

FAMILY AND MEDICAL LEAVE ACT & FAMILY LEAVE ACT
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Issues	Federal	New Jersey	Most Favorable
Enforcement	Enforced by U.S. Department of Labor	Enforced by Division on Civil Rights, Department of Law and Public Safety	
Legal References	29 <i>U.S.C.</i> 2601 <i>et seq.</i> (P.L. 1993 103-3) 29 <i>C.F.R.</i> 825.100 <i>et seq.</i>	<i>N.J.S.A.</i> 34: 11B-1 <i>et seq.</i> <i>N.J.A.C.</i> 13:14-1.1 <i>et seq.</i>	
Employers Covered 29 <i>U.S.C.</i> 2611 (4) 29 <i>C.F.R.</i> 825.104;105, 600(b) <i>N.J.S.A.</i> 34:11B-3f. <i>N.J.A.C.</i> 13:14-1.2 and 3(b)	Public employers are covered, regardless of the number of employees. §825.104. However, public employees must meet all the requirements of eligibility, including that the employer employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year within 75 miles of the worksite.	Employers that are government entities are deemed to be employers under the law.	Comparable
Employees Eligible 29 <i>U.S.C.</i> 2611 (2) 29 <i>C.F.R.</i> 825.110 <i>N.J.S.A.</i> 34:11B-3e. <i>N.J.A.C.</i> 13:14-1.2	Have worked for employer at least 1,250 hours in preceding 12 months and employed for at least 12 months; and employed at worksite by employer with 50 or more employees within 75 miles of that worksite (as detailed above). Hours of service is determined under Fair Labor Standards Act (FLSA) principles.	Have worked for employer at least 1,000 base hours in preceding 12 months and employed for at least 12 months. Base hours include overtime, workers' comp, and hours employee would have worked if not in military service. At employer's option base hours may also include hours for which employee receives other compensation like personal, vacation, sick leave.	New Jersey

