

Family Leave – Tough Acts To Follow?

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Family leave is a broad phrase that impacts almost every business in New Jersey.

What many businesses fail to recognize is that there are two acts to follow, not one.

- New Jersey has legislation called the New Jersey Family Leave Act (“NJFLA”).
- Federally, there is the Family and Medical Leave Act (FMLA”).

Most businesses that employ 50 or more employees working 20 or more weeks during the year need to follow both acts, and although there are similarities, it is most important to know the differences.

What Employers are Subject to the Acts?

- NJFLA: All employers of 50 or more employees working 20 or more workweeks during the current or prior calendar year
- FMLA: All employers who are engaged in commerce (broadly defined) and employed 50 or more employees working 20 or more workweeks during the current or prior calendar year.

What Employees are Eligible?

- NJFLA: Employees employed by a covered employer for at least 12 months and for at least 1,000 hours during the 12 month period prior to the leave.
- FMLA: Employees employed by a covered employer for at least 12 months and for at least 1,250 hours during the 12 month period prior to the leave.

When can a Covered Employee Take Leave?

- NJFLA: 1) Birth or adoption of a child; 2) Serious health condition of a child, parent or spouse (NOT THE EMPLOYEE)
- FMLA: 1) Birth or adoption of a child; 2) Serious health condition of a spouse, son, daughter or parent; 3) Serious health condition of employee which renders him or her unable to perform his or her job.

What May an Employer Require?

- NJFLA: Employers may require that employees certify as to the reason for leave. Employers may require that employees obtain a certification from a licensed health care provider.
- FMLA: Employers may require that employees certify as to the reason for leave. Employers may require that employees obtain a certification from a licensed health care provider.

How Much Leave can be Taken?

- NJFLA: 12 weeks in any 24 month period (may begin at any time within one year of birth or adoption)
- FMLA: 12 weeks in any 12 month period.

Can Leave be Taken Intermittently?

- NJFLA: Intermittent leave must be taken in intervals of at least one week. Unless agreed upon otherwise, intermittent leave under the NJFLA may only be taken for serious medical conditions and only if it is: a) medically necessary; b) taken in a 12 month period for each health condition; c) if reasonable notice is given to the employer; and d) the employee does not disrupt the employer's operations.
- FMLA: Unlike the NJFLA, the FMLA permits leave to be taken as necessary by the employee, including hourly, daily or weekly leave. However, intermittent leave is not permitted for health births or adoptions and only permitted for serious medical conditions where medically necessary.

Is Leave Paid?

- NJFLA: Leave can be paid or unpaid. Under the NJFLA paid leave is not required. However, New Jersey has enacted the Paid Family Leave Act. Eligible employees may be paid for up to six weeks in a 12 month period for up to two-thirds of the employee's salary (\$524 maximum per week). See my article on Paid Family Leave.
- FMLA: Leave can be paid or unpaid. There is not federal corollary to the New Jersey Paid Family Leave Act. However, many covered employees can receive benefits through the New Jersey Paid Family Leave Act. Paid Family Leave is not available for the serious health condition for oneself since the NJFLA does not cover serious health conditions of an employee.

What Job Security do Employees Have?

- NJFLA: When an employee returns from family leave, the employee must be reinstated to his or her former position or a comparable position.
- FMLA: When an employee returns from family leave, the employee must be reinstated to his or her former position or an equivalent position. Reinstatement may be denied to highly paid employees if it is necessary to prevent substantial economic to the employer.

Employers must be aware of these acts to avoid lawsuits by employees which can result in penalties, compensatory damages and punitive damages up to \$10,000 per person. In certain circumstances, there is an overlap between the acts, which can be confusing. If applied improperly, it can result in liability for employers.

It is important for employers to contact an attorney who works with small businesses before the employees goes out on leave or at the time leave is requested.