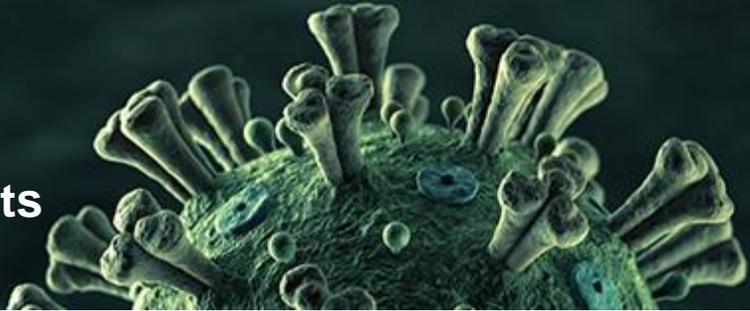




COVID-19 Latest Insights



COVID-19 State Leave Provisions: New Jersey

Updated April 23, 2020

Effective March 25, 2020, New Jersey enacted Senate Bill S2304 (enacted on March 25) and Senate Bill 2374 (enacted April 14, retroactive to March 25) (hereafter collectively “the NJ Acts”) in response to the coronavirus pandemic. All employers that are subject to New Jersey Department of Labor and Workforce Development regulations governing the state’s leave and disability laws are subject to the provisions of the NJ Acts on behalf of all individuals recognized as employees under the applicable laws.

The NJ Acts amend certain provisions of the state’s Earned Sick and Safe Leave Law, Family Leave Act, Family Leave Insurance, and Temporary Disability Benefits Law to expand employee access to job-protected and paid leave benefits during epidemic-related public health emergencies. The NJ Acts permanently amend the respective leave and disability laws and are not specific to the COVID-19 pandemic.

Preventive social distancing or “stay-at-home” measures enacted by order of the state entitle NJ employees to the provisions of the NJ Acts that apply to mandatory workplace and school closures. However, the NJ Acts do not cover employees who independently choose to self-quarantine when their workplace is not subject to a mandatory closure. Benefits under the NJ Acts are not available to employees who are able to work through remote access or other means.

This white paper describes the basic components of the NJ Acts. It is meant to serve as a guide to the state’s provisions at a high level as of the publication date. The regulatory environment is changing rapidly in response to the COVID-19 pandemic, and our understanding of the NJ Acts and their application may change as more information becomes available. Employers with specific questions should work closely with their benefits consultants to address case-specific concerns. Please also see the “Resources” section of the white paper for additional information.

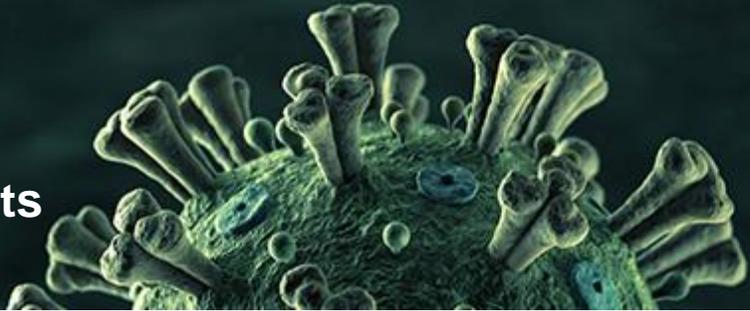
Highlights of the NJ Acts

The provisions of the NJ Acts pertain exclusively to employee absences on and after March 25, 2020, that are directly related to an epidemic-related public health emergency declared by the Governor or that are pursuant to a recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official during a declared state of emergency. The NJ Acts create two basic enhancements to the state’s leave and disability laws:

- They expand the state’s earned sick leave law to permit employees to use accrued sick time for isolation or quarantine recommended or ordered by a provider or a public health official as a result of suspected exposure to a communicable disease, or to care for a family member under a recommended or ordered isolation or quarantine.



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- They expand the state law’s definition of a “serious health condition” to give employees greater access to family leave and disability benefits during a public health emergency if they must take time off of work because they are diagnosed with or suspected of exposure to a communicable disease, or to care for a family member diagnosed with or suspected of exposure to a communicable disease.

The provisions of the NJ Acts are described in greater detail below.

Job protected leave: All covered employers are required to provide job protected leave to covered employees for absences that are covered under the NJ Acts, except as otherwise excluded under Family Leave Insurance (which does not itself provide job-protected leave). Employers are prohibited from discriminating or retaliating against employees who request or take leave under the provisions of the NJ Acts.