<p>Key Employee Exception</p> <p>29 <i>U.S.C.</i> 2614 (b) 29 <i>C.F.R.</i> 825.217</p> <p><i>N.J.S.A.</i> 34:11B-4h. <i>N.J.A.C.</i> 13:14-1.9</p>	<p>High paid employees may not be denied leave, but certain high paid salaried employees (top 10%) may be denied restoration to employment if necessary to prevent substantial and grievous economic injury to the employer's operations (described by regulation to exclude minor inconveniences and costs that the employer would experience in the normal course of business, but to include substantial, long-term economic injury, taking into account the ability to temporarily replace or do without the employee and the effect on the operations of reinstating the employee). The employer must notify the key employee upon his/her request for leave that he/she is one of the key employees for whom restoration may be denied.</p>	<p>Certain high paid employees (top 5% or one of the 7 highest paid, whichever is greater) may be denied leave if necessary to prevent substantial and grievous economic injury to the employer's operation and if employer notifies employee of intent to deny leave at the time of denial of leave is determined to be necessary. (Injury defined by regulation as economic harm that would adversely and substantially affect the operations considerably beyond the costs of replacing the employee).</p>	<p>Federal regarding denial of leave.</p> <p>New Jersey regarding restoration</p>
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<p>Amount of Leave</p> <p>29 <i>U.S.C.</i> 2612 29 <i>C.F.R.</i> 200; 202</p> <p><i>N.J.S.A.</i> 34:11B-4 <i>N.J.A.C.</i> 13:14-1.4</p>	<p>12 workweeks during any 12 month period.</p> <p>Spouses working for same employer are only entitled to a combined total of 12 weeks for the birth or placement of a child or to care for a parent. Each spouse may make up the rest of his/her 12-week entitlement with leave for a purpose other than birth or placement. §825.202</p> <p>26 workweeks during a 12-month period to care for a service member who has a “serious injury or illness.” This leave is only available during a single 12-month period. During the single 12-month period, an eligible employee may take a “combined total” of 26 workweeks (i.e., the 26 weeks is not in addition to, but rather includes other FMLA leave, and includes any applicable limitations on the amounts of time permitted). Does not limit the availability of family leave during any other 12-month period.</p> <p>Spouses working for the same employer are only entitled to a combined total of 26 weeks to care for service member; or for a combination of caring for service member, caring for sick parent, and leave for birth/adoption/foster care.</p>	<p>12 weeks during any 24-month period. (workweeks).</p> <p>No reduction in leave requirement for spouses working for same employer. An employer shall grant leave to more than one employee from the same family at the same time, if otherwise eligible. <i>N.J.A.C.</i> 13:14-1.12.</p>	<p>Federal, except for leave sharing requirement for spouses.</p>
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<p>Type of Leave</p> <p>29 <i>U.S.C.</i> 2612 29 <i>C.F.R.</i> 825.200</p> <p><i>N.J.S.A.</i> 34:11B-3 <i>N.J.A.C.</i> 13:14-1.5</p> <p><i>N.J.S.A.</i> 37:1-32(1) (NJCivil Union Law)</p>	<p>12 workweeks: To care for a child due to birth, placement for adoption or foster care; to care for parent, child or spouse with serious health condition, or employee’s own serious health condition.</p> <p>Also, for any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of active duty of the spouse, son, daughter, or parent of the employee (or out of notice of impending call or order to active duty) in the Armed Forces in support of a contingency operation. Parent does not include parents “in law,” but does include an individual who stood in loco parentis to the employee when employee was a child. 29 <i>U.S.C.</i> 2611(7); 29 <i>C.F.R.</i> 825.113.</p> <p>26 workweeks: To care for a covered service member. Spouse, son, daughter, parent, or next of kin (nearest blood relative) may take leave. (Covered service member is a member of the Armed Forces who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.)</p>	<p>To care for a child due to birth or adoption; to care for parent, parent of spouse or partner in a civil union, child, spouse, or partner in a civil union with serious health condition. (Parent defined to include biological, adoptive, resource-family, step, in-law or guardian who has either parent-child relationship or has sole or joint custody or visitation)</p>	<p>Federal for coverage of employee’s own serious health condition. Also for care for child due to foster care placement and for provisions regarding service members.</p> <p>New Jersey for “in laws” and partners in a civil union.</p>
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<p>Health Care Provider</p> <p>29 <i>C.F.R.</i> 825.118</p> <p><i>N.J.A.C.</i> 13:14-1.2</p>	<p>Means doctors of medicine or osteopathy authorized to practice medicine or surgery in the State; other persons determined by the Secretary of Labor to be capable of providing health care services, including only podiatrists, dentists, clinical psychologists, optometrists, chiropractors (for manual manipulation of spine to correct subluxation demonstrated by X-ray), nurse practitioners, and nurse-midwives, if authorized to practice under State law; or, the First Church of Christ, Scientist in Boston, Massachusetts.</p>	<p>Means any person licensed under Federal, State or local law, or the laws of a foreign nation, or any other person who has been authorized to provide health care by a licensed health care provider.</p>	<p>New Jersey, concerning “foreign doctors and persons authorized by health care providers.”</p>
<p>Timing of Leave for Birth or Placement</p> <p>29 <i>U.S.C.</i> 2612(a) (2)</p> <p>29 <i>C.F.R.</i> 825.201</p> <p><i>N.J.S.A.</i> 34:11B-4 (c)</p> <p><i>N.J.A.C.</i> 13:14-1.5 (c)</p>	<p>Entitlement to leave for birth or placement of a child <i>expires</i> 1 year after birth or placement.</p>	<p>Entitlement to leave for birth or placement of a child <i>must begin</i> within 1 year of birth or placement.</p>	<p>New Jersey</p>

<p>Pregnancy Disability</p> <p>29 U.S.C. 2612 29 C.F.R. 825.114 N.J.S.A. 34:11B-13 N.J.A.C. 13:14-1.2; 1.6</p>	<p>Any period before and after the birth of a child where the mother cannot work for medical reasons may be considered leave for a serious health condition.</p>	<p>Family leave is apart from and in addition to disability leave. Regulations describe interplay between FLA and other laws.</p>	
<p>Calculation of the 12 or 24 month period</p> <p>29 C.F.R. 825.200 N.J.A.C. 13:14-1.4(c) and (d)</p>	<p>Employer may choose any one of 4 methods to determine the “12 month period,” provided it is applied consistently and uniformly:</p> <ul style="list-style-type: none"> (1) calendar year (2) any fixed, 12-month “leave year” (3) 12-month period measured forward from the date leave begins (4) 12-month period measured backward from the date FMLA leave is used (“rolling back”) 	<p>Same (except substitute 24-month period for 12-month period) Also, the option chosen must be applied consistently and uniformly. An employer wishing to change to another alternative must give employees 60 days’ notice and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave. If an employer fails to select a listed option, the option that provides the most beneficial outcome to the employee will be used.</p>	
<p>Compensation During Leave</p> <p>29 U.S.C. 2612(c) 29 C.F.R. 825.207 N.J.S.A. 34:11B-4d. N.J.A.C. 13:14-1.5(b)</p>	<p>Paid leave not required.</p>	<p>Paid leave not required.</p>	<p>Comparable</p>

