

NEW JERSEY: EMPLOYEE BENEFIT CONSIDERATIONS

Employers doing business in New Jersey must consider New Jersey's unique laws regarding continuation of benefits, disability and family leave requirements, commuter benefits, extended dependent coverage up to age 31 ("DU31"), coverage of domestic partners and civil union partners, and annual reporting of minimum essential coverage (MEC) under the individual coverage mandate. Note that this publication is limited to employee benefit considerations and does not cover labor and employment law considerations.

WHEN NEW JERSEY HEALTH INSURANCE MANDATES MAY APPLY

New Jersey law requires that health policies and contracts issued in New Jersey comply with certain mandates, regardless of the state of domicile of the company. This publication covers several of the most important benefit considerations; see the Resources section below for a link to the state's mandated health benefits. Self-insured plans are typically exempt from New Jersey state mandates except as otherwise noted. Employers should consult with the insurer or with legal counsel to determine whether particular state requirements will apply to their plan(s).

STATE CONTINUATION OF BENEFITS ("MINI-COBRA")

New Jersey's continuation of coverage rule (also known as "mini-COBRA") applies to fully insured group health policies issued to certain small employers in New Jersey. Small employers are those that employed between two and 50 eligible employees during the preceding calendar year, with the majority of the workforce employed in New Jersey. The law does not apply to self-insured plans, and employees who qualify under federal COBRA are not eligible for coverage under New Jersey's state continuation law. Some employers that are subject to New Jersey state continuation must also comply with federal COBRA (i.e., employers with 20 to 50 employees).

As with federal COBRA, employers are permitted to add an administrative fee, not to exceed 2%, to the cost of the mini-COBRA premium. The law requires continuation of coverage for up to 12 months on medical plans only and does not require continued coverage for stand-alone dental or vision plans.

There are additional differences between New Jersey state continuation and federal COBRA. New Jersey's state continuation:

- Does not require that continuation coverage be made available to the spouse of a former employee when the former employee becomes eligible for Medicare.

Employers doing business in New Jersey must consider the state's unique laws, many of which apply when only one employee resides or works in New Jersey.



- Requires an election for continuation coverage be made within 30 days.
- Requires that payment of the initial premium be made within 30 days of the election for continuation coverage.

Continuation Coverage in the Event of Total Disability

Employees enrolled under a fully insured group health plan issued in New Jersey for at least three months are eligible to continue healthcare coverage (e.g., medical, dental, and vision) when employment is terminated due to total disability. Dependents of an employee who terminates employment as a result of a total disability are also eligible for continuation of coverage. Continuation remains available for any person who is covered by or eligible for Medicare, subject to any nonduplication of benefits provisions.

New Jersey Dependent Under 31 (“DU31”)

DU31 is a New Jersey law that applies to fully insured plans issued in New Jersey regardless of the size of the employer. The law does not apply to self-insured plans. DU31 allows children older than the child-dependent age limit in a parent’s group health plan (e.g., 26 years old) to elect coverage until age 31 if certain other eligibility standards are met.

DU31 election rights allow a dependent “young adult” to continue existing coverage when they reach the age limit on a parent’s coverage or to become covered under a parent’s group health plan if the young adult had coverage on the parent’s plan at any point in the past. This means that a young adult may establish and reestablish eligibility and make a DU31 election multiple times before their 31st birthday.

Dependent eligibility under DU31 requires a young adult to meet all the following criteria:

- Must be 30 years of age or younger and must reside in New Jersey or, if not residing in New Jersey, must be a full-time student at an accredited public or private institution of higher education.
- Must be unmarried and without dependents.
- Must not be covered under another group or individual health plan or entitled to Medicare benefits.

The DU31 law does not require employers to contribute to the premium for any covered young adult on their plan. A young adult who elects the DU31 continuation is responsible for the full applicable premium, plus a 2% administrative fee, unless the employer elects to pay any portion of the premium voluntarily.

For more information, see:

Coverage of Young Adults in New Jersey Up to Age 31

INDIVIDUAL COVERAGE MANDATE AND REPORTING (AKA MEC REPORTING)

The New Jersey Health Insurance Market Preservation Act requires every New Jersey resident to obtain health insurance, have a valid exemption (generally based on income/cost-related factors), or make a Shared Responsibility Payment to the state. Most basic health coverage satisfies state requirements, including insurance plans through an employer, Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and NJ FamilyCare. Plans that provide only limited benefits, such as vision or dental plans, do not. To ensure compliance, the Act requires insurers, employers, government agencies, multiemployer plans, and other entities that provide health insurance to submit required information returns annually to New Jersey that report on individuals’ health insurance coverage. Employers that provide a self-insured group health plan must report to the New Jersey Division of Taxation regarding each primary enrollee who was a New Jersey resident and to whom the plan provided minimum essential coverage (MEC) in all or part in the prior calendar year. Fully insured plan sponsors should contact their insurers to confirm that they are filing the required information timely with the New Jersey Division of Taxation on behalf of the plan sponsors. If an insurer does not file the required information on time, the employer is responsible for the filing.

