

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Rules Pertaining to the Family Leave Act

Proposed Readoption with Amendments: N.J.A.C. 13:14

Authorized By: Rachel Wainer Apter, Director, Division on Civil Rights.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-021.

Submit comments by April 30, 2021, to:

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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (DCR, or Division), in the Department of Law and Public Safety, enforces the New Jersey Family Leave Act (NJFLA), N.J.S.A. 34:11B-1 et seq. Pursuant to N.J.S.A. 52:14B-5.1, the Division's rules concerning the NJFLA, N.J.A.C. 13:14, were scheduled to expire on July 30, 2021. As the Division has timely filed this notice of proposal, this chapter is extended 180 days to January 26, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Accordingly, the Division proposes to readopt the rules with amendments to incorporate changes to the NJFLA enacted by recent legislation.

The NJFLA entitles certain employees working in New Jersey to a maximum of 12 weeks of family leave in a 24-month period. Employees returning from family leave are entitled to be restored to the position held prior to the leave or to an equivalent position. As originally enacted in 1989, the statute permitted eligible employees to take family leave to provide care for a newborn or newly adopted child, or to care for certain family members with a serious health condition.

DCR is proposing amendments to incorporate three statutory amendments to the NJFLA — P.L. 2020, c. 23, addressing communicable-disease-related public health emergencies, such as the current COVID-19 pandemic; P.L. 2019, c. 37, which broadened the definition of family members and included employees of employers with 30 to 50 employees; and a 2014 amendment that was made after the last time the NJFLA rules were readopted. In P.L. 2020, c. 23, the Legislature amended the NJFLA to provide more employees with access to leave during public health emergencies by expanding the definition of "family leave" and creating exceptions to an employer's right to deny family leave to an employee. Eligible employees can now take leave during a state of emergency declared by the Governor, or when indicated to be needed by the State Commissioner of the Department of Health (Commissioner of Health), or other public health authority, if either of two circumstances apply: 1. The employee needs to care for a family member, or someone who is the equivalent of family, who has been isolated or quarantined at the direction or recommendation of a public health authority or health care provider because of suspected exposure to a communicable disease; or 2. The employee needs to provide required care or treatment for a child if the child's school or place of care is closed by order of a public official due to an epidemic of a communicable disease or other public health emergency. The statutory amendments also created notice and certification requirements for family leave taken during public health emergencies, and delineated the requirements for taking reduced or intermittent leave for the emergency-related family or child care needs

allowed by P.L. 2020, c. 23. Before April 14, 2020, when the amendments became effective, under certain circumstances, employers could deny family leave to an employee who was either among the highest paid top five percent of the employer's employees or was one of the seven highest paid employees of the employer under certain circumstances. As amended, the NJFLA statute does not allow employers to deny family leave to such an employee in the event of a state of emergency declared by the Governor or when indicated to be needed by the Commissioner of Health or other public health authority, when the employee is requesting to use family leave for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease. P.L. 2020, c. 23 also added a definition of "health care provider" to the statute.

DCR also proposes amendments at this time to incorporate changes to the NJFLA enacted by P.L. 2019, c. 37. Before February 19, 2019, when this act became effective, the NJFLA applied only to employers with 50 or more employees worldwide. Since February 19, 2019, employers with 30 or more employees worldwide now meet the definition of a "covered employer" under the NJFLA. In addition, eligible employees can now take leave due to a serious health condition of a wider range of family members and people who are the equivalent of family. The Legislature also amended various sections of the NJFLA to clarify that the definitions of "parent" and "child" include any parent-child relationship resulting from a valid written agreement with a gestational carrier, which better secures the rights of many families, including lesbian, gay, bisexual, transgender, questioning, and intersex (LGBTQ+) families. The proposed rule amendments also incorporate a 2014 amendment to the NJFLA that was enacted after promulgation of the most recent rule amendments.

At the Federal level, the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§ 2601 et seq., allows eligible employees of a covered employer to take up to 12 weeks of job-protected leave in any 12-month period to care for a newborn or newly adopted child, for placement of a child with the employee for adoption or foster care, to care for a family member with a serious health condition, or because of the employee's own serious health condition. The U.S. Labor Department's Wage and Hour Division has promulgated final rules to implement the FMLA, 29 CFR 825. The differences between the NJFLA rules and the FMLA rules reflect differences in the Federal and State statutes. DCR's rules provide important guidance to employers and employees in recognizing the differences between the Federal and State leave laws.

The following is a summary of the rules proposed for readoption with amendments.

