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## Family and Medical Leave Act, NJ Family Leave Act and NJ Family Leave Insurance: Employment Law “F” Words

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These statutes and their requirements are often confused and not correctly applied. Two of these statutes are job holding/protection statutes and one is a job paying statute.

**JOB PROTECTION:** The federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA) are job holding/protection statutes. They do not provide for payment to the employee. Job protection under this legislation means an employee cannot be terminated from employment for taking these types of leave and are guaranteed the same or similar job if they return to work at the conclusion of the leave. Any payment the employee receives during a leave is through an external source (Disability, Paid Time Off, Workers' Compensation or some other mechanism).

### What must employers have to comply with FMLA and FLA?

An employer must have 50+ employees to be required to provide FMLA or FLA.

- Under FMLA, it is 50 employees within a 75 mile radius.
- Under FLA, only one of the 50+ employees must be located in New Jersey.

### What type of leave is covered?

- Under FMLA, leave may be taken to care for an employee's own health issues as well as to care for that of a family member.
- Under FLA, there is *no provision to take time to care for an employee's own health issues*, but FLA can be utilized to care for a family member.

If a leave is covered by *both statutes as with caring for a family member*, the time taken comes from each allotment at the same time. This means that the time runs concurrently from both statutes; the time will start and end simultaneously.

If at the outset, the leave is only covered by *one statute as with caring for one's health*, the time taken only reduces that single statute's allotment; a leave of absence is still available under the other statute to care for a family member. In this scenario, time runs consecutively meaning the time from each statute can be taken from one statute at a time, lengthening the leave.

*Note:* there are provisions under both statutes regarding intermittent leave.

### How do employees qualify?

- To qualify for FMLA, an employee needs to have worked at least 1,250 hours during the preceding 12 month period.
- To qualify for FLA, an employee needs to have worked for at least 1,000 hours during the preceding 12 month period.

### What amount of job holding/protection must occur?

Both statutes permit an employee to take time off, up to 12 weeks, and have their job held/protected.

- Under FMLA, it is 12 weeks in a 12 month time period.
- Under FLA, it is 12 weeks in a 24 month time period.

There are different methodologies for calculating the 12 month period—the methodology utilized by the employer should be included in the written policy. If the methodology is not provided, the employee may select a methodology that works best for them.

### **What signage/notification is required?**

Posters regarding each type of leave, FMLA and FLA, must be posted at the workplace.

**JOB PAYING:** The New Jersey Family Leave Insurance (FLI) is a job paying statute, not a job holding/protection statute. Any job holding/protection the employee receives during a FLI leave is through an external source (FMLA, FLA or some other mechanism, such as the SAFE Act).

### **What employer must comply with FLI?**

All employers in New Jersey with at least one (1) employee.

### **What type of leave is covered?**

- Up to six (6) weeks to either bond with a newborn or newly adopted child, or to provide care for a seriously ill family member in a twelve (12) month period; and
- Up to six (6) consecutive weeks or forty-two (42) intermittent days to bond with a newborn or a newly adopted child or to provide care for a seriously ill family member.

### **How do employees qualify?**

To establish a valid claim, an employee must have earned a certain amount during their “base year.” The base year is the 52 weeks immediately before the week in which the FLI coverage begins. The employee must have earned either:

- \$145 or more per week during 20 calendar weeks in the base year; or
- \$7,300 or more during the base year.

### **What amount of compensation is received?**

The weekly benefit rate for a FLI claim is based on an employee’s average weekly wage. The average weekly wage is generally based on how much an employee earns in the eight weeks immediately before the employee’s FLI claim begins. The weekly benefit rate is two-thirds (2/3) of an employee’s average weekly wage, up to \$633. An employer may require an employee, during a period of FLI coverage to use up to two weeks of paid sick leave, paid vacation time or other leave at full pay.

### **What signage/notification is required?**

In addition to posting the New Jersey FLI policy, employers must provide employees with a written copy of the notification: (i) at the time of an employee’s hiring, (ii) whenever an employee provides notice of a potential claim, and (iii) upon the first request of an employee. Written notification may be electronically transmitted to employees with computer access.

The key to not getting into trouble using the “F words” is to ensure that employers examine each situation on a case by case basis and provide the employee all necessary information regarding the type(s) of leave being sought/utilized.

**Attorney**

- Tracy Armstrong