<p>Maintenance of Health Benefits During Leave</p> <p>29 U.S.C. 2614(c) 29 C.F.R. 825.209</p> <p>N.J.S.A. 34:11B-8 N.J.A.C. 13:14-1.13</p>	<p>During leave, group health insurance must be maintained. Law contains no obligation to maintain other benefits such as life insurance, disability insurance, etc., although these must resume upon employee's return.</p>	<p>During leave, the employer must maintain group health insurance at same level, as well as any other benefits that the employer usually maintains for its employees on temporary leave. However, this provision has been ruled void as it relates to any employee welfare benefit plan regulated under ERISA. Thus, private employers (versus government employers) are not required to maintain insurance benefits under the FLA.</p>	<p>Federal as relates to employees of private employers.</p> <p>New Jersey as relates to level of benefits that must be maintained.</p>
<p>Recoupment of Health Insurance Premiums</p> <p>29 U.S.C. 2614(c)(2) 29 C.F.R. 825.213</p>	<p>If the employee fails to return to work after leave expires, the employer may recover the cost of health premiums paid unless the reason for not returning is due to the continuation of the serious health condition of self, parent, child or spouse, or serious injury or illness of covered service member, or another reason beyond the employee's control.</p>	<p>Recoupment of health premiums not addressed.</p>	<p>New Jersey if silence is interpreted to preclude recoupment.</p>
<p>Substitution of Paid Leave</p> <p>29 U.S.C. 2612(d)(2) 29 C.F.R. 825.208</p> <p>N.J.A.C. 13:14-1.7</p>	<p>Employee may elect or employer may require accrued paid leave to be substituted in some cases. Employer not required to provide paid leave where would not normally so provide. <u>Lumberton</u> App. Div. unreported ruling—whether employer may require employee to substitute accrued paid leave for FMLA leave is negotiable.</p>	<p>Existing past practice or policy governs the use of accrued paid leave. If there is no policy regarding the use of accrued paid leave, the employee may opt to use it but the employer may not require its use.</p>	<p>New Jersey</p>
<p>Other Employment During Leave</p>	<p>Employer may apply uniform policy governing outside or supplemental employment. If there is no policy, benefits may not be denied on the basis of employment during leave, unless the</p>	<p>Employee may not perform other full-time employment if employee was not so employed immediately prior to leave; regulations permit part-time employment at same number of hours regularly</p>	<p>FMLA where employer has no policy. Where employer has a policy, depends on terms of policy.</p>

<p>29 C.F.R. 825.312(h.) N.J.S.A. 34:11B-4g N.J.A.C. 13:14-1.8</p>	<p>leave was fraudulently obtained.</p>	<p>worked prior to leave; employer may not prohibit part-time employment</p>	
<p>Effect on Benefits Accrued Prior To Taking Leave</p> <p>29 U.S.C. 2614(a)(2) 29 C.F.R. 825.215 N.J.S.A. 34:11B-7 N.J.A.C. 13:14-1.11</p>	<p>Taking of leave does not result in the loss of any employment benefit accrued prior to commencement of leave. (Benefits include group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, pensions.)</p>	<p>Taking leave does not result in the loss of any employment benefit accrued prior to commencement of leave. (Benefits same as under federal law.)</p>	<p>Comparable</p>
<p>Effects on Benefits That Would Have Accrued During Period Leave Taken</p> <p>29 U.S.C. 2614(3) 29 C.F.R. 825.215(d)(2); (d)(4)</p>	<p>Employee not entitled to accrual of seniority and employment benefits that would have occurred during period of leave. Changes in benefits not dependent on seniority or accrual must be made upon employee's return. With respect to pension, period of leave will not constitute a break in service for vesting and eligibility purposes.</p>	<p>Doesn't address this specifically, but probably doesn't require accrual of benefits during leave since employee is to be returned to position held by the employee "when the leave commenced" in terms of "seniority, status, employment benefits pay and other terms and conditions of employment." Silent re: break of service pension.</p>	<p>Probably comparable</p>

