

TEANECK PUBLIC SCHOOL DISTRICT
Monday, February 24, 2020, 3:30pm—5:00 pm
Teaneck High School
Thursday, February 27, 2020, 3:30pm – 5:00 pm
TJ Middle School Auditorium

FAMILY LEAVE WORKSHOP

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Section 508 of the Rehabilitation Act

**Section 508 was made part of the
Rehabilitation Act of 1973 in 1998.**

**Its purpose is to “...require
Federal agencies to make their
electronic and information
technology (EIT) accessible to
people with disabilities.”**

Sources of Leave Entitlement

FEDERAL LAW: Family and Medical Leave Act (“FMLA”)

STATE LAW: New Jersey Family Leave Act (“NJFLA”), Family Leave Insurance Program (“FLI”), New Jersey Safe Act, Sick Leave under Title 18A

Sources of Leave Entitlement, cont.

CONTRACTUAL LAW: Collective Bargaining Agreement Between TTEA and the Board

ARTICLE X: SICK LEAVE

ARTICLE XI: LEAVES OTHER THAN SICK LEAVE

ARTICLE XII: REPORTING ABSENCES AND REIMBURSEMENT REGULATIONS

FEDERAL FAMILY MEDICAL LEAVE ACT

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a 12-month period for:

the birth of a child and to care for the newborn child within one year of birth;

the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

to care for the employee's spouse, child, or parent who has a serious health condition;

a serious health condition that makes the employee unable to perform the essential functions of his or her job;

any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or

Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

NEW JERSEY FAMILY LEAVE ACT

THE NEW JERSEY FAMILY LEAVE ACT ENTITLES CERTAIN EMPLOYEES TO TAKE UP TO 12 WEEKS OF FAMILY LEAVE IN A 24-MONTH PERIOD WITHOUT LOSING THEIR JOBS. WITH SOME EXCEPTIONS, EMPLOYERS MUST PROVIDE THIS TYPE OF LEAVE IF:

- **THE EMPLOYER HAS AT LEAST 50 EMPLOYEES (OR AT LEAST 30 EMPLOYEES AS OF JUNE 30, 2019), OR IS A GOVERNMENT ENTITY, REGARDLESS OF SIZE.**
- **THE EMPLOYEE HAS WORKED FOR THAT EMPLOYER FOR AT LEAST ONE YEAR, AND HAS WORKED AT LEAST 1,000 HOURS DURING THE LAST 12 MONTHS.**
- **THE LEAVE OF ABSENCE IS BEING TAKEN TO CARE FOR OR BOND WITH A CHILD WITHIN 1 YEAR OF THE CHILD'S BIRTH OR PLACEMENT FOR ADOPTION OR FOSTER CARE, OR TO CARE FOR A FAMILY MEMBER, OR SOMEONE WHO IS THE "EQUIVALENT" OF FAMILY, WHO HAS A SERIOUS HEALTH CONDITION.**

➤ **NOTE THAT THE NEW JERSEY FAMILY LEAVE ACT DOES NOT PROVIDE LEAVE FOR THE EMPLOYEE'S OWN HEALTH CONDITION.**

NEW JERSEY SAFE ACT

The New Jersey Security and Financial Empowerment Act ("NJ SAFE Act"), 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 employee must have worked at least 1,000 hours during the immediately preceding 12-month period. Further, the employee must have worked for an employer in the State that employs 25 or more employees for each working day during each of 20 or more calendar workweeks in the then-current or immediately preceding calendar year.

NEW JERSEY FAMILY LEAVE INSURANCE PROGRAM

New Jersey law provides up to 6 weeks of family leave insurance benefits. Beginning July 1, 2020, the law will allow up to 12 weeks of continuous family leave or 56 days of intermittent leave. 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.

SICK LEAVE UNDER NEW JERSEY TITLE 18A

N.J.S.A. 18A:30-1. Definition of sick leave

Sick leave is hereby defined to mean the absence from his or her post of duty, of any person because of personal disability due to illness or injury, or because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

N.J.S.A. 18A:30-2. Sick leave allowable

All persons holding any office, position, or employment in all local school districts, regional school districts or county vocational schools of the state who are steadily employed by the board of education or who are protected by tenure in their office, position, or employment under the provisions of this or any other law, except persons in the classified service of the civil service under Title 11, Civil Service, of the Revised Statutes, shall be allowed sick leave with full pay for a minimum of 10 school days in any school year.