Generally, employers that file federal Forms 1094/1095-B or 1094/1095-C may use those forms for purposes of New Jersey reporting, as follows:

- Small self-insured employers: Form 1095-B
- Large self-insured employers: Form 1095-C

- Fully insured employers (small or large): either Form 1095-B/C or NJ-1095, if the carrier does not file on behalf of the plan
- The deadline for furnishing Forms 1095-B/C to the state and primary enrollees generally follows the IRS deadline for ACA reporting. Thus, employers must send this required information by March 2 following the reporting year. (Note that the March 2 deadline shifts to March 1 in leap years, as the date corresponds to a permanent 30-day extension of the original January 31 deadline for furnishing ACA reporting forms to employees.)

For further information about the individual mandate reporting requirements for New Jersey and other states, see the PPI publication [State Individual Mandate Reporting Requirements](#).

For more information, see:

[New Jersey Employer Reporting Requirement](#)

MINIMUM STANDARDS FOR HEALTH BENEFIT PLANS, PRESCRIPTION DRUG PLANS AND DENTAL PLANS

New Jersey law (Section 11:22, Subchapter 5) - Minimum Standards for Health Benefit plans, Prescription drug plans and Dental plan requirements - sets forth insurance mandates that are applied to fully insured plans delivered or issued in New Jersey. Notably, one of the requirements prohibits fully insured plans issued in the state to impose an in-network deductible limit greater than \$2,500 for employee-only coverage and \$5,000 for family coverage. These deductible limits must be carefully considered especially when an employer intends to offer an HDHP. Employers should consult with their insurance carriers for full details on New Jersey's minimum standard requirements.

STATUTORY LEAVE REQUIREMENTS

Temporary Disability Insurance (TDI) and Family Leave Insurance (FLI)

The New Jersey Division of Temporary Disability and Family Leave Insurance has two separate mandatory leave programs that apply to the majority of employers with at least one employee working in New Jersey. Temporary Disability Insurance (TDI) provides leave to qualified New Jersey employees who have to stop working due to their own physical or mental health condition or other disability unrelated to their work. TDI applies to all private sector employers; local governments, including school districts, are not required to participate but can opt in voluntarily. All private and public sector employers with at least one employee working in New Jersey must provide leave benefits through Family Leave Insurance (FLI), which provides cash benefits for time off to bond with a newborn, a newly adopted child or newly placed foster child, or to provide care for a seriously ill or injured family member.

TDI is funded by both employee and employer contributions. In 2023, the employees' share of contribution is waived, and the employer contribution is based on rates set by the state. Conversely, FLI is fully funded by employee contributions. In 2023, the contribution limit for FLI is 0.06% of the employee's taxable wage base, capped at \$94.08 per year. Regardless of whether an employee takes TDI or FLI leave, the maximum weekly benefit amount is 85% of an employee's average earnings, up to the maximum weekly benefit rate set for that calendar year (2023: \$1,025).

Although TDI and FLI do not provide job protection and health benefit continuation rights, federal FMLA, New Jersey Family Leave Act (FLA), and/or the Security and Financial Empowerment Act (SAFE) may provide job protection and health benefit continuation rights during the leave if it runs concurrently and where qualified. Importantly, the definition of a covered family member under New Jersey FLI is much broader than the federal FMLA definition. For example, any non-blood-related individual with whom an employee has the equivalent of a family relationship is considered a covered "family member" under New Jersey FLI. In this case, federal FMLA would not apply (and therefore would not run concurrently).

For further information about the NJ TDI and FLI and other states' disability insurance and PFL or PFML programs, see the PPI publication [Quick Reference Chart: Statutory Disability & Paid Family and Medical Leave Programs](#).

For more information, see:

[TDI Information for Employers](#)

[FLI Information for Employers](#)

[Employer Toolkit](#)

[Private Plan Information for Employers](#)

New Jersey Family Leave Act (NJFLA)

New Jersey Family Leave Act (NJFLA) is New Jersey's version of FMLA. This regulation applies to private employers with 30 or more employees worldwide and all state and local government agencies regardless of size.

Employees are eligible for NJFLA leave if they have:

- Worked for a covered employer for at least 12 months.
- Worked at least 1,000 hours during the immediately preceding 12-month period (in contrast to the 1,250 hours requirement under federal FMLA).

