



Unemployment, Leave, and Other Benefits for New Jersey Workers During the Covid-19 Public Health Emergency

New Jersey is one of several states generally recognized as providing its workforce with comprehensive leave and unemployment benefits and worker protections. To mitigate the impact of the Covid-19 emergency on employees, New Jersey amended employment laws in March and April. Navigating through the combined and expanded state and federal benefits, the latter under the **Family First Coronavirus Response Act (FFCRA)** and the **Coronavirus Aid, Relief, and Economic Security (CARES)** Act, can be confusing and complex, partly because of different eligibility requirements, as well as the rapidly-changing laws, regulations, and guidance. Uncertainty regarding the labor market and medical or health concerns can impact workers in multiple ways, for example, the working hours of some who are still employed could be reduced by their employers or out of necessity; many could be furloughed or laid off temporarily, or permanently terminated. The complexity and uncertainty may make it challenging for workers to evaluate the different options that may be available to them.

The purpose of this document is to provide you with general information as of 5/15/20. The information in this document does not constitute legal advice or opinion. The chart below incorporates the recent actions of the New Jersey Legislature, in response to the Covid-19 pandemic and in response to the Governor's declaration of a public health emergency and a state of emergency. It is noteworthy that the language of the new laws is general; for instance, instead of referring specifically to Covid-19, the term "communicable infectious disease" is used. These legislative changes are permanent.

- **A3848**, effective on **3/20/20**, provides job protection to employees who need to take time off from work because they are or might be infected by the communicable infectious disease, based on written statements from authorized medical professionals. Such employees are protected from employer retaliation or discrimination. However, A3848 does not prohibit employers from terminating an employee's position for legitimate business reasons.
- **S2304**, effective on **3/25/20**, broadens qualifying reasons to take New Jersey Earned Sick Leave to include those resulting from a declared health emergency. It also expands the definition of "serious health condition" in **New Jersey Family Leave Act (NJFLA)** to include pandemic-related conditions.
- **S2374**, signed into law on **4/14/20**, is retroactive to **3/25/20**. It expands the definition of "short-term disability" in **New Jersey Temporary Disability Insurance (NJTDI)** and **New Jersey Family Leave Insurance (NJFLI)** laws to include pandemic-related illnesses and conditions, e.g., employees' or their family members' self-isolation or mandatory quarantine, as determined by public health officials or health care providers. S2374 also expands qualifying reasons under NJFLA to include the employees' need to care for their children, including those with physical or mental impairment of all ages, whose schools or places of care are closed due to the declared health emergency.

The information in the chart and in this document is not exhaustive. For more information, visit the web pages of the U.S. and New Jersey Departments of Labor (USDOL and NJDOL), listed in the "Information Resources" section at the end of this document. In particular, the following web page of NJDOL contains *suggested* sequences of benefit usage, given a variety of circumstances: <https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>

Finally, it is important for employees to consult with their employers, not only to receive information and updates on paid/unpaid leave benefits and flexibility regarding working remotely and work scheduling, but also to maintain frequent communication and to learn of any required documents and advance notices. Qualified **individuals with disabilities** may request "reasonable accommodations" under the Americans with Disabilities Act so that modifications to jobs, work environments, and/or schedules, may be made to enable such employees to perform *essential* functions of their jobs and have the same opportunities to receive the benefits available as employees without disabilities.¹

¹ U.S. Equal Employment Opportunity Commission. *The EEOC What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (updated on 5/7/20). <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