N.J.A.C. 13:14-1.1 sets forth the purpose of the chapter. N.J.A.C. 13:14-1.2 sets forth definitions that are used in the rules. DCR proposes amending several definitions to incorporate recent statutory amendments to the definitions of those terms. DCR proposes defining "closure of a school or place of care" and "family leave"; and amending the definitions of "disrupt unduly the operations of the employer," "health care provider," "intermittent leave," and "reduced leave schedule." As a result of the April 2020 amendments to the NJFLA, in the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an eligible employee may now take leave to provide care to a family member when made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease in certain circumstances. This includes taking leave to provide in-home care or treatment of a child due to the closure of the child's school or place of care by order of a public official due to the epidemic or other public health emergency. DCR proposes defining "closure of a school or place of care" to clarify that a school or place of care is considered closed when the school requires the child to participate only virtually, either full time or on particular days as part of a hybrid model. However, a school or place of care is not considered closed when an employee chooses to keep their child home even though the school or place of care is open for in-person instruction. DCR also proposes defining "family leave" to clarify the reasons for which leave may be taken. Given that there are now four reasons for which an employee may take leave, enumerating the different reasons in the definition of "family leave" will simplify the rules. DCR proposes amending the definition of "disrupt unduly the operations of the

employer” to account for the term’s additional use in the statutory amendments related to communicable disease and to take account of the potential health and safety risks of allowing an employee to take intermittent or reduced leave to care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease. DCR proposes amending the definition to create a presumption that an intermittent or reduced leave schedule for an employee to care for a family member who has been diagnosed with a communicable disease, or is suspected of having a communicable disease, would disrupt unduly the employer’s operations. DCR proposes that the presumption would apply unless the employee does not come into contact with others while working or can work remotely during the leave. DCR proposes amending the definitions of “intermittent leave” and “reduced leave schedule” to account for the new statutory reasons for leave and to clarify that leave due to placement of a child with the employee for foster care may be taken intermittently or on a reduced schedule. DCR also proposes amending “intermittent leave” to clarify its meaning consistent with the legislative action and to allow that leave to be scheduled in increments smaller than a week. In addition, DCR proposes amending the definition of “health care provider” to encompass the statutory definition included in the Legislature’s recent amendments and remove from the definition people who are authorized to provide health care by a licensed health care provider.

DCR proposes amending the definitions of “child,” “employer,” “family member,” and “parent.” As a result of recent amendments to the NJFLA, an eligible employee may now take leave to care for a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner or partner in a civil union, any other individual related by blood, and any other individual with whom the employee has a close relationship that is equivalent to a family relationship, with a serious health condition.

DCR proposes amending the definition of “eligible employee” to include individuals who have been laid off or furloughed within the previous 90 days by an employer due to that employer curtailing operations because of a state of emergency. This would allow laid off or furloughed employees who are called back to work to count up to 90 calendar days of the time they were laid off or furloughed as time they were employed for purposes of NJFLA eligibility. This would only apply if their employer laid them off or furloughed them because it curtailed its operations due to a state of emergency. For example, an employee being called back to work from a 60-day furlough who was furloughed because their employer could not operate during the COVID-19 state of emergency could count the 60 calendar days as days they were employed for purposes of NJFLA eligibility. Therefore, they could accept their employer’s offer to return to work after the furlough and take leave for a reason covered by the NJFLA, if they were otherwise eligible. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked per week during the rest of the 12-month period. This change would update the definition of “eligible employee” to conform to the amendments to the NJFLA made at P.L. 2013, c. 221.

DCR proposes amending the definition of “employer” consistent with the recent amendments to the NJFLA to include any employer that employs 30 or more employees, whether employed in New Jersey or not, for each working day during 20 or more calendar workweeks in the current or immediately preceding calendar year.

DCR proposes defining “state of emergency” as a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator. This change would update the definition of “eligible employee” to conform to the amendments to the NJFLA made at P.L. 2013, c. 221.

N.J.A.C. 13:14-1.4, Terms of leave, sets forth the duration and time periods in which leave may be taken, and the notice requirements for taking leave. DCR proposes amending the notice requirements for employees requesting leave, consistent with the recent statutory amendments to the NJFLA. While the current rules impose a uniform 30-day notice requirement for all types of NJFLA leave, the recent amendments to the NJFLA create shorter notice requirements in some situations. They allow 15 days’ notice of intermittent or reduced leave to

care for, or bond with, a newborn child or a child placed with an employee for adoption or foster care, and 30 days’ notice for consecutive leave for those purposes. Employees requesting leave to care for a family member with a serious health condition must provide at least 15 days’ notice for intermittent or reduced leave and must provide notice in a reasonable and practicable manner for consecutive leave. For intermittent or reduced leave to care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the employee must provide notice as soon as practicable and must provide notice in a reasonable and practicable manner for consecutive leave. For all types of leave, in emergent circumstances, the employee must provide the employer with as much notice as possible. The existing rule sets forth methods the employer may use to count the 24-month period an employee must have worked for an employer to determine eligibility. DCR proposes amending subsection (d) to require employers to notify employees of the method they have chosen to measure the 24-month period in which 12 weeks of leave are available to employees.