NJFLA leave provides eligible employees with up to 12 weeks of continuous unpaid leave within a 24-month period for any of the following qualified reasons:

- To care for or bond with a child (within one year of the child's birth or placement for adoption or foster care).
- To care for a family member, or someone who is the equivalent of family, with a serious health condition (including a diagnosis of COVID-19) or who has been isolated or quarantined because of suspected exposure to a communicable disease (including COVID-19) during a state of emergency.
- To provide required care or treatment for a child during a state of emergency if their school or place of care is closed by order of a public official due to an epidemic of a communicable disease (including COVID-19) or other public health emergency.

NJFLA requires employers to continue an employee's health benefits at the same level and same cost as if the employee were still actively at work and provide job protection during the entirety of the approved leave. NJFLA can be taken continuously or intermittently in full day increments; note that electing to take leave intermittently reduces the benefit to a maximum of 56 days.

Where applicable, NJFLA runs concurrently with federal FMLA; however, unlike federal FMLA, NJFLA does not cover an employee's own serious medical condition. Because of this, an employee may be entitled to take up to 12 weeks of federal FMLA leave for their own serious health condition and 12 weeks of NJFLA leave to care for a family member in a 12-month period. Similarly, an employee can take up to 12 weeks for pregnancy and recovery from childbirth under federal FMLA, and then take an additional 12 weeks of NJFLA leave to bond with or care for their newborn after the doctor certifies the employee is fit to return to work or has exhausted their FMLA leave (whichever is earlier).

For more information, see:

[NJFLA Fact Sheet](#)

New Jersey Security and Financial Empowerment Act (NJ SAFE Act)

The NJ SAFE Act provides eligible employees the ability to take unpaid leave to address circumstances resulting from domestic violence or a sexually violent offense for a period of up to 20 days in a 12-month period. Leave can be taken intermittently in full-day increments or continuously and runs concurrently with any paid vacation leave, personal leave, or medical or sick leave that the employee elects to use or that the employer requires the employee to use during any part of the unpaid 20-day period.

To be eligible for NJ SAFE leave, an employee must work for a New Jersey employer who employs at least 25 employees for each working day during each of 20 or more calendar workweeks in the current or immediately preceding calendar year. Employees must also have worked 1,000 hours during the 12-month period immediately preceding the leave.

NJ SAFE Act leave can be taken for the purpose of engaging in a number of activities that relate to an incident of domestic violence or a sexually violent offense, including seeking medical attention and legal assistance and participating in counseling or safety planning services. For a full list of eligible activities, see the links below.

NJ SAFE Act leave is available to:

- An eligible employee who is a victim of domestic violence or a sexually violent offense.
- An eligible employee whose parent-in-law, sibling, grandparent, grandchild, child, parent, spouse, domestic partner, or civil union partner is a victim of domestic violence or a sexually violent offense.
- Any other individual related by blood to the employee, or any other individual that the employee shows to have a close association with the employee that is the equivalent of a family relationship, and is a victim of domestic violence or a sexually violent offense.

Covered employers are required to post a notice of employees' rights and responsibilities under the SAFE Act in all New Jersey workplaces. The notice is provided by the New Jersey Commissioner of Labor and Workforce Development.

For more information, see:

[NJ SAFE Act poster](#)

New Jersey Earned Sick Leave

All private employers of any size with at least one employee working in New Jersey must provide their New Jersey full-time, part-time, and temporary employees with up to 40 hours of earned sick leave per year. Public employers that are required to provide employees with fully paid sick leave pursuant to any other law, rule, or regulation of the state are exempt. Beginning on the first day of employment, an employee shall accrue one hour of earned sick leave for every 30 hours worked unless an employer elects to provide the full entitlement (40 hours) on the first day of each benefit year. Unused sick leave must be carried forward from one benefit year to the next, but the total amount of leave under the Act is still capped at 40 hours annually.

Eligible employees can use accrued and available earned sick leave to:

- Attend treatment or seek diagnosis, care, or recovery for their own or a family member's physical or mental health illness or injury.
- Seek preventive medical care for themselves or a family member.
- Address circumstances related to their own or a family member's domestic or sexual violence incident.
- Attend their child's school-related meeting, conference, or event related to the child's education, health condition, or disability.
- Provide care for their child when the employee's workplace or the child's school or place of care is closed due to an epidemic or public health emergency.

For more information, see:

[Earned Sick Leave Is the Law in New Jersey](#)

SMALL EMPLOYER HEALTH INSURANCE

New Jersey state law does not require small employers (those with at least one but not more than 50 employees) to offer health insurance to their employees. Federal requirements for small health plans, such as the requirement to provide essential health benefits (EHB), apply to small employer health plans issued in New Jersey, as does prohibition against discrimination or exclusion based upon preexisting conditions.