<p>Executive, Administrative and Professional Employees</p> <p>29 <i>C.F.R.</i> 825.206</p>	<p>Salaried, executive, administrative, and professional employees of covered employers who meet the <i>Fair Labor Standards Act</i> (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 <i>C.F.R.</i> Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the “salary basis” requirements for FLSA’s exemption extends only to “eligible” employees’ use of leave required by FMLA.</p>	<p>Unpaid leave would not result in loss of exempt status under State minimum wage and overtime law.</p>	<p>Comparable</p>
<p>Reinstatement Rights</p> <p>29 <i>U.S.C.</i> 2614 29 <i>C.F.R.</i> 825.214</p> <p><i>N.J.S.A.</i> 34:11B-7 <i>N.J.A.C.</i> 13:14-1.11</p>	<p>Must be restored to same position held by employee when leave commenced or equivalent position of like seniority, status, employment benefits, pay and other terms and conditions.</p>	<p>Same</p>	<p>Comparable</p>
<p>RIF</p> <p>29 <i>U.S.C.</i> 2614 29 <i>C.F.R.</i> 825.216</p> <p><i>N.J.S.A.</i> 34:11B-7 <i>N.J.A.C.</i> 13:14-1.11</p>	<p>If job would have been eliminated due to RIF while employee was on leave, the right to reinstatement is the same as if employee had not been on leave. Employee retains all rights under applicable recall system while on leave.</p>	<p>Same</p>	<p>Comparable</p>

<p>Continuity of Instruction; Special Provisions for School Districts</p> <p>29 <i>U.S.C.</i> 2618(d) 29 <i>C.F.R.</i> 825.602-604</p> <p><i>N.J.A.C.</i> 13:14-1.5(f)</p>	<p>A district may require that an employee employed principally in an instructional capacity wait until the next semester to return after a leave, with health benefits maintained during the period of involuntary leave, if:</p> <p>(1) leave begins more than 5 weeks before the end of the term; leave lasts at least 3 weeks; teacher would return during the 3-week period before end of term;</p> <p>(2) leave except for own illness begins during the 5-week period before the end of the term; leave lasts more than 2 weeks; teacher would return during the 2-week period before end of term;</p> <p>(3) leave except for own illness begins during the 3-week period before the end of the term, and leave will last more than 5-working days.</p>	<p>The law contains no provision for permitting a school district to extend the return of instructional employees to the end of the academic year. Rather, the law states that an employer may <i>not</i> require an employee to take leave beyond the period of time requested.</p>	<p>New Jersey, if silence is interpreted to preclude the delay of an employee's return.</p>
<p>Early Return</p> <p><i>N.J.A.C.</i> 13:14-1.5(e)</p>	<p>Early return not addressed.</p>	<p>Return prior to expiration of leave is governed by employer's policy regarding other leaves of absence. If there is no policy, the employer shall permit return prior to pre-arranged expiration of leave if it will not cause undue hardship to employer, such as continued payment to the temporary replacement.</p>	

