

GUIDE:

NEW JERSEY FAMILY LEAVE INSURANCE¹

New Jersey workers are now eligible to receive cash benefits for up to 6 weeks when they take time off from work to care for a family member. New Jersey became the second state² in the nation to provide workers with paid family leave in 2009, when the state government amended the Temporary Disability Benefits Law to create Family Leave Insurance (FLI). As of January 1, 2015, FLI provides up to \$604.00 per week (adjusted annually) to New Jersey workers who take time off from their jobs to care for a seriously ill relative or bond with a newborn or newly adopted child.

Although FLI is a relatively new program, the Temporary Disability Benefits Law has provided New Jersey workers whose disabilities prevent them from working with up to 26 weeks of cash benefits since 1948. Temporary Disability Insurance (TDI) provides up to \$604.00 per week (adjusted annually) to disabled workers, including female workers during part of their pregnancy.

While FLI and TDI provide benefits for lost wages, the programs do not provide job protection. Two other laws, the New Jersey Family Leave Act (NJFLA) and the federal Family and Medical Leave Act of 1993 (FMLA), guarantee workers in certain companies and industries the right to return to work after taking family leave. The NJFLA entitles workers at large businesses (with 50 or more employees) to take time off from work for up to 12 weeks of unpaid family leave every 24 months, and guarantees them the same or similar job when they return. Employees may take family leave under the NJFLA to care for a seriously ill relative, a newborn or a newly adopted child. The FMLA is similar to the NJFLA but has stricter eligibility requirements while protecting more leave time — 12 weeks of unpaid leave for every 12 months — and applying to pregnancy and disability leave.

For many people who become pregnant or need to take family leave, FLI, TDI, the NJFLA and the FMLA will interconnect in complex ways. The following guide attempts to anticipate and answer questions about each of the laws and the ways they interact.

FAMILY LEAVE INSURANCE (FLI)

FLI provides New Jersey workers with up to 6 weeks of partial wage replacement during a 12-month period. Benefits are available (1) to bond with your child during the first 12 months after your child's birth, or during the first 12 months after your child is placed with you for adoption, and (2) to care for a

¹ The original version of this guide was researched and written by Melissa Ader, Yale Law Class of 2012. A Better Balance is extremely grateful to Melissa for her invaluable contributions to our work.

² Rhode Island became the third state to enact a family leave insurance law in July 2013. Washington State passed paid family leave legislation for bonding with a new child in 2006 but has delayed implementation.



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family member with a serious health condition. FLI does not, however, provide job protection. You are eligible for FLI if your employer is covered by the Unemployment Compensation Law (this includes most employers). If you are a domestic worker, you are eligible if your employer has paid you at least \$1000.00 in a calendar quarter. If your employer is a labor union, the union must have paid you at least \$1000.00 in a calendar year. You are also eligible if you work for New Jersey State government or for a County or Municipal government. Federal government workers are not covered by FLI.

There are three ways to receive FLI: through your employer's private plan, through the State Plan, or through the Family Leave Insurance Benefits During Unemployment program. If your employer has opted out of the State Plan and has a private plan, you will submit your claim through that private plan and your benefits will be provided under that plan rather than by the State of New Jersey. All approved private plans must be at least as generous in terms of benefit amounts, eligibility requirements and duration of payments as the State Plan, and some may be more generous.

If your employer does not have an approved private plan, you will apply to the State Plan and receive your FLI benefits from the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development, which is a New Jersey governmental agency. To apply to the State Plan, you must complete form FL-1 (located at http://lwd.state.nj.us/labor/forms_pdfs/tidi/fl1.pdf) and mail or fax it to the Division of Temporary Disability Insurance. The Division of TDI requires you to mail or fax your form only when you have stopped working and begun your family leave. If you send it before you have begun your family leave, the Division of TDI may take longer to process your claim. However, you should begin preparing your paperwork before you begin family leave, so that you can mail it out on the first day of your leave. You are eligible for the State Plan only if you have earned at least \$8,300, or have worked at least 20 calendar weeks in which you earned at least \$165 per week, in the 52 weeks immediately before beginning your family leave. If you are eligible to receive benefits from the State Plan, you will receive two-thirds of your average weekly wage (as measured during the eight weeks prior to taking the leave of absence), up to a maximum of \$604.00 per week (as of 2015).