	Paid Leave		Unemployment Benefits				NJ Partial Wage Replacement Benefits		Unpaid Leave Under:	
	Federal Earned Leave Benefits Under FFCRA		NJ Unemployment Insurance (UI)	CARES Act Expanded Unemployment Benefits			NJ Temporary Disability Insurance (TDI)	NJ Family Leave Insurance (FLI)	NJ Family Leave Act (NJFLA)	Federal Family & Medical Leave Act (FMLA)
	Paid Sick Leave	Paid Expanded Family & Medical Leave		Pandemic Unemployment Assistance (PUA)	Pandemic Unemployment Compensation (PUC)	Emergency Unemployment Compensation (PEUC)				
Covered Employers	1) Private employers (including non-profit organizations), with fewer than 500 full- + part-time employees (including working, on leave, and temporary/joint employees in the U.S.) at the time when employee leave is initiated. 2) Certain public sector employers.	Private employers, regardless of size, with workers in New Jersey	For-profit and non-profit private employers, public sector and educational employers, with worker(s) in NJ, and which are subject to NJ State Unemployment Insurance (SUI) or Federal Unemployment Tax Act (FUTA), are covered employers. Some non-profit organizations which choose to reimburse NJ Unemployment Trust Fund for unemployment benefits paid are covered.				All private businesses which are covered employers for UI and which choose to contribute to NJ TDI/FLI Plan are covered. Other employers including state & local govts may choose to participate in separate state-approved private or state plans. Check with the employer.	Private businesses and state/local gov agencies with 30 or more employees nationwide, during at least 20 weeks in the current or previous year.	Federal, state, local gov, education agencies, non- & for-profit employers w/ 50+ employees within a 75-mile radius.	
Covered Employees	All full- and part-time employees, including temporary/joint employees. Employers may exempt health care providers and emergency responders from benefits.	Covered employees, self-employed and gig workers in FFCRA "Paid Sick Leave" must meet the additional requirement of minimum employment period of 30 calendar days.	Part- and full-time employees after 120 days of employment. Health care workers and first responders are covered. Employees covered by unexpired collective bargaining agreements are not eligible.	Terminated/furloughed workers & those whose hours have been reduced by employers by 20% or more - through no fault of their own, i.e., not due to misconduct or job performance. People who quit their jobs voluntarily are not covered.	Those who do not otherwise qualify for NJ UI benefits: 1) Self-employed/gig workers who are unemployed/partially unemployed/impacted by declared emergency. 2) All workers, including self-employed/gig workers, who are unable to work or telework because of qualifying reasons below. 3) Those without enough work history and those seeking part-time work to qualify for NJ UI.	Same as NJ UI	Employees of covered employers who work in NJ. Typically independent contractors are not covered, but they may be eligible under recently-amended laws following Covid-19 outbreak.	NJ employees who contribute to NJ FLI plan or an approved private plan through employer and who have worked 20 wks, earning at least \$200/wk, or have earned \$10,000 during the base year. Typically independent contractors are not covered, but they may be eligible under recently-amended laws following a declared health emergency.	Employees of covered employers at work sites in NJ, including those whose bases of operations are outside NJ but perform partial work in NJ. <u>Required minimum employment period</u> before leave: one year , with 1,000 hours in the preceding 12 months .	Employees who have worked for a covered employer for one year or longer, with 1,250 hours worked during the period of 12 months before taking the leave.
Exemption/Expansion	<u>Exemption</u> : private employers (including non-profit organizations) with fewer than 50 employees may qualify for exemption from providing both the Paid Leave & the Paid Expanded Family & Medical Leave under FFCRA for qualifying reason 5) below (due to school closing or child care unavailability) if the leave would "jeopardize the viability of the business as a going concern," or if the employee's specialized skills are needed for the business to operate minimally.	<u>Expanded definition of family members</u> to include e.g. adopted, step, and foster children, spouse/s domestic partner's siblings, blood-related individuals, and those with an association with the employee equivalent to a family association.	People who quit their jobs voluntarily are not eligible for unemployment benefits. Some eligibility requirements for NJ UI (e.g. the requirement for claimants to search for work actively) may be relaxed or waived during a declared emergency.				Expanded definitions of * in "Qualifying Events" below: *child* includes those placed in foster care and those with surrogate or birthing mothers. *Family member* includes child, parent/in-law, spouse/civil union or domestic partner, sibling, grandparent, grandchild, blood relative, and others with close association "equivalent of a family relationship."		1) Birth & adoption of & bonding with a child. 2) A "serious health condition" including those caused by a domestic violence, experienced by the employee or an immediate family member which requires the care of the employee. "Serious health condition" includes illness and complications caused by a "pandemic flu." Note that leave taken to avoid exposure to the infectious disease would not be covered under the FMLA. 3) Qualifying exigencies due to an immediate family member's serving as a member of the National Guard, Reserves, or Regular Armed Forces.	