N.J.A.C. 13:14-1.5, Leave entitlements, already states that eligible employees may take 12 weeks of family leave in a 24-month period. The time may be taken as either paid or unpaid leave, or a combination of the two. DCR proposes amendments in accordance with the recent statutory changes to make clear that the various kinds of leave described at N.J.A.C. 13:14-1.4 also are available for 12 weeks in a 24-month period and also can be taken as paid or unpaid leave or a combination.

Similarly, DCR proposes to incorporate the statutory requirement that employees requesting family leave on an intermittent basis or a reduced leave schedule must make a reasonable effort to schedule such leave, so as not to unduly disrupt the operations of the employer, and, if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. DCR also proposes amending this section to create a presumption that an intermittent or reduced leave schedule for an employee to care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease would disrupt unduly the employer’s operations. DCR proposes that the presumption would apply unless the employee does not come into contact with others while working or can work remotely during the leave. The presumption would ensure that an employee who is exposed to a family member who has or might have a communicable disease would not be present in the workplace if their presence would put others at risk of contracting the communicable disease. DCR also proposes amending the section to specify that nothing in the section precludes an employer from requiring an employee to work remotely while taking intermittent or reduced leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease.

The recent amendments to the NJFLA also provide that leave taken on a reduced leave schedule in connection with a single serious health condition must be taken within 12 consecutive months, rather than within 24 consecutive weeks, as the NJFLA previously required. Therefore, DCR proposes amending this section to comport with that NJFLA amendment. Additionally, the rulemaking provides that the leave taken on a reduced leave schedule in connection with a single declaration of a state of emergency by the Governor or indication by the Commissioner of Health or other public health authority must be taken within 12 consecutive months.

DCR also proposes amending this section by replacing notice provisions that are a duplicative of those at N.J.A.C. 13:14-1.4 with a statement that all leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4.

N.J.A.C. 13:14-1.6 sets forth the manner in which the NJFLA relates to, and interacts with, other laws. DCR proposes amending this section to incorporate recent amendments to the NJFLA that permit eligible employees to take leave in connection with the placement of a child with the employee for foster care and the care of a family member due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease. DCR also proposes clarifying a sentence regarding leave taken for an employee’s own disability.

N.J.A.C. 13:14-1.7 sets forth requirements that employers treat family leave in the same manner they have treated similar leaves of absence.

N.J.A.C. 13:14-1.8 sets forth the circumstances under which an employee may engage in other employment while taking leave pursuant to the NJFLA. DCR proposes clarifying, consistent with recent NJFLA amendments, that an employer may not prohibit an employee from continuing other full-time employment that commenced before the employee began NJFLA leave, and also that part-time employment may continue during leave, so long as the hours spent at that part-time employment do not increase.

N.J.A.C. 13:14-1.9 sets forth standards that permit an employer to deny NJFLA leave to particular salaried employees in the highest-paid tier of the employer's staff. DCR proposes amendments to provide exceptions for the denial of NJFLA leave during a state of emergency, consistent with recent NJFLA amendments, and additional, non-substantive clarifications to this section.

N.J.A.C. 13:14-1.10 sets forth the requirements for an employer to obtain a certification from the employee or a health care provider regarding the reason the employee is requesting leave under the NJFLA. DCR proposes amendments to reflect that the same requirements apply to NJFLA leave taken in connection with the placement of a child with the employee for foster care as apply to leave taken in connection with the birth of a child or the placement of a child with the employee for adoption. DCR proposes amendments to reflect the new certification requirements for leave to care for a family member due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease. DCR also proposes non-substantive clarifying amendments to this section.

N.J.A.C. 13:14-1.11 sets forth the reinstatement rights of an employee upon the expiration of a family leave.

N.J.A.C. 13:14-1.12 sets forth the requirement that employers grant a family leave to more than one employee from the same family at the same time, provided the employees are otherwise eligible for the leave.

N.J.A.C. 13:14-1.13 sets forth requirements for employers who maintain leaves of absence that provide benefits other than health benefits that differ depending upon the type of leave taken to provide the same benefits to employees on family leave in the same manner that they provide benefits to employees who are granted another type of leave of absence that most closely resembles family leave.

N.J.A.C. 13:14-1.14 sets forth the rules requiring employers to provide employees with notice about the NJFLA.

DCR proposes minor clarifying and/or technical amendments throughout the chapter that do not change the meaning of the text.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division believes that the rules proposed for readoption with amendments will have a positive social impact on all covered employers and all eligible employees in the State of New Jersey and their families. The proposed amendments implement recent changes to the NJFLA enacted by the Legislature, and without these amendments, the rules will not provide accurate guidance to employers and employees regarding what the law requires. The proposed amendments will have a beneficial social impact by clarifying the rights and obligations of employers and employees under the NJFLA.

