



New Jersey School Boards Association

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PAID FAMILY LEAVE

In April of 2008, Gov. Corzine signed, [A-873](#), the Paid Family Leave bill. The law extends the State's temporary disability insurance program (TDI) to provide paid family leave benefits. It allows for up to six weeks of paid leave to care for a new child or a family member with a serious medical condition. The law affects all employers, including schools that are subject to the State's unemployment compensation law. It will be financed by deductions from employee's paychecks, which will start on January 1, 2009. Employees will be eligible to take the leave starting July 1, 2009.

This document has been prepared by NJSBA staff to assist board of education members, business administrators, chief school administrators and others in the implementation of Family Temporary Disability Leave (FTD). This FAQ includes anticipated questions about the Act's requirements and the most recent information available from responsible agencies.

Please be advised that in an attempt to provide the most up-to-date information possible, NJSBA has created this FAQ for informational purposes only. Regulations for Family Temporary Disability Leave, when published, may change the information contained in this document. Please consult with your board attorney for the most recent information.

1. How is FTD funded?

It is funded through mandatory employee contributions to the "Family Temporary Disability Leave Account," which is part of the state-run Temporary Disability Insurance Fund.

2. How much are employees required to contribute?

Starting in January of 2009, employees will be required to contribute 0.09% of their pay (rising to .12% in 2010). The Department of Labor has estimated that it will cost the average employee \$30 per year. There is no direct employer cost. See also Q&A #7.

3. Are school district employees covered by the Act?

Yes, every employer, including school districts, whose employees are covered under the Unemployment Insurance Law, is a covered employer for purposes of FTD. Unlike state FLA and Federal FMLA, employers with less than 50 employees are not exempted.

4. Which employees are eligible?

An employee is eligible to take the leave if in the past 52 weeks the employee has worked at least 20 weeks at minimum wage (20 x \$143/ week) or 2) earned 1000 times the minimum wage (\$7,200). Individuals are eligible if they are employed or have left their jobs within the preceding 2 weeks.

5. How much are employees paid when out on FTD?

The weekly benefit is the same as it is under the State's TDI program (2/3 of weekly compensation up to a maximum of \$524 per week).

6. Who pays the employee?

Unless the employee is using his or her own paid leave (see also Q&A # 17), the employee is paid from the "Family Temporary Disability Leave Account" of the Temporary Disability Insurance Fund. This fund is administered by the New Jersey Department of Labor and Workforce Development.

7. What are the costs to employers?

While there is no direct cost to employers, there are undoubtedly indirect costs. First and foremost, the additional incentive to take leave could have a detrimental effect on the continuity of the delivery of educational services to students. Any additional teacher absences will result in substitute costs. Additional indirect costs include mandated record keeping and compliance costs.

8. Under FTD, how much leave may an eligible employee take?

An employee may take up to 6 weeks in a 12 month period.

9. For what purposes can employees take FTD?

An employee may take leave to "provide care" for "family members" with "serious medical conditions." An employee may also take leave to care for a new child.

10. May the FTD leave be used on an intermittent basis?

Yes, eligible employees may take up to 42 days of intermittent leave. Evidently, the 42 day entitlement is based on a 7 day calendar week. In contrast, under the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA), the intermittent entitlement is based on a 5 day work week rather than the 7 day calendar week. Intermittent leave may be taken to care for a family member with a serious medical condition. It may only be taken for a new child if the employer agrees. Under FTD, intermittent leave may not be taken in units of less than one day.

11. What is a serious medical condition, under the law?

"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." This definition is the same as the definition under the state's unpaid family leave (FLA).

12. Is there any qualification on when an employee may take leave for a new child?

Yes, the leave *must be taken* within the first 12 months after the birth or adoption placement. Note this is different from the requirement in the state's FLA entitlement. Under FLA, the leave *must start* within one year of birth or adoption.