<p>Reduced Leave</p> <p>29 <i>U.S.C.</i> 2612(b) 29 <i>C.F.R.</i> 825.203-205</p> <p><i>N.J.S.A.</i> 34:11B-3 k: 34:11B-5 <i>N.J.A.C.</i> 13:14-1.2</p>	<p>Reduced leave means a leave schedule that reduces the number of hours per workweek, or hours per workday, of an employee.</p> <p>May not be taken upon birth or adoption without employer’s consent. Permitted for serious health condition when medically necessary. Employer may limit to units as small as employer’s payroll system uses to account for absences or leave. No limits on the amount of leave that may be taken on reduced basis.</p> <p>(See notice for serious health condition below.)</p>	<p>Non-consecutive leave of up to the equivalent of 12 work weeks, taken in increments of not less than one work day, unless otherwise agreed to by the employee and employer, but less than one work week at a time.</p> <p>May not be taken upon birth or adoption without employer’s consent.</p> <p>May only be scheduled for 24 consecutive weeks, and only once during any 24-month period.</p> <p>Reasonable, practical notice must be given. Employee shall make reasonable effort not to unduly disrupt employer’s operations.</p>	<p>Federal contains fewer restrictions on amount of reduced leave permitted.</p>
<p>Intermittent Leave</p> <p>29 <i>U.S.C.</i> 2612(b) 29 <i>C.F.R.</i> 825.203-205</p> <p><i>N.J.S.A.</i> 34:11B-4 <i>N.J.A.C.</i> 13:14-1.2; 1.5(d)</p>	<p>May not be taken upon birth or adoption without employer’s consent. Permitted for serious health condition or “serious injury or illness (service member),” when medically necessary. Leave taken in separate blocks of time due to a single illness, rather than for one continuous period of time, and may include periods from one hour to several weeks. Employer may limit to units as small as employer’s payroll system uses to account for absences or leave. No limits on the amount of leave that may be taken on intermittent basis.</p> <p>(See notice for serious health condition below.)</p>	<p>May not be taken upon birth or adoption without employer’s consent. Non-consecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12-month period. Leave may be taken when medically necessary if taken within a 12-month period for a single serious health condition, and reasonable, practical notice is given. Employee shall make reasonable effort not to unduly disrupt employer’s operations.</p>	<p>Federal contains fewer restrictions on amount of reduced leave permitted.</p>

<p>Transfer of Employee During Intermittent or Reduced Leave</p> <p>29 U.S.C. 2612(b)(2); 2618(c)</p> <p>29 C.F.R. 825.204; 601</p> <p>N.J.A.C. 13:14-1.5(d)4.</p>	<p>Provides that during intermittent or reduced leave, an employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, has equivalent pay and benefits, and which better accommodates recurring periods of leave than the regular position.</p> <p>School Districts: if leave for an instructional employee is based on foreseeable medical treatment for “serious health conditions” or “serious injury or illness” (servicemember) and the employee would be on leave for greater than 20% of the total working days in the period during which leave would extend, district may require employee to choose between taking an uninterrupted block of time, or transferring temporarily to an alternative position (as described above).</p>	<p>Same.</p> <p>Also, an employer may not transfer an employee to an alternative position in order to discourage the employee from taking leave or to otherwise work a hardship on the employee.</p> <p>Special rules applicable to instructional employees of schools not addressed.</p>	<p>New Jersey, if silence regarding special rules for instructional employees is interpreted to preclude the transfer.</p>
<p>Medical Certification From a Health Care Provider May Be Required By Employer to Support:</p> <p>29 U.S.C. 2613; 2614(c)(3)</p> <p>29 C.F.R. 825.305-308; 825.310</p> <p>N.J.S.A. 34:11B-4e. N.J.A.C. 13:14-1.10(b)</p>	<p>Request for leave because of serious health condition or serious illness or injury (servicemember).</p> <p>Employee’s fitness to return to work from medical leave, pursuant to uniformly applied practice, if not conflicting with state law or bargaining agreement. Subsequent recertifications may be required on a reasonable basis.</p> <p>Regulations contain a checklist for the health care provider’s use.</p>	<p>Request for leave for serious health condition of family member. Certification may also be required for child care leave due to the birth or placement of a child.</p> <p>No requirement for fitness to return because law does not provide leave for employee’s own serious health condition.</p>	<p>Federal law doesn’t specifically authorize requiring certification for care of child due to birth or placement.</p> <p>Not applicable.</p>

