

Understanding Family and Medical Leave

New Jersey School Boards Association

Spring Education Symposium

April 25, 2023

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New Jersey Schools Insurance Group ("NJSIG")

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* Do you have SBLL (E&O) coverage?
You may refer any employment-related inquiries to the New Jersey Employment Practices Hotline Attorney (NEPHA) at:
(201) 623-1223
NEPHA@cgajlaw.com

Topics for Discussion:

- Federal Family and Medical Leave Act (“FMLA”)
- New Jersey Family Leave Act (“NJFLA”)
- Designating Maternity Leave
- Family Leave Insurance (“FLI”)

FMLA & NJFLA: Leave Entitlements



FMLA and NJFLA provide eligible employees with up to twelve (12) work weeks of unpaid, job protected leave for specified family and medical reasons (also military caregiver leave)

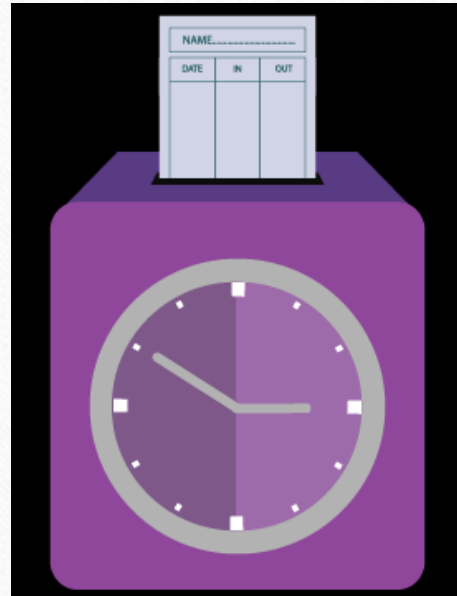
- FMLA → twelve (12) month entitlement period
- NJFLA → twenty-four (24) month entitlement period
- Continuation of group health benefits
- Restoration to same or “equivalent” job
- “Work week” = any week the employee would otherwise be required to work at least one day

*** RECOMMENDATION:**
**Board Policy should clearly define
method for calculating FMLA/NJFLA
entitlement periods**

FMLA & NJFLA: Employee Eligibility

FMLA

- ✓ Employed for at least one year
- ✓ Must have *actually worked* **1,250 hours** in previous 12 months



NJFLA

- ✓ Employed for at least one year
- ✓ Must have *actually worked* **1,000 hours** in previous 12 months

* NOTE: Full-time teachers are presumed to have met the 1,250 hour requirement

FMLA: Qualifying Reasons for Leave

1. Employee's own serious health condition
2. "Family member" suffering from a serious health condition
3. Birth/Adoption of a child (*must be completed* within 1-year of birth or placement)
4. "Qualifying exigency" due to active military status



NJFLA: Qualifying Reasons for Leave



1. “Family member” suffering from a serious health condition
2. Birth/Adoption of a child (must commence within 1-year of birth or placement)
3. “Qualifying exigency” due to active military status

*** NOTE: NJFLA does not entitle an employee to leave for his/her own serious health condition**

Leave taken for the same “qualifying reason” shall be concurrently designated as FMLA & NJFLA

N.J.A.C. 13:14-1.6(a):

“Where an employee requests leave for a reason covered by both the [NJFLA] and another law, the leave simultaneously counts against the employee's entitlement under both laws.”

29 C.F.R. § 825.701(a):

“If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws”.

Bond with newly-born child
Care for family member
Qualifying exigency



**FMLA & NJFLA
leave**

But... N.J.A.C. 13:14-1.6(b)(2):

“If an employee takes FMLA leave because of his or her own disability, including a disability related to pregnancy or childbirth, and a family member becomes seriously ill or a child is born or adopted while he or she is still on FMLA disability leave, the intervening birth, adoption or serious family illness does not convert the FMLA leave to a leave under the Act. for as long as the employee continues to be eligible for FMLA leave based on his or her own disability...”

Pregnancy- and/or
childbirth-related
disabilities



**FMLA leave
only**

FMLA: Serious Health Condition (employee or family member)

An illness, injury, impairment, or physical or mental condition that involves:

1. incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or a period of incapacity requiring absence of more than **three (3) calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
2. incapacity due to **pregnancy**, or for prenatal care; or any period of incapacity (or treatment therefore) due to a **chronic serious health condition** (e.g., asthma, diabetes, epilepsy, etc.); or
3. incapacity that is **permanent** or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
4. absences to receive **multiple treatments** (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).