If you apply for FLI benefits more than 14 days after your last day of covered employment and while you are unemployed, your claim will be processed under the Family Leave Insurance Benefits During Unemployment program. In that case, you must meet all the requirements of the Unemployment Compensation Law (i.e. be eligible to receive Unemployment Insurance) with the exception of establishing availability to work. You should still send in form FL-1 only when you have begun your family leave. If you send the form early, the Division of TDI may take longer to process your claim.

I live in New Jersey, but I work in another State. Am I eligible for FLI benefits?

No. In order to be eligible for FLI benefits, you must work for a New Jersey-covered employer; where you live is irrelevant. FLI benefits are paid out of a New Jersey State insurance program funded by employees of New Jersey-covered employers.

How does FLI define “seriously ill”?

A serious health condition means an illness, injury, impairment, or physical or mental condition, which requires inpatient care in a hospital, hospice, or residential medical care facility or continuing medical treatment or continuing supervision by a health care provider. Continuing medical treatment or continuing supervision by a health care provider means:

- 1) A period of incapacity (inability to work, attend school or perform regular daily activities due to a serious health condition, treatment for the condition and recovery from the condition) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - a) Treatment two or more times by a health care provider; or
 - b) Treatment by a health care provider on one occasion, which results in scheduling continuing treatment under the supervision of a health care provider;
- 2) Any period of incapacity due to pregnancy, or for prenatal care;
- 3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (such as asthma);
- 4) A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or
- 5) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (radiation, chemotherapy, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

Do I have to take my FLI benefits all in one block of time?

Not necessarily. If the leave is to care for a seriously ill family member, you can take benefits during one continuous period, up to a maximum of six weeks, or intermittently up to a forty-two day maximum in a twelve-month period. If you take a leave of non-consecutive weeks or days (“intermittent leave”), your schedule must be medically necessary. You must provide your employer with notice at least 15 days before taking the leave, unless an emergency or other unforeseen circumstance prevents you from providing 15 days of notice. You must provide your employer with a copy of the medical certification completed by your family member’s health care provider (Part C of form FL-1). Last, you must make a reasonable effort to schedule the leave without excessively disrupting your employer’s operations and, before the leave begins, to provide your employer with a regular schedule of the days on which you will take the intermittent leave (Part E of form FL-1, which your employer must sign).



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If the leave is to bond with a newborn or newly adopted child, you must take the leave during one continuous period of time of at least seven days, unless you and your employer agree to a schedule that involves non-continuous periods of at least seven days, up to a maximum of six weeks in a twelve-month period. (For instance, if your employer agrees, you could receive family leave benefits for the first week of January, February, March, April, May and June, while working during the other three weeks of each month.) If you and your employer agree to a schedule that includes non-continuous periods of leave, you must have your employer sign a regular schedule of the days on which you will take the leave (Part E of form FL-1).

If you apply to the FLI Benefits During Unemployment program, benefits must be paid for full weekly periods starting from Sunday through Saturday.

What is the minimum amount of leave time that I must take in order to receive FLI benefits for caring for a seriously ill relative?

Under the State Plan, you may take as little as one day of leave time but will only receive FLI benefits if you continue to take leave at least one calendar week after your first day of family leave (i.e. after a waiting period). For instance, if you use your family leave to take an ill parent to the doctor on Monday, March 1st, you will only become eligible to receive FLI benefits if you take additional day(s) of family leave on or after Monday, March 8th. From that point on, you are eligible to receive benefits for each day of leave you take. However, in order to receive benefits for your first day of leave (in this case, for March 1st) you must wait until you have taken some time off during each of three total, but not necessarily consecutive, weeks. For instance, if you take off March 1st, two days the week of Monday March 8th, and another day the week of March 22, you will become eligible to receive your March 1st benefits on the first day you take leave thereafter.

