

New Jersey Family Leave Act - FAQs

Who is covered for Family Leave Insurance benefits?

Employees of all private and governmental employers subject to the New Jersey Unemployment Compensation Law are covered.

Are employees of small businesses covered for Family Leave Insurance benefits?

Yes. All employees working for covered employers are covered for Family Leave Insurance benefits, regardless of the number of employees in the business.

Who provides the funding for the Family Leave Insurance program?

Beginning January 1, 2009 employers are required to withhold 0.0009 from employees' taxable wages as defined in the Unemployment Compensation Law. This is the same wage upon which the withholding for unemployment compensation and temporary disability insurance is based (\$28,900 in 2009). The withholding rate increases to 0.0012 beginning in 2010. Employers do not contribute to the program. Visit the website for the Division of Employer Accounts for information regarding the withholding and remitting of contributions.

How are the taxable wages subject to the State Plan Family Leave Insurance (FLI) program reported?

The taxable wages subject to the state plan FLI program are reported on the "Employer Quarterly Report," NJ927.

How are the worker contributions for Family Leave Insurance (FLI) remitted?

The worker contributions deducted for FLI are remitted together with the other contributions due on the "Employer Quarterly Report," NJ927 or NJ927W

Is a household employer required to report and submit worker Family Leave Insurance (FLI) contributions quarterly?

No. A household employer will report the taxable FLI wages and submit the worker FLI contributions with the "Employer Annual Report," NJ927H.

Does the worker deduction for Family Leave Insurance need to be displayed as a separate deduction on the W2?

Yes. The worker deduction for FLI must be displayed as a separate deduction on the W2. The FLI deduction cannot be combined with the Temporary Disability Insurance (TDI) deduction.

Can an employer combine the deduction for TDI and FLI on the employee's pay stub?

If the employee is covered by the State Plan for both TDI and FLI, or the employee is covered by a private plan for both TDI and FLI, then the deduction for TDI and FLI can be combined on the employees pay stub. However, the deduction for TDI and FLI must be displayed separately on the W2.

Can a governmental employer who has chosen not to elect coverage for Temporary Disability Insurance (TDI) benefits under the New Jersey Temporary Disability Law choose not to elect coverage for Family Leave Insurance (FLI)?

No. Even though a governmental employer has chosen not to elect coverage for TDI, there is no such exemption for FLI.

Must an employee who is taking NJFLA or FMLA covered leave to care for a seriously ill family member or to bond with a newborn or newly adopted child also file a claim for Family Leave Insurance benefits for that same period of leave?

No. The law does not compel an employee to file a claim for Family Leave Insurance benefits at any given time. The law does state that an individual who is entitled to leave covered under the NJFLA or FMLA must "take" any Family Leave Insurance benefits "concurrently with leave taken pursuant to the NJFLA or the FMLA." This may be misconstrued by some to mean that when an employee requests and is granted permission by his or her employer to take leave from work to care for a seriously ill family member or to bond with a newborn or newly adopted child and where such leave is covered under the NJFLA or FMLA the employee must also apply for Family Leave Insurance benefits for the same period of leave. However, the purpose of the concurrent leave provision is not to compel an employee to apply for Family Leave Insurance benefits at any given time, but rather to ensure that the law which established the Family Leave Insurance program does not confer upon employees an additional six weeks of leave entitlement beyond the 12 weeks of unpaid leave to which such employees are entitled under the NJFLA and FMLA. The Family Leave Insurance benefits program does not confer upon employees any leave entitlement whatsoever, but rather, establishes a monetary benefit for

which employees may or may not file a claim either with the State or with a private plan provider. Family Leave Insurance benefits eligibility will be determined on a case-by-case basis without any regard to whether the claimant is on NJFLA or FMLA covered leave during the period for which he or she is applying for Family Leave Insurance benefits.

Does an employee have a responsibility to give notification to the employer if he/she intends to claim Family Leave Insurance benefits?

Yes. Employees intending to take leave to bond with a newborn or newly adopted child must provide the employer with a minimum of thirty (30) days notice prior to commencement of the family leave. Failure by the employee to provide this notice will result in a 2 week (14 day) reduction in the claimant's maximum Family Leave Insurance benefits entitlement for the 12-month period unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.

Employees intending to take leave to care for a seriously ill family member on a continuous, non-intermittent basis must provide the employer with prior notice of the family leave in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance precludes prior notice.

Employees intending to take leave to care for a seriously ill family member on an intermittent basis must provide the employer with a minimum of fifteen (15) days notice prior to the commencement of the intermittent family leave unless an emergency or other unforeseen circumstance precludes prior notice.

