

# LEAVE AND BENEFITS DURING COVID-19

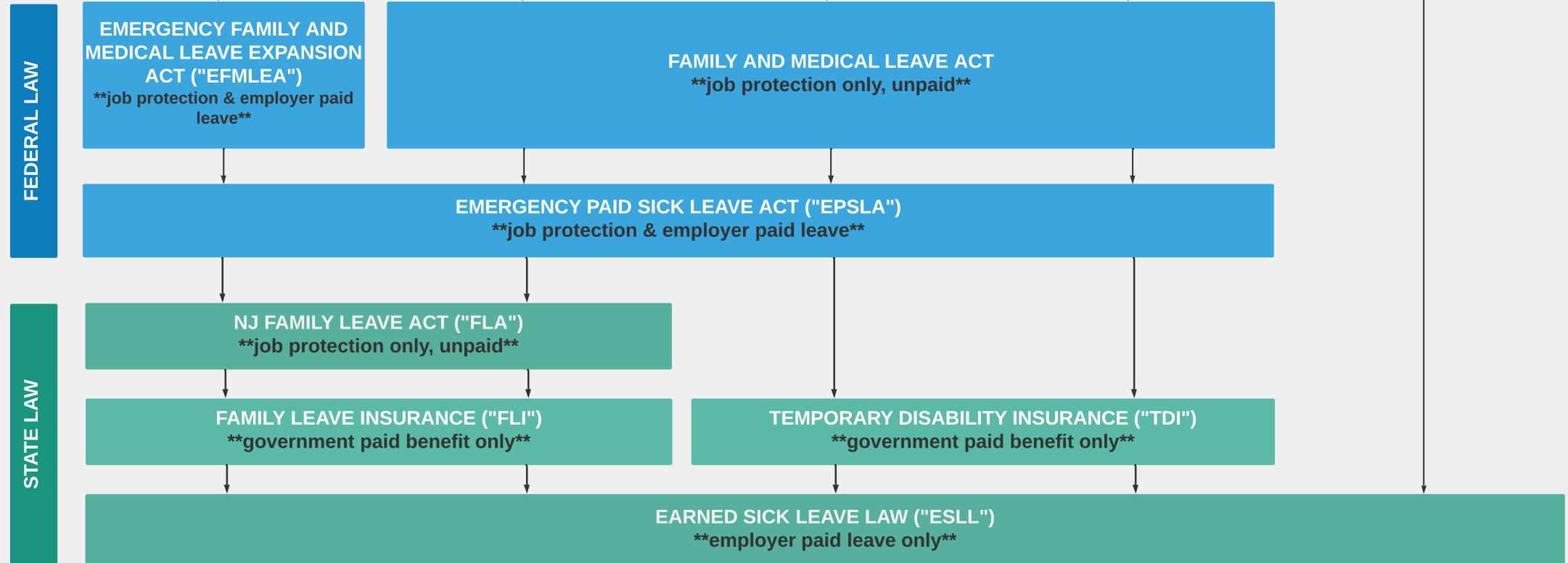
## Reasons for Leave



## Leave and/or Benefits Available

Leave and/or Benefits may overlap. Some overlapping leaves and/or benefits may be used concurrently or consecutively. It will vary by the type of leave/benefit and the employer's leave policies. For a brief overview, please refer to the FAQs and example scenarios on the next page.

For more information, please contact WEISSMAN & MINTZ LLC.



### NOTES:

- ONLY EFMLEA, EPSLA, FMLA, and FLA provide job-protection, i.e., they require employers to restore an employee to the same or equivalent job.
- EFMLEA, FMLA, EPSLA, and ESLL require employers to provide leave to employees.
- FLI and TDI do not entitle an employee to take leave. They provide compensation for certain qualifying reasons.

# FEDERAL JOB-PROTECTED & PAID LEAVE DURING COVID-19

**EFMLEA** requires employers to provide paid, job-protected leave to employees who are unable to work because they must care for their child due to COVID-19 related closures. EFMLEA requires employers to restore employees to the same or equivalent job.

## Am I eligible for EFMLEA?

If PRIVATE your employer must have less than 500 employees  
If PUBLIC, yes regardless of how many employees they have.

