



New Jersey SAFE Act: Unpaid Leave for Victims of Domestic or Sexual Violence

Revised July 2021

The New Jersey Security and Financial Empowerment Act (NJ SAFE Act) requires employers with **25 or more employees** to provide eligible New Jersey employees up to 20 days of unpaid leave during a 12-month period when the employees or certain family members of the employees have been victimized by “an incident of domestic violence” or “a sexually violent offense.”

This article provides an overview of the NJ SAFE Act, as amended in February 2019. Employers familiar with the New Jersey Family Leave Act (NJFLA), which was also amended in February 2019, will see many similarities as well as some key differences. To learn more about the 2019 amendments, see Pro Bono Partnership’s article, [*New Jersey Significantly Expands Employee Entitlements with Respect to Leaves of Absence and Wage Replacement Benefits.*](#)

Covered Employers and Eligible Employees

The NJ SAFE Act applies to all **employers** that have had 25 or more employees (whether located in New Jersey or elsewhere) for each working day during each of 20 or more calendar workweeks in the then current or the immediately preceding calendar year. For an **employee** to be eligible for leave, the employee must be employed in New Jersey by a covered employer, must have been employed by the employer for at least 12 months, and must have worked at least 1,000 base hours during the immediately preceding 12-month period.¹

¹ Note that the NJ SAFE Act provides:

Any time, up to a maximum of 90 calendar days, during which a person is laid off or furloughed by an employer due to that employer curtailing operations because of a state of emergency declared after October 22, 2012, shall be regarded as time in which the person is employed for the purpose of determining eligibility for leave time under this act. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked per week during the rest of the 12-month period.

A “state of emergency” is defined as “a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or

Incidents of Domestic Violence and Sexually Violent Offenses

The need for leave must arise from an incident of domestic violence or a sexually violent offense perpetrated on an employee or one of the employee's covered family members. A **family member** includes the employee's child, grandchild, parent, parent-in-law, grandparent, sibling, civil union partner, domestic partner, spouse, any other individual related by blood to the employee, or any other individual the employee shows to have a close association with the employee that is the equivalent of a family relationship.

An **incident of domestic violence** means any one or more of the following acts inflicted by an adult or an emancipated minor: assault, burglary, contempt of a domestic violence order that constitutes a crime or disorderly persons offense, criminal coercion, criminal mischief, criminal restraint, criminal sexual contact, criminal trespass, cyber-harassment, false imprisonment, criminal harassment, homicide, kidnapping, lewdness, robbery, sexual assault, stalking, terroristic threats, and any other crime involving the risk of death or serious bodily injury to a person protected under New Jersey's Prevention of Domestic Violence Act of 1991.²

A **victim of an incident of domestic violence** means:

1. Any person who is age 18 or older, or who is an emancipated minor, and who has been subjected to an incident of domestic violence by a current or former civil union partner or spouse or by any other person who is a present or former household member;
2. Any person, regardless of age, who has been subjected to an incident of domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common if one of the parties is pregnant; or
3. Any person who has been subjected to an incident of domestic violence by a person with whom the victim has had a dating relationship.

A **victim of a sexually violent offense** means any person who has been subjected to:

1. Aggravated sexual assault; sexual assault; aggravated criminal sexual contact; a kidnapping where one or more prohibited sexual acts is committed

for which a state of emergency has been declared by a municipal emergency management coordinator.”

² For additional details regarding the acts listed in the text above, see N.J.S.A. 2C:25-19, at <https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>.

- against a child under the age of 16; criminal sexual contact; felony murder if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses; or a criminal offense with substantially the same elements as any offense enumerated above under the laws of the United States, New Jersey, or another state; or
2. Any offense for which a court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense.³

Reasons for Which Leave May Be Taken

Leave may be taken for any one or more of the following reasons:

1. Seeking medical attention for, or recovering from, physical or psychological injuries to the employee or a family member (as defined above) caused by domestic or sexual violence.
2. Obtaining services from a victim services organization for the employee or a family member.
3. Obtaining psychological or other counseling for the employee or a family member.
4. Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or a family member from future domestic or sexual violence or to ensure economic security.
5. Seeking legal assistance or remedies to ensure the health and safety of the employee or a family member, including preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence.
6. Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the employee or a family member was a victim.

