

## LEGAL SERVICES ADVISORY

### Leave Options in the 21-22 School Year

Some members will continue to require some form of leave in the 2021-22, 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 mandatory Families First Coronavirus Response Act (FFCRA) leave expired at the end of 2020, other leave options remain, including expansions of the New Jersey Family Leave Act (NJFLA).

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#### 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, but will more likely include other accommodations, such as mask wearing, distancing, or other mitigation measures. 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.

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#### 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. Such agreement will be harder to achieve than last year given the state's requirement that schools return to in-person instruction in September of 2021. Similarly, employers may voluntarily offer FFCRA leave, and may be entitled to

certain tax credits for doing so. Locals may also seek to negotiate the use of sick leave bank days for quarantine purposes. If an individual has exhausted sick leave, or their employer is not permitting them to utilize accrued sick leave, and one of the options above has not been successful, they should seek assistance from their NJEA UniServ field representative. There may be a possible grievance if an individual is not permitted to use existing sick days, or an unpaid leave option such as administrative unpaid leave or utilizing family leave if the member qualifies (see below).

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#### For those who are sick or must quarantine due to exposure from work:

In addition to the options discussed in the preceding paragraph, P.L. 2020 c. 84 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.

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**For those who need to care for their child(ren) due to school or childcare facility unavailability:**

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While the state of 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. Note that this expanded NJFLA leave provision will expire if and when the state of emergency is lifted.

However, it should be noted that family leave insurance benefits were not extended to cover this leave purpose, so compensation would not be available through those funds.

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**For those who need to care for a family member:**

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While the state of 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. Note that the expanded NJFLA leave and family leave insurance benefits provisions will expire if and when the state of emergency is lifted.