**and**

You must have been employed at least 30 days before the date of leave requested.

## Am I still eligible if I am an "essential" employee?

The EFMLEA does not mention "essential" employees. The EFMLEA permits employers to exempt the following employees from coverage under EFMLEA:

- health care providers;
- emergency responders; and
- any individual that the State's highest authority determines is an emergency responder necessary for the State's response to COVID-19.

Even if you are a health care provider or emergency responder, your employer may still decide to offer you paid leave under EFMLEA.

## How long can I take leave for, and how much will I receive?

You can take a total of up to 12 weeks (or the equivalent for part-time employees).

The first 10 days will be unpaid. The remaining days will be paid at 2/3 of your regular rate of pay.

## Will I still have 12 weeks if I've already taken FMLA leave?

No, your EFMLEA leave entitlement will be reduced by the amount of FMLA leave you have already taken because EFMLEA leave is a type of FMLA leave. If you used 2 weeks of FMLA, then you will have 10 weeks of EFMLEA available.

## Can I use my existing accrued leave (e.g., sick, personal, vacation) for the first 10 days?

Yes, you may use your existing accrued leave (e.g. sick, personal, vacation) to cover the first 10 days of unpaid EFMLEA. You may also use EPSLA leave.

## Can my employer require me to use EFMLEA leave concurrently with my other accrued leave (e.g. sick, personal, vacation)?

Yes, your employer may require you (or you may elect) to use your existing accrued leave concurrently with your EFMLEA leave. This would result in you receiving 2/3 of your regular rate of pay and 100% of your regular rate of pay for the same period of leave.

## Can I be fired or disciplined for using EFMLEA?

No, an employer may not retaliate against an employee using EPSLA.

## Do I need to provide documentation? If so, what kind?

Yes, you are required to provide oral or written documentation containing the following information:

- Employee's name;
- Date(s) for which leave is requested;
- Statement that the employee is unable to work because he or she must care of his or her child due to COVID-19.
- Name of the child(ren) being cared for;
- Name of the school, place of care, or child care provider that has closed or become unavailable; and
- A representation that no other suitable person will be caring for the child(ren) during the period for which leave is being requested.

## How do I avail of EFMLEA leave?

Please refer to your employer's leave policies. Employees may impose **reasonable** policies and notice requirements.

## Until when can I use EFMLEA?

EFMLEA leave is available from April 1, 2020 to December 31, 2020.

**EPSLA** requires employers to provide paid, job-protected leave to employees who are unable to work because of various COVID-19 reasons. EPSLA requires employers to restore employees to the same or equivalent job.

## Am I eligible for EPSLA?

If PRIVATE your employer must have less than 500 employees  
If PUBLIC, yes regardless of how many employees they have.

**and**

You must have been employed at least 30 days before the date of leave requested.

## How long can I take leave for, and how much will I receive?

Up to 80 hours for full-time employees (or 2-weeks equivalent for part-time employees). Employees will be paid at 100% of their regular rate of pay.

## Can my employer require me to use EPSLA leave prior to or concurrently with my other accrued leave (e.g. sick, personal, vacation)?

No, your employer may not require this. EPSLA is in addition to your existing accrued leave.

## Can I be fired or disciplined for using EPSLA?

No, an employer may not retaliate against an employee using EPSLA.

## How do I avail of EPSLA leave?

Please refer to your employer's leave policies. Employees may impose **reasonable** policies and notice requirements.

## Until when can I use EPSLA?

EPSLA leave is available from April 1, 2020 to December 31, 2020.

## Do I need to provide documentation? If so, what kind?

Yes, you are required to provide oral or written documentation containing the following information:

- Employee's name;
- Date(s) for which leave is requested;
- Statement that the employee is unable to work

## Additional documentation is required depending on the reason for leave.

- If you are unable to work because you must care for your child(ren) at home due to COVID-19 closures, you must also provide:
  - Name of the child(ren) being cared for;
  - Name of the school, place of care, or child care provider that has closed or become unavailable; and
  - A representation that no other suitable person will be caring for the child(ren) during the period for which leave is being requested.
- If you are unable to work because you or an individual you have to care for have been advised by a health care provider or public health authority to quarantining, you must also provide the:
  - Name of the health care provider who advised him or her to quarantine; or
  - Name of the public health authority or government entity that issued the quarantine.
- If you or an individual you have to care for are unable to work because you or the individual has COVID-19 or symptoms of COVID-19.
  - then the normal FMLA certification requirements apply.

