



# What NJ Workers Need to Know About the Families First Coronavirus Response Act

## Overview: Emergency Paid Sick Leave and Expanded Family & Medical Leave

The federal *Families First Coronavirus Response Act* takes effect April 1, 2020 and gives certain workers access to emergency paid leave to care for themselves or a loved one, or to care for their children at home, due to coronavirus.

**The law requires employers to provide two types of leave: Emergency Paid Sick Leave and Emergency Childcare Leave.**

- Emergency Paid Sick Leave: 80 hours (up to two weeks) of paid leave for employees to care for themselves or a loved one for coronavirus quarantine (ordered by a public health official or recommended by a health-care provider), illness, or symptoms (seeking a medical diagnoses); or, the school/child care closure of the employee's son or daughter
- Emergency Childcare Leave: 12 weeks of job-protected leave for employees (the first two weeks unpaid; the remaining 10 weeks paid), under the Family & Medical Leave Act (FMLA), to care for their children if their school or child care is closed, or their child care provider is unavailable, due to coronavirus

**Private employers with less than 500 employees and most government employers are required to pay their employees for these two different emergency paid leaves. Exemptions and opt-out provisions can be reviewed at the USDOL website.\***

**Both leaves expire on December 31, 2020.**

- In addition to these new federal emergency paid leaves, all New Jersey workers are eligible for earned sick leave under New Jersey's Earned Sick Leave Law; temporary disability benefits and family leave insurance benefits under New Jersey's Temporary Disability Benefits Law, and most are eligible for family leave under the New Jersey Family Leave Act, although there are differences in how they can be used. Please see [nj.gov/labor](http://nj.gov/labor) to learn more about your eligibility for these benefits and protections.

The U.S. Department of Labor will be issuing further guidance on this law and this document may be modified as more information becomes available. **For additional details and FAQs please see <https://www.dol.gov/agencies/whd/pandemic>.**

### Snapshot: Families First Coronavirus Response Act Emergency Paid Leaves

Reason for emergency leave	Emergency Paid Sick Leave / 80 hours	Emergency Childcare FMLA / 12 Weeks**	Wage employer pays employee***	Maximum per day
To care for self due to quarantine, illness or symptoms	✓	✗	Full wages	\$511
To care for loved one in case of coronavirus quarantine, illness, or symptoms	✓	✗	2/3 wages	\$200
To care for son/daughter due to lack of school or child care	✓	✓	2/3 wages	\$200

\* The U.S. Department of Labor may grant exemptions to employers with less than 50 employees whose business is jeopardized by providing the leave.

\*\* First two weeks may be unpaid.

\*\*\* Wages are defined as the employee's regular rate of pay, the federal minimum wage, or the state or local minimum wage where they are employed, whichever is greater. New Jersey's minimum wage is \$11/hour as of January 1, 2020.

## Emergency Paid Sick Leave: The Details

The Families First Coronavirus Response Act requires covered employers to provide up to 80 hours of emergency paid sick leave to employees to care for themselves or a loved one for coronavirus quarantine, illness, or symptoms; or, the school/child care closure of the employee's son or daughter.

- Emergency paid sick leave applies to leave taken between April 1st and December 31st, 2020, and it applies to current and new employees, as well as full-time, part-time, temporary and self-employed/"gig" workers.
- Where leave is foreseeable, an employee should provide notice of leave to the employer as soon as practicable.
- Employers pay employees for this time away from work.
- This law mandates paid sick leave in addition to NJ's Earned Sick Leave Law. The law does not diminish employees' rights or benefits under any other federal, state, or local law, or collective bargaining agreement.
- This law mandates paid sick leave in addition to existing employer policy. The emergency paid sick leave is in addition to any existing leave, and employees can't be required to use their existing accrued leave before using emergency paid sick leave.
- Employers cannot require an employee to find a replacement worker if the employee needs to take emergency paid sick leave.
- The law applies to unionized employees.
- It's against the law for an employer to retaliate or discriminate against a worker who uses or seeks to use their emergency paid sick leave. An employee's job is protected while using this leave.

Eligible workers may utilize emergency paid sick leave if they are:

- Subject to a federal, state, or local quarantine order related to COVID-19, or
- Advised by a healthcare provider to self-quarantine due to COVID-19 concerns, or
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis for the symptoms, or
- Caring for an individual who is subject to a quarantine order or who has been advised to quarantine by a healthcare provider, or
- Caring for their child because the child's school or place of care has been closed due to COVID-19; child can be biological, adopted, or foster, stepchild, legal ward, or child for whom employee is standing in loco parentis; or an adult child who has a mental or physical disability and is incapable of self-care because of that disability.