<p>Contents of Medical Certification</p> <p>(See above citations.)</p>	<p>(Serious health condition)</p> <p>(1) date condition began</p> <p>(2) probable duration</p> <p>(3) appropriate medical facts regarding condition</p> <p>(4) statement either that employee is needed to care for particular family member and amount of time needed; or a statement that employee is unable to perform the functions of the position</p> <p>(5) for intermittent or reduced leave, the dates on which planned medical treatment is expected, and the duration of such treatment</p> <p>(6) for intermittent or reduced leave for employee's own health condition, a statement of medical necessity for that schedule, and expected duration of the schedule</p> <p>(7) for intermittent or reduced leave for family member with health condition, or serious injury/illness a statement that the schedule is necessary, or will assist in the recovery of the sick individual, and the expected duration and schedule of the leave.</p>	<p>(Serious health condition)</p> <p>Certification shall be sufficient if it states:</p> <p>(1) date condition began</p> <p>(2) probable duration</p> <p>(3) medical facts within provider's knowledge regarding condition.</p> <p>(For birth or placement)</p> <p>(1) date of birth or placement.</p> <p>Employer may discipline for employee's misrepresentation. Certification must warn of consequences of refusing to sign or false certification.</p>	<p>New Jersey – requirements are not stated with as much specificity.</p>
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<p>Second and Third Opinions</p> <p>(See above citations.)</p>	<p>Where employer has reason to doubt validity of certification, may require second opinion by health care provider designated by employer, but not employed on regular basis, and at employer's expense.</p> <p>If second opinion differs from first, may require third opinion, jointly approved, at employer's expense. Opinion is final and binding.</p>	<p>Same</p> <p>Certification requirements may not be used to intimidate, harass, discourage.</p>	<p>Comparable</p>
<p>Failure to Provide Medical Certification</p> <p>29 C.F.R. 825.311</p>	<p>Employee who fails to provide certification within reasonable period of time after certification is requested (generally within 15 days from the request) may be denied leave or continued leave. An employee who fails to provide certification of fitness to return may be denied reinstatement until the requested certification is provided.</p>	<p>State law does not address consequences for failure to provide medical certification.</p>	<p>Comparable, if silence in New Jersey law is construed to permit denial of leave, similar to denial permitted for failure to provide employee's own certification. (See below)</p>
<p>Certification Related to Active Duty (Servicemember)</p>	<p>Employer may require certification at time and such timely manner as per regulations that may be prescribed by Secretary of Labor</p>		
<p>Employee's Certification; Consequences for Failure to Provide.</p> <p>N.J.A.C. 13:14-1.10(a)</p>	<p>The law contains no provision for requiring an employee's own certification.</p>	<p>Permits employer to require employee's signed certification attesting only to reasons for leave. Leave may be denied for failure to sign certification, if certification is required by employer. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee certifies falsely.</p>	<p>Federal, if construed to preclude requiring employee's own certification and denial of leave for failure to provide same.</p>

<p>Notice to Employer: Serious Health Condition</p> <p>29 <i>U.S.C.</i> 2612(e) 29 <i>C.F.R.</i> 825.302, 303</p> <p><i>N.J.A.C.</i> 13:14-1.5; 13:14-1.4(a), (b)</p>	<p>If need for leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule treatment so as not to disrupt unduly the operation of the employer, subject to the health care provider’s approval; and shall provide not less than 30-days notice, except that if treatment is to begin in less than 30 days, notice shall be as is practicable.</p> <p>Verbal notice is sufficient – Employer may require written notice if customary, but may not disallow leave if timely verbal or other notice is given.</p> <p>For intermittent or reduced leave: Upon request, employee shall advise why schedule is necessary and of the schedule for treatment. Parties shall attempt to work out a schedule.</p> <p>For leave due to call or impending call to active duty involving a qualifying exigency, in support of contingency operation—notice “as is reasonable and practicable.”</p>	<p>Notice must be provided no later than 30 days prior to start of leave, except under exigent circumstances.</p> <p>Employer may establish a policy requiring written notice, except where impracticable.</p> <p>For intermittent or reduced leave schedule: Employer may require notice in manner which is reasonable and practicable. Reasonable effort not to disrupt unduly the operations.</p>	<p>New Jersey for number of days’ notice.</p>
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<p>Notice to Employer: Care for Child After Birth or Adoption</p> <p>29 <i>U.S.C.</i> 2612(e) 29 <i>C.F.R.</i> 825.302, 303</p> <p><i>N.J.A.C.</i> 13:14-1.5, 13:14-1.4(a), (b)</p>	<p>If need is foreseeable, employee shall provide not less than 30-days' notice before start of leave, but if the date of birth or placement requires leave to begin in less than 30 days, notice shall be given as is practicable.</p> <p>Verbal notice is sufficient – Employer may require written notice if customary, but may not disallow leave if timely verbal or other notice is given.</p>	<p>Notice must be no less than 30 days before start of leave, except where emergent circumstances warrant shorter notice.</p> <p>Employer may establish policy requiring written notice, except where impracticable.</p>	<p>Comparable</p>
<p>Notice to Employer: Leave that is Unforeseeable</p> <p>29 <i>C.F.R.</i> 825.303 <i>N.J.A.C.</i> 13:14-1.5</p>	<p>As soon as practicable.</p>	<p>As soon as practicable.</p>	<p>Comparable</p>
<p>Employee's failure to Provide Required Notice</p> <p>29 <i>C.F.R.</i> 825.304</p>	<p>If employee fails to give 30-days notice for foreseeable leave, without a reasonable excuse, employer may deny the taking of leave until at least 30 days after the date the employee provides notice of the need for leave.</p>	<p>Not addressed.</p>	

