

**PERSONNEL
EXTENDED LEAVE WITHOUT PAY**

Leave Under the Family Leave Act (NJFLA) and
the Family and Medical Leave Act (FMLA)

New Jersey School Boards Association complies with the Family and Medical Leave Act of 1993 ("FMLA") as well as the New Jersey Family Leave Act ("NJFLA"). Eligible employees of NJSBA may be entitled to take unpaid leave for specific family and medical reasons under both FMLA and/or NJFLA.

An employee may only elect to use his/her earned paid sick time and/or earned paid vacation time during an approved family medical leave. An employee must notify his/her Department Director or immediate supervisor if he/she elects to use earned paid sick time and/or earned paid vacation time. This shall be a paid family medical leave. If the employee's earned paid sick time and/or earned paid vacation time is exhausted during the family medical leave, the leave shall then become an unpaid family medical leave. The Human Resources Department will notify Payroll in writing of the leave. Eligible employees are entitled to leave as follows:

Employee Eligibility

Pursuant to the FMLA, employees who have worked 1,250 hours or more during the last twelve (12) months are eligible to receive an unpaid leave of absence for a period not to exceed twelve (12) work weeks in any twelve (12) month period.

Leave Entitlement

If an employee is eligible for FMLA leave, the employee is entitled to take up to 12 work weeks of unpaid leave per a rolling 12-month period measured backward from the date an employee uses any FMLA leave, for one or more of the following reasons:

1. Birth of a child or to care for a newborn;
2. Placement of an adopted child or foster child;
3. To care for a spouse, child or parent with a serious health condition;
4. Employee's own serious health condition;
5. Qualifying exigency arising out of the fact that a spouse, son, daughter or parent of employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

If a husband and wife are employed by NJSBA, they may be limited to a combined 12 work weeks of leave for birth and care of a child, placement for adoption or foster care, or to care for a parent with a serious health condition.

Service Member Family Leave

If an eligible employee is the spouse, son, daughter, parent or next of kin of a member of the Armed Forces, including the National Guard or Reserves, the employee may be limited to a combined total of 26 work weeks of leave per a single 12-month period to care for the service member who is recovering from a serious illness or injury sustained in the line of duty on active duty. If the eligible employee takes this type of leave, he or she is entitled to a combined total of 26 work weeks of all types of FMLA leave.

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A husband and wife may be limited to a combined 26 work weeks of leave in a single 12-month period for service member family leave.

There may be circumstances where an employee's leave may fall under the jurisdiction of NJ state law (NJFLA) rather than the federal law (FMLA). Leave under state law will run concurrently with federal law (FMLA).

Intermittent Leave or Leave on Reduced Schedule

Employees may request leave on an intermittent schedule (blocks of time such as hours or weeks) or leave on a reduced schedule (full-time to part-time) under certain circumstances.

Notice and Certification

Employees seeking leave for the birth, adoption or foster placement of a child or for the serious health condition of the employee or a family member (i.e., child, parent, spouse) must provide written notice to his/her Department Director and the Human Resources Director as follows:

- A. If the leave is due to the serious health condition of a family member, no later than fifteen (15) days prior to the start of the leave. However, where fifteen (15) days' notice cannot be given due to emergency circumstances, notice shall be as is practicable.
- B. If the leave is due to the serious health condition of the employee, no later than 30 days prior to the start of the leave. However, where thirty (30) days' notice cannot be given, notice shall be as is practicable.
- C. If the leave is for caring for a child upon the birth or placement for adoption or foster care of the child, no later than thirty (30) days before the start of the leave. However, where thirty (30) days' notice cannot be given, notice shall be as is practicable.
- D. Where the need for the leave is unforeseeable, two (2) days' oral notice will be sufficient notice. However, the employee must subsequently provide written notice as soon as practicable after the commencement of the leave.

The above notice requirements shall be satisfied by the employee completing and submitting to the Human Resources Department the Family Medical Leave Employee Request Form, within the required time frame. Copies of the Employee Request Form are available through Human Resources. Failure to provide the notice within the required timeframe may delay the leave until the required number of days' notice has elapsed.

If possible, notice must be given in advance to the Department Director, as is the case for all absences. Notice must be given by the employee to the Human Resources Director in order to schedule a meeting with the Human Resources Director for the purpose of discussing employee benefit issues related to the absence.

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Leave Under the Family Leave Act (NJFLA) and
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NJSBA shall require any employee requesting leave for the serious health condition of the employee or a family member, to provide a medical certification by a licensed health care provider verifying (1) the need for the leave (2) the probable length of the leave (3) the timing of the leave (4) any request for an intermittent or reduced leave schedule and the particular statement of medical necessity for that schedule.

Said certification must be provided within fifteen (15) days of the of NJSBA's request, or, in the case of unforeseeable leave, within two (2) business days after the leave begins. NJSBA may require a second and third opinion at its expense, as provided by law. Copies of the Certification of Health Care Provider are available in the Human Resources Department. Human Resources may determine that a medical certification submitted pursuant to GO/4153.1R in connection with a period of extended paid sick leave constitutes adequate medical certification.

