

CHAPTER 14

RULES PERTAINING TO THE FAMILY LEAVE ACT

Authority

N.J.S.A. 34:11B-16.

Source and Effective Date

R.1996 d.482, effective September 16, 1996.
See: 28 N.J.R. 3510(a), 28 N.J.R. 4484(a).

Executive Order No. 66(1978) Expiration Date

Chapter 14, Rules Pertaining to the Family Leave Act, expires on September 16, 2001.

Chapter Historical Note

Chapter 14, Rules Pertaining to the Family Leave Act, was adopted as R.1991 d.475, effective September 16, 1991. See: 23 N.J.R. 1993(a), 23 N.J.R. 2864(b). Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1996 d.482, effective September 16, 1996. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

Law Review and Journal Commentaries

How Federal Family Leave Compares with N.J. Law. Donna M. Kaye, 136 N.J.L.J. No. 2, 11 (1994).

13:14-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 34:11B-1 et seq. which provide for family leave for employees in certain cases and prohibit certain employer practices by establishing interpretations of the provisions of that statute.

13:14-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the “Family Leave Act,” N.J.S.A. 34:11B-1 et seq., unless the context indicates otherwise.

“Base hours” means an employee’s regular hours of work excluding overtime, for which an employee receives compensation.

“Base salary” as used in section 4h(1) of the Act means the salary paid to an employee, excluding overtime, bonuses, etc., but not excluding salary withheld for State, Federal, and local taxes, FICA, employee contributions to any pension, health and/or insurance plans or programs, etc.

“Care” means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, assistance with essential daily living matters and personal attendant services.

“Child”, for the purpose of determining whether an employee is eligible for family leave because of such employee’s parental status, means a child as defined in the Act to whom such employee is a biological parent, adoptive parent, foster parent, step-parent, or legal guardian, or has a “parent-child relationship” with a child as defined by law, or has sole or joint legal or physical custody, care, guardianship or visitation with a child.

“Consecutive leave” means leave that is taken without interruption based upon an employee’s regular work schedule, and does not include breaks in employment in which an employee is not regularly scheduled to work. (For example, when an employee is normally scheduled to work from September through June and is not scheduled to work during July and August, a leave taken continuously during May, June and September shall be considered a consecutive leave.)

“Disability leave” means any period of leave for which the employee is disabled (that is, unable to perform his or her work) including, but not limited to, any period of time during which an employee is collecting disability benefits.

“Disrupt unduly the operations of the employer”, as used in sections 4a(3) and 5b of the Act, means an intermittent or reduced leave schedule that, if implemented, would cause the employer measurable harm, economic or otherwise, significantly greater than any measurable harm which would befall the employer if the same employee was granted a consecutive leave. The burden of proof in these instances rests with the employer and will be determined by the Division on a case by case basis.

“Eligible employee” means any individual employed by the same employer in the State of New Jersey for 12 months or more and has worked 1,000 or more base hours during the preceding 12 month period. An employee is considered to be employed in the State of New Jersey if:

1. Such employee works in New Jersey; or
2. Such employee routinely performs some work in New Jersey and the employee’s base of operations or the place from which such work is directed and controlled is in New Jersey.

“Employer” means:

1. Effective May 4, 1990, an “employer” shall mean an employer as defined in the Act, which employs 100 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

2. Effective May 4, 1991, an “employer” shall mean an employer as defined in the Act which employs 75 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

3. Effective May 4, 1993, an “employer” shall mean an employer as defined in the Act which employs 50 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding the calendar year.

“Health care provider” means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

“Health insurance policy” means all health benefits provided by an employer to an employee. Health benefits includes the opportunity provided by an employer to participate in a group health plan.

“Intermittent leave” means a non-consecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12 month period.

“Reduced leave” means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, unless otherwise agreed to by the employee and employer, but less than one workweek at a time.

“Reduced leave schedule” means a reduced leave that is scheduled for not more than 24 consecutive weeks.

“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.

“Spouse” means a person to whom an employee is lawfully married as defined by New Jersey law.

“Substantial and grievous economic injury” as used in section 4h(2) of the Act means economic harm that will befall an employer which is of such a magnitude that it would substantially and adversely affect the employer’s operations, considerably beyond the costs which are associated with replacing an employee who has requested family leave.

“Workweek” means the number of days that an employee normally works each calendar week, irrespective of the number of hours worked each day. (For purposes of a reduced leave, an employee who normally works five days each calendar week is entitled to a maximum of 60 days of family leave. An employee who normally works four days each calendar week is entitled to a maximum of 48 days of family leave).

Case Notes

“Base hours” include regular hours for which employee is paid workers’ compensation benefits, as that term is used in Family Leave Act section defining “employee.” *Kenney v. Meadowview Nursing and Convalescent Center*, 706 A.2d 295, 308 N.J.Super. 565 (A.D. 1998).

Corporation having less than dozen employees in New Jersey, but with 164 employees in six states, was “employer” for purposes of New Jersey’s Family Leave Act. *Essex Crane Rental Corp. v. Director, Div. on Civil Rights*, 294 N.J.Super. 101, 682 A.2d 750 (A.D.1996).

13:14-1.3 Applicability

(a) For the purpose of counting employees, an employer, as defined in the Act and in this chapter, shall consider:

1. Employees in this State, irrespective of their eligibility for family leave;
2. Employees who work outside of the State of New Jersey; and
3. Employees of an employer’s subsidiary, division or other related entity. In making the determination of whether to count the employees of an employer’s subsidiary, division or other entity, the Division on Civil Rights will consider any or all of the following factors on a case by case basis:
 - i. The interrelationship of the employer’s operation;
 - ii. The degree of centralized control of labor relations;
 - iii. The existence of common management; and/or
 - iv. The degree of common ownership or financial control.

(b) To determine whether a government entity is an employer for the purposes of granting family leave, the criteria established under (a) above shall apply.