The proposed amendments will continue to promote the economic security of families by permitting employees to take time off due to the birth or placement of a child with the employee for adoption or foster care, or because of the serious health condition of a family member or others who are the equivalent of family, without risking loss of employment or retaliation by employers. The proposed amendments will also promote the economic security of families by expanding the triggering events for taking family leave to include the care of a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

The proposed amendments also continue to recognize the practical difficulties facing employers in providing the leave required by the NJFLA and, therefore, clarify employers' rights to advance notice.

Economic Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any economic impact because all legal obligations arising under the rules have been mandated by the NJFLA. The proposed amendments present no new legal obligations. The rules may assist the regulated entities in complying with existing legal obligations by clarifying rights, obligations, and permissible and impermissible conduct, thus reducing the need to retain professional services to assist in complying with the NJFLA.

Federal Standards Statement

The rules proposed for readoption with amendments are intended to clarify and interpret the NJFLA, and are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. The Federal FMLA allows eligible employees of a covered employer to take up to 12 weeks of job-protected leave in any 12-month period. Under the FMLA, leave may be taken to care for a newborn or newly adopted child, for placement of a child with the employee for adoption or foster care, to care for a family member with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of their job. Effective April 2, 2020, the Federal Emergency Family and Medical Leave Expansion Act provides for paid family leave for a qualifying need related to a public health emergency through December 31, 2020. Under the law, an employee may take leave to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency. To the extent that the proposed amendments provide rights or obligations that exceed similar provisions in Federal law, the NJFLA mandates such provisions.

Jobs Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the number of jobs in this State.

Agriculture Industry Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the agriculture industry of this State.

Regulatory Flexibility Statement

The Division does not anticipate that the rules proposed for readoption with amendments will impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The NJFLA applies to employers having 30 or more employees. Therefore, some covered employers may be small businesses as that term is defined in the Regulatory Flexibility Act. However, these rules and proposed amendments do not impose any reporting, recordkeeping, or other compliance requirements beyond those imposed by existing State and Federal law.

Housing Affordability Impact Analysis

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the affordability of housing in New Jersey or would change the average costs associated with housing, because the rules proposed for readoption with amendments clarify statutory requirements for family leave pursuant to the NJFLA.

Smart Growth Development Impact Analysis

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on smart growth, or would change housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments clarify statutory requirements for family leave pursuant to the NJFLA.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State because the rules proposed for readoption with amendments clarify statutory requirements for family leave pursuant to the NJFLA. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:14.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

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.

...
 "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, **parent pursuant to a valid written agreement between the parent and a gestational carrier**, resource family parent, step-parent, **parent-in-law**, or legal guardian, or has a "parent-child relationship" [with a child] as defined [in] at N.J.S.A. 34:11B-3, or has sole or joint legal or physical custody, care, guardianship, or visitation [with a child].

...
 "Closure of a school or place of care," for the purpose of determining whether an employee is eligible for family leave to provide in-home care or treatment to a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to an epidemic or other public health emergency, includes, but is not limited to, periods of time when in-home care or treatment of the child are required because the order by a public official results in the school or place of care being closed to the child of the employee to in-person instruction or care during specific times of the day or days of the week, but does not include when the child of an employee may attend the school or place of care, but the employee chooses to provide in-home care or treatment of the child.

...
 "Disrupt unduly the operations of the employer,"[,] as used in sections [4a(3)] 4j 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] that 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]. **Whether the intermittent or reduced leave schedule would disrupt unduly the operations of the employer will be determined by the Division on a [case by case] case-by-case basis. There is a presumption that an intermittent or reduced leave schedule for an employee taking leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease would disrupt unduly the operations of the employer. This presumption does not apply to an employee who does not come into contact with other people while working or an employee who can work remotely while taking the leave.**

"Eligible employee" means any individual employed by the same employer for 12 months or more, who has worked 1,000 or more base hours during the preceding [12 month] **12-month period. Any time, up to a maximum of 90 calendar days, during which a person is laid off or furloughed by an employer due to that employer curtailing operations because of a state of emergency shall be regarded as time in which the person is employed for the purpose of determining eligibility for leave time under the Act. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked per week**

during the rest of the 12-month period. An employee is considered to be employed in the State of New Jersey if:

1.-2. (No change.)

