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**NJEA LEGAL SERVICES
COVID-19 RELATED USE OF FAMILY AND SICK LEAVE**

This piece is intended to be read together with Legal Services’ frequently asked questions on “Accommodations for Return to School during COVID-19” and “Returning to Work.”

COVID-19 RELATED FAMILY LEAVE UNDER FEDERAL LAW

The Families First Coronavirus Response Act (“FFCRA”) requires public employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

Generally, employers covered under the FFCRA must provide employees:

Up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 2/3 for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

Part-time employees are eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Qualifying Reasons for Leave Related to COVID-19:

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, **including unable to telework**, because the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

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4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

EXAMPLES:

Employee A has been advised by his doctor to self-quarantine because he is immunocompromised and therefore vulnerable to complications from COVID-19. Under the FFCRA, Employee A is entitled to 80 hours of paid sick leave.

Employee B’s children are home because their daycare is closed for COVID-19 related reasons and there is no other suitable person available for child care. Under the FFCRA, Employee B is entitled to 12 weeks of leave.

Employee C’s spouse is home on the advice of her doctor to self-quarantine. Under the FCCRA, Employee C is entitled to 80 hours of paid sick leave.

- ➔ An employee may take Paid Sick Leave or Expanded Family and Medical Leave intermittently (i.e., in separate periods of time, rather than one continuous period) if the employer and employee agree leave can be used intermittently.
- ➔ Employees are limited to a total of 80 hours Paid Sick Leave.
- ➔ The paid leave entitlements (80 hours Paid Sick Leave and Expanded Family and Medical Leave) under the FFCRA are currently set to expire on December 31, 2020. That means FFCRA paid leave is essentially “use it or lose it,” and should be used prior to any other contractual leave available under a collective negotiations agreement. Additionally, the FFCRA’s Paid Sick Leave is in addition to – and shall not in any way diminish, reduce, or eliminate – any other right or benefit to which an employee is entitled under any collective negotiations agreement.

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- ➔ Employers cannot require employees to first use any other paid leave to which the employee is entitled before the employee uses FFCRA Paid Sick Leave. Nor may an employer require an employee to use unpaid leave prior to taking FFCRA Paid Sick Leave.
- ➔ If an employee has been advised by a health care provider to self-quarantine for reasons related to COVID-19, he or she must obtain a certification (a formal letter, for example, not just a brief note on a prescription page) from his or her doctor setting forth that advice and submit it to his or her employer in support of his or her request for COVID-19 related leave.

COVID-19 RELATED FAMILY LEAVE UNDER STATE LAW

The New Jersey Family Leave Act (“NJFLA”) provides eligible employees with 12 weeks of unpaid leave within a 24-month period. NJFLA family leave is available for the following purposes:

1. Childcare due to closure of school or childcare facility due to epidemic or other public health emergency by order of a public official;
 2. Care of a family member when a public health authority directs that person to quarantine or take other measures due to illness or known or suspected exposure; or
 3. Care of a family member who was recommended by a health care provider or public health authority to undergo voluntary self-quarantine because of suspected exposure.
- ➔ Employees may be required by their employer to obtain a certification (a formal letter, for example, not just a brief note on a prescription page) from the health care provider or public health authority confirming the reasons for the leave.

NJ Family Leave Insurance (“FLI”) provides eligible employees with partial wage replacement benefits when they are caring for a family member with a serious health condition. Recent additions to the law provide for wage replacement when the employee is home to care for a family member for qualifying COVID-19 reasons.

Sick Leave Under Title 18A:

School employees who are experiencing COVID-19 symptoms or have been advised to self-isolate by their health care provider or employer for COVID-19 related reasons may utilize accrued paid sick leave after exhausting FFCRA Paid Sick Leave.



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Sources and related materials:

Families First Coronavirus Response Act, Pub. L. No. 116-127, § 7002(a), 134 Stat. 178, 212 (2020)

29 C.F.R. § 826

“FAQs on Paid Leave and Unemployment Rights,” <https://educatingthroughcrisis.org/your-rights/faqs-on-paid-leave-and-unemployment-rights/>

DOL Benefits Eligibility Tool, <https://getstarted.nj.gov/labor/>

L. 2020 N.J., c. 23, § 1

N.J.S.A. 18A:30-1