Qualifying Events	Inability to work or telework partially or fully because the employee: 1) Is subject to public-declared Covid-19 quarantine; or 2) Is advised by a health care provider to self-quarantine; or 3) Has Covid-19 symptoms and is seeking medical care; or 4) Is caring for an individual subject to 1) or 2); or 5) Is caring for his/her child under 18 y.o. & any child with a disability of all ages whose school/place of care is closed due to Covid-19.	Inability to work or telework partially or fully because the employee is caring for his/her child under 18 y.o. & any child with a disability of all ages whose school or place of care is closed and virtual activities are taking place instead due to Covid-19 [qualifying reason 5].	1) An employee seeks treatment/counseling because he/she or a family member is a victim of domestic or sexual violence. 3/25/20: <u>S2304</u> expanded reasons: 2) A closure of the employee's workplace, school/place of care of the employee's child during the health emergency. 3) An employee self-quarantines or has to care for a family member in self-quarantine (e.g. due to a pre-existing condition), regardless of positive test results. 4) Employee's mandatory quarantine or need to care for a family member in mandatory quarantine, as a result of suspected exposure to the disease and the order of a medical authority.	https://www.nyunemployment.nj.gov/labornyemployment/faq/eligibility-stm#remain	1) Having been diagnosed w/ Covid-19 or having symptoms & seeking diagnosis. 2) Having a family/household member w/ a diagnosis of Covid-19. 3) Being advised by a healthcare provider to self-quarantine e.g. because of compromised immune system or having been in direct contact with a person diagnosed with Covid-19. 4) Being the primary caregiver of a family/household member whose school/place of care is closed due to the declared emergency. 5) Laid off workers from new jobs or workers who are unable to get to job sites due to Covid-19. 6) Because of the Covid-related death of the head of household, the dependent family member becomes the breadwinner. 7) Job quitting or place of employment is closed, both as a direct result of the declared emergency.		Non-job-related illness, injury, or other short-term disability, including those due to domestic and sexual violence. <u>S2374</u> (4/14/20), retroactive to 3/25/20) expands the definition of the employee's "short-term disability" to include an illness caused by a known or suspected exposure to a communicable disease resulting in mandatory in-home care or treatment or a voluntary self-quarantine (e.g. due to a pre-existing condition) of the employee, as determined by a public health official or a health care provider, to prevent the spread of the disease in the community.	Birth or adoption of a child". Act of violence or "serious health condition," experienced by a family member ". <u>S2374</u> (4/14/20), retroactive to 3/25/20) expands "serious health condition" to include the family member's being in voluntary quarantine or mandatory quarantine because of known or suspected exposure to a communicable infectious disease, as ordered by a public health authority or a licensed health care provider.	Birth & adoption of & bonding with a child ". Caring for a family member " with a "serious health condition"--as expanded by <u>S2304</u> on 3/25/20 to include family member's being in self quarantine because of known or suspected exposure to a communicable infectious disease, or in mandatory quarantine to receive in-home care, as recommended/ordered by a public health authority/health care provider. <u>S2374</u> . (retroactive to 3/25/20): Employee's need to care for a child whose school/place of care is closed due to the declared health emergency.	
Maximum Duration of Benefits	During the maximum duration of 2 weeks, a full-time employee can receive up to 80 hours of paid leave. A part-time employee receives the average # of work hours for a 2-week period.	Up to an additional 12 wks. Full- and part-time employees are paid for their average # of hrs/wk.	Up to 40 hours of paid leave per benefit year.			An additional 13 wks of benefits after 26 weeks of NJ UI or PUA base. The combined duration of NJ UI/PUA and PEUC benefits is 39 wks.	One week of benefits for each week worked in covered employment, up to 26 weeks .	<u>Thru 6/30/20</u> : max duration: 6 wks in a 12-month period . For <u>intermittent leave</u> , max duration is 56 days . <u>From 7/1/20</u> : max. duration: 12 wks in a 12-month period .	Up to 12 weeks of leave in a 24-month period.	During a 12-month period , up to 12 wks of unpaid leave; 26 wks of unpaid leave to care for a family member who is a service-member & who has been seriously injured/ill. Employee may take leaves for different events as long as the total does not exceed the max. allowed for each.