# STATE PAID LEAVE/BENEFITS DURING COVID-19

**ESLL** requires employers to provide 40 hours of sick leave. An employer is compliance if the employer provides fully paid time off, including but not limited to sick days, vacation, or personal days. ESLL does not require employers to return employees to the same or equivalent job.

## Am I eligible for ESLL?

All employees (i.e. individuals engaged in service to an employer in the business of the employer for compensation), except

- individuals employed in the construction industry under a collective bargaining agreement;
- per diem health care employees;
- public employees who are provided sick leave at full pay under a State law or regulation; and
- independent contractors.

## How long can I take leave for, and how much will I receive?

Employers are required to provide a minimum of 40 hours or 1 hour for every 30 hours worked. An employer may choose to provide more than this. Leave will be paid at 100% of your regular rate of pay.

## How do I avail of ESLL leave?

Please refer to your employer's leave policies. Employees may impose **reasonable** notice requirements.

## Do I need to provide documentation?

Yes, your employer may require you to provide reasonable documentation, e.g. a copy of the order of the public official or the determination by the health authority to quarantine.

**Temporary Disability Benefits** law provides employees with compensation for an employee's own disability (TDI) and for a qualifying family leave (FLI). TDI and FLI provide partial compensation for otherwise unpaid leave. Employers are not required to restore employees to the same or equivalent job.

## FLI

### Am I eligible for FLI?

You are eligible if you have worked at least 20 weeks earning at least \$200/week.

### For how long can I claim FLI, and how much will I receive?

You may claim up to 6 weeks (12 weeks after July 1, 2020) of FLI in a 24-month period.

For January 1-June 30, you will receive 2/3 of your average weekly wage, up to a maximum of \$667 per week.

From July 1, you will receive 85% of your average weekly wage, up to a maximum of \$881 per week.

### How do I avail of FLI?

You must apply with the NJ Division of Temporary Disability and Family Leave Insurance. Applications may be submitted by mail, fax, or online at [www.myleavebenefits.nj.gov](http://www.myleavebenefits.nj.gov).

### Can my employer require me to use my existing accrued leave before claiming FLI?

No. Your employer may not require you to use your existing accrued leave before claiming FLI. You may elect to use your existing accrued leave before claiming FLI. This will not reduce your FLI benefit days.; this will be in addition to your FLI benefit days.

## TDI

### Am I eligible for TDI?

You are eligible if you have worked at least 20 weeks earning at least \$200/week unless you are a member of the Division of State Police in the NJ Department of Law & Safety.

### For how long can I claim TDI, and how much will I receive?

You may claim up to 26 weeks of TDI in a 24-month period.

For January 1-June 30, you will receive 2/3 of your average weekly wage, up to a maximum of \$667 per week.

From July 1, you will receive 85% of your average weekly wage, up to a maximum of \$881 per week.

### How do I avail of TDI?

You must apply with the NJ Division of Temporary Disability and Family Leave Insurance. Applications may be submitted by mail, fax, or online at [www.myleavebenefits.nj.gov](http://www.myleavebenefits.nj.gov).

### Can my employer require me to use my existing accrued leave before claiming TDI?

It depends on who your employer is.

If your employer is the State of New Jersey, including Rutgers, NJIT, or any governmental entity or instrumentality, then your employer may require you to use up to 2 weeks of accrued sick leave before you may claim TDI. However, your employer may not require you to use your last week of accrued sick leave before claiming TDI.

# JOB-PROTECTED LEAVE UNDER FMLA & FLA

**FMLA and FLA** entitle employees to unpaid, job-protected leave. Upon return from leave, an employee is entitled to the same or "equivalent" job. An equivalent job means a job that is virtually identical in terms of pay, benefits, and other terms and conditions of employment. FLA will run concurrently with FMLA and/or EFMLEA if the leave is for a reason covered by both. N.J.A.C. 13:14-1.6(a) ("Where an employee requests leave for a reason covered by both the [FLA] and another law, the leave simultaneously counts against the employee's entitlement under both laws.").