New Jersey Earned Sick and Safe Leave Law (NJESSL): The NJESSL requires employers to provide 40 hours of paid sick time accruals over a defined 12-month benefit period. The NJ Acts expand the allowed use of an employee’s accrued sick time to include time during which the employee is not able to work due to the following:

- The closure of the employee’s workplace, or the school or place of care of the employee’s child, by order of a public official or because of a state of emergency declared by the Governor, due to an epidemic or other public health emergency.
- The declaration of a state of emergency by the Governor, or the issuance by a healthcare provider or the Commissioner of Health or other public health authority of a determination that the presence in the community of the employee, or a member of the employee’s family in need of care by the employee, would jeopardize the health of others.
- During a governor-declared state of emergency, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the employee’s or family member’s presence in the community would jeopardize the health of others.

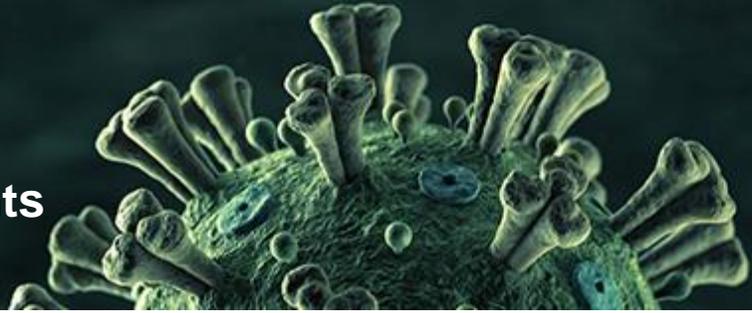
The NJ Acts do not modify the sick time accrual rates previously established under the NJESSL, nor do they limit an employer’s right to restrict the total amount of accrued sick time an employee can use in a 12-month benefit period.

New Jersey Family Leave Laws (Family Leave Act and Family Leave Insurance): The New Jersey Family Leave Act (NJFLA) allows employees to take up to 12 weeks of job-protected, *unpaid* leave in a 24-month period for the birth/adoption of a child or to care for a family member with a serious health condition. New Jersey Family Leave Insurance (NJFLI) provides a lesser duration of *paid* leave for comparable reasons. The NJ Acts expand the allowed reasons for which employees can take family leave to include leave to care for a family member due to the family member’s known or suspected exposure to a communicable disease.

The NJ Acts also expand the definition of a “serious health condition” under the family leave laws specifically during a state of emergency declared by the Governor or when quarantine or isolation of an individual is deemed



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necessary by the Commissioner of Health or other public health authority. Under these circumstances, a “serious health condition” includes “an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of a family member of the employee” when the family member is subject to a recommendation or order of quarantine or isolation issued by a healthcare provider or other public health authority.

In addition, the NJ Acts eliminate certain advance notice and certification requirements when the employee’s need for family leave pertains to the specific expanded “serious health condition” circumstances noted above, or when the need is due to the closure of a family member’s place of care because of a declared state of emergency.

New Jersey Temporary Disability Benefits (NJTDBL): NJTDBL provides wage replacement benefits, subject to certain caps, through the state or via a state-approved private insurance plan. The NJ Acts expand the definition of a “serious health condition” under NJTDBL to mimic the expanded definition under the family leave laws. They also expand the definition of a “compensable disability” to include leave to care for a family member “suffering from accident or sickness,” and they amend the definition of “sickness” to include the expanded definition of “serious health condition” under the restricted application of that term as described in the “New Jersey Family Leave Laws” section above.

The NJ Acts also eliminate the seven-day waiting period for NJTDBL benefits eligibility exclusively when benefits are requested on behalf of the employee’s own serious health condition *and* when the serious health condition satisfies the restricted application of that term.

Employer Administration of the NJ Acts

Earned Sick Leave: Upon request from an employee, employers must permit – but cannot require – employees to take their available accrued sick leave balance, up to the permitted maximum amount and for the expanded reasons established by the NJ Acts. No formal application is required.

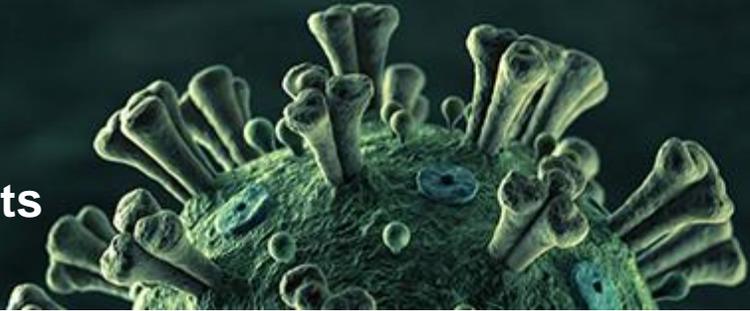
NOTE: Nothing in the NJ Acts modifies the earned sick leave carryover or buy back provisions of the NJESSL. Employees can continue to carry over up to 40 hours of unused earned sick leave into the next benefit year, or can instead receive taxable earnings for 50% or 100% of the available year-end balance up to a maximum of 40 hours.