FMLA for “On-The-Job” Injury

FMLA and workers’ compensation may run together



The reason for the absence must be due to a qualifying serious illness or injury (“serious health condition”)

The employer must properly notify the employee in writing that the leave will be counted as FMLA leave

NJFLA: Serious Health Condition (family member only)

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:
 - i. incapacity of more than **three (3) consecutive days**, and any subsequent treatment or period of incapacity that also involves, (i) Treatment two or more times by a health care provider; or (ii) Treatment by a health care provider on one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
 - ii. incapacity due to **pregnancy**, or for prenatal care;
 - iii. incapacity or treatment for such incapacity due to a **chronic serious health condition**;
 - iv. incapacity, which is **permanent** or long-term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke or the terminal stages of a disease); or
 - v. absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

Certification of Health Care Provider

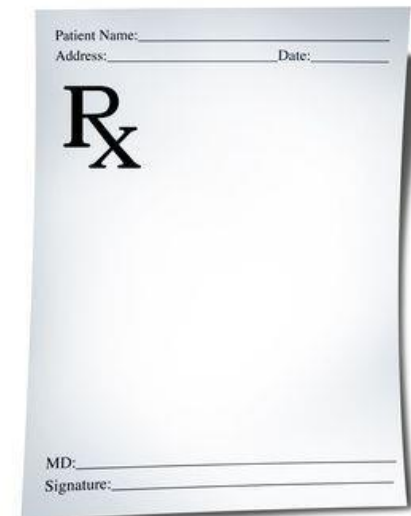
29 C.F.R. §825.305

Employer may require a request for leave due to employee's own/family member's serious health condition be supported by a

Certification of Health Care Provider

**** Legal recommendation – always request a certification***

- Should be requested within five (5) business days of leave request
- Employee has fifteen (15) days to return completed certification



Patient Name: _____ Date: _____
Address: _____ Date: _____
Rx
MD: _____
Signature: _____

Designating Maternity Leave

STEP 1: Determine employee's eligibility for FMLA & NJFLA

- Has employee been employed for at least one year?
- Has employee worked 1,250 and/or 1,000 hours in previous 12 months?
- Has employee used any FMLA in designated 12-month period? Has employee used any NJFLA in designated 24-month period?
- Issue FMLA Notice of Eligibility



Designating Maternity Leave

STEP 2: Request written leave request and Certification of Health Care Provider

- Legal presumption of disability → 4 weeks prior to due date, and 4 weeks after delivery
 - Actual disability based upon opinion of health care provider



Designating Maternity Leave

STEP 3: Determine whether sick leave is used prior to, or concurrently with, FMLA leave

Use of paid sick leave during FMLA leave is **mandatorily negotiable** – that means the use of sick leave is governed by “past practice” and/or the applicable Union contract

- Lumberton Tp. Bd. Of Ed., P.E.R.C. No. 2002-13, 27 NJPER 372, aff’d 28 NJPER 427 (App.Div. 2002)