Can employees receive Family Leave Insurance benefits if they work part time?

Yes. Employees working part time and suffering a wage loss due to family care or bonding leave may receive benefits provided all other eligibility requirements are met. Family Leave Insurance is a wage loss protection program that provides partial wage replacement regardless of whether a claimant is a full-time or part-time employee.

Under what circumstances can an employee file for Family Leave Insurance benefits?

Beginning July 1, 2009, New Jersey law will provide up to six (6) weeks of Family Leave Insurance benefits to covered individuals to:

Bond with a child during the first 12 months after the child's birth, if the covered individual or the domestic partner or civil union partner of the covered individual is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the covered individual.

Care for a family member with a serious health condition supported by a certification provided by a health care provider. Claims may be filed for six consecutive weeks, for intermittent weeks or for 42 intermittent days during a 12-month period beginning with the first date of the claim.

Family member means a child, spouse, domestic partner, civil union partner or parent of a covered individual. Child means a biological, adopted, or foster child, stepchild or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, 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.

What constitutes a serious health condition?

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 (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - i. Treatment two or more times by a health care provider; or
 - ii. Treatment by a health care provider on one occasion, which results in a regimen of 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;
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 therefrom) by a health care provider or by a provider of health care services under orders of, or on referral 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 or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

What is the definition of a health care provider?

Health care provider means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

When must a claimant submit a claim for Family Leave Insurance benefits?

A claim must be filed within 30 days after the commencement of a period of family leave. A penalty may be imposed if the claim is filed late.

Where can an individual obtain an application to claim Family Leave Insurance benefits?

Application forms will be available after June 1, 2009 by visiting the Department of Labor and Workforce Development's web site at www.nj.gov/labor, by telephoning the Division of Temporary Disability Insurance's Customer Service Section at (609) 292-7060, or by writing to the Division of Temporary Disability Insurance, PO Box 387, Trenton, NJ 08625-0387.

When can an individual claim Family Leave Insurance benefits to bond with a newborn or newly adopted child?

Family Leave Insurance benefits for bonding with a newborn or newly adopted child are only payable during the 12 months after the child's birth or adoption.

If my child was born or placed for adoption prior to July 1, 2009, am I eligible to claim bonding benefits?

Yes. Provided the child was born or placed for adoption within the one year period prior to the period(s) benefits are claimed and all other eligibility requirements are met.

Is a claimant eligible for Family Leave Insurance benefits if he/she has to provide care for a sick relative (child, spouse, parent, or domestic/civil union partner) who is out of state or out of the country?

Yes. A claim may be submitted for Family Leave Insurance benefits to care for a family member with a serious health condition who is out of the state or out of the country. Benefits may be payable provided the medical certificate is properly completed and establishes a need for care.

What are the minimum earnings required for an employee to be eligible for Family Leave Insurance Benefits?

In order to have a valid claim for Family Leave Insurance benefits, a claimant must have had at least 20 calendar weeks in covered New Jersey employment in which he/she earned \$143 or more (called "base weeks"), or have earned \$7,200 or more in such employment during the "Base Year" period. The "Base Year" is the 52 weeks immediately before the week in which the family leave began. Only covered wages earned during the base year period can be used in determining a claim.

Can employees be covered by a private plan instead of the State Plan?

Yes. The Family Leave Insurance Law permits employers to provide coverage through an approved Family Leave Insurance private plan instead of the state administered plan called the State Plan. Private plans must provide a benefit amount and benefit duration that equals or exceeds the State Plan and eligibility requirements that are no more restrictive than the State Plan. The cost to the worker for private plan Family Leave Insurance coverage cannot be more than the cost to workers for State Plan coverage. All private plans must be approved by the Division of Temporary Disability Insurance. Information regarding the benefits available under the private plan can be obtained from the employer.

How does an employee file for benefits if the employer has a private plan?

If an employee is covered by a Private Plan and wants to file a claim for Family Leave Insurance benefits, the employer will provide the employee with the necessary claim form. A decision on eligibility will be made by the Private Plan insurer. Claimants who disagree with a decision on a Private Plan claim can file a complaint with the Private Plan Compliance Section, Claims Review Unit, P O Box 957, Trenton, NJ 08625-0957.

Are school employees eligible to receive Family Leave Insurance benefits between academic years or terms or during a school-wide recess?

