



NEW JERSEY QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

New Jersey is an at-will employment state. This means that either party may terminate the employment relationship at any time, with or without cause, and with or without notice. Exceptions to the at-will employment policy are contracts stating otherwise, firing an employee for discriminatory reasons, or firing an employee in violation of public policy. *Witkowski v. Thomas J. Lipton, Inc.*, 643 A.2d 546 (N.J. 1994).

Mass Layoffs

Beginning April 10, 2023, in the event of a mass layoff, employers employing 100 or more employees must provide not less than 90 days' notice (or the period of time required pursuant to the federal Worker Adjustment and Retraining Notification Act – 29 U.S.C. § 2101, *et seq.* – whichever is longer) before the first termination of employment occurs in connection with the mass layoff. N.J. Stat. § 34:21-2a. The employer shall provide to each employee whose employment is to be terminated, a severance pay equal to one week of pay for each full year of employment. N.J. Stat. § 34:21-2b.

Immigration Verification

New Jersey places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under New Jersey state laws, although employers may use E-Verify voluntarily.

Drug Testing

New Jersey allows pre-employment drug testing. If an employer has a drug testing policy and employees or applicants test positive for marijuana, the employer must offer them an opportunity to provide a legitimate medical explanation for the positive test result and give them written notice of their right to provide the explanation. However, employers are allowed to prohibit the possession or use of intoxicating substances during work hours or on workplace premises. N.J. Stat. § 24:6I-6.1.

Medical Marijuana

The State of New Jersey has a Medical Marijuana Program. Additional information may be found at njmmp.nj.gov/njmmp/.

Court and Jury Duty Leave

Employers must allow employees to attend court for required jury service. Furthermore, employers cannot penalize, threaten, or coerce employees because they are required to attend court for jury service. N.J. Stat. § 2B:20-17.

In New Jersey, full-time employees who work for the state or local government are entitled to be paid their normal salary while they are on jury duty. NJ Rev Stat. Ann. § 2B:20-16. The New Jersey Department of Labor and Workforce Development has clarified that there is no requirement for private employers to compensate employees for time spent while on jury duty. NJ Dept. of Labor and Workforce Dev. FAQ Wage and Hour Compliance FAQs (for Employers).

Voting Leave

New Jersey does not have any statutes or other laws requiring employers to provide voting leave, whether paid or unpaid.

While New Jersey does not require employers to grant voting leave, there are laws in place that prohibit employers from improperly influencing or intimidating their employees with respect to voting.

New Jersey employers and their agents are prohibited from doing any of the following:

- Influencing or otherwise interfering with the employee's vote by means of threats, intimidation, or other methods of coercion;
- Enclosing in employees' pay envelopes any candidate name or any political motto, device, threat, or argument intended to influence their political opinions or actions; and

- Exhibiting in the workplace, within 90 days of an election, any notice containing threats, or any information intended to influence employees' political actions or opinions. This prohibition can apply to a notice or information indicating that work will partly or totally cease, the workplace will close, or wages will be reduced if a particular ticket or candidate is elected.

N.J. Stat. Ann. §§ 19:34-27, 19:34-30.

Parental Leave

Pregnancy Disability Leave

New Jersey employers cannot provide paid or unpaid leave to female employees affected by pregnancy or breastfeeding in ways that are less favorable than leave provided to other employees who have a similar ability or inability to work. N.J. Stat. Ann. § 10:5-12. Pregnancy or breastfeeding means pregnancy; childbirth; breastfeeding or expressing milk for breastfeeding; and medical conditions related to pregnancy, childbirth, recovery from childbirth, or breastfeeding. N.J. Stat. Ann. § 10:5-12(s).

Insurance

Under New Jersey's Family Temporary Disability insurance program, eligible employees may receive family leave insurance benefits when they take leave for a family member's serious health condition, the birth of their child, the placement of a child with them for adoption or foster care, or activities for which certain unpaid crime victim leave can be taken. N.J. Stat. § 43:21-39.2; N.J. Stat. § 43:21-39.3.

Other Leave

Earned Paid Leave

The State of New Jersey requires employers to provide earned sick leave to each employee working for the employer in the state. N.J. Stat. § 34:11D-2. For every 30 hours worked, the employee shall accrue one hour of earned, paid sick leave. N.J. Stat. § 34:11D-2. New Jersey employers must allow eligible employees to use up to 40 hours of earned sick leave in a benefit year for their own or their family members' mental or physical illnesses, injuries, other adverse health conditions, or preventive medical care; certain public health emergencies or dangers; school-related events or child-care meetings; and certain reasons related to their status or their family members' status as victims of domestic or sexual violence. N.J. Stat. § 34:11D-3.

Crime Victim Leave

New Jersey employers must provide eligible employees with up to 20 days of unpaid crime victim leave during the 12-month period following an incident where they or their family members are victims of domestic violence or a sexually violent offense. N.J. Stat. Ann. § 34:11C-3.

Emergency Response Leave

Employers must allow employees to take leave to serve as volunteer emergency responders during a state of emergency declared by the U.S. President or New Jersey's Governor or to respond to an emergency alarm. Employers are not required to pay an employee for any work time missed while serving as a volunteer emergency responder; however, a volunteer emergency responder is permitted to charge their absence as a vacation day or sick day, if the volunteer has such days. N.J. Stat. Ann. § 40A:14-214.