What is the minimum amount of leave time that I must take in order to receive FLI benefits for bonding with my child?

Under the State Plan, you will only receive FLI benefits after you have taken seven consecutive days of FLI leave. For instance, if you take family leave each day from December 1 – December 7, you will become eligible to receive FLI benefits on December 8. You will not receive benefits for the first week of leave until you have received benefits for three consecutive weeks. For instance, if you take family leave from December 1 – December 7, and receive benefits for leave taken from Monday January 4 – Monday January 25, you will also receive the benefits accrued during the December 1 week of leave.

Can I receive FLI to care for my seriously ill mother-in-law?

No. You can only claim FLI benefits to care for your child, spouse, domestic partner, civil union partner or parent. “Parent” means your biological parent, foster parent, adoptive parent, or stepparent, or a person who was your legal guardian when you were a child.

Can I receive FLI to care for my seriously ill stepchild?

Yes. “Child” means your biological, adopted, or foster child, stepchild or legal ward, the child of your domestic partner, or the child of your civil union partner, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

Can I receive FLI benefits to bond with a child who is any age?

It depends. FLI benefits will only be paid for the purpose of bonding with a child within one year of the child’s birth or for bonding with a minor child if your claim is made within one year of his/her placement with you for adoption.

Can I receive FLI benefits if I must stay home to care for my six-year-old daughter when she misses a day of school due to her chronic health condition (such as asthma or diabetes)?

Probably. If your child is incapable of attending school because of her chronic health condition, you may take family leave for any period of time (up to 6 weeks) during which you stay home to care for her. To receive FLI benefits, your child must be receiving continuing medical treatment or supervision by a health care provider for her chronic health condition, and you must complete the “waiting period.”

If my six-year-old daughter has a cold, can I receive FLI benefits to care for her?

Probably not. For your daughter’s cold to count as a serious illness, she would have to miss school for more than three consecutive days. She would also have to receive treatment from a health care provider at least twice, or a single treatment with a health care provider would have to lead to the creation of a continuing treatment plan under medical supervision.

Can I receive FLI benefits to care for a seriously ill relative who does not live in New Jersey or the United States?

Yes, as long as you can establish that your relative needs care and provide the appropriate medical certificate.

Are there any eligibility requirements that I need to fulfill if I want to receive FLI benefits through the State Plan?

Yes. In order to receive FLI benefits, you may not be currently receiving TDI benefits (or any benefits from a government disability or cash sickness program), Unemployment Insurance benefits, Workers’ Compensation, your full salary or paid time off. The law does not exclude those receiving private disability benefits. You must not go to work while you are receiving FLI benefits. You must have earned at least \$8,300, or have worked at least 20 calendar weeks in which you earned at least \$165 per week, in the 52 weeks immediately before the beginning of the family leave period. If you are taking care of a seriously ill family member, your family member must be currently under the care or supervision of a health care provider. You must not be currently out of work due to a labor dispute at

your place of work. You must not have been fired by your most recent employer for gross misconduct connected with your work because you committed a crime punishable under the New Jersey Code of Criminal Justice. The period of family leave for which you are claiming benefits cannot have started when you were ineligible to receive benefits, or more than fourteen days after your last day of work.

I want to receive FLI benefits, but my employer is telling me that I have to use my paid time off before I can access my FLI benefits. Is this legal?

Yes, but only for two weeks. Your employer can require you to use up to two weeks of employer-provided paid sick leave, paid vacation time, or other leave at full pay before you receive any FLI benefits. You will not receive FLI benefits for any day on which you receive paid time off at full pay, and your employer may request that your FLI benefit entitlement during the 12-month period be reduced by the number of days on which you receive paid time off. Your paid time off can count towards the State Plan's seven-day "waiting period;" if you receive paid time off for at least seven days of your family leave, you can begin receiving FLI benefits immediately after you finish using your paid time off.