NJSBA may request periodic recertification of the health care provider where an employee is on leave because of a serious health condition, according to law. (Ref. 29 C.F.R. 825.308).

Health Benefits

During FMLA leave, NJSBA will maintain the employee's group health insurance coverage for the employee under the same terms and conditions as if the employee was actively working. During the leave, the employee will be required to continue to make all premium payments that he/she otherwise would have had to make if actively working. Employees will not earn pension service credit, or receive or make pension contributions, nor will they earn any vacation or sick accruals while on unpaid family or medical leave.

Return to Work

Human Resources may require the employee to present a Family Medical Leave Physician's Return to Work Authorization Form completed and signed by the physician prior to being restored to employment. If such certification is required but not provided, the employee's return to work may be delayed until the certification is provided.

If an employee fails to return to work following a FMLA leave, for a reason other than (1) the continuation, recurrence or onset of a serious health condition which would entitle the employee to a FMLA leave; or (2) other circumstances beyond the employee's control, the employee shall be required to reimburse the NJSBA for the health insurance premiums paid on his/her behalf during his/her FMLA leave.

Failure to return to work once all paid leave and unpaid leave have been exhausted may result in termination of employment.

Upon return to work from FMLA leave, NJSBA will return an employee to his/her position prior to the leave, or to an equivalent position with the same pay, benefits and other terms and conditions of employment. However, if NJSBA experiences a reduction in force or layoff and the employee would have lost his/her position had he/she not been on leave, the employee is not entitled to reinstatement.

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Employee Eligibility

Pursuant to the NJFLA, most employees who have worked at least 1,000 hours during the last twelve (12) months are eligible to receive an unpaid leave of absence for a period not to exceed twelve (12) weeks in any twenty-four (24) month period.

Leave Entitlement

If an employee is eligible for NJFLA leave, the employee is entitled to take up to 12 work weeks of unpaid leave per a rolling 24-month period measured backward from the date an employee uses any FMLA leave, for one or more of the following reasons:

1. Birth of a child or to care for a newborn;
2. Placement of an adopted child or foster child;
3. To care for a spouse, child or parent or parent-in-law with a serious health condition;

There may be circumstances where an employee's leave may fall under the jurisdiction of NJ state law (NJFLA) rather than the federal law (FMLA). Leave under state law will run concurrently with federal law (FMLA).

Employees may request leave on an intermittent schedule (blocks) of time such as hours or weeks, or leave on a reduced schedule (full-time to part-time) under certain circumstances.

Health Benefits

During NJFLA leave, NJSBA must maintain group health insurance coverage for the employee on the same terms as if the employee continued to work. During the leave, the employee will be required to continue to make all premium payments that he/she otherwise would have had to make if actively working. Employees will not earn pension service credit, or receive or make pension contributions, nor will they earn any vacation or sick accruals while on unpaid family or medical leave.

Return to Work

Human Resources may require the employee to present a Family Medical Leave Physician's Return to Work Authorization Form completed and signed by the physician prior to being restored to employment. If such certification is required but not provided, the employee's return to work may be delayed until the certification is provided.

If an employee fails to return to work following a NJFLA leave, for a reason other than (1) the continuation, recurrence or onset of a serious health condition which would entitle the employee to a NJFLA leave; or (2) other circumstances beyond the employee's control, the employee shall be required to reimburse the NJSBA for the health insurance premiums paid on his/her behalf during his/her NJFLA leave.

Failure to return to work once all paid leave and unpaid leave have been exhausted may result in termination of

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Upon return to work from NJFLA leave, NJSBA will return an employee to his/her position prior to the leave, or to an equivalent position with the same pay, benefits and other terms and conditions of employment. However, if NJSBA experiences a reduction in force or layoff and the employee would have lost his/her position had he/she not been on leave, the employee is not entitled to reinstatement.

Employer's Response to Employee

Upon receipt of the employee's written notice of the need for a leave and the medical certification completed and forwarded by the physician, the employer shall determine whether the employee is eligible for leave under NJFLA or FMLA, and whether the leave or any part thereof will count toward the employee's twelve (12) work weeks of entitlement under the NJFLA, the FMLA, or both. The employer may request and the employee shall promptly provide any additional information that the employer requires to make such a determination.

Once NJSBA has determined whether the employee's leave will count toward the employee's twelve (12) work weeks of entitlement under the NJFLA or the FMLA, or both, NJSBA shall provide the employee with a completed copy of the attachment Family Medical Leave Employer Response Form, indicating that information, and containing a written explanation of the specific expectations and obligations of the employee and explaining the consequences of failing to meet these obligations.

An otherwise eligible employee may be denied leave under the NJFLA if the employee is among the five (5) percent highest paid or is one of the seven (7) highest paid employees of NJSBA, whichever is greater, and the employer can demonstrate that the leave will cause substantial and grievous economic injury to its operations. An eligible employee may be denied restoration to employment following FMLA leave if the employee is of the highest ten (10) percent paid, and if the employer determines that such restoration will cause substantial and grievous economic injury to the employer.

Please note that FMLA and NJFLA are separate and distinct from paid New Jersey Temporary Disability Insurance and Family Leave Insurance under the New Jersey Department of Labor law.

