

New Jersey Division on Civil Rights



# Family Leave Act



# CIVIL RIGHTS

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**34:11B-1. Short title**

This act shall be known and may be cited as the "Family Leave Act."

L.1989, c.261, s.1.

**34:11B-2. Findings, declarations**

The Legislature finds and declares that the number of families in the State in which both parents or a single parent is employed outside of the home has increased dramatically and continues to increase and that due to lack of employment policies to accommodate working parents, many individuals are forced to choose between job security and parenting or providing care for ill family members. The Legislature further finds that it is necessary to promote the economic security of families by guaranteeing jobs to wage earners who choose to take a period of leave upon the birth or placement for adoption of a child or serious health condition of a family member. The Legislature, therefore, declares that it is the policy of the State to protect and promote the stability and economic security of family units. The Legislature further declares that employees should be entitled to take a period of leave upon the birth or placement for adoption of a child or serious health condition of a family member without risk of termination of employment or retaliation by employers and without loss of certain benefits.

L.1989, c.261, s.2.

**34:11B-3 Definitions.**

3.As used in this act:

a."Child" means a biological, adopted, or resource family child, stepchild, legal ward, or child of a parent who is

(1)under 18 years of age; or

(2)18 years of age or older but incapable of self-care because of a mental or physical impairment.

b."Director" means the Director of the Division on Civil Rights.

c."Division" means the Division on Civil Rights in the Department of Law and Public Safety.

d."Employ" means to suffer or permit to work for compensation, and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

e."Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under this act, for not less than 1,000 base hours during the immediately preceding 12-month period.

f. "Employer" means a person or corporation, partnership, individual proprietorship, joint venture, firm or company or other similar legal entity which engages the services of an employee and which:

(1) With respect to the period of time from the effective date of this act until the 365th day following the effective date of this act, employs 100 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year;

(2) With respect to the period of time from the 366th day following the effective date of this act until the 1,095th day following the effective date of this act, employs 75 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; and

(3) With respect to any time after the 1,095th day following the effective date of this act, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year. "Employer" includes the State, any political subdivision thereof, and all public offices, agencies, boards or bodies.

g. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

h. "Parent" means a person who is the biological parent, adoptive parent, resource family parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child.

i. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

(1) the birth of a child of the employee;

(2) the placement of a child with the employee in connection with adoption of such child by the employee; or

(3) the serious health condition of a family member of the employee.

j. "Family member" means a child, parent, or spouse.

k. "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours worked per workweek but not for fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer.

l. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- (1) inpatient care in a hospital, hospice, or residential medical care facility; or
- (2) continuing medical treatment or continuing supervision by a health care provider.

L.1989,c.261,s.3; amended 2004, c.130, s.111.

**34:11B-4. Duration, frequency of family leave; payment by employer; certification; denial of leave**

An employee of an employer in this State subject to the provisions of this act shall be entitled to a family leave of 12 weeks in any 24-month period upon advance notice to the employer, unless the employer denies family leave to the employee pursuant to subsection h. of this section.

a. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

(1) The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

(2) The employee provides the employer with prior notice of the leave in a manner which is reasonable and practicable; and

(3) The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

b. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employer and the employee.

c. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

d. Family leave required by this act may be paid, unpaid, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than 12 workweeks, the additional weeks of leave added to attain the 12-workweek total required by this act may be unpaid.

e. An employer may require that any period of family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the director to be capable of providing adequate certification.

(1) Where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states: (a) the date on which the serious health condition commenced; (b) the probable duration of the condition; and (c) the medical facts within the provider's knowledge regarding the condition;

(2) Where the certification is for the birth or placement of the child, the certification need only state the date of birth or date of placement, whichever is appropriate.

In any case in which the employer has reason to doubt the validity of the certification provided pursuant to paragraph (1) of this subsection, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided pursuant to paragraph (1) of this subsection, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.

f. In any case in which the necessity for leave under this act is foreseeable, based upon an expected birth or placement of the child for adoption, the employee shall provide the employer with prior notice of the expected birth or placement of the child for adoption in a manner which is reasonable and practicable.

g. No employee shall, during any period of leave taken pursuant to this section, perform services on a full-time basis for any person for whom the employee did not provide those services immediately prior to commencement of the leave.

h. An employer may deny family leave to the employee if:

(1) The employee is a salaried employee who is among the highest paid 5% of the employer's employees or the seven highest paid employees of the employer, whichever is greater;

(2) The denial is necessary to prevent substantial and grievous economic injury to the employer's operations; and

(3) The employer notifies the employee of its intent to deny the leave at the time the employer determines that the denial is necessary.

i. In any case in which the leave has already commenced at the time of the notification pursuant to paragraph (3) of subsection h. of this section, the employee shall return to work within 10 working days of the date of notification.

L.1989, c.261, s.4.

**34:11B-5. Reduced leave schedule**

An employee shall be entitled, at the option of the employee, to take this leave on a reduced leave schedule, except that:

- a. The employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks; and
- b. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employer and employee, if the leave is taken upon the birth or adoption of a healthy child.