	Paid Leave			Unemployment Benefits			NJ Partial Wage Replacement Benefits		Unpaid Leave Under:	
	Federal Earned Leave Benefits Under FFCRA		NJ Earned Sick Leave	NJ Unemployment Insurance (UI)	CARES Act Expanded Employment Benefits		NJ Temporary Disability Insurance (TDI)	NJ Family Leave Insurance (FLI)	NJ Family Leave Act (NJFLA)	Federal Family & Medical Leave Act (FMLA)
	Paid Sick Leave	Paid Expanded Family & Medical Leave			Pandemic Unemployment Assistance (PUA)	Pandemic Unemployment Compensation (PUC)				
Maximum Benefit Amounts	The applicable rate—the higher of: the worker's regular pay rate and NJ Min. Wage. For reasons 1, 2, 3: 100% of the applicable rate, for amount up to \$511/day or \$5,110 in total. For reasons 4 & 5: 2/3 of the applicable rate, for amount up to \$200/day or \$2,000 in total.	The first 2 weeks are unpaid. The remaining 10 weeks are paid at 2/3 of the applicable pay rate, up to \$200/day or \$10,000 in total.	One paid leave hour is accrued for every 30 hours worked. Hours are accrued from the start of a benefit year or from the start of employment for new employees who begin after the start of a benefit year. The applicable pay rate is the employee's regular pay rate.	60% of the average wage/week, with the maximum benefit amount of \$713/week. For UI benefit amounts, visit: https://myunemployment.nj.gov/before/about/calculator/	Same as NJ UI benefits: 60% of average weekly salary—up to \$731/week for up to 39 weeks . Beneficiaries, including businesses operating at a loss or with insufficient income, receive a minimum of \$231/week in PUA benefits. (The PUC benefit of \$600/week is added to the base PUA and UI benefits during the PUC qualifying benefit period between 3/30 and 7/31/20.)	Additional benefit of \$600/week, regardless of the base NJ (regular) UI or PUA benefit amount.	1/1-6/30/20: TDI benefit is 2/3 of average weekly wage, up to \$667/wk. From 7/1/20: 85% of average weekly wage, up to \$881/wk.	1/1-6/30/20: FLI benefit is 2/3 of average weekly wage, up to \$667/wk. From 7/1/20: 85% of average weekly wage, up to \$881/wk. Max. total benefits: 1/3 total wage during the base year.	Leave is unpaid. Employee may choose, but not required, to use available paid time off, which does not extend the maximum duration of FLA-allowed leave of 12 weeks in a 24-month period.	Leave is unpaid. Employee may choose to use available paid time off. Employer may also require the employee to use accrued paid time off for some or all of the FMLA leave period.
Effective Dates	4/1 - 12/31/20		From 10/29/18.	Application date after termination/event.	1/27 - 12/31/20	3/30 - 7/31/20	[On 7/1/19, the one-week waiting period was eliminated; benefits now are effective immediately.]			
Can Benefits be Retroactively Applied?	No		Up to 40 hours of unused sick leave can be carried over into the following benefit year. Unused leave can also be "bought back" by the employer at the regular pay rate.	No	The base PUA benefit is retroactive to the date of a qualifying event on or after 1/27/20.	Yes, retroactive to qualifying event after 3/30/20. Benefits can be paid retroactively to 4/1/20 & after a qualifying event.	Yes, TDI benefits are retroactive to the date of disability.	Yes, for 30 days from the 1st day of leave. If claim is received after 30 days, a reason for the delay in filing for the claim must be provided.		
Can Benefit Be Taken Intermittently?	As long as employer and employee agree, intermittent leave in any increment for telework is allowed; for on-site work, leave must be taken in full-day increments.		Yes		Yes		Yes	Yes	Yes, if leave is due to an epidemic of a communicable disease	
How to Apply for Benefits?	Contact the employer.			https://www.myunemployment.nj.gov/labor/myunemployment/before/about/howtoapply/applyonline.shtml		No separate actions are required.	Contact employer with private plan, otherwise: https://myleavebenefits.nj.gov/labor/myleavebenefits/worker/tdi/index.shtml	Contact employer with private plan, otherwise: https://myleavebenefits.nj.gov/worker/fli/	Contact employer. For one continuous leave, a 30-days' notice to employer is required. For intermittent leave, 15 days' notice or as soon as practicable for unanticipated events.	
Funding Sources	The employer is eligible for refundable tax credits from the federal government for the entire costs of the paid leave, including health and other benefits. Self-employed and gig workers will receive a reimbursement through payroll tax credits when filing self-employment taxes with the federal government.	Employer	New Jersey UI Trust Fund	The federal government, administered through NJ Dept of Labor.		Participating employees and employers contribute to NJ TDI Fund through payroll deductions unless employers participate in state-approved private or State plans.	Only employees (not employers) contribute to NJ FLI Fund through payroll deductions.	N/A		
Required Documentation	If leave is foreseeable, employee should provide leave notice to employer as soon as practical. The info to be provided: employee name, a statement of inability to work/telework with leave date(s) & reason(s). Name of quarantine-issue entity/health care provider. For qualifying reason 5), names of child & of school/child care provider and statement that no other suitable person is available to care for the child.	Employee is not required to give a medical reason for leave which is shorter than 3 consecutive days. For more: https://www.nj.gov/labor/forms_pdfs/earnedsickleave1-3-19%20Employee%20FAQs%20Earned%20Sick.pdf	After the approval of the UI application, the claimant must certify for benefits online each week.	After applying online, no action is required if a confirmation # is received. Online self-certification is required every week. Before applying, visit: https://myunemployment.nj.gov/labor/myunemployment/assets/pdfs/CARES_FFCRA.pdf and https://myunemployment.nj.gov/assets/pdfs/UI_process_selfemployment.d.pdf	No further action is required, except for weekly certifications of benefits online. For 13 more wks under PEUC, see answer to Q8: https://myunemployment.nj.gov/labor/myunemployment/covidFAQ.shtml	A doctor's statement is required, including the duration of the period when the individual is expected to be out of work.	For one continuous leave, a 30-days' notice to employer is required; a 15 days' notice for non-continuous leave. For caregiving claims, a reasonable notice is required for leave in one continuous period if possible; otherwise, 15 days' notice.	Employer is entitled to request verification of the qualifying reason, e.g. certification from the employee's child's school/place of care (for NJFLA), or a medical certification from a licensed health care provider or the public health official.		
Job Protection?	Yes. Employees' benefits such as health insurance also continue on the same terms during the paid leave. Employee is protected from retaliation or discrimination when requesting a leave or filing a complaint.	Yes				3/20/20: A3848 provides job protection and prohibits employers during a health emergency from terminating or penalizing employees who request time off from work to care for family members who have the recommendation of medical professionals to self-isolate or receive treatment. Other qualifying reasons: no job protection, but employees may have job protection rights under NJFLA or FMLA, as well as expansive protection and remedies from employer's retaliation and discrimination. Employer-approved time off may not be guaranteed.	3/20/20: A3848 provides job protection and prohibits employers during a health emergency from terminating or penalizing employees who request time off from work to care for family members who have the recommendation of medical professionals to self-isolate or receive treatment. Other qualifying reasons: no job protection, but employees may have job protection rights under NJFLA or FMLA, as well as expansive protection and remedies from employer's retaliation and discrimination. Employer-approved time off may not be guaranteed.	Yes. After leave, employee is generally entitled to the same position held before the leave. If the original position is no longer available, the employer must offer an equivalent position in terms of pay, benefits, shift, proximity to the original work site, and status. Employers are also prohibited from retaliating against employees who have requested or taken leave.		
Direct Complaints to:	After inability to resolve concerns with employer, call: 1-866-4US-WAGE (1-866-487-9243). https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD_district_offices.pdf	NJ LWD Wage & Hour Division: https://www.nj.gov/labor/wagehour/complaint_filing_wage_claim.html Tel: (609) 292-2305				Direct complaints on private or State plans to Commissioner, NJ Dept of Labor and Workforce Development. To appeal a decision, visit: https://myleavebenefits.nj.gov/labor/myleavebenefits/worker/resources/appeals.shtml	Within 180 days of denial, contact: NJ OAG, Division of Civil Rights: www.NJCivilRights.gov	Call: 1-866-4US-WAGE. https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD_district_offices.pdf		