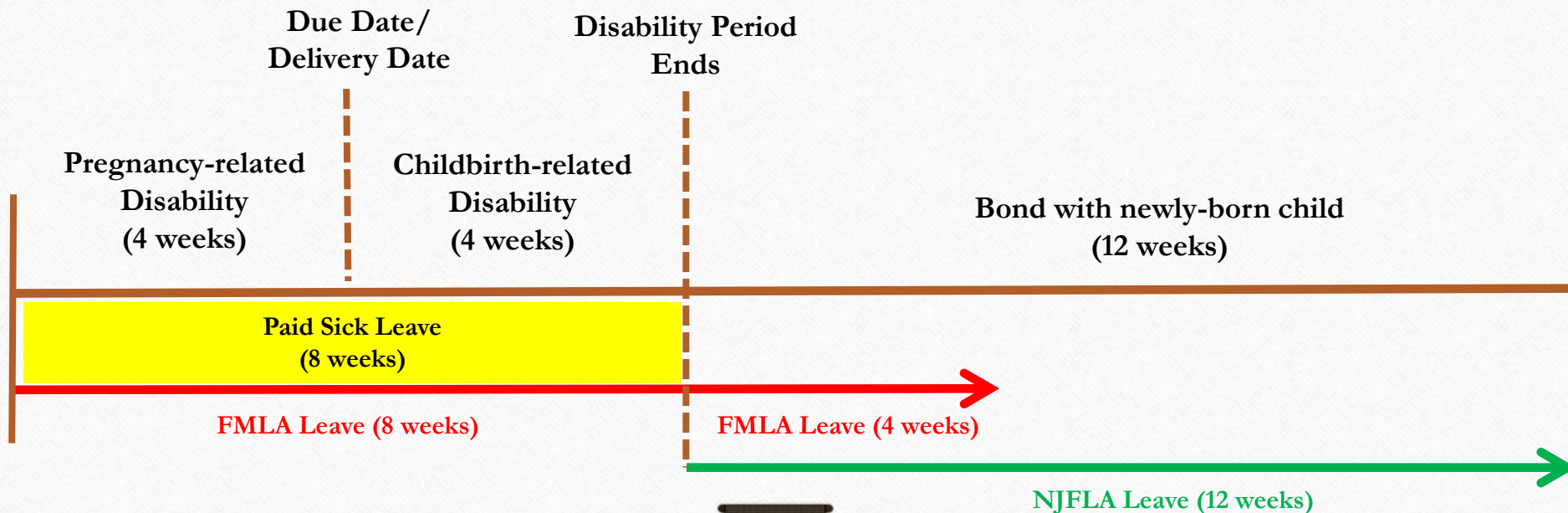
“**Prior to**” → Employee may utilize sick leave for pregnancy- and childbirth-related disabilities before using FMLA leave

“**Concurrently**” → Pregnancy- and childbirth-related disabilities will count against both accrued sick leave and FMLA

Designating Maternity Leave

STEP 4: Designate employee's leave

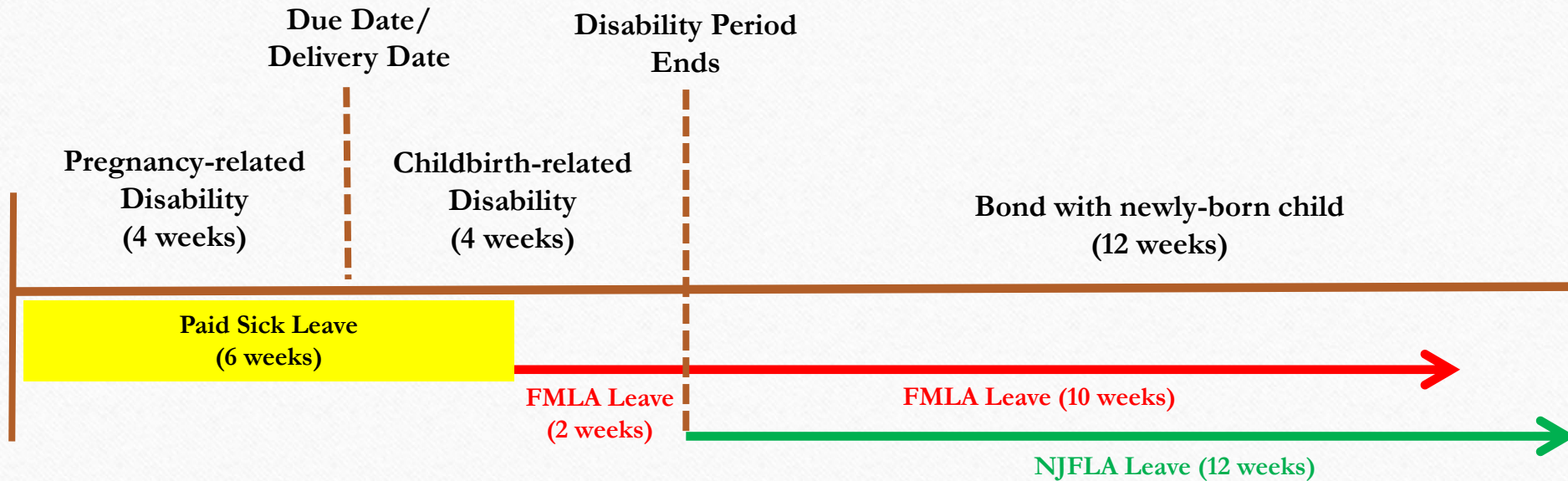
If your district runs sick leave & FMLA concurrently -



