

FEDERAL FAMILY AND MEDICAL LEAVE ACT FMLA

(FOR MUNICIPALITIES WITH 50 OR MORE EMPLOYEES)

The Family and Medical Leave Act (“FMLA”) entitles eligible employees to take up to 12 weeks of job-protected leave in a 12 month period for specified family and medical reasons.

Eligibility

To be eligible for FMLA benefits, an employee must:

1. have worked for **(Name of the Local Unit)** for a total of 12 months (need not be consecutive); and
2. have worked at least 1,250 hours (including overtime) over the previous 12 months.

An eligible employee may take up to a total of twelve (12) work weeks of FMLA leave during any 12-month period for one or more of the following reasons:

- The birth and care of an employee's newborn child;
- The placement of a child with the employee for adoption or foster care; •
- The care for a spouse, parent, child, domestic partner or civil union partner with a serious health condition;
- Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.
- Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty). Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list.

Extent of Leave and How Leave May be Taken

1. An eligible employee is entitled to a total of up to twelve (12) work weeks of leave during any twelve-month period.
2. The twelve (12) month period will begin on the first day of the leave. Effective January 1, 2017, the twelve (12) month period will be the calendar year.
3. An eligible employee is entitled to twenty-six (26) workweeks of leave to care for a covered service member with a serious injury or illness during a single 12-month period.

Intent on Return to Work

The **(Name of the Local Unit)** may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. An employee returning from leave taken because of

his/her own serious health condition must provide certification from his/her health care provider that he/she is able to return to work with or without restrictions. The certification should be provided to the **(Name of the Local Unit)** within ten (10) days to the leave expiring if possible.

If an employee gives unequivocal notice of intent not to return to work, the **(Name of the Local Unit)** is under no obligation to maintain health benefits (subject to COBRA requirements) or to restore the employee.

Employee Status after Leave

An employee who takes FMLA will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.

Definitions

1. Child – a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.
2. Parent – the biological parent of employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.
3. Spouse – Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized or civil union partner or domestic partner.

The **(Name of the Local Unit)** will apply the “rolling-forward” method to calculate an employee’s entitlement to FMLA leave.

When an employee takes leave for a reason covered by the New Jersey Family Leave Act (“FLA” “NJFLA”) and the FMLA, the leave shall be simultaneously counted against an employee’s entitlement under both statutes to the extent permitted by law.

Spouses employed by the **(Name of the Local Unit)** are jointly entitled to a combined total of 12 workweeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, and/or to care for a parent who has a serious health condition. Leave for birth and care, or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement during the 12 month period following such birth or placement.

No Retaliation

No employee will be discriminated against for exercising his or her rights under FMLA or be discouraged from the use of Family Leave.

Intermittent Leave

Employees may take FMLA leave intermittently under certain circumstances. If FMLA leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to the **(Name of the Local Unit)** approval. Eligible employees may take FMLA leave intermittently or on a reduced leave schedule when medically necessary or to care for a seriously ill family member. Employees taking leave intermittently or on a reduced leave schedule must make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the **(Name of the Local Unit)**.

The employee must provide the **(Name of the Local Unit)** with prior notice of the care, medical treatment or continuing supervision by a healthcare provider that is necessary due to a serious health condition of the employee or an eligible family member in a manner which is reasonable and practicable.

For employees taking medical or family intermittent leave for themselves, the maximum leave allowed will be twelve (12) weeks.

For employees taking medical or family intermittent leave for a family member with a serious illness, the maximum leave allowed is twelve (12) weeks.

Employees may elect to use applicable accrued paid leave (such as sick or vacation leave) to cover some or all of their FMLA leave. If the employee does not so elect, FMLA leave will be unpaid. The **(Name of the Local Unit)** is responsible for designating if an employee's use of paid leave counts as FMLA leave based on information from the employee.

Benefits During FMLA leave

The employee's health insurance coverage will be maintained under the same terms and conditions as if the employee had continued to work. Employees may be required to pay their share of health insurance premiums while on leave. In some instances, the **(Name of the Local Unit)** may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

Job Restoration

Upon return from FMLA leave, the employee will be restored to his/her original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. If the **(Name of the Local Unit)** should experience a reduction in force or layoff, an employee who would have been affected by such a reduction in force or layoff had he/she not been on FMLA leave is not entitled to be returned to work following exhaustion or completion of FMLA leave, however, the employee retains all rights under any applicable lay off or recall system. An employee's use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave and FMLA leave will not be considered in discipline related to tardiness and/or attendance.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, the **(Name of the Local Unit)** may refuse to reinstate certain highly-paid "key" employees after using FMLA leave during which health coverage was maintained. In order to do so, the **(Name of the Local Unit)** will:

- Notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave:

- Notify the employee as soon as the **(Name of the Local Unit)** decides it will deny job restoration, and explain the reasons for this decision;
- Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration. 46 A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees.

Notice And Certification

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable.

Employees seeking to use FMLA leave when the need is unforeseeable must advise the **(Name of the Local Unit)** of the need for leave as soon as practicable.

The employee will be required to provide medical certification (Form WH-380-E) supporting the need for leave due to a serious health condition affecting the employee or an immediate family member.

In the event an employee is out of work due to a workers compensation injury or illness, maternity leave, or any other documented qualified absence, the absence will automatically be designated as FMLA leave.

The **(Name of the Local Unit)** may also require employees to provide:

- second or third medical opinions (at the **(Name of the Local Unit)** expense) and periodic recertification;
- periodic reports during FMLA leave regarding the employee's status and intent to return to work and
- medical certification of fitness for return to duty.

When intermittent leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the **(Name of the Local Unit)** operation.