taking job-protected leave under the NJFLA affect an employee's eligibility to receive benefits for disability leave under the New Jersey Temporary Disability Benefits Law, also called Temporary Disability Insurance (TDI)?**

An employee may be eligible to receive cash benefits when they cannot work due to a non-work-related illness or injury under TDI. New Jersey Department of Labor and Workforce Development administers TDI. 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 example, if an employee is receiving temporary disability benefits based on a post-partum medical condition, but has exhausted their federal FMLA leave, the employee is entitled to begin their 12 weeks of leave under the NJFLA to care for their child. That is true even though they still have a disability as defined by TDI and are receiving compensation under that law.

## **VII. Other Frequently Asked Questions**

### **40. What if there is an issue that is not covered by these FAQs, the NJFLA [law](#) or [regulations](#), or other NJFLA [resources](#)?**

In interpreting the NJFLA law and rules, where the NJFLA law and rules do not specifically cover an issue, DCR may refer to the rules under the FMLA as an interpretive guide unless the rules under the FMLA conflict with the NJFLA.

### **41. Where can an employee file a complaint if they think their rights under the NJFLA are being violated by their employer?**

An individual can file a complaint on DCR's online portal, the New Jersey Bias Investigation system (NJBIAS) [here](#), and find out more information about filing a complaint [here](#) or call 1.833.NJDCR4U (1.833.653.2748).