"Employer" means an employer as defined in the Act, which employs [50] **30** or more employees, whether employed in New Jersey or not, for each working day during each of 20 or more calendar workweeks in the [then current] **then-current** or immediately preceding calendar year. "Employer" **also** includes the State, any political subdivision thereof, and all public offices, agencies, boards, or bodies, regardless of [whether that government entity employs 50 or more] **the number of employees.**

"Family leave" means leave from employment, so that the employee may provide care made necessary by reason of:

1. **The birth of a child of the employee, including a child born pursuant to a valid written agreement between the employee and a gestational carrier;**

2. **The placement of a child into foster care with the employee or in connection with adoption of a child by the employee;**

3. **The serious health condition of a family member of the employee; or**

4. **In the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease that:**

i. **Requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;**

ii. **Prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease, or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee would jeopardize the health of others; or**

iii. **Results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergoes self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee would jeopardize the health of others.**

"Family member" means a child, parent, **parent-in-law**, sibling, **grandparent**, **grandchild**, spouse, **domestic partner** or partner in a civil union, **any other individual related by blood to the employee, or any other individual that the employee shows to have a close association with the employee, which is the equivalent of a family relationship.**

"Health care provider" means a **duly licensed health care provider or any other health care provider deemed appropriate by the Director of the Division on Civil Rights, including, but not limited to**, 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 include[s] the opportunity provided by an employer to participate in a group health plan.

"Intermittent leave" means leave due to a single qualifying reason (the serious health condition of a specific family member; [or] the birth or placement of a child with the employee for adoption or foster care [of a child]; or the provision of care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease), taken in separate periods of time, [where each period of leave is at least one workweek] **rather than one continuous period, and may be scheduled in increments of hours, days, or weeks.**

"Parent" means a person who is the biological parent, adoptive parent, foster parent, resource family parent, step-parent, parent-in-law, or legal guardian[, having]; a person who became a parent pursuant to a valid written agreement with a gestational carrier; a person who has a "parent-child relationship" with a child as defined [in] at N.J.S.A. 34:11B-3 [or, having]; or a person who has sole or joint legal or physical custody, care, guardianship, or visitation with a child.

“Reduced leave schedule” means leave due to a single qualifying reason (the serious health condition of a specific family member; [or] the birth or placement of a child with the employee for adoption [of a child] or foster care; or the provision of care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of a communicable disease), that is scheduled for fewer than an employee’s usual number of hours worked per workweek, but not for fewer than an employee’s usual number of hours worked per workday, unless agreed to by the employee and the employer.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition which requires:

1.-2. (No change.)

As used in this definition, “continuing medical treatment or continuing supervision by a health care provider” means:

1.-3. (No change.)

4. A period of incapacity, which is permanent or [long-term] **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) where the individual is under continuing supervision of, but need not be receiving active treatment by, a health care provider; or

5. (No change.)

... “State of emergency” means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

13:14-1.4 Terms of leave

(a) Family leave may be taken for up to 12 weeks within any 24-month period. The leave may be paid, unpaid, or a combination of paid and unpaid. [The employee who requests the leave must provide the employer with notice no later than 30 days prior to the commencement of the leave, except]

(b) Except where emergent circumstances warrant shorter notice[.], the employee who requests the leave must provide the employer with the following notice:

1. For intermittent or reduced leave to:

i. Care for or bond with a newborn or a child placed with the employee for adoption or foster care or to care for a family member with a serious health condition, at least 15 days’ notice; or

ii. Care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the employee must provide notice as soon as practicable; and

2. For consecutive leave to:

i. Care for or bond with a newborn or a child placed with the employee for adoption or foster care, at least 30 days’ notice; or

ii. Care for a family member with a serious health condition or to care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the employee must provide notice in a reasonable and practicable manner.

(c) In emergent circumstances, the employee must provide the employer with as much notice as possible.

[(b)] (d) An employer may establish a policy [which] that requires employees to provide such notice in writing, except that such policy must provide that, in emergent circumstances, an employee may provide the employer with oral notice when written notice is impracticable. The policy may require that an employee [must] provide the employer written notice after submitting oral notice. A policy requiring written notice shall not be applicable to an employee unless the employer adequately informs the employee of such a policy.

[(c)] (e) (No change in text.)

[(d)] (f) An employer may choose any method of determining the 24-month period listed [in (c)] at (e) above, provided that employees are

notified of the alternative chosen and the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least 60 [days] days’ notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act’s leave requirements. If an employer fails to select **and notify employees** of one of the options listed [in (c)] at (e) above for measuring the 24-month period, the option that provides the most beneficial outcome for the employee will be used.

13:14-1.5 Leave entitlements

(a) An eligible employee may take 12 weeks of family leave within any [24 month] **24-month** period in order to provide care made necessary by reason of:

1. (No change.)