Eligible full-time workers are entitled to 10 days (80 hours) of emergency paid sick time; part-time employees receive the average number of hours they work in a two-week period.

## Wage replacement for emergency paid sick leave

Reason for emergency paid sick leave	Wage employer pays employee*	Maximum per day	Total maximum
To care for self due to quarantine, illness or symptoms	Full wages	\$511	\$5,110
To care for an ill loved one or son/daughter due to school/care closure	2/3 wages	\$200	\$2,000

\* Wages are defined as the employee's regular rate of pay, the federal minimum wage, or the state or local minimum wage where they are employed, whichever is greater. New Jersey's minimum wage is \$11/hour as of January 1, 2020.

## Emergency Childcare Leave: The Details

The Families First Coronavirus Response Act requires covered employers to provide 12 weeks of job-protected emergency childcare leave to employees, under the federal Family & Medical Leave Act (FMLA), to care for their children if their school or child care is closed, or their child care provider is unavailable, due to coronavirus.

- Emergency childcare leave applies to leave taken between April 1st and December 31st, 2020, and applies to employees who have been employed 30 or more days; applies to full-time, part-time, temporary and self-employed/“gig” workers.
- Where leave is foreseeable, an employee should provide notice of leave to the employer as soon as practicable.
- Employers pay employees for this time away from work.
- An employee may use it when they are unable to work or telework because they need to care for a son or daughter if the child’s school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.
- The employee’s child that needs care can be biological, adopted, or foster, stepchild, legal ward, or child for whom the employee is standing in loco parentis; or an adult child who has a mental or physical disability and is incapable of self-care because of that disability.
- For employees who work for an employer with 25 or more employees, their job is protected if they take this leave. For employers with less than 25 employees, the employer must take reasonable efforts to restore the employee to an equivalent position.
- The law applies to unionized employees.
- The first 10 days of emergency childcare leave may be unpaid. The employee may use other employer-provided paid leave (including emergency paid sick leave and/or NJ earned sick leave) for those days, but an employer cannot require it.
- The emergency childcare leave is provided under the Family & Medical Leave Act (FMLA), which provides eligible employees who work for a covered employer up to 12 weeks of unpaid, job-protected leave in a 12-month period, for specified family and medical reasons. The emergency childcare leave is not in addition to these 12 weeks of FMLA, it is solely an additional use under this law, and expires December 31, 2020.

Eligible workers may utilize emergency childcare leave if they are:

- Unable to work or telework during the coronavirus emergency because they need to care for a son or daughter:
  - because the child’s school or place of care is closed, or
  - because the child care provider is unavailable.

## Wage replacement for emergency childcare leave

	Wage employer pays employee*	Maximum per day	Total maximum
First two weeks	May be unpaid	-	-
Next 10 weeks	2/3 wages	\$200	\$10,000

\* Wages are defined as the employee’s regular rate of pay, the federal minimum wage, or the state or local minimum wage where they are employed, whichever is greater. New Jersey’s minimum wage is \$11/hour as of January 1, 2020.

For part-time workers, emergency childcare leave pay is calculated based on the regular number of hours worked. For employees whose schedule varies week to week, emergency childcare leave pay is based on the average number of hours worked in the past six months, or if recently hired, what the employee would normally be scheduled to work.



## What is the best order in which to use the new federal emergency leaves, expanded Unemployment Insurance benefits, and my NJ benefits/protections?

It depends on your particular situation. Here are some likely scenarios and orders of usage, assuming you are a full-time worker, covered under both the federal and state paid leave laws. It's important to think through your individual situation - your wages, other employer-provided paid time off and benefits, such as health insurance—before making these decisions. See [nj.gov/labor](http://nj.gov/labor) for information on all of NJ's laws and programs, including Unemployment Insurance.

### I can't work because I have to watch my children due to school/child care closure or unavailability of child care.



1. **80 hours of Federal Emergency Paid Sick Leave.** Your employer pays you for this. This will expire at the end of the year and not roll over. Keep in mind it is at 2/3 your rate of pay and capped at \$200 a day and a total of \$2,000. You can also use it as your two weeks of unpaid emergency childcare leave (#3 below.)
2. **Up to one week of NJ Earned Sick Leave,** if you have any left in this benefit year (workers can earn up to 40 hours; one hour accrued for every 30 hours worked). Your employer pays you for this. You can take this now, use it as your two weeks of unpaid emergency childcare leave (#3, below), or save it for later in the year. Your NJ sick leave can be rolled over into the next year or bought back by your employer and is at your regular rate of pay.
3. **12 weeks of Federal Emergency Expanded Family & Medical Leave.** Your employer pays you for this. The first two weeks are unpaid and the remaining 10 weeks are at 2/3 your rate of pay and capped at \$200 a day and a total of \$10,000. If you've already taken your emergency paid sick leave and NJ Earned Sick Leave, you may use other employer-provided paid time off during the first two weeks, although your employer cannot require you to do this. Your employer pays the remaining ten weeks. Using this would exhaust your FMLA leave for the next 12 months.
4. **Up to 39 weeks of Unemployment Insurance,** if you are no longer receiving pay from your employer. Unemployment benefits provide 60% of average wages, with a maximum of \$713/week (+ additional \$600/week through July). Apply at [myunemployment.nj.gov](http://myunemployment.nj.gov).