Family and Medical Leave

Eligible employees may take up to 12 weeks of family leave in any 24-month period for the birth of their child, the placement of a child with them for adoption or foster care, or a family member's serious health condition. Family leave may be paid, unpaid, or a combination of paid and unpaid leave. There are limited exceptions in which the employer may deny family leave to the employee outlined by statute. N.J. Stat. § 34:11B-4.

Military Leave

Eligible employees in New Jersey may take leave to perform military service, including up to three months to participate in assemblies or annual training conducted by the U.S. Armed Forces and up to three months in a four-year period to attend service schools conducted by the U.S. Armed Forces. However, they must meet certain requirements to qualify for reinstatement. N.J. Stat. § 38:23C-20.

Smoking Laws

In general, smoking is prohibited in workplaces and indoor public places in New Jersey. N.J. Stat. § 26:3D-58. Limited exceptions are outlined by statute. N.J. Stat. § 26:3D-59; N.J. Stat. § 26:3D-60. Employers cannot discriminate against employees and applicants because they do or do not smoke, or use other tobacco products unless this discrimination has a rational basis that reasonably relates to their employment and job duties. N.J. Stat. § 34:6B-1.

Break Time to Express Milk

Breastfeeding is a protected class in New Jersey and an individual cannot be discriminated against because they are breastfeeding. N.J. Stat. Ann. § 10:5-12. A reasonable accommodation for an employee's pregnancy-related needs may include reasonable break time each day for an employee who is breastfeeding an infant child and a private room or other location close to the employee's work area where they may express breast milk. N.J. Stat. Ann. §10:5-12(s).

Meal Breaks

The State of New Jersey has no law regulating meal breaks or rest periods for anyone over the age of 18. New Jersey does require employers to provide minors with a 30-minute meal period after five consecutive hours of work. NJ Dept. of Labor and Workforce Dev. FAQ Wage and Hour Compliance FAQs (for Employers).

Minimum Wage, Overtime, and Wage Recordkeeping

Effective January 1, 2024, the New Jersey minimum wage is \$15.13 per hour for most employees; \$13.73 per hour for seasonal employees, and small employers with fewer than six employees; and \$12.81 per hour for agricultural employees. N.J. Stat. Ann. § 34:11-56a4. These hourly rates will increase each year on January 1, until each hourly rate reaches \$15.00 per hour. *Id.* Seasonal and small employers have until 2026 to reach \$15.00 per hour. *Id.* Agricultural workers will reach the \$15.00 per hour minimum wage by 2027. *Id.* Employers must still comply with federal wage laws and regulations. Employers must pay tipped employees at least \$5.26 per hour with a tip credit of \$9.87 per hour. *Id.* If the hourly rate plus tips does not equal at least the minimum wage per hour, the employer is required to make up the difference.

Staff members providing direct care at long term care facilities have a minimum wage that is \$3.00 above the minimum wage for most employers. *Id.* In 2024, this rate is \$18.13 per hour. *Id.*

New Jersey generally follows federal requirements for overtime pay, i.e., if an employee works more than 40 hours, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. Limited exceptions are outlined by statute. N.J. Stat. Ann §34:11-56a4.

Final Payments

The State of New Jersey requires an employer to issue a final paycheck on the next regular payday. N.J. Stat. Ann. § 34:11-4.3. For employees who are compensated in part or in full by an incentive system, employers must pay a reasonable approximation of all wages owed until the exact amounts due can be computed. *Id.*

Employers must pay for accrued unused vacation upon termination if unused vacation has been promised to employees or if there is a contractual obligation for employers to pay such wages to employees. *Scott G. Smith v. Tyco International. (US), Inc.*, 2007 WL 1039067, at *1 (N.J. Sup. Ct. Apr. 9, 2007).

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the New Jersey Department of Labor and Workforce Development, Division of Unemployment Insurance. Additional information regarding the benefits may be accessed at www.myunemployment.nj.gov/.

Workers' Compensation

The New Jersey Workers' Compensation Act, N.J. Stat. Ann. § 34:15-1, *et seq.*, applies to all private and public employers in New Jersey, except employers in the railroad and certain maritime industries. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. Under the Act, a workplace injury must be immediately reported to the employer; failing to report an injury in a timely manner may result in a denial of benefits.

The Act is administered by the New Jersey Department of Labor and Workforce Development, and additional information regarding the Act may be accessed at www.nj.gov/labor/wc/wc_index.html.

Finally, New Jersey recognizes a private cause of action for retaliation under the Act. *Lally v. Copygraphics*, 428 A.2d 1317 (N.J. 1981). If an employer discriminates against an employee because they have asserted their rights under the Act, the employer may have to pay a fine. N.J. Stat. Ann. § 34:15-39.1.

Child Labor

Generally, 14 is the minimum age for employment under New Jersey state law. At the age of 16, a child may be employed for most work during restricted hours, unless the work is declared hazardous by the U.S. Department of Labor. There are restrictions for places of work dealing with minors, as well as restrictions on the hours of the day the minor may work, and these vary depending on the age of the minor. The laws may be found at <https://www.nj.gov/labor/youngworkers/>.

Gun Laws

The State of New Jersey does not have separate laws governing firearms in the workplace. However, New Jersey's right-to-carry laws are so restrictive that it is unlawful for almost all employees to possess concealed firearms in the workplace. N.J. Stat. § 2C:39-5, N.J. Stat. § 2C:39-6.