Family Leave and/or Disability Leave: Employees must submit claim forms for any qualified portion of a leave under the NJ Acts that is eligible for an insured wage replacement benefit under NJFLI or NJTDBL. Information about benefits eligibility and the claims submission process is available through the New Jersey Department of Labor and Workforce Development.

NOTE: Employers can allow employees to use fully-paid Earned Sick Leave balances prior to or in lieu of any partially-paid benefits available under NJFLI or NJTDBL, as applicable, but they cannot require employees to do so.



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SPECIAL NOTE REGARDING UNEMPLOYMENT BENEFITS: Nothing in the NJ Acts modifies an employee's eligibility for unemployment benefits under the state's unemployment compensation law or the federal emergency unemployment benefits provisions of the recently-enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act. Employers should review state and federal unemployment provisions to determine whether non-terminated employees who have exhausted paid leave benefits are eligible to collect unemployment benefits during a period of unpaid leave.

Interaction with Families First Coronavirus Response Act (FFCRA)

Effective April 1 through December 31, 2020, the federal FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The FFCRA does not diminish employees' rights or benefits under any other federal, state, or local law, or under a collective bargaining agreement.

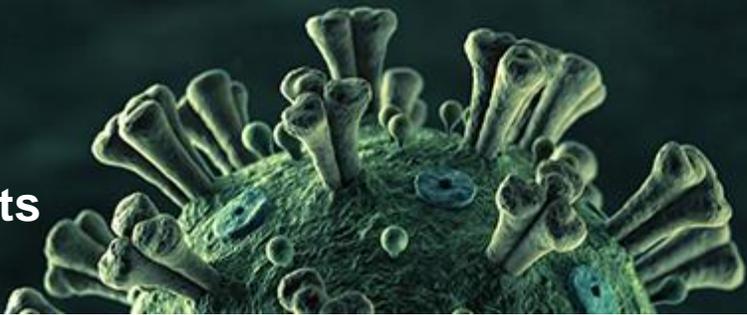
For leaves covered under the NJ Acts that extend or commence later than March 31, 2020, and that are also covered under the FFCRA, the job protection and salary replacement benefits provided under the NJ Acts may be greater than or less than the benefits available under the FFCRA. To the extent that the provisions of the NJ Acts offer a richer wage replacement benefit than the FFCRA – as will be true under certain fact patterns when the covered employee's rate of pay exceeds \$511/day (\$2,555/week, or \$132,860/year) – employees can choose the richer benefit. However, employees cannot receive pay or benefits from more than one program simultaneously and cannot under any circumstances receive more than 100% of their regular earnings.

NOTE: The definitions of covered employers and employees under the NJ Acts and under FFCRA are not identical. For example, the FFCRA does not apply to employers with 500 or more employees, whereas several provisions of the NJ Acts apply to employers of all sizes. (Some of the state's family leave provisions apply only to employers of 30 or more employees.) Likewise, the types of leaves covered under the NJ Acts and under FFCRA are not identical. Employers should first establish whether the employer is covered under both the state and the federal provisions. They should next confirm whether the type of leave request is covered under both the state and the federal provisions. Finally, employers should determine whether an individual employee meets the eligibility criteria under both the state and the federal provisions.

There are several variables that may affect an individual employee's eligibility for leave under the NJ Acts and/or FFCRA, including tenure, available leave balances (NJESSL, NJFLA, NJFLI, NJTDBL, FMLA) as of the leave date, and the reason for the leave. Employers should work closely with their Human Resources professionals, their benefits consultants and their disability and leave carriers to address case-specific questions and concerns.



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COVID-19 State Leave Provisions Chart