No. An employee of an educational institution and who has a reasonable assurance of returning to work in the same or similar capacity during the succeeding academic year or term or following a period of school-wide recess is not eligible for Family Leave Insurance benefits between academic years or terms or during a school-wide recess.

Exception: If an employee of an educational institution has sufficient base year wages in other covered employment and those wages are sufficient to establish a valid Family Leave Insurance benefits claim, benefits can be paid based only upon the wages from the other covered employment for the period of time between the academic years or terms or during the school-wide recess.

Is there a waiting period before Family Leave Insurance benefits can be paid?

Yes. The first seven consecutive days of a claim is called the waiting period. If benefits are payable for any period during each of the three consecutive weeks following the waiting period, then benefits are also payable for the waiting period.

In the case of intermittent family leave, in a single period of family leave taken to provide care for a family member with a serious health condition, Family Leave Insurance benefits are payable with respect to the first day of leave taken after the waiting period and each subsequent day of leave during that period of family leave. If benefits become payable on any day after the first three weeks in which leave is taken, then benefits will also be payable for any leave taken during the waiting period.

Exception: There is no additional seven-day waiting period for a Family Leave Insurance claim for benefits to bond with a newborn

when the Family Leave Insurance claim is for the period immediately following a Temporary Disability Insurance (TDI) pregnancy-related claim.

Is a claimant required to take Family Leave Insurance benefits all at one time?

If the leave is to care for a seriously ill family member, the leave may be taken during one continuous period, up to a maximum of six (6) weeks or intermittently up to a 42 day maximum in a 12-month period.

If the leave is to bond with a newborn or newly adopted child, the leave must be taken during one continuous period of time of seven (7) days or more unless both the employee and the employer have agreed to an intermittent leave schedule. In those cases, leave may be taken in non-continuous intermittent periods of seven (7) days or more. All leave taken to bond with a newborn or newly adopted child must be taken during the 12-month period immediately following the birth or adoption of the child.

Is there a minimum number of days that an employee must claim Family Leave Insurance benefits?

No. The law does not establish a minimum number of days or weeks that an employee must claim Family Leave Insurance benefits. It only establishes the maximum leave time of six (6) weeks of benefits within a 12-month period.

If a claimant receives six weeks of Family Leave Insurance benefits to bond with a newborn and then has a parent becomes seriously ill later in the year, can a new claim be filed since the leave would be for a different reason?

Claimants are limited to six (6) weeks of benefits within a 12-month period regardless of the reason for the leave. If the maximum entitlement was not paid for the bonding claim, a new claim could be filed during the 12-month period to care for a seriously ill family member. The claimant would be eligible to receive the balance of the maximum entitlement.

How is the 12-month period determined?

Twelve-month period means, with respect to an individual who establishes a valid first claim for Family Leave Insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim.

How is the weekly benefit amount for Family Leave Insurance payments determined?

The weekly benefit rate is calculated at two-thirds (2/3) of the claimant's average weekly wage up to the maximum amount payable. The average weekly wage is generally based on the earnings in the eight calendar weeks immediately prior the week in which the leave begins. The total wages earned during all base weeks in the eight-week period are divided by the number of base weeks to obtain the average weekly wage.

NOTE - If the claimant received New Jersey Temporary Disability Insurance (TDI) pregnancy disability benefits and then files a Family Leave Insurance claim to bond with a newborn child, the weekly benefit amount will be the same as the TDI weekly benefit amount. There is no new calculation of the weekly benefit amount provided the bonding claim immediately follows the TDI pregnancy claim.

How soon will Family Leave Insurance benefits be issued after a claim is submitted?

Most claimants are sent benefit checks within two weeks after a properly completed claim is received.

Can an employer require an employee to use paid time off during the period the employee is claiming Family Leave Insurance benefits?

Yes. The employer of a claimant may require the claimant, during a period of family leave, to use up to two weeks of paid sick leave, paid vacation time or other leave at full pay. This option does not relieve employers of any collective-bargaining provisions with respect to paid time off. Employees are permitted to take the paid time off during the waiting period.

Can an employer require an employee to use more than two weeks of paid time off during the period the employee is claiming Family Leave Insurance benefits?

No. Although the employer may "require" the claimant, during a period of family leave, to use up to two weeks of paid sick leave vacation time or other leave at full pay, the employer may only "permit" the claimant, during a period of family leave, to use more than two weeks of paid sick leave, vacation time or other leave at full pay.

How does the receipt of paid time off during the period an employee is claiming Family Leave Insurance benefits affect the amount of benefits that can be paid?