Some Issues to Keep in Mind

- Employees who are being paid by their employers for their on-site or tele-work, or for any paid sick or family leave, are not eligible for unemployment benefits.
- Before accessing benefits of NJ Earned Sick Leave or FFCRA Earned Leave benefits or NJ Temporary Disability Insurance (TDI) or Family Leave Insurance (FLI), an employee *may choose* to use his/her Paid Time Off (PTO), but his/her employer *may not require* him/her to do so *unless* the company's handbook or union contract or prior agreement says otherwise. This flexibility is allowed during the first two unpaid weeks of the 12-week benefit period under the FFCRA Family and Medical Leave as well. A worker in New Jersey has the following options in any sequence during these two weeks:
 - Use benefits under NJ Earned Sick Leave.
 - Use his/her PTO.
 - Use the two-week of benefits under the FFCRA Sick Leave for the first two unpaid weeks during the 12-week period of the FFCRA Family and Medical Leave. Using this option, benefits for the entire 12 weeks is 2/3 the wage rate, up to \$200/day. Note that the closure of an employee's child's school or place of care because of the declared public health emergency is only qualifying reason for the FFCRA Family and Medical Leave.
- An employee who refuses to go to work at a non-essential business which remains open in defiance to the Governor's executive order can use New Jersey Earned Sick Leave.
- If the employer of the employee who is on FFCRA paid leave or NJ Earned Sick Leave closes the business for any reasons, these paid sick leave benefits are payable only until the business closure, after which the employee is likely to be eligible for UI benefits. If, however, the business reopens later, the employee then is eligible for paid leave if any qualifying reason remains.
- Similarly, an employee who is on Temporary Disability Insurance (TDI) or Family Leave Insurance (FLI) and is laid off or terminated from the job for bona fide business reasons should file for UI benefits within four weeks after he/she or the family member has recovered. The UI-eligible individual must first notify NJDOL Division of Temporary Disability and Family Leave Insurance via its online form. For more information, visit:
<https://myunemployment.nj.gov/labor/myunemployment/before/circumstances/uad/index.shtml>
- The Pandemic Emergency Unemployment Compensation (PEUC) under the CARES Act provides UI benefits to unemployed individuals who do not otherwise have enough work history to receive UI benefits. However, new entrants to the labor force who have not found their first jobs are ineligible for PEUC or any UI benefits (unless they become breadwinners of their families following the death from Covid-19 of families' breadwinners on whom they were dependent.)
- A worker who refuses to work on site at a business which is open during the public-declared health emergency only because he/she wants to avoid exposure to the communicable infectious disease at the workplace is not eligible for any benefits on the chart unless he/she also has a qualifying reason (e.g. having a pre-existing condition such as a compromised immune system). If the worker has reasons to believe that the employer does not meet requirements of U.S. DOL Occupational Health and Safety Administration (OSHA), he/she should file a complaint to OSHA:
<https://www.osha.gov/SLTC/covid-19/>
- An individual who has been receiving UI benefits while being furloughed but is asked to return to work at a reopened site is required to do so (which is equivalent to accepting a suitable job offer) unless he/she has any qualifying reason to remain on benefits. If such a person quits his/her job instead of returning to work in order to continue to receive UI benefits, he/she is considered to have committed fraud.
- New Jersey is one of 27 jurisdictions in the U.S. to have "Short Term Compensation" programs. In New Jersey, this program is known as the "**Shared Work Program**." Employees of an employer with a Shared Work agreement with the State are eligible to receive UI benefits on a pro-rated basis according to the corresponding percentage of reduced pay due to *temporary* reductions in their hours and/or pay rates. The employer must have an agreement with NJDOL that includes a promise not to engage in permanent layoffs of their workers while the agreement is in force, and to reduce employees' pay rates/hours by the same percentages within defined groups of employees. The employer must maintain all employees' fringe benefits during the Shared Work period. Employees affected by reduced pay receive additional UI benefits under the CARES Act, including the PUC component (additional

