



# Changes to Federal and State Leave Laws Regarding Covid-19

Updated April 28, 2020

# Leaves of Absence

- Title 18A – Sick Days
- Family Medical Leave Act (FMLA).
  - Federal law that covers all public employers and private employers with 50 or more employees
- New Jersey Family Leave Act (NJFLA)
  - State law that covers all public employers and private employers with 30 or more employees
- Contractual Leaves
  - Maternity leave
  - Child rearing leave
- New Jersey Family Leave Insurance Act (FLIA)
  - Disability payments that can be used while on leave

# Recent Changes to Leave Laws

- Coronavirus Aid, Relief and Economic Security Act – enacted March 27, 2020 (CARES)
  - Amends FMLA to provide for paid leave in certain situations
  - **Paid leave and other new provisions to federal leave laws sunset on December 31, 2020.**
  - The expanded FMLA and the EPSLA do *not* apply to those employees who were sent home prior to April 1, 2020 because of an employer's closure.
- New Jersey amended both NJFLA and FLIA to cover Coronavirus related leaves.
  - **Changes to state law are only in effect during a public health emergency.**

# New Jersey Family Leave Act

- NJFLA is still a maximum of 12 weeks in a 24-month period
- Reasons for taking NJFLA now include:
  - Childcare due to closure of school or childcare facility due to epidemic or other public health emergency by order of a public official.
  - 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.
  - 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.

# New Jersey Family Leave Act

- Certifications required:
  - If a school or facility is closed the certification should include the date of closure and reason for closure of the school or childcare facility.
  - For other types of leave the certification must be completed by a public health authority, public official, or health care provider with the date of recommendation or directive, probable duration of condition or quarantine, and any other relevant medical facts

# New Jersey Family Leave Insurance Act

- Reasons for collecting FLIA benefits now include:
  - The leave is taken because the family member has an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease or in an effort to prevent spread of a communicable disease;
  - The family member is required to be in in-home care or treatment;
  - 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 family member or employee may jeopardize the health of others; and
  - The recommendation, direction, or order of the provider or authority that the employee or family member be isolated or quarantined as a result of suspected exposure to a communicable disease.

# Family Medical Leave Act

- An individual employed by the employer for at least 30 days before the first day of leave may take up to 12 weeks of job-protected leave to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency.
- The first 10 days of the leave is unpaid
- Thereafter an employee receives pay at  $\frac{2}{3}$  his/her regular rate capped at \$200 per day, total amount not to exceed \$10,000.

# Emergency Paid Sick Leave Act

- EPSLA provides up to 10 days of paid sick leave for full time employees and paid sick leave for part time workers equal to hours worked when the employee is unable to work or telework for the following reasons:
  1. The employee is subject to a federal, state or local quarantine order;
  2. The employee is advised by a health care provider to self-quarantine;
  3. The employee is experiencing COVID-19 symptoms and seeking medical diagnosis;
- compensation is at full rate of pay, capped at \$511 per day up to \$5,110 total.



# Emergency Paid Sick Leave Act

4. The employee is caring for an individual—including a non-family member—who is subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;
  5. The employee is caring for their minor child if the child's school or place of care is closed or the child's care provider is unavailable due to the public health emergency; **OR**
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor
- Paid leave is provided at two-thirds the employee's regular rate, capped at \$200 per day and \$2,000 total (\$12,000 aggregate over a 12-week period for reason 5).

# Concurrent Use of EPSLA and FMLA

- An employee may use both EPSLA and FMLA if his/her child's school or daycare is closed
- In the circumstance, an employee may take the 10 paid ESPLA days concurrent with the 10 unpaid emergency FMLA days, followed by paid emergency FMLA.

# How to apply for a leave?

- Employees should continue to apply to their employer to use NJFLA
- Employees should continue to apply to the State of New Jersey to use FLIA
- Employees apply for paid FMLA and ESPLA through their employer