Family Leave Insurance benefits will not be paid for any day the employee receives wages or other paid time off at full pay. Additionally, when an employer requires the claimant to use paid time off at full pay, the employer may, within a reasonable and practicable time, request that the claimant's maximum Family Leave Insurance benefit entitlement during the 12-month period be reduced by the number of days of leave at full pay required by the employer to be used by the claimant. A full week of paid time off will reduce the claimant's maximum entitlement by seven (7) benefit days. Paid time off for periods less than a full week will result in a reduction of one benefit day for every day of paid time off at full pay. The maximum reduction is 14 benefit days. The employee is permitted to take any required fully-paid leave during the waiting period.

Are Family Leave Insurance benefits reduced or denied when the care provider/claimant is receiving benefits from another source?

Yes. Family Leave Insurance benefits are not payable for any period the claimant/care provider is receiving New Jersey Temporary Disability Insurance Benefits, Unemployment Compensation Benefits, Workers' Compensation Benefits, or benefits from a disability or cash sickness program or similar law of any state or the federal government including, but not limited to, Social Security Disability benefits.

How are Family Leave Insurance benefit payments treated for tax purposes?

Family Leave Insurance benefits must be included as income for Federal Income Tax purposes. Claimants will receive a Form 1099-G, Certain Government Payments, showing the amount of benefits paid. Claimants should contact the IRS or their tax advisor to obtain additional information. For state tax purposes, Family Leave Insurance benefits are not taxable for New Jersey Gross Income Tax.

Can an employee opt out of the Family Leave insurance program?

No. Family Leave Insurance is a component of the New Jersey Temporary Disability Benefits Law. Coverage and employee contributions are mandatory.

What is the difference between Family Leave Insurance and employee leave laws?

The Family Leave Insurance benefits program provides covered individuals Family Leave Insurance benefits, a monetary benefit, not a leave entitlement. The Family Leave Insurance benefits program does not establish the right of a covered individual to be restored to employment following a period of leave from work to participate in providing care for a family member who has a serious health condition or to bond with a newborn or newly adopted child. However, a covered individual's job may be protected if the employer is subject to the federal Family and Medical Leave Act (FMLA) or the New Jersey Family Leave Act (NJFLA).

Visit the US Department of Labor's website at www.dol.gov/esa/whd/fmla for information about the FMLA and the New Jersey Division of Civil Rights website at www.nj.gov/oag/dcr for information about the NJFLA.

Is a Family Leave Insurance claimant's job protected?

The Family Leave Insurance program does not protect anyone's job. The program provides partial wage replacement when an employee cannot work because of the need to care for a child, parent, spouse, or domestic partner, or to bond with a newborn or newly adopted child. Some employees may have their job protected under other laws, such as the federal Family and Medical Leave Act (FMLA) or the New Jersey Family Leave Act (NJFLA).

Can a claimant use Family Leave Insurance back-to-back with a Temporary Disability Insurance (TDI) claim for pregnancy?

Yes. Claimants may apply for Family Leave Insurance benefits upon recovery from a pregnancy-related disability.

Will there be an additional seven (7) day waiting period for Family Leave Insurance claim following a State Plan or Private Plan Temporary Disability Insurance (TDI) claim for pregnancy?

There is no additional seven-day waiting period for a Family Leave Insurance claim for benefits to bond with a newborn when the Family Leave Insurance claim is for the period immediately following a TDI pregnancy-related claim. Claimants collecting State Plan TDI for a pregnancy-related disability will automatically be sent information on how to file for Family Leave Insurance benefits after the child is born.

Can individuals who are unemployed file for Family Leave Insurance benefits?

Yes. If a claimant applies for Family Leave Insurance benefits more than 14 days after his/her last day of work, benefits may be payable under the provisions of the Family Leave Insurance Benefits During Unemployment Program. Individuals claiming benefits under this program must meet all the eligibility requirements of the Unemployment Compensation Law, but are not required to establish availability for work.

If eligible, benefits are paid for full weekly periods starting from Sunday through Saturday. There is no provision to pay for intermittent days under the Family Leave Insurance Benefits During Unemployment Program.

Where can someone get more detailed information regarding the Family Leave Insurance provision of the New Jersey Temporary Disability Benefits Law?

The New Jersey Department of Labor and Workforce Development’s website, www.nj.gov/labor, is the best source for information. Visitors can go to the Family Leave Insurance navigation link to access a copy of the law, accompanying rules and other information.

The above information is from the



STATE OF NEW JERSEY

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

at: http://lwd.dol.state.nj.us/labor/fli/content/fli_faq.html#12