\$600/week in UI benefits through 7/31/20), up to the maximum UI amount under the NJ Shared Work Program.
https://careerconnections.nj.gov/resources/sharedwork/shared_work_program.shtml

- A New Jersey worker who has used all benefits under his/her PTO, NJ Paid Sick Leave, and the FFCRA paid leave may apply for New Jersey's partial wage replacement benefit – NJ TDI and FLI -- depending on qualifying reasons. However, an employee who is receiving workers' compensation or NJTDI and is not working at all is not eligible to receive paid leave under the FFCRA.
- Employees in New Jersey may expand the duration of TDI by using accrued PTO from employers or NJ Earned Sick Leave benefits before or after TDI. However, their employers cannot require them to use these two benefits, if available, before TDI.
- Similarly, employers cannot require employees to use PTO before accessing NJFLI. If PTO and/or NJ Earned Sick Leave is/are used, these paid covered days are *in addition to* the FLI maximum duration.
- Workers with two jobs at two different employers can take FLI under one employer while still working at the second job as long as the hours of the second job don't increase.
- An individual who is receiving UI benefits and then become disabled more than 14 days after the last day worked may be eligible for benefits under the “**Disability During Unemployment (DDU)**” program.
<https://myunemployment.nj.gov/labor/myunemployment/before/circumstances/ddu/index.shtml>
- The more extensive protection provided NJ Family Leave Act (NJFLA) applies to all unpaid leave of New Jersey workers, including those on the federal FMLA.
- Periods of earned leave benefits under the FFCRA (both FFCRA “Paid Sick Leave” and “Expanded Family and Medical Leave”) *all* count towards the federal **FMLA** maximum duration of 12 weeks of leave in a 12-month period. However, paid leave under the FFCRA does not count towards NJ Earned Sick Leave or TDI/FLI or NJFLA or the employer's PTO; FFCRA paid leave periods are in addition to State and employer's benefit periods.
- Unlike the NJFLA, the federal FMLA does allow an employee to use leave time for his/her own medical condition. (Qualifying reasons for unpaid leave under the NJFLA stem from an employee's need to care for a family member, caused by medical or public health emergency such as the closure of the employee's child's school or place of care following a pandemic or the birth of a child. In contrast, causes of qualifying reasons under the federal FMLA include medical-related events, experienced by both family members and the employees themselves.) So, an employee who otherwise meets eligibility requirements of both NJFLA and FMLA can take two periods of unpaid leave in a single 12-month period. For example,
 - One period of up to 12 weeks of leave under NJFLA to care for a family member whose school or place of care is closed during a Governor-declared health emergency (as long as a maximum 12 weeks of leave are taken in a 24-month period), plus
 - A second period of up to 12 weeks of leave under FMLA for the employee's own “serious health condition,” e.g. complications from an illness caused by a “pandemic flu.”See eligibility, documentation, and other requirements of NJFLA and FMLA in the above chart.

Impacts of Benefits While on Unemployment, Earned Sick, Family, and Disability Benefits

- **The Supplemental Security Income (SSI)** program is a “program of last resort.” SSI recipients are required by Title XVI of the Social Security Act to apply for unemployment and other benefits for which they may be eligible.²

The Social Security Administration (SSA) considers all of the benefits listed in the above heading to be *countable unearned income*. Each dollar from other benefits will reduce the SSI payment by one dollar, with the exception of the \$20 “general exclusion.” All components of regular and expanded UI benefits, including the *additional* \$600/week CARES Pandemic Unemployment Compensation (PUC) which is payable to UI beneficiaries who were eligible during the period from April through July 2020), will reduce and may result in the suspension of SSI payments.