Designating Maternity Leave

STEP 4: Designate employee's leave

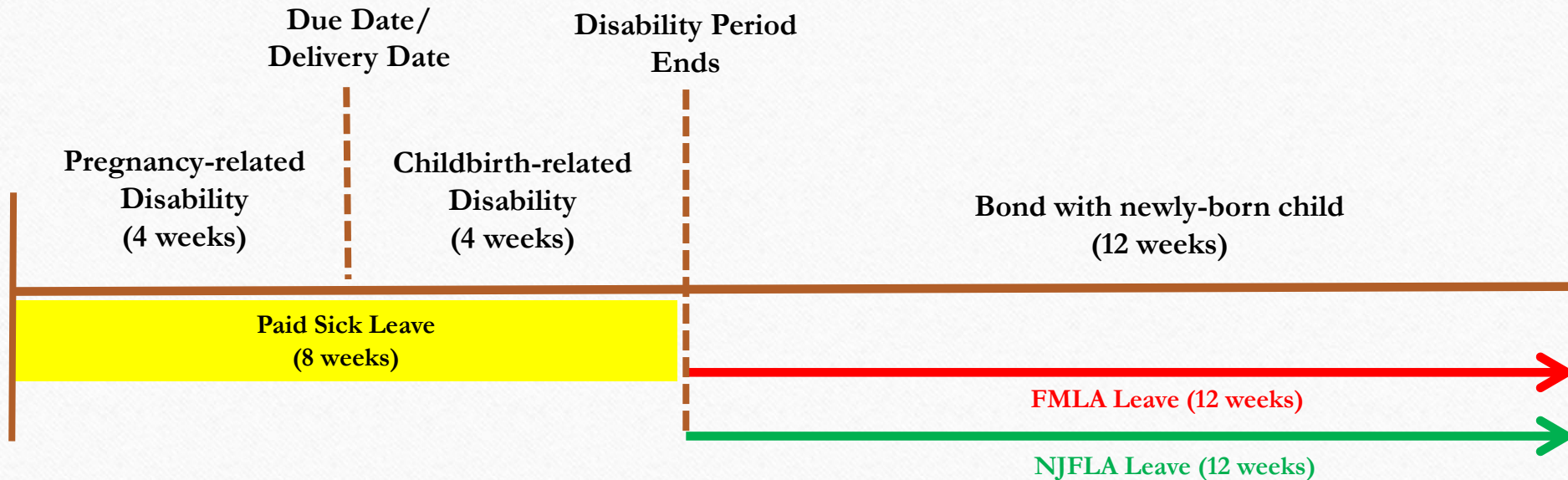
If your district runs sick leave & FMLA *consecutively* and employee has *insufficient* sick leave for entire disability period



Designating Maternity Leave

STEP 4: Designate employee's leave

If your district runs sick leave & FMLA *consecutively* and employee has *sufficient* sick leave for entire disability period



New Jersey Family Leave Insurance (“FLI”)

The Basics

New Jersey FLI provides salary continuation during an approved unpaid family leave

- Does ***not*** entitle employees to additional leave time
- Employee may apply for benefits when on approved unpaid leave of absence to care for family member with a “serious health condition” and/or to bond with newborn
- No “double dipping”



Legal Updates for 2020

Statutory Amendments to NJFLA/FLI

Effective July 1, 2020

	<u>OLD:</u>	<u>NEW:</u>
NJFLA Employee Requirements	<ul style="list-style-type: none">• Fifty (50) employees	<ul style="list-style-type: none">• Thirty (30) employees
Maximum Weekly Benefit	<ul style="list-style-type: none">• 66% average weekly wage	<ul style="list-style-type: none">• 85% average weekly wage
Cap Amount	<ul style="list-style-type: none">• 53% of state average weekly wage (~ \$650)	<ul style="list-style-type: none">• 70% of the state average weekly wage (~ \$1,025)
Maximum FLI Entitlement Period	<ul style="list-style-type: none">• Six (6) weeks or forty-two (42) intermittent days	<ul style="list-style-type: none">• Twelve (12) weeks or fifty-six (56) intermittent days

Also – NJFLA definition of “family member” expanded to include siblings, grandparents, grandchildren, parents-in-law, domestic partners, any blood relatives, and any individual with whom the employee has a relationship that is “the equivalent” of a family member



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