

Complying with Expanded Family and Medical Leave Laws in New Jersey

April 22, 2020

The New Jersey Family Leave Act (NJFLA), which applies to employers with 30 or more employees, was recently expanded to include protections for certain absences related to COVID-19. Specifically, eligible employees may qualify for up to 12 weeks of leave in a 24-month period for leaves of absences related to school or daycare closures caused by COVID-19 or to care for family members who must quarantine because of a communicable disease, such as COVID-19. This expansion of the NJFLA follows expanded coverage under the federal Family and Medical Leave Act (FMLA) which now requires **all employers with less than 500 employees** to [allow eligible employees protected time off for COVID-19 related reasons](#).

Employers should implement and/or amend procedures and employment policies to comply with these expanded leave laws. The policies [should notify employees of leave availability](#) and the compensation or benefits for which they may be eligible during any such leave of absence, including, but not limited to, compensation under the [federal Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act](#). When drafting new policies and procedures, it is important to also inform employees when they may also be able to use paid sick time and/or apply for New Jersey temporary disability or family leave insurance benefits. In addition, employers should establish and communicate to employees the notice and documentation that employees must provide to employers to support their leave requests.

Employee Notice/Documentation to Support Leave Request

Employees who are unable to work due to a [school/daycare closure](#) should be advised to notify their employer as soon as practical and provide documentation to support their request for leave. Under the NJFLA, employees can be required to set forth the dates of leave being requested and the reason for the closure. Similarly, under the expanded FMLA, employees must submit a signed statement containing the following information:

- the employee's name;
- the date(s) for which leave is requested;
- the COVID-19 qualifying reason for leave;
- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason;
- the name of the child being cared for;
- the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and
- a statement representing that no other suitable person is available to care for the child during the period of requested leave.

Employees who are ill with or must quarantine as a result of COVID-19 by order of a public official or upon a recommendation by their health care provider due to actual or suspected exposure to the illness, should be required to provide the following information:

- the employee's name;
- the date(s) for which leave is requested;
- the COVID-19 qualifying reason for leave;
- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason; and
- the name of the government entity who ordered, or the name of the health care provider who recommended, the employee quarantine due to concerns related to COVID-19.

Employees who cannot work because they need to care for a family member relating to COVID-19 may be required under the NJFLA to provide the date on which a public health authority or health care provider issued a quarantine determination or recommendation and the probable duration of such determination; in some cases, medical or other facts may be required. Under the federal leave laws, employees should be required to provide the following information:

- the employee's name;
- the date(s) for which leave is requested;
- the COVID-19 qualifying reason for leave;
- a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason; and
- the name of the government entity who ordered, or the name of the health care provider who recommended, the family member being cared for quarantine due to concerns related to COVID-19.

In addition to making clear what type of notice and documentation is required by employees, employers must establish procedures to designate employee's time off as FMLA and/or NJFLA, if applicable. Employers should memorialize each leave request and notify employees in writing if their time off counts against their allotted 12 weeks under the FMLA and/or the NJFLA.

Employers must maintain records relating to employees' leaves of absence under these laws and may be eligible for a refundable tax credit for any time off paid by the employer pursuant to the [federal Emergency Paid Sick Leave Act and/or Emergency Family and Medical Leave Expansion Act](#).

Employees cannot be retaliated against for taking leave and typically must be reinstated to their position.

We are available to help employers prepare and implement procedures and policies relating to leaves of absence under these expanded family and medical leave laws and programs.