² <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500501001>

Individuals whose SSI has been suspended because their total countable income exceeds the threshold must contact SSA immediately as soon as their UI and other benefits are reduced – either because they have returned to work or because they have exhausted these benefits. Once the reported total countable income has fallen below the threshold, the SSA is supposed to resume SSI payments without a new application provided this happens within 12 months of the SSI suspension date, so long as other SSI eligibility requirements continue to be met.

SSI recipients should also be mindful of the strict rules regarding **resource limits**. Because of the backlog in processing UI claims, UI recipients may receive multiple weeks of retroactive benefits at one time. Other than immediately spending these funds down, affected SSI recipients may also consider opening ABLE accounts to transfer excess funds into them.³ SSI recipients are required to report their unemployment benefits to SSA by the 10th of the month.

- Beneficiaries of Social Security retirement, survivors and **Social Security Disability Income (SSDI)** are not impacted by their receipt of any benefits which increase their unearned income. The SSA does not impose any resource limits on these beneficiaries.
- **Medicaid Eligibility**

Section 2104(h) of the CARES Act specifically allows for the *additional* \$600 per week in Pandemic Unemployment Compensation (PUC) to be **disregarded** from countable income for both Medicaid and Children's Health Insurance Program (CHIP) eligibility determinations. However, base benefits of state UI and federal Pandemic Unemployment Assistance (PUA) are countable incomes for both eligibility determination purposes.⁴ In New Jersey, the additional \$600/week in PUC benefit is paid separately from the base state UI and PUA benefits. This practice should help UI recipients identify which streams of UI benefits are countable for Medicaid/CHIP eligibility, and should ease the Medicaid eligibility review process.

New Jersey and other states which have accepted the 6.2% increase in the Federal Medical Assistance Percentages (FMAP) from the federal government are required to continue to provide Medicaid coverage to Medicaid-eligible individuals as of 3/18/20 through the end of the federally-declared Covid-19 emergency (currently through 7/31/20.)

Medicaid Communication No. 20-04, issued on 4/23/20 by the New Jersey Division of Medical Assistance and Health Services (DMAHS), effective on 3/18/20, provides some flexibility with respect to self-attestation of income and resources when the Eligibilities Determination Agencies (EDA) are unavailable to verify these figures electronically.⁵

Some individuals whose Medicaid eligibility is completely dependent on their receiving SSI should look to other types of Medicaid for New Jerseyans for which they may be eligible.⁶

Section 1619(b) of the Social Security Act allows certain SSI beneficiaries *who work* to keep Medicaid eligibility even after their SSI has been suspended. Such individuals must meet Section 1619(b) requirements.⁷ A 1619(b) individual who has lost his/her job thus becomes ineligible for Medicaid under this Section of the Act.

³ <https://www.state.nj.us/humanservices/dds/hottopics/able/>

⁴ See answers to question 51 on pages 16 and 17 of Centers for Medicare and Medicaid. [Families First Coronavirus Response Act \(FFCRA\), Public Law No. 116-127 Coronavirus Aid, Relief, and Economic Security \(CARES\) Act, Public Law No. 116-136 Frequently Asked Questions \(FAQs\)](#). Posted 4/13/20.

⁵ https://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2020/20-04_COVID-19_Guidance.pdf

⁶ The 3/12/20 webinar presented by Beverly Roberts, Director of the Arc of New Jersey's Mainstreaming Medical Care, "Overview of NJ Medicaid for People with Intellectual and Developmental Disabilities" is an excellent resource for this purpose. https://www.thearcfamilyinstitute.org/what_we_do/medicaid-update-2020.html

⁷ Eligibility requirements of Section 1619(b): having received an SSI cash payment for at least one month; having earned income from work and needing Medicaid benefits to continue to work, but having insufficient gross earnings to replace Medicaid and SSI benefits; and meeting SSA's disability and non-disability requirements. Eligible individuals who work in New Jersey may have countable income of up to \$35,520 a year in 2020 to keep Medicaid while working. <https://www.ssa.gov/disabilityresearch/wi/1619b.htm>

The above DMAHS *Communication* allows individuals with Medicaid eligibility through **NJ WorkAbility** to remain on Medicaid if they have temporarily lost employment during Covid-19 emergency. DMAHS has requested federal approval for additional flexibilities in Medicaid and CHIP eligibility determination.

Individuals with NJ WorkAbility who receive earned sick or family leave benefits but still have their jobs must be mindful of WorkAbility's unearned income threshold of **\$1,064/month** as these benefits are countable unearned income.