Once I submit my FLI claim, how soon will I receive a benefit check?

The Division of Temporary Disability Insurance will usually mail the first benefit check within two weeks after receiving a claim that has been properly completed.

Who pays for FLI benefits?

All covered employees contribute, even if they never receive benefits. Your employer will deduct 0.09% (as of January 1, 2015) of your taxable wage base in the form of weekly deductions from your wages. The taxable wage base is \$32,000 for 2015, but the wage base changes each year. Employers do not contribute.

TEMPORARY DISABILITY INSURANCE (TDI) AND FAMILY LEAVE INSURANCE (FLI)

TDI provides New Jersey workers who cannot work because of a disability NOT caused by their job with up to 26 weeks of cash benefits during a 12-month period. *If your pregnancy prevents you from working, you are eligible to receive TDI benefits.* TDI does not provide you with job protection. While various laws protect pregnant and disabled employees from unfair treatment, in some situations your employer may still fire or demote you during or when you return from your pregnancy or disability leave. The eligibility requirements for TDI are the same as those of FLI, unless you work for a government employer or the state police. You are eligible for TDI if you work for the State of New Jersey, including Rutgers, The State University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology. However, if you work for a different government entity



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(such as a municipal government) you are only eligible if your employer chooses to be covered by TDI. Members of the Division of State Police in the Department of Law and Public Safety are not eligible to receive TDI benefits.

There are three ways to receive TDI: through your employer's private plan, through the State Plan, or through the Disability During Unemployment program. If your employer has an approved private plan for TDI benefits, submit your benefits claim through that plan. All approved private plans must be at least as generous in terms of benefit amounts, eligibility requirements and duration of payments as the State Plan, and some may be more generous.

If your employer does not have an approved private plan, you will apply to the State Plan and receive your TDI benefits from the Division of Temporary Disability Insurance, a New Jersey governmental agency. To apply to the State Plan, you must complete form DS-1 (located at http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/WDS1.pdf) and mail or fax it to the Division of Temporary Disability Insurance. You should mail in the form only when you have stopped working and your doctor certifies you are disabled; if you do otherwise, your claim may be denied. The State Plan's earning requirements are the same for TDI and FLI. Through the State Plan, you will receive two-thirds of your average weekly wage (as measured during the eight weeks prior to taking the leave of absence), up to a maximum of \$604.00 per week (as of January 1, 2015).

If you apply for TDI benefits more than 14 days after your last day of employment and while you are unemployed, your claim will be processed under the Disability During Unemployment program. You must meet all the requirements of the Unemployment Compensation Law (i.e. be eligible to receive Unemployment Insurance) with the exception of establishing ability to work. You should still fill out form DS-1 only when your doctor certifies you are disabled.

If I get pregnant, can I receive TDI benefits when my pregnancy prevents me from working, and then use FLI benefits immediately after to care for my newborn child?

Yes. TDI can be used back-to-back with FLI (but not at the same time). You should use TDI benefits until you recover from your pregnancy-related disability. After recovery, file a claim for FLI benefits, checking on Form FL-2 (when transitioning from State Plan TDI to State Plan FLI) that the reason for family leave is to "bond with child."

If I receive FLI benefits to bond with a newborn immediately after having received TDI benefits for my pregnancy, do I have to wait seven days (a "waiting period") between receiving the TDI benefits and the FLI benefits?

No. If the FLI claim immediately follows the TDI claim, there is no "waiting period" between the end of the TDI claim and the beginning of the FLI claim.



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If I file a claim for FLI benefits to care for my newborn during the period immediately after I received TDI benefits for pregnancy, how will the Division of Temporary Disability Insurance calculate my FLI weekly benefits?

Your FLI weekly benefits will be the same as your TDI weekly benefits.

If I already filed a TDI claim due to my broken arm a few months ago, can I file another claim due to my pregnancy?

Yes. You can have multiple disability claims during the year, as long as you meet the eligibility requirements, have medical documentation for each new claim, and have not used up your maximum of TDI benefits calculated by your earnings.

