

NEW JERSEY

FAMILY AND MEDICAL LEAVE

The New Jersey **Family Leave Act** (NJ Rev. Stat. Sec. 34-11B-1 *et seq.*) requires employers to provide employees with up to 12 weeks of leave in any 24-month period:

- For the birth or adoption of a child (must begin leave within 1 year after date of birth or placement); *or*
- To care for a child, parent (including parent-in-law), or spouse with a serious health condition.

In *Gerety v. Atlantic City Hilton Casino Resort*, 877 A.2d 1233 (N.J. 2005), the state supreme court held that pregnant employees are not entitled to preferential leave treatment under the **New Jersey Law Against Discrimination (LAD)**. The court determined that an employer does not violate the LAD as long as it treats pregnant employees no differently than nonpregnant employees who require medical leave. The court further found that an employer may terminate an employee who exceeds the time allowed under an employer-provided medical leave policy, even if he or she is medically unable to return to work, as long as the employer consistently applies the policy with no exceptions.

COVERAGE

The Act covers private and public employers with 50 or more employees. To be eligible, an employee must be employed by the same employer for 12 months or more and have worked 1,000 or more hours (excluding overtime) during the preceding 12 months.

INTERMITTENT LEAVE OR REDUCED SCHEDULE

Serious health condition of family member. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

- The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;
- The employee provides the employer with prior notice of the leave in a manner that is reasonable and practicable; *and*
- The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

Birth or adoption of a child. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employer and the employee. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

Reduced leave. An employee may use leave on a reduced basis by working fewer days per week. An employee is not entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks. Leave taken on a reduced leave schedule may not result in a reduction of the total amount of leave to which an employee is entitled.

NOTICE

Employee. If the leave is for the birth or adoption of a child, the employee must give 30 days' notice or notice "as soon as practicable." If the leave is for a serious medical condition, the employee must give 15 days' notice or notice "as soon as practicable." The employee must produce a doctor's certification if the employer requests it.

Employer. Employers are required to post in a conspicuous place a notice of employees' rights and responsibilities under the law.

CERTIFICATION

An employer may require an employee requesting family or medical leave to provide certification issued by a duly licensed healthcare provider or any other healthcare provider.

Serious health condition of family member. Where the certification is for the serious health condition of a family member of the employee, the certification is sufficient if it states the date on which the serious health condition began, the probable duration of the condition, and the medical facts within the provider's knowledge regarding the condition.

Birth or placement of a child. Where the certification is for the birth or placement of the child, the certification need only state the date of birth or date of placement, whichever is appropriate.

When validity of certification is in doubt. When the employer has reason to doubt the validity of the certification of a serious health condition, the employer may require at its own expense that an employee obtain an opinion concerning the condition from a second healthcare provider designated or approved, but not employed on a regular basis, by the employer.

Leave of Absence

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When certifications conflict. If the second opinion differs from the certification of the first healthcare provider, the employer may require at its own expense that the employee obtain the opinion of a third healthcare provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third healthcare provider is final and binding on the employer and the employee.

PAY

Family leave required by this law may be paid, unpaid, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than 12 workweeks, the additional weeks of leave added to attain the 12-workweek total required by this act may be unpaid.

REINSTATEMENT

When an employee returns from leave, he or she is entitled to be restored to the same or a similar job of like seniority, status, employment benefits, pay, and other terms and conditions of employment. If during a leave, an employer experiences a reduction in force or layoff and the employee would have lost his or her position had the employee not been on leave, the employee is not entitled to such reinstatement. Employees do retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

HIGHLY COMPENSATED EMPLOYEES

An employer may deny family leave to salaried employees who are among the highest paid 5 percent of the employer's workforce, or one of the employer's 7 highest paid employees, whichever is greater. Such a denial must also be necessary to prevent substantial and grievous economic injury to the employer's operations. The employer must notify the employee of its intent to deny the leave at the time the employer determines that the denial is necessary.