## FMLA

For more information on COVID-19 and FMLA, please visit <https://www.dol.gov/agencies/whd/fmla/pandemic>.

### Am I eligible for FMLA?

If **PRIVATE** your employer must have more than 50 employees

If **PUBLIC**, yes regardless of how many employees they have

**and**

you worked at least 1250 hours in the last 12 months.

### For how long can I take leave?

You may take leave for up to 12 weeks in a 12 month period.

### How do I take FMLA leave?

You must notify your employer of your need to take leave. Please refer to your employer's policies. Your employer's policies must comply with FMLA regulations.

### Who is considered a "family member"?

Your spouse, son or daughter, and parent.

## FLA

For more information, please read [S2304](#), which recently expanded FLA coverage to include COVID-19 reasons.

### Am I eligible for FLA?

If **PRIVATE** your employer must have 30 or more employees

If **PUBLIC**, yes regardless of how many employees they have

**and**

you worked at least 1000 hours in the last 12 months.

### For how long can I take leave ?

You may claim up to 12 weeks in a 24-month period.

### How do I take FLA leave?

You must notify your employer of your need to take leave. Please refer to your employer's policies. Your employer's policies must comply with FLA regulations.

### Who is considered a "family member"?

Your child, parent, spouse, civil union partner, parent-in-law, sibling, grandparent, grandchild, domestic partner, or any other blood relative, and any other individual that you have a close association with the employee which is the equivalent of a family relationship.

**SCENARIO 1 Employee A has 80 hours of accrued leave from her employer. A's employer only has 31 employees and was not covered by the FMLA.**

**Weeks 1-2** A takes EFMLEA leave to care for her child due to a school closure. A uses 40 hours of accrued leave from her employer. FLA runs concurrently.

**Weeks 3-12** A takes EFMLEA leave to care for her child due to a school closure. A's employer requires that she use her remaining accrued leave concurrently. FLA runs concurrently.

**Weeks 12-14** A takes EPSLA leave to continue caring for her child due to a school closure.

**Weeks 15-17** A has been advised by a healthcare provider to quarantine due to COVID-19. A does not have any paid leave remaining and receives TDI. This leave is not job-protected because A's employer is not covered by the FMLA.

**Weeks 18-41** A got into an accident and sustained a prolonged injury. A uses TDI. These 24 weeks of TDI are not job-protected because A's employer is not covered by the FMLA.

**Weeks 41-53** A's wife becomes ill. A uses 12 weeks of FLI (instead of 6 because this would be after July 1, 2020). These 12 weeks are not job-protected under the FLA because the FLA ran concurrently with EFMLEA.

**SCENARIO 2 Employee B has 80 hours of accrued leave from her employer. B's employer is a public employer and is covered by the FMLA.**

**Weeks 1-2** B takes EFMLEA leave to care for her child due to a school closure. B decides not to use her 80 hours of accrued leave or EPSLA for the first 10 days. Her employer doesn't require her to use her accrued leave. FLA runs concurrently.

**Weeks 3-12** B takes EFMLEA leave to care for her child due to school closure. B's employer does not require her to use her accrued leave concurrently with EFMLEA. FLA runs concurrently.

**Weeks 12-14** B is advised by her healthcare provider to self-quarantine because she is considered high risk. She is unable to work because her job can't be performed remotely. B uses 80 hours of EPSLA.

**Weeks 15-16** B tests positive for COVID-19 and is symptomatic. B uses 40 hours of accrued leave.

**Weeks 17-18** B decides to have a vacation. B uses 40 hours of accrued leave.

**Weeks 19-44** B gets into an accident and sustains a prolonged injury. B receives TDI. However, the leave isn't job protected because she has exhausted her FMLA leave when she took Weeks 1-12 off to care for her child due to a school closure.

**Weeks 45-57** B gives birth to a second child and wants to take job-protected leave to bond with her newborn baby. She receives FLI for 12 weeks. The leave is not job-protected under FLA because FLA ran concurrently with EFMLEA.