

LEGAL SERVICES ADVISORY

Leave Options in 2021

Some members will continue to require some form of leave in 2021, whether it is to accommodate their disability, because they are sick, need to quarantine, or to fulfill their family's childcare or caregiving obligations. While FFCRA expired at the end of 2020, other leave options remain.

- **For those with disabilities:** If the member has a disability as defined by federal and state anti-discrimination law, they may request a reasonable accommodation from their employer, which may include remote work. They can also request a disability leave of definite duration, for example a leave until they are able to be fully vaccinated. Whether the employer has an obligation to grant these requests will depend upon each individual's circumstances. Additionally, those at high risk for severe illness from COVID-19 who cannot reach their place of employment due to that risk may be eligible for Pandemic Unemployment Assistance (PUA) if they have exhausted all other paid time off options; again, individual circumstances may determine eligibility.
- **For those who are sick or must quarantine:** If a member is sick or must quarantine, they should be eligible to use their accrued paid sick leave for their own illness or quarantine. If they are able to work, the member may first seek to arrange remote work with the employer to avoid using accrued time, but it is voluntary for the employer to agree. If an individual has exhausted sick leave, or their employer is not permitting them to utilize accrued sick leave, they should apply for PUA through the NJ Department of Labor and Workforce Development (DOLWD). PUA has been extended through March 14, 2021.
- **For those who are sick or must quarantine due to exposure from work:** A new law, S2380, creates a rebuttable presumption for workers' compensation coverage purposes that "essential workers" who contracted the virus were exposed through their work. Unfortunately, that law is not clear on whether it covers school employees; a catchall provision in the statute may encompass school employees. Members may choose to file a workers' compensation claim either on their own or through a privately retained attorney.
- **For those who need to care for their child(ren) due to school or childcare facility unavailability:** While the state of emergency or the public health emergency continues, the New Jersey Family Leave Act (NJFLA) has been expanded to cover leaves for childcare purposes if the school or childcare facility is unavailable due to the pandemic. This expansion does not add to the overall 12 weeks of leave allotted in a 24-month period, so depending upon the contract or past practice in the workplace, members may have already exhausted their 12 weeks if they have previously used FFCRA, FMLA, or NJFLA leave. If the child(ren) is on a hybrid schedule, this leave is arguably available for the days the child(ren) is not attending school in-person. Additionally, family leave insurance benefits were not extended to cover this leave purpose, so compensation would not be available through those funds. However, the member may be eligible for PUA benefits. While typically individuals would be required to exhaust sick leave prior to being eligible for PUA, it is likely that it would not be required in this case because of the ineligibility to use sick leave for childcare purposes.
- **For those who need to care for a family member:** While the state of emergency or the public health emergency continues, the NJFLA was expanded to cover leaves to care for a family member when the family member is either directed by a public health authority or advised by a health care provider to quarantine due to illness or known or

suspected exposure. Family leave insurance benefits were also expanded to cover these types of leaves, so partial payment can be applied for during this leave through the NJ DOLWD. Additionally, PUA benefits may be available to individuals on this type of leave after other benefits and paid leave options are exhausted (although, as noted above, it is unlikely that exhaustion of sick leave would be required in this case as the individual would be ineligible to use sick leave for caretaking purposes).

- **Looking ahead:** President Biden, in releasing details about his plan for COVID relief, has stated that he will ask Congress to put FFCRA leave requirements back in place, extend emergency paid leave measures until September 30, 2021, and provide over 14 weeks of paid leave for: caregiving when a child's school or care center is closed; to those who have or are caring for those with COVID-19 symptoms, or who are quarantining due to exposure; and grant time off to get the vaccine. Of course, this is subject to change and we will provide details if and when new legislation is passed.