SICK LEAVE UNDER NEW JERSEY TITLE 18A

⌘ 18A:30-2.1 Sick leave payment for service connected disability; satisfactory service

18A:30-2.1. a. Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S.18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

b. Leave taken by an employee pursuant to subsection a. of this section shall constitute satisfactory service as provided pursuant to N.J.S.18A:29-14 and any other provision, statutory or contractual, relating to employment, adjustment or other increments and shall not constitute inefficiency or other good cause for the withholding of an employment or adjustment increment.

CONTRACTUAL LEAVE

ARTICLE X SICK LEAVE

B. GENERAL

1. Ten (10) month employees may accumulate sick days not to exceed ten (10) days, and twelve (12) month employees may accumulate sick days not to exceed twelve (12) days per year. In the event less than ten (10) or twelve (12) days respectively of sick leave are utilized by an employee covered by this Agreement, there shall be credited to the employee's sick account the difference between the number of days actually used and ten (10) or twelve (12) days respectively.

CONTRACTUAL LEAVE, cont.

ARTICLE XI

LEAVES OTHER THAN SICK LEAVE

- A. MATERNITY LEAVE
- B. CHILD-REARING LEAVE
- C. DEATH IN THE IMMEDIATE FAMILY
- D. DEATH IN THE NON-IMMEDIATE FAMILY
- E. DEATH ON NON-RELATIVE
- F. ILLNESS IN THE IMMEDIATE FAMILY
- G. QUARANTINE
- H. PERSONAL BUSINESS
- I. NON-ATTENDANCE AT LAWFULLY ASSIGNED DUTY
- J. WITNESS IN COURT
- K. SEPTEMBER AND JUNE REGULATIONS
- L. WORKERS' COMPENSATION INJURY
- M. EDUCATION
- N. MISCELLANEOUS

ARTICLE XII

REPORTING ABSENCES AND REIMBURSEMENT REGULATIONS

FMLA v. NJFLA

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1. **FMLA stands for Family and Medical Leave Act while NJFLA stands for New Jersey Family Leave Act.**
 2. **FMLA is a federal act and is mandatory for all eligible employers to honor it while NJFLA is a state act.**
 3. **While FMLA guarantees the employee unpaid leave of 12 weeks over a 12 month period, the NJFLA provides the employee 12 week leave over a 24 month period.**
 4. **The NJFLA does not include leave for the employee's own medical condition while the FMLA does.**
 5. **The FMLA does not offer anything to care for the in-laws while the NJFLA does.**
 6. **While the FMLA only covers employers with more than 50 employees in a 75 mile radius, the NJFLA applies to all employers with minimum 50 employees worldwide. No limitations on governmental entities such as public school districts.**

FMLA FAQs

(Q) What does the Family and Medical leave act provide?

The Family and Medical Leave Act (FMLA) provides eligible employees up to 12 workweeks of unpaid leave a year, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. Employees are also entitled to return to their same or an equivalent job at the end of their FMLA leave.

The FMLA also provides certain military family leave entitlements. Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family members. Additionally, they may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

(Q) Who can take FMLA leave?

In order to be eligible to take leave under the FMLA, an employee must:

- work for a covered employer;**
- have worked 1,250 hours during the 12 months prior to the start of leave;**
- work at a location where the employer has 50 or more employees within 75 miles; and**
- have worked for the employer for 12 months.**

The 12 months of employment are not required to be consecutive in order for the employee to qualify for FMLA leave. In general, only employment within seven years is counted unless the break in service is

- (1) due to an employee's fulfillment of military obligations, or**
- (2) governed by a collective bargaining agreement or other written agreement.**

(Q) Does the time I take off for vacation, sick leave or PTO count toward the 1,250 hours?

The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included. (Special hours of service rules apply to airline flight crew members.)