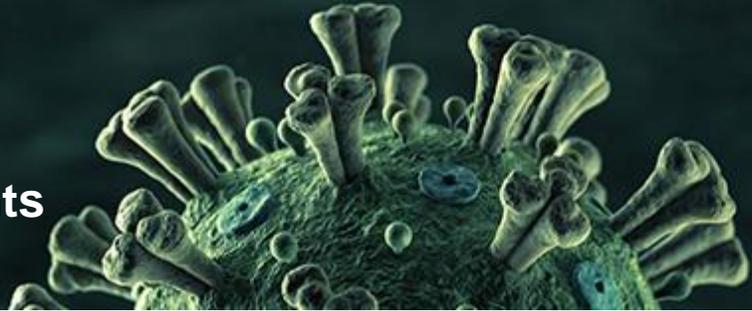
	COVID-19 State Leave Provisions (NJ) Effective 3/25/2020 For absences that commenced prior to 3/25/2020, benefits under the NJ Acts commence 3/25/2020			FFCRA Provisions Effective 4/1/2020
Qualified Reason (QR) for Employee Absence <ul style="list-style-type: none"> QR assumes Governor-declared public health emergency 	NJ Earned Sick Leave (ESL) <ul style="list-style-type: none"> Lesser of 40 hours or EE's available accrued Earned Sick Leave balance 	NJ Family Leave <ul style="list-style-type: none"> Unpaid job-protected leave benefits provided under NJ Family Leave Act (FLA) Paid leave benefits provided under NJ Family Leave Insurance (FLI) 	NJ Disability	Interaction with Families First Coronavirus Response Act (FFCRA) <ul style="list-style-type: none"> Emergency Paid Sick Leave (EPSL) Emergency FMLA (EFMLA) FFCRA does not apply to employers with 500+ EEs
EE diagnosed with or has symptoms of COVID-19, or is advised to self-isolate or quarantine by a healthcare provider or public health authority	<ul style="list-style-type: none"> Up to 40 hours at 100% EE regular rate of pay EE can opt to use or defer ESL 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> 1/3 EE regular rate of pay to max \$667/week for up to 6 weeks² Effective after exhaustion of FFCRA and/or ESL benefit 	<ul style="list-style-type: none"> 80 hours of EPSL at 100% EE regular rate of pay to max \$511/day Effective immediately upon start of QR or after discretionary use of ESL
EE must care for minor child due to mandatory school closure or because child care provider is unavailable for public health reasons	<ul style="list-style-type: none"> Up to 40 hours at 100% EE regular rate of pay EE can opt to use or defer ESL 	<ul style="list-style-type: none"> 1/3 EE regular rate of pay to max \$667/week for up to 6 weeks¹ Effective immediately upon start of QR or after discretionary use of FFCRA and/or ESL benefit 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> 80 hours of EPSL plus 10 weeks of EFMLA, both at 1/3 EE regular rate of pay to max \$200/day Effective immediately upon start of QR or after discretionary use of ESL
EE must care for a family member who is diagnosed with or has symptoms of COVID-19, or who is advised to self-isolate or quarantine by a healthcare provider or public health authority	<ul style="list-style-type: none"> Up to 40 hours at 100% EE regular rate of pay EE can opt to use or defer ESL 	<ul style="list-style-type: none"> 1/3 EE regular rate of pay to max \$667/week for up to 6 weeks¹ Effective immediately upon start of QR or after discretionary use of FFCRA or ESL benefit 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> 80 hours of EPSL at 1/3 EE regular rate of pay to max \$200/day Effective immediately upon start of QR or after discretionary use of ESL
EE is unable to work or telework because employer's business was ordered to close, or business remains open in defiance of order and EE refuses to work	<ul style="list-style-type: none"> Up to 40 hours at 100% EE regular rate of pay EE can opt to use or defer ESL 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Not applicable

¹ Effective 7/1/2020, wage replacement benefit increases to 85% of EE regular rate of pay to maximum \$881/week for up to 12 weeks.

² Effective 7/1/2020, wage replacement benefit increases to 85% of EE regular rate of pay to maximum \$881/week; maximum duration remains unchanged.



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Resources

Federal resource on FFCRA: <https://www.dol.gov/agencies/whd/fmla/pandemic>

NJ Legislative Acts: S2304 https://www.njleg.state.nj.us/2020/Bills/AL20/17_.PDF

S2374 https://www.njleg.state.nj.us/2020/Bills/S2500/2374_I1.PDF

NJ Department of Labor and Workforce Development, Division of Temporary Disability and Family Leave Insurance: www.MyLeaveBenefits.nj.gov/

NJ COVID-19 Information Hub: <https://covid19.nj.gov/faqs/nj-information/>

“What NJ Workers Need to Know About the Families First Coronavirus Response Act”:

<https://www.nj.gov/labor/assets/PDFs/FamiliesFirstCoronaResAct.pdf>

[NJ Workers: FAQs During the Coronavirus Emergency:](https://myunemployment.nj.gov/labor/myunemployment/covidFAQ.shtml)

<https://myunemployment.nj.gov/labor/myunemployment/covidFAQ.shtml>

This information has been provided as an informational resource for PPI clients and business partners. It is intended to provide general guidance, and is not intended to address specific risk scenarios. Regarding insurance coverage questions, each specific policy must be reviewed in its entirety to determine the extent, if any, of coverage available for the impact of the Coronavirus.