### I'm ill with COVID-19.



1. **80 hours of Federal Emergency Paid Sick Leave.** Your employer pays you for this. This will expire at the end of the year and not roll over. It is at your regular rate of pay, capped at \$511 a day and a total of \$5,110.
  2. **Up to one week of NJ Earned Sick Leave,** if you have any left in this benefit year (workers can earn up to 40 hours; one hour accrued for every 30 hours worked). Your employer pays you for this. You can take this now or save it for later in the year. Your NJ sick leave can be rolled over into the next year or bought back by your employer and is at your regular rate of pay.
  3. **Up to 39 weeks of Unemployment Insurance,** if you are no longer receiving pay from your employer. Unemployment benefits provide 60% of average wages, with a maximum of \$713/week (+ additional \$600/week through July). Apply at [myunemployment.nj.gov](http://myunemployment.nj.gov).
- After exhausting Unemployment Insurance benefits, or instead of Unemployment Insurance benefits:***
4. **Up to 26 weeks, per your doctor's assessment of your medical needs, of Temporary Disability**

**Insurance**, at 66% of average wages, capped at \$667/week. Apply at [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov). A person who has, because of their employment, contracted COVID-19 at work could be eligible for Workers' Compensation and would file through their employer.

## I'm caring for a loved one who's ill with COVID-19.



1. **80 hours of Federal Emergency Paid Sick Leave.** Your employer pays you for this. This will expire at the end of the year and not roll over. Keep in mind it is at 2/3 your rate of pay and capped at \$200 a day and a total of \$2,000.
2. **Up to one week of NJ Earned Sick Leave**, if you have any left in this benefit year (workers can earn up to 40 hours; one hour accrued for every 30 hours worked). Your employer pays you for this. You can take this now or wait and save it for later in the year. Up to 40 hours of your NJ sick leave can be rolled over into the next year or bought back by your employer and is at your regular rate of pay.
3. **Up to 39 weeks of Unemployment Insurance**, if you are no longer receiving pay from your employer. Unemployment benefits provide 60% of average wages, with a maximum of \$713/week (+ additional \$600/week through July). Apply at [myunemployment.nj.gov](http://myunemployment.nj.gov).

**After exhausting Unemployment Insurance benefits, or instead of Unemployment Insurance benefits:**

4. If your loved one still requires care, **up to 6 weeks of NJ Family Leave Insurance** at 66% of average wages, capped at \$667/week. Apply at [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov).

## I haven't been fired, but I have had no work hours from my employer since April 1.



1. **You would likely be eligible for up to 39 weeks of Unemployment Insurance.** Unemployment benefits provide 60% of average wages, with a maximum of \$713/week (+ additional \$600/week through July). Apply at [myunemployment.nj.gov](http://myunemployment.nj.gov).
2. If there were any weeks prior to April 1 that you still had your full work hours and pay but were unable to work because you had to care for yourself or a loved one, or had to care for your children at home due to coronavirus, you may be eligible for **up to one week of NJ Earned Sick Leave**, if you have any left in this benefit year (workers can earn up to 40 hours; one hour accrued for every 30 hours worked). Your employer pays you for this. You can take this now or wait and save it for later in the year. Up to 40 hours of your NJ sick leave can be rolled over into the next year or bought back by your employer and is at your regular rate of pay.
3. If there were any weeks prior to April 1 that you still had your full work hours and pay but were unable to work because you were sick or quarantined with coronavirus, you may be eligible for **up to 26 weeks of Temporary Disability** at 66% of average wages, capped at \$667/week. Apply at [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov).
4. If there were any weeks prior to April 1 that you still had your full work hours and pay but were unable to work because you had to care for a loved one who was ill or quarantined due to coronavirus, you may be eligible for **up to 6 weeks of NJ Family Leave Insurance** at 66% of average wages, capped at \$667/week. Apply at [myleavebenefits.nj.gov](http://myleavebenefits.nj.gov).



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