GROUP HEALTH INSURANCE

The Act requires employers to continue to pay the employee's health coverage during leave, but a New Jersey state court has ruled that the **Employee Retirement Income Security Act (ERISA)** preempts this requirement for employers who maintain employee welfare benefit plans that are regulated under ERISA. However, continued payment is required under the federal **Family and Medical Leave Act (FMLA)**.

EMPLOYEE'S OWN ILLNESS

The state Family Leave Act does not cover an employee's own serious health condition. However, employees may be eligible to take time off for their own illnesses under FMLA. In that situation, the two laws would interact as explained in the following example.

***Example:** An employee develops a serious health condition and is unable to work. If the employee meets the eligibility criteria under the federal FMLA, the employee may take up to 12 weeks of medical leave. This leave time does not count against the employee's entitlement under the state leave law because that law does not provide for leave for an employee's own serious health condition. Later on, during the same 12-month period, the same employee needs to take time off for the birth or adoption of a child or to care for a child, spouse, or parent with a serious health condition. The employee is now entitled to an additional 12 weeks under the state leave law. Total time off: 24 weeks.*

New Jersey also has a temporary disability insurance law. That law provides wage replacement income to employees who are unable to work because of nonoccupational injuries and illnesses, including pregnancy (workers' compensation would cover occupational injuries). Leave taken under the state family leave law is in addition to leave taken under the disability law and does not restrict any rights an employee may have under the disability law. FMLA leave taken for an employee's own illness may run concurrently with disability payments. See the state **DISABILITY INSURANCE** section for additional information.

SAME-SEX COUPLES

The New Jersey Supreme Court has ruled that same-sex couples have the right to the same legal privileges given to married couples (*Lewis v. Harris*, NJ S.Ct. No. A-68-05). In its decision, the Court directed the state Legislature to

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either amend the marriage statutes to include same-sex couples or enact a parallel law under which same-sex couples can enjoy the benefits and burdens of civil marriage. Regardless of the steps that the state Legislature takes, employers will need to consider that company leave policies pertaining to spouses will now include same-sex couples. See the state *DOMESTIC PARTNERSHIPS* section for more information.

INTERACTION BETWEEN STATE AND FEDERAL FAMILY LEAVE LAWS

New Jersey employers with 50 or more employees are subject to the requirements of the federal FMLA, which covers many of the same events as the New Jersey Family Leave Act and allows up to 12 weeks of leave per year. Employers that are subject to both laws must comply with whichever offers more protection to the employee. See the national *LEAVE OF ABSENCE* section for additional information.

MILITARY LEAVE

Under certain circumstances, employees are entitled to take time off to serve in the U.S. armed forces and to be reinstated when service has been completed. Refer to the national and state *MILITARY SERVICE* sections for additional information.

TIME OFF FOR JURY DUTY AND VOTING

Under certain circumstances, employees also are entitled to take time off to vote in an election, to serve on jury duty, or to make other types of court appearances. See the state *JURY DUTY/COURT APPEARANCE* and *POLITICAL ACTIVITY* sections for further details.

LEAVE OF ABSENCE POLICIES

It is a good idea to have a written policy in place explaining employee rights and responsibilities regarding leaves of absence. Some employers implement a comprehensive policy addressing many different types of leave; others develop separate policies for each type of leave available. Companies should consider developing and implementing a stated policy regarding the following:

- Family and medical leave
- Paid sick leave
- Disability leave
- Workers' compensation leave
- Paid holidays
- Union-related leave
- Vacation time
- Military service leave
- Voting and jury duty leave
- Bereavement leave

Some of these types of leave are subject to federal and state requirements that must be integrated into the policy. Others are purely voluntary categories of leave that may or may not be offered at the employer's discretion. For additional information, see the national *ATTENDANCE* and *PERSONAL LEAVE* sections, and the national and state *DEATH IN FAMILY, DISABILITIES, HOLIDAYS, JURY DUTY/COURT APPEARANCE, LEAVE OF ABSENCE, MATERNITY AND PREGNANCY, MILITARY SERVICE, POLITICAL ACTIVITY, SICK LEAVE, VACATIONS, and WORKERS' COMPENSATION* sections.