- According to the Guidance of the U.S. Department of Housing and Urban Development (HUD)⁸, the additional \$600/week in PUC benefits is disregarded in rent calculations for holders of **HUD-funded housing vouchers**. However, the base UI/PEUC and paid sick/family leave benefits are countable income in such rent calculations. The Division of Developmental Disabilities (DDD) is using the same principle as HUD's to determine rent for holders of **DDD-subsidized housing vouchers**.

HUD urges the public to check with local public housing authorities or property owners as to how they should treat these benefits in their rent calculations. HUD has also placed a temporary ban on evictions for non-payment of rent, fees, and penalties related to non-payment of rent. This ban applies to all tenants of HUD-subsidized housing.

- All components of UI and paid sick/family leave benefits will reduce Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) awards.

INFORMATION RESOURCES

New Jersey. Department of Labor:

New Jersey Workers: Frequently Asked Questions During Coronavirus Emergency.
<https://www.nj.gov/labor/assets/PDFs/NJWorkersFAQs.pdf>

New Jersey Earned Sick Leave: Notice of Employee Rights.
https://www.nj.gov/labor/forms_pdfs/mw565sickleaveposter.pdf

What is Unemployment Insurance? <https://myunemployment.nj.gov/labor/myunemployment/before/about/>

NJ Temporary Disability Insurance (TDI): FAQs. <https://myleavebenefits.nj.gov/labor/myleavebenefits/help/faq/tdi.shtml>

NJ Family Leave Insurance (FLI): FAQs. <https://myleavebenefits.nj.gov/labor/myleavebenefits/help/faq/fli.shtml>

New Jersey. Office of the Attorney General. The Division of Civil Rights.

The New Jersey Family Leave Act. https://www.nj.gov/oag/dcr/downloads/posters/8x11_flaposter.pdf

Civil Rights and COVID-19: Frequently Asked Questions (Updated 4/16/20).
<https://www.nj.gov/oag/dcr/downloads/NJ-DCR-FAQs-on-COVID-19.pdf>

U.S. Department of Labor.

Unemployment Insurance Relief During COVID-19 Outbreak.
<https://www.dol.gov/coronavirus/unemployment-insurance#faq>

⁸ https://www.hud.gov/sites/dfiles/Housing/documents/HUD_Multifamily_Corona_QA_FINAL.pdf

U.S. Department of Labor. Wage and Hour Division.

Families First Coronavirus Response Act: Questions and Answers.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Webinar on the Families First Coronavirus Response Act (FFCRA):

- Slides: https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA_webinar.pdf
- Recorded webinar: <https://dolwhd.cosocloud.com/pm4jvdbn4sch/?proto=true>

Family and Medical Leave Act. <https://www.dol.gov/agencies/whd/fmla>

COVID-19 and the Family and Medical Leave Act: Questions and Answers.

<https://www.dol.gov/agencies/whd/fmla/pandemic>

Cornell Institute on Employment and Disability. *COVID-19 and Social Insurance and Benefit Programs.*

<https://yti.cornell.edu/images/COVID-19-Benefits.pdf>

Centers for Medicare and Medicaid Services. *COVID-19 FAQs on Implementation of Section 6008 of the Families First Coronavirus Response Act (FFCRA) and the Coronavirus, Aid, Relief, and Economic Security (CARES) Act.*

<https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf>

The Arc. *COVID-19, Unemployment, and People with Disabilities.*

http://thearc.org/wp-content/uploads/2020/04/Unemployment-Fact-Sheet_4-16-20.pdf

Legal Assistance

Legal Services of New Jersey (LSNJLAW) provides free legal assistance to low income New Jerseyans in civil matters.

- Phone: 1-888- LSNJ-LAW (1-888-576-5529), weekdays between 8:00 am 5:30 pm, or
- Online submissions: <https://lsnjlawhotline.org/>

Other useful resources of LSNJLAW:

- *Looking Out for Your Legal Rights* (May 2020).
<https://www.lsnjlaw.org/Publications/Pages/Looking%20Out%20Articles/May20LOWeb.pdf>
- *COVID-19 Paid Sick Leave and Expanded Paid Family and Medical Leave.*
<https://www.lsnjlaw.org/Health-Care/Coronavirus/Pages/COVID19-Paid-Sick-Leave.aspx>
- *Unemployment, Welfare, and Social Security Benefits: How They Affect One Another.*
<https://www.lsnjlaw.org/Government-Aid-Services/SSDI-SSI/Pages/Unemployment-Welfare-SocSec.aspx>
- *Coronavirus and Unemployment.*
<https://www.lsnjlaw.org/Health-Care/Coronavirus/Pages/Coronavirus-and-Unemployment.aspx>

Community Health Law Project. <http://www.chlp.org/>

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