<p>Posting Requirements</p> <p>29 U.S.C. 2619 29 C.F.R. 825.300</p> <p>N.J.S.A. 34:11B-6 N.J.A.C. 13:14-1.14</p>	<p>Employers must conspicuously post a notice explaining the Act’s provisions and providing information concerning the procedures for filing complaints of violations of the Act. (Appendix C of the federal regulations contains a form that may be used for this purpose.) Also, FMLA entitlements and employee obligations must be included in any handbook, policy or other written guidance to employees concerning employee benefits or leave rights.</p>	<p>Employer must display conspicuous notice of employees’ rights and obligations and use other appropriate means to keep employees informed.</p> <p>Must display official FLA poster of DCR. Must be in handbook, policy manual or other guidance must be provided to each employee – may duplicate NJFLA fact sheet available from DCR website</p>	<p>Comparable</p>
<p>Other Notice to Employees</p> <p>29 C.F.R. 301</p> <p>N.J.A.C. 13:14-1.14</p>	<p>§825.301 When an employee provides notice of the need for leave, the employer shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining the consequences of a failure to meet these obligations. (Regulations contain specific items that should be included.)</p>	<p>Employer must provide written guidance to employees regarding employees’ rights under the FLA in policies, manuals or handbooks that describe employee benefits. If no such policies, manuals or handbooks exist, employer must still provide written guidance to each of its employees concerning the employee’s rights and obligations. Fact sheet is available at www.njcivilrights.org.</p>	<p>Comparable.</p>
<p>Retaliation</p> <p>29 U.S.C. 2615 N.J.S.A. 34:11B-9 N.J.A.C. 13:14-1.15</p>	<p>No retaliation</p>	<p>No retaliation</p>	<p>Comparable</p>

<p>Record Keeping</p> <p>29 U.S.C. 2616 29 C.F.R. 825.500</p>	<p>Employers must make and keep records, and preserve them for at least 3 years. Records must disclose payroll and identifying employee data, dates on and increments in which FMLA leave was taken, all copies of employee and employer notices, documents describing employee leave, premium payments of employee benefits, any disputes over leave.</p>	<p>No specific requirements.</p>	
<p>Penalties for Employer Violations</p> <p>29 U.S.C. 2617, 2619 <i>N.J.S.A.</i> 34:11B-11</p>	<ul style="list-style-type: none"> • Damages for lost wages and benefits • Where no wages or salary benefits lost, other compensatory damages • Interest • Liquidated damages equal to above, except for “good faith” violations • Equitable relief • Counsel fees and costs <p>Posting Requirements</p> <ul style="list-style-type: none"> • Fines up to \$100 and employer may not take adverse action (e.g., denying leave) against employee for failure to provide advance notice of the need for leave. 	<ul style="list-style-type: none"> • Remedies under NJ LAD • Punitive damages (capped at \$10,000 or \$500,000 for class action) • Reasonable attorney fees to prevailing party; only awarded to employer upon showing of bad faith <p>In addition to other relief or affirmative action provided by law, not more than \$2,000 for the first offense, and no more than \$5,000 for subsequent offenses, in summary action by A.G. collected pursuant to “penalty enforcement law.”</p>	
<p>Statute of Limitations</p> <p>29 U.S.C. 2617(c)</p>	<p>2 years 3 years for willful violations</p>	<p>Presumably, same as under NJ LAD.</p> <p><i>Montells v. Haynes</i>, 133 N.J. 282 (1993) two-year statute of limitations</p>	
<p>Filing Complaint</p> <p>29 C.F.R. 825.400 <i>N.J.A.C.</i> 13:14-1.16</p>	<p>Department of Labor Private lawsuit in federal or state court</p>	<p>Division Civil Rights Private lawsuit in state court</p>	