2. The placement for adoption or foster care of a child with an employee; [or]

3. The serious health condition of a family member of the employee[.]; or

4. In the event of a state of emergency declared by the Governor, or when indicated to be needed by the New Jersey Commissioner of the Department of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease that:

i. Requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;

ii. Prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or

iii. Results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergoes self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

(b) The leave may be paid, unpaid, or a combination of paid and unpaid. Should an eligible employee take less than 12 weeks of family leave for any of the above reasons, such employee shall be entitled to take additional leave for any of the above reasons, provided that the total leave taken does not exceed 12 weeks in any consecutive [24 month] **24-month** period and the other qualifications and restrictions contained in the Act, attendant to each type of leave, are not abridged.

(c) An eligible employee is entitled to up to 12 [consecutive] weeks of family leave in order to care for such employee’s newly born child or child placed for adoption or foster care with such employee. An employee is entitled to a family leave for the birth, [or] adoption, or foster care of a child if the employer falls within the statutory definition of employer at the time leave commences and [commencement of] the leave begins within one year of the birth or placement for adoption or foster care of the child. An employee taking a family leave for [either] any of these reasons may take [such] consecutive leave or take leave intermittently or on a reduced leave schedule [only if agreed to by the employee and the employer]. **When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave, so as not to unduly disrupt the operations of the employer, and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4.**

[1. An employee who takes a leave for these purposes shall provide the employer with notice no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.]

(d) An employee whose family member [(as defined by the Act)] has a serious health condition is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave or when medically necessary, intermittent basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave so as not to unduly disrupt the operations of the employer, **and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4.**

[1. An employee who takes a leave in connection with the serious health condition of a family member shall provide the employer with notice, no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.]

[2.] **1.** For purposes of this subsection, the total time within which an intermittent **or reduced** leave is taken may not exceed a [12 month] **12-month** period, if such leave is taken in connection with a single serious health condition. Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive [24 month] **24-month** period, or until such time as the employee's [12 week] **12-week** family leave entitlement is exhausted, whichever is shorter. Any remaining family leave to which the employee is entitled, subsequent to the expiration of any or all intermittent **or reduced** leaves, may be taken in a manner consistent with this chapter.

[3. For purposes of this subsection, an employee taking a family leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive 24 week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive 24 month period. Any remaining family leave to which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.]

(e) **An employee who takes leave to care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave, or intermittent basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave, so as not to unduly disrupt the operations of the employer, and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. There is a presumption that an intermittent or reduced leave schedule for an employee taking leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease would disrupt unduly the operations of the employer. This presumption does not apply to an employee who does not come into contact with other people while working or an employee who can work remotely while taking the leave. Nothing in this section shall preclude an employer from requiring an employee requesting intermittent or reduced leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease to work remotely during the time the employee is taking such leave to reduce or eliminate a health or safety risk. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4. For purposes of this subsection, the total time within which reduced leave is taken may not exceed a 12-month period, if such leave is taken in connection with a single declaration of a state of emergency by the Governor or indication by the New Jersey Commissioner of the Department of Health or other public health authority. Any remaining family leave to which the employee is entitled, subsequent to the expiration of a reduced leave, may be taken in a manner consistent with this chapter.**

[4.] **(f)** If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable [based on care of or planned medical treatment for a family member, or if an employer agrees to permit an employee intermittent or reduced schedule leave for the birth of a child or placement of a child for adoption], the employer may require the employee during the period of leave to temporarily transfer to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than [does] the employee's regular position. The alternative position must have equivalent pay and benefits to the employee's regular position. An employer may not transfer an employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position is able to return to full-time work, [he or she] **they** must be placed in the same or equivalent job as the one [he or she] **they** left when the leave commenced.

Recodify existing (e)-(f) as **(g)-(h)** (No change in text.)

13:14-1.6 Relation with other laws

(a) Where an employee requests leave for a reason covered by both the **New Jersey Family Leave Act** and another law, the leave simultaneously counts against the employee's entitlement under both laws. For example, the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 et seq., provides leave to care for a seriously ill spouse and the **New Jersey Family Leave Act** also provides leave for that reason. Under this example, since the leave is taken for a purpose covered by both the **Federal FMLA** and the **New Jersey Family Leave Act**, the leave simultaneously counts against the employee's entitlement under both laws.