³ For additional details regarding the acts listed in the text above, see N.J.S.A. 30:4-27.26, at <https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>.

Amount of Leave and Pay While on Leave

In the case of a qualifying event, an eligible employee is entitled to job-protected unpaid leave of no more than 20 days in one 12-month period, to be used in the 12-month period following the qualifying event. Each incident of domestic violence or sexually violent offense constitutes a separate qualifying event for which an eligible employee is entitled to unpaid leave, provided that the employee has not exhausted the allotted 20 days for the 12-month period. Here is an example:

- Mary has been employed in New Jersey by the same employer for two years and has worked over 1,500 hours in the past 12 months. Thus, Mary is an eligible employee under the NJ SAFE Act. Mary's employer has had 25 or more employees for several years.
- Mary's daughter was a victim of domestic violence on October 15, 2013 (Incident #1) and on April 10, 2014 (Incident #2).
- As a result of Incident #1, Mary's daughter was hospitalized for **five days** following the incident. At the request of the daughter's physician, Mary stayed with the daughter at the hospital for all five days. Between and including October 16, 2013 and March 3, 2014, Mary needed **11 days** in order to relocate with the daughter to a new location and attend legal proceedings.
- As a result of Incident #2, Mary needed **14 days** to prepare for and attend court proceedings. Mary used **the first of those days** on April 11, 2014.
- Pursuant to the NJ SAFE Act, from October 15, 2013 to October 14, 2014, Mary was entitled to use a total of **20 days** of unpaid leave for both incidents. Through April 11, 2014, Mary had used **16 days** for Incident #1 and **one day** for Incident #2. Pursuant to the NJ SAFE Act, from April 12, 2014 to October 14, 2014 Mary would have had **three days** of unpaid leave remaining for Incident #1 and/or for Incident #2.
- Pursuant to the NJ SAFE Act, from October 15, 2014 to April 9, 2015 Mary was entitled to use a total of **20 days** of unpaid leave for Incident #2, less any of the remaining **three days** that Mary might have used between and including April 12, 2014 and October 14, 2014 for Incident #2.
- If Mary's employer has 50 or more employees, then the employer would also be governed by the federal Family and Medical Leave Act (FMLA) and the NJFLA. The **five days** Mary spent at the hospital with the daughter would also count against the 12 weeks of unpaid leave that Mary is entitled to under the FMLA and the NJFLA. Had Mary used up all of Mary's NJ SAFE Act unpaid leave entitlement, to the extent that Mary needed to take additional time off to care for the daughter's serious health condition, Mary would be entitled to do so if Mary had remaining FMLA or NJFLA unpaid leave available.

Note that as of July 1, 2019, the NJFLA applies to employers with 30 or more employees. The FMLA still applies only to employers with 50 or more employees.

Leave may be taken intermittently in intervals of no less than one day.

An eligible employee can elect, but an employer cannot require the employee, to use (1) the employee's accrued paid vacation leave, personal leave, or medical or sick leave or (2) any family leave insurance benefits that the employee is entitled to under the New Jersey Family Leave Insurance Benefit Law.⁴ If the employee elects to use accrued paid leave or family leave insurance benefits, then that leave or those benefits will run concurrently with the otherwise unpaid leave provided under the NJ SAFE Act.

Where the need for leave is a qualifying event under the NJ SAFE Act, the FMLA, and/or the NJFLA, an employer is required to count the leave under each of the applicable laws concurrently. In other words, if an employee's reason for requesting leave under the NJ SAFE Act is also covered by the FMLA or the NJFLA, then the leave counts simultaneously against the employee's leave entitlement under each applicable law.

If the reason for taking leave under the NJ SAFE Act is not a qualifying event under the FMLA or NJFLA, then the employee remains entitled to full amount of leave otherwise available to the employee under the FMLA or NJFLA.