How long will I receive TDI benefits for my pregnancy?

Typically, you will receive benefits for up to 4 weeks before the expected delivery date and up to 6 weeks after the actual delivery date. However, if your doctor certifies that you have a specific complication related to the pregnancy, a Caesarean section, or another simultaneous disability, you may be able to receive benefits for a longer period of time.

If I work until my delivery, can I collect TDI benefits for a longer period of time after the birth?

No. You may receive TDI benefits only for the period of time that your doctor certifies that you are unable to work. However, you can apply to receive FLI benefits to bond with a newborn after you become physically able to work.

If I receive TDI benefits for my pregnancy, how often must I see my doctor?

While there is no set requirement as to how often you must see your doctor, you must be under his or her continuing care in order to continue receiving benefits. Periodically, forms will be mailed to you to obtain updated medical information. Those forms must be completed by you and your doctor and returned to:

The Division of Temporary Disability Insurance
PO Box 387
Trenton, New Jersey 08625-0387

Will I start receiving TDI benefits as soon as I file my claim?

No. Your benefits will become payable on the eighth consecutive day of your leave, after the “waiting period” of seven days. If, following the waiting period, your disability continues for three consecutive



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weeks, you will receive the benefits accrued during the waiting period; if not, you will never receive the benefits accrued during the waiting period.

Do I have to take my TDI benefits all in one block of time?

Yes. Once you become able to work, you can no longer receive TDI benefits. If you have not already received 26 weeks of TDI benefits in a year, and your disability returns later in the year, you may file a second claim for TDI benefits. However, you must receive your TDI benefits on consecutive days and weeks during a single period of disability.

If I don't live in New Jersey, can I still receive TDI and FLI benefits?

Yes. You do not have to live in New Jersey to receive TDI or FLI benefits, but you must work for a New Jersey-covered employer.

I work for a governmental employer (for instance, a county government or municipal government) which is not covered for TDI benefits. Even though I cannot receive TDI benefits, can I still receive FLI benefits?

Yes. Although some governmental employers are not covered for TDI benefits, all non-federal governmental employers must be covered for FLI benefits.

Can I receive TDI benefits or FLI benefits if I worked part-time before taking the leave?

Yes, as long as you meet all other eligibility requirements.

Are there any eligibility requirements that I need to fulfill if I want to receive TDI benefits through the State Plan?

Yes. You must be disabled for more than seven days, and your disability cannot have begun more than fourteen days after your last day of work. You must have earned at least \$8,300, or have worked at least 20 calendar weeks in which you earned at least \$165 per week, in the 52 weeks immediately before the beginning of the disability. You must be under the care of a legally licensed physician, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor. Your disability must not be self-inflicted or the result of a criminal act which you committed. You must not have been fired by your most recent employer for gross misconduct connected with your work because you committed a crime punishable under the New Jersey Code of Criminal Justice. The disability must not have begun while a labor dispute was occurring at your most recent place of employment. You must not work for wages during your period of disability. If your employer continues to pay you after the onset of the disability, the sum of those wages and your TDI benefits cannot be greater than your weekly wages directly before you stopped working.

Can I be fired or demoted if I receive TDI or FLI benefits?

Maybe. The New Jersey Temporary Disability Benefits Law entitles employees who take disability or family leave to cash benefits, but it does not entitle you to job protection. If you receive TDI or FLI benefits and are covered by the NJFLA or the FMLA (see below) you cannot be fired or demoted unless a general layoff occurs while you are on leave; if your original position is no longer available, your employer must offer a position equivalent in pay, benefits and status. However, if you are not covered by those statutes (if your employer is too small, you have not worked for your employer for enough time, or you fail to meet other eligibility conditions of those statutes), your employer is allowed to fire or demote you during your leave of absence or after you return.