13. Who are family members under FTD?

"Family members" are defined as child, spouse, domestic / civil union partner or parent (biological, foster, adoptive or legal guardian when employee was a child) of the covered individual. This definition is substantially similar to the state unpaid (FLA) definition. Note, however, unlike FLA, FTD does not allow leave to care for parents-in-law.

14. How is child defined under the law?

"Child" means a biological, adopted or foster child, stepchild or legal ward of a covered individuals, child of a domestic/ civil union partner of a covered individual, who is *less than* 19 years old, or who is 19 years old or older and incapable of self care because of mental or physical impairment.

15. When may an employee take the leave?

There is a one week waiting period before an eligible employee will be paid under FTD. This means that if there is a qualifying event, the employee must be out of work for one week, before FTD starts to pay benefits. Note that there is no waiting period if the employee takes FTD immediately after being out on Temporary Disability Insurance (TDI). Once the employee completes the third week of leave (including the 1 week waiting period) then FTD benefits are payable for the one week waiting period and the one week waiting period is counted toward the 6 week entitlement.

16. Does the FTD entitlement run concurrently with the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)?

Yes. If the employee is eligible for FLA or FMLA, the employee must take paid FTD concurrently with those leaves.

17. Can the employer require the employee to take accrued paid leave during the one week waiting period?

Yes, the employer may permit or require the employee to use available sick days (including the 10 days provided under *N.J.S.A. 18A:30-2*), vacation or other paid leave, prior to receiving FTD benefits. Employers, however, may not require employees to use more than 2 weeks of paid leave. If the employer requires the employee to use paid leave, the employer must allow the employee to use paid leave during the one week waiting period.

18. If the employee does use paid leave, is that time deducted from his or her 6 week FTD entitlement?

Yes, employers may count that time towards the 6 week FTD entitlement.

19. Is FTD affected by a district's collective bargaining agreement (CBA)?

The law specifically states that the law will not prevent "any *new* provision of a collective bargaining agreement or employer policy, which provides employees more generous leave or gives employees greater rights to select which kind of leave is used or the order in which the different kinds of leave are used." Thus, if there are more generous provisions in your CBA, the negotiated provisions will control.

20. What notice must an employee give to take the leave?

The employee must provide 30 days' notice for leave for a new child. For leave requested for the care of a seriously ill family member the employee must give prior notice in a reasonable and practical manner, *unless emergency or unforeseen* circumstances preclude it. For intermittent leave, barring emergency or unforeseen circumstances, the employee must provide 15 days notice.

21. Are there any prohibitions on when an employee may schedule leave?

In addition to providing the requisite notice, employees must make a reasonable effort to schedule leave so that it does not unduly disrupt operations.

22. Are employees required to provide a medical certification?

Yes, they are required to provide the same medical certification that is required under FLA. That certification will include the date the condition began, probable duration, and medical facts known by health care provider regarding the condition.

23. Does the employer need to provide any information to Department of Labor?

Yes, by the ninth day of the leave the employer must provide the Division of Temporary Disability Insurance (and the employee) the employee's name, address, social security number, and such wage information as the Division may require to determine the individual's eligibility for benefits, including any sick pay, vacation or other fully paid time off provided by the employer during the period of

FTD leave with information regarding employees' personal and wage information, on forms provided by the Division.

24. If the employee takes the FTD, is he/she entitled to return to his/her job at the expiration of that leave?

While the law provides no independent entitlement to job restoration, be aware that the employee may be protected by a myriad of other provisions, including, but not limited to, FMLA, FLA, tenure, or by provisions of the collective bargaining agreement.

25. What type of notice must employers provide to their employees?

Employers must "conspicuously" post notification where it is accessible to all employees. Forms to be posted will be issued pursuant to regulations. Employers must provide a copy of the notice to each employee in the following situations:

1. within 30 days after the regulation is issued;
2. when the employee is hired;
3. when the employee notifies the employer that the employee is taking time off for circumstances that would qualify for FTD; and,
4. any time the employee requests such information.

Copies of employer posters can be found on the New Jersey Department of Labor's web site.

(<http://lwd.state.nj.us/labor/fli/fliindex.html>)