FMLA FAQs

Q) Does an employee have to take leave all at once or can it be taken periodically or to reduce the employee's schedule?

When it is medically necessary, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the employer's approval and must conclude within 12 months after the birth or placement.

(Q) Can an employer change an employee's job when the employee takes intermittent or reduced schedule leave?

Employees needing intermittent/reduced schedule leave for foreseeable medical treatments must work with their employers to schedule the leave so as not disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

FMLA FAQs

(Q) What is a serious health condition?

The most common serious health conditions that qualify for FMLA leave are:

- conditions requiring an overnight stay in a hospital or other medical care facility;**
- conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);**
- chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and**
- pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).**

(Q) Can I continue to use FMLA for leave due to my chronic serious health condition?

Under the regulations, employees continue to be able to use FMLA leave for any period of incapacity or treatment due to a chronic serious health condition. The regulations continue to define a chronic serious health condition as one that (1) requires “periodic visits” for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity. The regulations clarify this definition by defining “periodic visits” as at least twice a year.

NJFLA FAQs

How Much Leave Am I Entitled To?

Each eligible employee may take up to 12 weeks of continuous leave during a given 24-month period. When caring for a family member with a serious health condition, an employee may take leave that is not continuous, for example, an intermittent leave or a reduced work schedule. Sometimes an employer's approval is necessary for this type of arrangement if the leave is taken in connection with the birth or adoption of a child.

What Notice Has To Be Given To The Employer?

An employer is entitled to require the employee to give 30 days notice for leave related to the birth or adoption of a child. In the case of relative's serious health condition, 15 days notice may be required. If an emergency arises, reasonable notice must still be given, within the confines of the circumstances

NJFLA FAQs

What Am I Entitled To When I Return To Work?

The employee is generally entitled to the same position held before the leave. Exception: If the original position is no longer available when the employee returns, the employer must offer an equivalent position in terms of pay, benefits and status.

Layoff: If a layoff occurred while the employee was on leave, the employee retains the same rights as if no leave had been taken.

SPECIAL RULES FOR TEACHERS--FMLA

§ 825.604 Special rules for school employees, restoration to an equivalent position.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of “established school board policies and practices, private school policies and practices, and collective bargaining agreements.” The “established policies” and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to an equivalent position must provide substantially the same protections as provided in the Act for reinstated employees. See § 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SPECIAL RULES FOR TEACHERS--FMLA

Limitations on Leave Taken near the End of the Semester

There are also special rules for teachers who begin FMLA leave of more than five weeks, less than five weeks, and less than three weeks before the end of a term. These rules allow the school to require the employee to continue taking leave, usually for the purpose of not disrupting class learning by having teachers coming and going so close to break.

Teacher begins leave more than five weeks before the end of the term:The school may require the Instructional Employee to continue taking leave until the end of the term if, (1) the leave will last at least three weeks, and (2) the employee would return during the three- week period before the end of the term.

Teacher begins leave for a purpose other than the employee's own serious health condition during the five- week period before the end of the term: The school may require the Instructional Employee to continue taking leave until the end of the term if, (1) the leave will last more than two weeks, and (2) the employee would return during the two- week period before the end of the term.

Teacher begins leave for a purpose other than the employee's own serious health condition during the three- week period before the end of the term The school may require the Instructional Employee to continue taking leave until the end of the term if the leave will last more than five working days.

NEW JERSEY FAMILY INSURANCE BENEFITS

Right now, new parents or caregivers can receive up to six weeks of benefits equal to two-thirds of their pay, but capped at \$633 a week.

As of July 1, 2020, New Jersey Family Insurance will increase the eligibility period from six to 12 weeks and raise the cap on the reimbursement an applicant can receive to 85 percent of their wages — up to \$859.

MATERNITY LEAVE

PRESUMPTIVE PERIOD OF DISABILITY

4 weeks before expected due date and

4 weeks after the date of delivery

**MOTHER IS PRESUMED TO BE SICK IN ORDER TO UTILIZE SICK DAYS
WITHOUT A MEDICAL CERTIFICATION**

HYNES V. BLOOMFIELD TWP. BOE, APP. DIV. 190 N.J. SUPER. 1983