Even if you are not covered by the FMLA or NJFLA, you may be protected from unfair termination by one or more anti-discrimination laws.³ If you believe you have been fired based on your decision to claim TDI benefits for your pregnancy-related disability leave, you may have a claim that your employer violated your rights under the New Jersey Law Against Discrimination, the Pregnancy Discrimination Act of 1978, Title VII of the Civil Rights Act of 1964, or the Americans with Disabilities Act. These laws protect you from discrimination in employment based on your sex, which includes pregnancy, childbirth and related medical conditions, your marital status and your disability. If you believe you have been fired because of your decision to claim FLI benefits in order to care for a seriously ill family member, you may have a claim under the Americans with Disabilities Act, which prohibits discrimination against an individual because of his/her relationship or association with a disabled person. If you believe you have been fired based on your decision to claim FLI benefits in order to bond with a child, you may be protected by Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on sex, including sex-role stereotypes about motherhood, or the Pregnancy Discrimination Act of 1978.

If you are fired after you file your TDI or FLI claim, you will still receive FLI or TDI benefits until the completion of your claim.

Who pays for TDI benefits?

All covered employers and employees contribute, even if they never receive benefits. The rate of contribution for employers varies from 0.10% to 0.75% of their employees' taxable wage base.

³ In addition, prospective and current state employees are protected from discrimination at work based on their familial status, N.J. ADMIN. CODE § 4A: 7-3.1 (2009), and some employees in Monroe (MONROE, N.J. CODE § 50-5(A)), Newark (NEWARK, NJ CODE § 2:2-84.4), Passaic (PASSAIC, N.J. CODE § 35-6), Rocky Hill (ROCKY HILL, N.J. CODE § 24-9) and Wanaque (WANAQUE, N.J. CODE § 29-22) are further protected under local laws from such discrimination.

As of January 1, 2015, employees contribute at the rate of 0.25% on the first \$32,000 in covered wages earned during the calendar year. Employers will deduct this amount from your weekly wages. Under this calculation, the maximum amount an employee will contribute in 2013 is \$111.24.

THE NEW JERSEY FAMILY LEAVE ACT (NJFLA) AND THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

The NJFLA and the FMLA entitle New Jersey workers to *unpaid* time off for family leave. Unlike FLI and TDI, the NJFLA and the FMLA provide job protection. Although the NJFLA and the FMLA are very similar, they have important differences.

What is the difference between the FMLA and the NJFLA?

The FMLA is a federal law applying to workers across the United States, while the NJFLA is a state law that only applies to workers in New Jersey.⁴ Both laws entitle workers to time off to care for a seriously ill family member or a newborn or newly adopted child. However, only the FMLA provides time off due to an employee's own serious health condition (including pregnancy); therefore, the FMLA, but not the NJFLA, entitles you to leave for your pregnancy-related disability. Only the NJFLA allows you to take leave to care for a seriously ill parent-in-law.

The FMLA provides you with more family leave than the NJFLA; under the FMLA, you may take 12 weeks of eligible leave within a period of 12 months, while under the NJFLA, you may only take 12 weeks of eligible leave every 24 months. However, the NJFLA applies to more individuals than the FMLA. The NJFLA applies to employers with 50 or more employees worldwide, while the FMLA applies to employers with 50 or more employees who work within 75 miles of one another. The FMLA also guarantees certain workers unpaid job-protected leave for up to 12 weeks to deal with certain obligations (including child care activities) arising from a spouse, parent or child being on, or called to, active duty in the military. The FMLA also provides up to 26 weeks of unpaid leave for workers whose spouse, child, parent or next of kin is a seriously ill or injured member of the armed services.

Employees are eligible for the FMLA if they have worked for their employer for at least 12 months and at least 1,250 hours in the last 12 months. Employees are eligible for the NJFLA if they have worked for their employer for at least 12 months and at least 1,000 hours in the last 12 months. Government employees are covered by both laws. An employer may deny NJFLA leave to an employee who is in the highest paid 5% or whose base salary is among the seven highest, whichever number of employees is

⁴ To learn more about the Family and Medical Leave Act, see A Better Balance, *The Family and Medical Leave Act* (Jan. 2011), available at <http://abetterbalance.org/web/home/forfam/know-your-rights>.

greater, if the employer can demonstrate that the employee's absence would cause a substantial and grievous economic injury to the employer's operation. The employer must first provide proper notice to such employees. Under the FMLA, if an employee is among the highest paid 10% of all employees at his or her workplace, the employer may choose not to give the employee his or her job back after leave if the employee's absence would have a substantial negative effect on the business.