(b) Medical or disability leave [granted] **that an employee takes** under other laws, but **that is not [granted] covered** under the **New Jersey Family Leave Act**, shall not abridge an employee's right to leave or other protections granted under the **New Jersey Family Leave Act**. For example, the **Federal FMLA** provides leave for an employee's own disability, but **New Jersey's Family Leave Act does not provide leave for an employee's own disability** [leaves are not covered by the Act]. Some situations which may arise under this example include, but are not limited to:

1. If an employee first takes FMLA leave **under Federal law** because of [his or her] **their** own disability, including a disability related to pregnancy or childbirth, the employee would be entitled to an additional 12 weeks of leave within 24 months under the **New Jersey Family Leave Act** to care for a seriously ill family member[.]; **family member due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease; or a newly born child or a child placed with the employee for adoption or foster care** [adopted child], because the prior disability leave was taken for a purpose not covered by the **New Jersey Family Leave Act**. Under this example, if an eligible employee is on **FMLA** disability leave **under Federal law** while pregnant for four weeks and is on **FMLA** disability leave **under Federal law** following childbirth for an [addition] **additional** six weeks **to recover from childbirth**, those 10 weeks that the employee is on disability leave count against the employee's **Federal FMLA** entitlement only, and the employee retains the full 12-week entitlement under the **New Jersey Family Leave Act** [for the] to care [of] **for** the [newly-born] **newly born** child; and

2. If an employee takes FMLA leave **under Federal law** because of [his or her] **their** own disability, including a disability related to pregnancy or childbirth, and a family member becomes seriously ill; **a family member needs care due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease; or a child is born or adopted or placed with the employee for foster care** while [he or she is] **they** are still on **FMLA** disability leave **under Federal law**, the intervening birth, adoption, **care required due to an epidemic or communicable disease**, or serious family illness does not convert the **FMLA** leave **under Federal law** to a leave under the **New Jersey Family Leave Act**. For as long as the employee continues to be eligible for **FMLA** leave **under Federal law** based on [his or her] **their** own disability, the

leave does not simultaneously count against the employee's entitlement under the **New Jersey Family Leave Act**.

(c) An employee retains all rights under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., when taking leave under the **New Jersey Family Leave Act**, and an employee's receipt of disability benefits or other compensation does not limit or impair the employee's right to take leave to care for a covered family member under the **New Jersey Family Leave Act** while receiving such benefits. For example, if an employee is receiving temporary disability benefits based on a post-partum medical condition, but has exhausted [her] **their** Federal FMLA leave, [she] **the employee** is entitled to begin [her twelve] **their 12** weeks of leave under the **New Jersey Family Leave Act** to care for [her] **their** newly born child, even though [she is] **they are** still disabled as defined by the Temporary Disability Benefits Law and is receiving compensation under that law.

13:14-1.8 Other employment

An employee on family leave may not engage in other full-time employment during the term of the leave, unless such employment commenced prior to the leave and is not otherwise prohibited by law. During the term of family leave an employee may commence part-time employment which shall not exceed half the regularly scheduled hours worked for the employer from whom the employee requested leave. An employee may continue part-time employment which commenced prior to the employee's family leave, at the same number of hours that the employee was regularly scheduled **at that part-time employment** prior to such leave. An employer may not maintain a policy or practice which prohibits part-time employment during the course of a leave **or prohibits continuation of lawful full-time employment that commenced prior to the leave.**

13:14-1.9 Exemptions

(a) An employer is not required to grant a family leave to any employee who would otherwise be eligible under this Act if:

1. The employee's base salary ranks within the highest paid five percent or [his or her] **the employee's** base salary is one of the seven highest, whichever number of employees is greater (for purposes of this exception, all employees of an employer whether employed in New Jersey or not shall be included in this calculation);

2. (No change.)

3. The employer notifies the employee of its [intent] **decision** to deny the leave when [such] determination **that decision** is made.

(b) The provisions of (a) above shall not apply when, in the event of a state of emergency declared by the Governor or when indicated to be needed by the New Jersey Commissioner of the Department of Health or other public health authority, the family leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

13:14-1.10 Certification by an employee or health care provider

(a) An employer may require an employee who requests family leave to sign a form of certification attesting that such employee is taking family leave [for] **in connection with the birth of a child or the placement of a child with the employee for adoption or foster care** [of a child or]; to care for a family member because of that family member's serious health condition; **or to care for a family member because of an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, whichever is applicable. Any employee who refuses to sign such certification may be denied the requested leave.** The employer may not require the employee to sign or otherwise submit a form of certification attesting to additional facts, including the employee's eligibility for family leave. [Any employee who refuses to sign such certification may be denied the requested leave.]

1. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee intentionally misrepresents that such employee is taking family leave [for] **in connection with the birth [or adoption] of a child, or the placement of a child with the employee for adoption or foster care;** to care for a family member because of that family member's serious health condition;

or to care for a family member because of an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, whichever is applicable. The form of certification established by the employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

(b) An employer may require that any period of family leave **for a serious health condition of a family member or for the birth or placement of a child with the employee for adoption or foster care** be supported by certification issued by a health care provider, **as described at (b)1 and 2 below, or where the leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, certification issued by a school, place of care for children, public health authority, public official, or health care provider, as described at (b)3 below.**

1. Where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states the approximate date on which the serious health condition commenced, the probable duration of the condition and the medical facts within the provider's knowledge showing that the family member's health condition meets the criteria of a serious health condition. **In any case in which the employer has reason to doubt the validity of the certification provided, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.**

2. Where the certification is for the birth or placement of [the] a child **with the employee for adoption or foster care**, the certification need only state the date of birth or date of placement, whichever is appropriate.