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New Jersey Paid Family Leave Insurance

New Jersey law provides up to 6 weeks of paid family leave insurance benefits. Beginning July 1, 2020, the law will allow up to twelve weeks of continuous family leave or 56 days of intermittent leave. The New Jersey paid family leave program provides partial wage replacements to employees for a limited amount of time. Employees will receive two-thirds of their average weekly earnings, up to a maximum set by state law. Employees who are covered by family leave insurance can apply for benefits to:

- bond with a child within 12 months of the child’s birth or placement by adoption or foster care. The applicant, or the applicant’s spouse or domestic or civil union partner, must be the child’s biological, adoptive or foster parent, unless a surrogate carried the child.
- care for a family member with a serious health condition. Supporting documentation from a health care provider is mandatory.
- care for a victim of domestic violence or a sexually violent offence or for a victim’s family member.

“Family member” means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, civil union partner, and any other person related by blood to the employee or with whom the employee has a close association that is the equivalent of a family relationship.

“Child” means a biological, adopted, or foster child, stepchild or legal ward of a parent. A child gained by way of a valid written contract between the parent and a surrogate (gestational carrier) is included in this definition.

Your payroll contributions finance this program. Family leave insurance coverage under the state plan requires contributions to be deducted from your wages. The deductions are noted on your pay stub.

For more details about this type of leave, including eligibility requirements, etc., please contact the Human Resources Department.

When all family leave entitlements and accrued time off benefits described herein have been exhausted, employees may request an extended leave without pay.

New Jersey SAFE Act

New Jersey School Boards Association complies with the New Jersey Security and Financial Empowerment Act (“NJSAFE Act”), N.J.S.A. 2C:25-19, which provides that certain employees are eligible to receive an unpaid leave of absence, for a period not to exceed 20 days in a 12-month period, to address circumstances resulting from domestic violence or a sexually violent offense. To be eligible, the victim must have worked at least 1,000 hours during the immediately preceding 12-month period.

Leave under the NJ SAFE Act may be taken by an employee who is a victim of domestic violence, as that term is defined in N.J.S.A. 2C:25-19, or a victim of a sexually violent offense, as that term is defined in N.J.S.A. 30:4-27.6. Leave may also be taken by an employee whose child, parent, spouse, domestic partner, or civil union partner is a victim of domestic violence or a sexually violent offense.

Leave under the NJ SAFE Act may be taken for the purpose of engaging in any of the following activities as they relate to an incident of domestic violence or a sexually violent offense.

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- (1) Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's child, parent, spouse, domestic partner or civil union partner.
- (2) Obtaining services from a victim services organization for the employee or the employee's child, parent, spouse, domestic partner or civil union partner.
- (3) Obtaining psychological or other counseling for the employee or the employee's child, parent, spouse, domestic partner or civil union partner.
- (4) Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety from future domestic violence or sexual violence or to ensure the economic security of the employee or the employee's child, parent, spouse, domestic partner or civil union partner.
- (5) Seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's child, parent, spouse, domestic partner or civil union partner, including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic violence or sexual violence; or
- (6) Attending, participating in or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the employee or the employee's child, parent, spouse, domestic partner or civil union partner, was a victim.

Leave under the NJ SAFE Act must be used in the 12-month period immediately following an instance of domestic violence or a sexually violent offense. The unpaid leave may be taken intermittently in intervals of no less than one day. The unpaid leave shall run concurrently with any paid vacation leave, personal leave, or medical or sick leave that the employee elects to use or which the employer requires the employee to use during any part of the 20-day period of unpaid leave. If the employee requests leave for a reason covered by both the NJ SAFE Act and the Family Leave Act, N.J.S.A. 34:11b-1 et seq., or the federal Family and Medical Leave Act, 20 U.S.C. 2601 et seq., the leave shall count simultaneously against the employee's entitlement under each respective law.

Employees eligible to take leave under the NJ SAFE Act must, if the necessity for the leave is foreseeable, provide the employer with written notice of the need for the leave. The employee must provide the employer with written notice as far in advance as reasonable and practicable under the circumstances. The employer has the right to require the employee to provide the employer with documentation of the domestic violence or sexually violent offense that is the basis for the leave. The employer must retain any documentation provided to it in this manner in the strictest confidentiality, unless the disclosure is voluntarily authorized in writing by the employee or is authorized by a federal or State law, rule or regulation.

The NJ SAFE Act also prohibits an employer from discharging, harassing or otherwise discriminating or retaliating or threatening to discharge, harass or otherwise discriminate against an employee with respect to the compensation, terms, conditions or privileges of employment on the basis that the employee took or requested any leave that the employee was entitled to under the NJ SAFE Act, or on the basis that the employee refused to authorize the release of information deemed confidential under the NJ SAFE Act.

N E W J E R S E Y S C H O O L B O A R D S A S S O C I A T I O N

GOVERNANCE & OPERATIONS

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To obtain relief for a violation of the NJ SAFE Act, an aggrieved person must file a private cause of action in the Superior Court within one year of the date of the alleged violation.

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See Also: 4154