Although LGBT workers who reside in New Jersey can now take leave under both the FMLA and NJFLA to care for a seriously ill same-sex spouse, the FMLA itself does not cover domestic partnerships or civil unions.⁵ Civil union partners and domestic partners are eligible to take leave to care for their partner only under the NJFLA.

Can I be fired or demoted if I take family leave through the FMLA or the NJFLA?

No. After you return from family leave covered by the FMLA or NJFLA, you are entitled to the same position you held before the leave. If your original position is no longer available, your employer must offer a position equivalent in pay, benefits and status. If a layoff occurs while you were on leave, you will retain the same rights as if no leave had been taken. (For example, if there is a general downsizing and you would have been laid off even if you hadn't taken family leave, your employer can fire you.)

However, if you take family leave covered by the NJFLA and schedule the leave to occur on non-consecutive days or weeks, your employer is allowed to temporarily transfer you for the period of your family leave to an available alternative position for which you are qualified and which can better accommodate your family leave schedule. This alternative position must have equivalent pay and benefits to your original position. Your employer may not transfer you in order to discourage you from taking family leave or place a hardship on you. As soon as you complete your family leave and return to full-time work, your employer must place you in the same or equivalent job as your original job.

In the context of the NJFLA, what are the definitions of “parent” and “child”?

“Parent” means your biological parent, adoptive parent, foster parent, step-parent, in-law, or other person who has a parent-child relationship with you as defined by law. “Child” means a biological, adopted, or resource family child, stepchild, legal ward, or child who is under 18 years of age, or at least 18 years of age but incapable of self-care because of a mental or physical impairment.

In the context of the FMLA, what are the definitions of “parent” and “son or daughter”?

⁵ To learn more about how the Family and Medical Leave Act applies to LGBT families, see A Better Balance, *The Family and Medical Leave Act: What Should LGBT Families Know?* (Jun. 2015), available at <http://abetterbalance.org/web/home/forfam/know-your-rights>.

“Parent” means your biological parent or another person who acted as your parent when you were a child.

Under the FMLA, “son or daughter” means a biological, adopted, or foster child, a stepchild, or a legal ward, and who is under 18 years of age, or at least 18 years of age but incapable of self-care because of a mental or physical disability. “Son or daughter” under the FMLA also includes a child of a person standing “in loco parentis.” The term “in loco parentis” means one who is acting in the place of a parent. The federal Department of Labor has made it clear that this category can include an LGBT parent who is raising a child but has no biological or legal relationship to the child.⁶

If I take a 6-week leave of absence covered by both the FMLA and the NJFLA beginning on January 1, 2015, and I take another 6 weeks of FMLA and NJFLA-covered leave beginning on August 1, 2015, when is the next time I can take a leave of absence?

As long as you are eligible for the FMLA, you can take your next leave of absence on January 1, 2016. You will become eligible for another NJFLA-covered leave of absence on January 1, 2017.

If I take a leave of absence that is covered by both the FMLA and the NJFLA, can I decide that I only want the leave covered by the FMLA (and not the NJFLA), or by the NJFLA (and not the FMLA)?

No. If you are eligible to take a leave of absence under both the FMLA and the NJFLA, your leave of absence will count against the time allotted by *both* the FMLA and the NJFLA. However, if you are only eligible to take a leave of absence under the NJFLA, your leave will only count against the time allotted by the NJFLA; the same is true of the FMLA. For instance, if you take 12 weeks of leave to take care of a seriously ill parent and meet all other eligibility requirements for both the FMLA and the NJFLA, you will use up 12 weeks of FMLA leave *and* 12 weeks of NJFLA leave. However, if you take a 12 week leave of absence for your own personal disability (such as your pregnancy), an absence not covered by the NJFLA, you will use up 12 weeks of FMLA leave, but will still have 12 weeks of NJFLA leave left to use for other purposes (for instance, to care for your newborn once you are no longer disabled).