New Jersey does have the Small Employer Health Benefits (SEH) Program that provides two requirements to insurers to ensure that small employers:

- Have access to small group health benefits plans without regard to the occupation of the group or the health status of any of the group's members.
- Have the ability to renew the coverage from year to year regardless of the group's claims experience or any changes in the health status of the group's members.

Additionally, the SEH Program restricts insurer use of small group participation requirements, employer contribution requirements, preexisting condition limitation provisions, and factors related to rates for health benefits plans offered to small employers.

For more information, see:

Small Employer Health (SEH) Program

DOMESTIC PARTNERSHIPS AND CIVIL UNIONS

New Jersey insurance law requires that any benefit coverage offered by a plan to an employee's spouse must also be offered equally on the same terms and conditions to an employee's civil union partner under the New Jersey Civil Union Act. This Act, implemented in February 2007, established "civil unions" for couples of the same sex, granting partners in civil unions generally all of the same benefits, protections and responsibilities under the law as are granted to spouses. Once enacted, the Civil Union Act amended the Domestic Partnership Act of 2004 so that only unrelated opposite or same sex couples 62 and older can enter into domestic partnerships on and after February 19, 2007. The Domestic Partnership Act affords employers the option to offer coverage for domestic partners. Both Acts apply to fully insured plans issued in New Jersey regardless of the size of the employer. The law does not apply to self-insured plans.

For two people to establish a civil union in New Jersey, they must satisfy all of the following criteria:

- Be of the same sex.
- Not be a party to another civil union, domestic partnership, or marriage.
- Be at least 18 years of age (parental consent required for under 18 but older than 16).

For two people to register as domestic partners in New Jersey, the couple must meet all of the following criteria and file the Affidavit of Domestic Partnership with a Local Registrar of Vital Statistics.

- The parties can be the same sex or different sexes.
- Both parties must be 62 years of age or older.
- Share a common residence.
- Jointly responsible for each other's common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property.
- Not be party to a marriage or civil union recognized by New Jersey law or a member of a domestic partnership with another individual, nor have legally terminated another domestic partnership within the last 180 days.
- Not related by blood or affinity up to and including the fourth degree of consanguinity.
- Choose to share each other's lives in a committed relationship of mutual caring.

The cost of coverage for a registered domestic partner or civil union partner and any applicable dependents is not subject to New Jersey income tax withholding. However, the federal government does not recognize domestic partners as spouses eligible for tax-favored benefits. Thus, if the domestic partner is not the employee's tax dependent, the cost of coverage is subject to federal taxation. New Jersey continuation coverage rules allow domestic partners and civil union partners to make an independent election upon the death of a covered employee or upon dissolution of the partnership.

If an employer does not request relationship documentation (e.g., marriage certificate) from married employees, it should not make a domestic partner's coverage conditional upon submission of evidence of the domestic partnership.

For further information about domestic partner benefits considerations, including best practices for calculating and processing domestic partner cost of coverage imputed income, see the PPI publication **Domestic Partner Benefits: A Guide for Employers**.

For more information, see:

Division of Taxation, Civil Union Act

Registration of Civil Unions

Registration of Domestic Partnerships Bulletin 07-04

OFFER OF RETIREMENT PLAN

In 2019, the state enacted the New Jersey Secure Choice Savings Program, a state-sponsored payroll deduction IRA for New Jersey employees who are not offered a retirement plan benefit through their employer. However, the state has delayed implementation of the program, with no launch date yet announced.

For more information, see:

New Jersey Secure Choice Savings Program

COMMUTER BENEFITS

Employers with 20 or more employees working in New Jersey who are not covered by a collective bargaining agreement must offer their New Jersey employees the opportunity to utilize a pretax transportation fringe benefit covering commuter highway vehicle and mass transit expenses according to the federal Qualified Transportation Fringe Benefit tax code (IRC 132(f)). Covered employers must allow covered employees to elect up to the maximum benefit level provided by federal law (2023: \$300/month). This pretax fringe transportation benefit covers expenses such as transit passes, commuter highway vehicle travel, and costs of parking at park-and-ride lots. This law does not apply to employees of the federal government who are eligible for a transit benefit equal to or greater than the pretax transportation fringe benefit required by the state.

The Commissioner of Labor and Workforce Development is authorized to issue citations to employers that do not offer this New Jersey pretax transportation fringe benefit mandate. An employer will have 90 days to offer a pretax transportation fringe benefit before the civil penalty is imposed. After 90 days, \$250 for a first violation, and another \$250 for each subsequent violation.

For more information, see:

Governor's Statement

SUMMARY

Employers with one or more employees who, depending on the regulation, work and/or reside in New Jersey should be well informed about the range of benefit requirements that pertain to such employees.

RESOURCES

New Jersey-Mandated Health Benefits