Notice Requirements for Employees and Employers

Where the need for leave under the NJ SAFE Act is foreseeable, an employee must provide written notice to the employer of the need as far in advance as is reasonable and practical under the circumstances, unless an emergency or some other unforeseen circumstance precludes prior notice.

An employer may require that an employee requesting leave under the NJ SAFE Act provide documentation supporting the request. One or more of the following documents is automatically considered sufficient support for the request:

1. A domestic violence restraining order or other documentation of equitable relief issued by a court of competent jurisdiction.
2. A letter or other written documentation from the county or municipal prosecutor documenting the domestic violence or sexually violent offense.

⁴ Prior to February 19, 2019, the employer could require the employee to substitute accrued paid vacation leave, personal leave, or medical or sick leave for otherwise unpaid leave under the NJ SAFE Act.

3. Documentation of the conviction of a person for the domestic violence or sexually violent offense.
4. Medical documentation of the domestic violence or sexually violent offense.
5. Certification from a certified domestic violence specialist⁵ or the director of a designated domestic violence agency⁶ or rape crisis center⁷ that the employee or family member is a victim of domestic violence or a sexually violent offense.
6. Other documentation or certification of the domestic violence or sexually violent offense provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or family member in dealing with the domestic violence or sexually violent offense.

Employers must (1) display in a conspicuous manner a notice of employees' rights and obligations under the NJ SAFE Act in the form and manner prescribed by the New Jersey Department of Labor and Workforce Development (NJDLWD) and (2) use other appropriate means to keep employees advised of their rights and obligations.

The NJDLWD-issued form of notice can be download at the NJDLWD's [Employer Poster Packet](#) web page.

If they haven't done so already, employers with 25 or more employees should revise their employee handbooks or other policies that describe leave benefits to include information about the NJ SAFE Act, as amended in 2019.

Confidentiality Requirement

All information (1) provided to an employer in support of an employee's leave request, (2) regarding a leave taken pursuant to the NJ SAFE Act, and/or (3) relating to a failure of the employee to return to work shall be retained in the strictest confidence, unless the

⁵ A **certified domestic violence specialist** is a person who has fulfilled the requirements for certification as a domestic violence specialist established by the New Jersey Association of Domestic Violence Professionals.

⁶ A **designated domestic violence agency** is a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the New Jersey Department of Children and Families (Division) and is under contract with the Division for the express purpose of providing such services.

⁷ A **rape crisis center** is an office, institution, or center offering assistance to victims of sexual offenses through crisis intervention, medical and legal information, and follow-up counseling.

disclosure is voluntarily authorized in writing by the employee or is required by applicable federal or New Jersey law, rule, or regulation.

No Retaliation

An employer must not retaliate in any way against an employee (1) who took or requested leave to which the employee was entitled to the NJ SAFE Act or (2) on the basis that the employee refused to authorize the release of information deemed confidential.

Legal Relief

Employers who violate the NJ SAFE Act can be held liable in court for, among other things, all remedies that are available in tort actions, lost wages and benefits, civil penalties, and attorneys' fees.

EEOC Guidance on Employees Who Experience Domestic Violence, Sexual Assault, or Stalking

In October 2012, the U.S. Equal Employment Opportunity Commission issued its [*Questions and Answers \[on\] The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking.*](#) Employers might want to consult this document and integrate it into training they provide to managers about the NJ SAFE Act.

Questions

If you have any questions about the NJ SAFE Act and you are associated with a New Jersey charitable nonprofit, feel free to contact Christine Michelle Duffy, Esq., at (973) 240-6955. If your nonprofit needs assistance in revising its employee handbook or leaves of absence policy, please contact the Pro Bono Partnership lawyer with whom you usually work.

This document is provided as a general informational service to volunteers, clients, and friends of Pro Bono Partnership. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does distribution of this document create an attorney-client relationship.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of: (i) avoiding penalties

under the Internal Revenue Code or any other U.S. federal tax law; or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

Copyright © 2021 Pro Bono Partnership, Inc. All rights reserved. No further use, copying, dissemination, distribution, or publication is permitted without the express written consent of Pro Bono Partnership, Inc.