Is it legal for my employer to ask for proof that I have a newborn, have just adopted a child, have a serious medical condition, or must care for my seriously ill family member, if I want to take leave under the NJFLA?

⁶ Administrator’s Interpretation No. 2010-3 (Dep’t of Labor June 22, 2010), available at http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm.



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Yes. You may be required to provide verification of your medical condition or parenthood, such as a doctor's certification that you just gave birth to a child. However, your employer cannot require you to certify that you are eligible for family leave under the NJFLA; he or she must decide whether you are legally eligible.

THE INTERACTION BETWEEN FLI, TDI, THE NJFLA AND THE FMLA

If I take family leave in order to care for a sick relative or bond with a child, may I choose to receive FLI benefits *without* using the leave time and protections allotted to me by the FMLA and the NJFLA?

No. If you decide to receive FLI benefits and you are eligible for FMLA and/or NJFLA leave, your family leave will count against the time allotted to you by the FMLA and/or the NJFLA. However, you can take unpaid leave under the FMLA and/or the NJFLA and decide not to apply for FLI benefits.

If I take a 12-week leave of absence within 12 months while applying for FLI benefits, how much leave can I take?

Provided you are eligible, you can take up to 12 weeks of family leave under the FMLA and/or the NJFLA. However, you will only receive FLI benefits for up to 6 weeks.

If I need to care for a family member while I am on disability leave and receiving TDI benefits for my pregnancy, can I still ask for the job protections of the NJFLA?

Yes. You may take NJFLA leave to care for a family member at the same time as you receive TDI benefits for your pregnancy. You will retain all the rights of the NJFLA (including job protection). However, you may not receive FLI benefits while you are receiving TDI benefits.

Can I be eligible to receive cash benefits under the TDI or FLI programs even if I am not covered by the FMLA or NJFLA?

Yes. If your employer has fewer than 50 employees and is not a governmental entity, you have worked for your current employer for fewer than 12 months, or you have worked fewer than 1,000 hours during the 12 months immediately prior to taking the leave, you will not be covered by the FMLA or the NJFLA but may still be eligible to receive TDI or FLI benefits. Similarly, because New Jersey provides up to 26 weeks of TDI benefits each year but only 12 weeks of NJFLA leave every 2 years, it is possible for you to have used up your NJFLA-covered leave while remaining eligible for TDI benefits.



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How much notice must I give my employer if I want to take leave to care for a newborn or newly adopted child?

Whether you plan to take leave covered by the FMLA or the NJFLA, or to apply for FLI benefits, you must provide your employer with at least 30 days of advance notice if your need for leave is foreseeable. If the leave is not foreseeable, you must provide notice as soon as it is practicable. (For instance, it may be difficult to give your employer notice more than 30 days before your adopted child is placed with you.) If the need for leave is foreseeable and you do not provide notice, you will lose 14 days of your maximum FLI benefits. You can provide the notice by speaking to your employer, and must tell your employer approximately when and for how long you will be taking the leave. If your employer asks you “reasonable” questions in order to make sure you qualify for the leave, you must respond, or else may be denied FMLA protection.

How much notice must I give my employer if I want to take leave to care for a seriously ill family member?

If you plan to take leave covered by the FMLA or NJFLA, you must provide your employer with at least 30 days of advance notice if your need for leave is foreseeable. If the leave is not foreseeable, you must provide notice as soon as it is practicable. If you plan to apply for FLI benefits, you must provide notice in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance prevents prior notice. If you plan to apply for FLI benefits to care for your family member on non-consecutive days or weeks, you must provide at least 15 days of notice before the first day on which benefits are paid, unless unforeseen circumstances prevent this