The employee shall make a reasonable effort to schedule reduced leave so as not to disrupt unduly the operations of the employer and the employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member, in a manner which is reasonable and practicable. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled.

L.1989, c.261, s.5.

**34:11B-6. Employees to be informed of their rights and obligations**

An employer shall display conspicuous notice of its employees' rights and obligations pursuant to the provisions of this act, and use other appropriate means to keep its employees so informed.

L.1989, c.261, s.6.

**34:11B-7. Return from leave; conditions**

An employee who exercises the right to family leave under section 4 of this act shall, upon the expiration of the leave, be entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment. If during a leave provided by this act, the employer experiences a reduction in force or layoff and the employee would have lost his position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position. The employee shall retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

L.1989, c.261, s.7.

**34:11B-8. Continuation of health benefits during leave**

a. During a leave taken under section 4 of this act, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee returns to work pursuant to section 7 of this act or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner.

b. During a leave taken under section 4 of this act, the employer shall provide any employment benefits that are not required to be maintained pursuant to subsection a. of this section pursuant to the employer's policy with regard to employment benefits for employees on temporary leave from employment.

L.1989, c.261, s.8.

**34:11B-9. Withholding of rights, benefits; discharge of employee, unlawful**

a. It shall be unlawful for any employer to interfere with, restrain or deny the exercise of, or the attempt to exercise, the rights provided under this act or to withhold the benefits provided for under this act.

b. It shall be unlawful for an employer to discharge or discriminate against an individual for opposing a practice made unlawful by this act.

c. It shall be unlawful for a person to discharge or discriminate against an individual because the individual:

(1) has filed a charge, or has instituted or caused to be instituted a proceeding, under or related to this act;

(2) has given or is about to give information in connection with an inquiry or proceeding relating to a right provided under this act; or

(3) has testified or is about to testify in an inquiry or proceeding relating to a right provided under this act.

L.1989, c.261, s.9.

**34:11B-10. Penalty for violation by employer**

The penalty for an employer violating this act is, in addition to other relief or affirmative action provided by law, not more than \$2,000.00 for the first offense and not more than \$5,000.00 for the second and each subsequent offense, to be recovered in a summary civil action in the name of the Attorney General and collected pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

L.1989, c.261, s.10.

**34:11B-11. Suits, complaints, permitted; punitive damages**

Any person may initiate suit in Superior Court or file a complaint with the division on either an individual or class basis. In addition to the remedies provided in section 16 of P.L.1945, c.169 (C.10:5-17), the aggrieved party may be awarded punitive damages in an amount not greater than \$10,000.00 except that in the case of a class action or a director's complaint the total amount of punitive damages shall not exceed \$500,000.00 or 1% of the net worth of the defendant, whichever is less. In determining the amount of punitive damages, the court or director shall consider, among other relevant factors, the amount of compensatory damages awarded, the amount of civil penalty to be paid by the employer, the frequency and persistence of the violation of this act by the employer, the resources of the employer, the number of persons adversely affected by the violation, and the extent to which the employer's failure to comply with this act was intentional.

L.1989, c.261, s.11.

**34:11B-12. Award of attorneys' fees**

In an action or complaint brought under this act, the prevailing party may be awarded reasonable attorneys' fees as part of the cost, provided however, that no attorneys' fees shall be awarded to the employer unless there is a determination that the action was brought in bad faith.

L.1989, c.261, s.12.

**34:11B-13. Family leave in addition to temporary disability benefits**

Family leave granted under this act is in addition to, and shall not abridge nor conflict with, any rights pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

L.1989, c.261, s.13.

**34:11B-14. Benefits provided by collective bargaining agreement; reduction prohibited**

No provision of this act shall be deemed to justify an employer in reducing employment benefits provided by the employer or required by a collective bargaining agreement which are in excess of those required by this act. Nor shall any provision of this act, or any regulations promulgated to implement or enforce this act, be construed to prohibit the negotiation and provision through collective bargaining agreements of leave policies or benefit programs which provide benefits in excess of those required by this act. This provision shall apply irrespective of the date that a collective bargaining agreement takes effect.

L.1989, c.261, s.14.



**34:11B-15. Reports on impact, benefits of act**

a. The director shall provide reports to the Governor, the President of the Senate and the Speaker of the General Assembly, each of which reports shall describe the actual or potential costs, impact or benefits of this act on businesses which have:

- (1) Not less than 100 employees;
- (2) Less than 100 employees but not less than 75 employees; and
- (3) Less than 75 employees but not less than 50 employees; and
- (4) Less than 50 employees.

Each report shall also indicate the total number of employees in each of the categories indicated above, the total number of employees in each category to which the provisions of this act apply and the total number of employees from each category who utilize the benefits under this act.

b. The first report shall be provided not later than the end of the second year following the effective date of this act. The second report shall be provided not later than the end of the fourth year following the effective date of this act. Thereafter, a report shall be provided on an annual basis.

L.1989, c.261, s.15.

**34:11B-16. Rules, regulations**

The director shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), deemed necessary for the implementation and enforcement of this act.

L.1989, c.261, s.16.