[3. In any case in which the employer has reason to doubt the validity of the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.]

3. Where the certification is for an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, the certification shall be sufficient if it includes:

i. For leave taken to provide in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency, the date on which the closure of the school or place of care of the child of the employee commenced, and the reason for such closure;

ii. For leave taken due to a public health authority's issuance of a determination requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee would jeopardize the health of others, the date of issuance of the determination and the probable duration of the determination; or

iii. For leave taken because a health care provider or public health authority recommends that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected

exposure to a communicable disease because the presence in the community of that family member in need of care by the employee would jeopardize the health of others, the date of the recommendation, the probable duration of the condition, and medical or other facts within the health care provider or public health authority's knowledge regarding the condition.

(c) (No change.)

(a)

**DIVISION OF CRIMINAL JUSTICE
VICTIMS OF CRIME COMPENSATION OFFICE
Rules Relating to the Practice and Procedure Before
the New Jersey Victims of Crime Compensation
Office**

**Proposed Amendments: N.J.A.C. 13:75-1.4, 2.1, 2.6,
3.1, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 4.8, 4.10, 5.1, 5.2, 6.1,
7.1, and 7.2**

Proposed New Rules: N.J.A.C. 13:75-5.3 and 8

Authorized By: Victims of Crime Compensation Office, Mary Ellen Bonsper, Acting VCCO Director.

Authority: N.J.S.A. 52:4B-1 et seq., specifically 52:4B-9.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-018.

Submit comments by April 30, 2021, to:

Mary Ellen Bonsper, Acting VCCO Director
Victims of Crime Compensation Office
50 Park Place
Newark, New Jersey 07102
or electronically at: MaryEllen.Bonsper@njvictims.org.

The agency proposal follows:

Summary

The Victims of Crime Compensation Office (Office), pursuant to its rulemaking authority at N.J.S.A. 52:4B-1 et seq., proposes to amend N.J.A.C. 13:75 to comport with legislative changes made to the Criminal Injuries Compensation Act of 1971, N.J.S.A. 52:4B-1 et seq. (Act), pursuant to P.L. 2019, c. 380 (legislative amendments).

The proposed amendments make available new kinds of assistance, such as the expansion of legal services provided to crime victims, expenses particular to victims of human trafficking, increase emergency awards, lengthen the period in which victims can file claims, and allow some limited awards where previously no award was available for homicide survivors. Also, in compliance with P.L. 2019, c. 380, the amendments allow an award to be reduced or denied in some instances where the victim was the proximate cause of their injuries; provided there is relevant evidence in support of the determination.

The Office proposes to amend N.J.A.C. 13:75-1.4, 2.1, 2.6, 3.1, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 4.8, 4.10, 5.1, 5.2, 6.1, 7.1, and 7.2. The Office also proposes new N.J.A.C. 13:75-5.3, which provides for de minimis awards under certain circumstances. In addition to technical and grammatical changes throughout the chapter, the Office proposes other changes, that will provide victims with necessary assistance.

At N.J.A.C. 13:75-1.4, Definitions, the Office proposes to amend the definitions of "dependent," "direct victim," and "relative"; add the definitions of "legal assistance" and "relevant evidence"; replace the definition of "victim" to comport with the legislative amendments made to those definitions; and delete the definition of "homicide survivor." In homicide cases only, the definition of "direct victim" has been expanded to include spouse, parent, legal guardian, grandparent, child, sibling, domestic or civil union partner of the decedent, or the parent of the decedent's child. Because the definition of direct victim has been expanded to include persons previously categorized as secondary victims in relation to some awards, the rulemaking deletes the limitation that, in cases of homicide, a secondary victim survivor shall be treated as a direct

victim for purposes of counseling only. "Legal assistance" would be defined as "assistance provided to a crime victim in the enforcement of victims' rights in all: 1. courts; 2. family law matters, including, but not limited to, child protection actions, divorce, custody, parenting time, child support, emancipation, dependency, guardianship, and family reunification; 3. obtaining protective and restraining orders; 4. employment matters, including, but not limited to, wage and hour claims; 5. accessing public benefits; 6. life planning; and 7. any other situation for which an eligible crime victim needs legal services related to the victimization. "Relevant evidence" would be defined as evidence having a tendency to prove or disprove any fact of consequence to the determination of the action and that is deemed to be admissible under the rules of evidence. N.J.R.E. § 402. Relevant evidence does not include rumor, supposition, speculation, hearsay or opinion, except as otherwise deemed admissible under the rules of evidence. The definition of "victim" would be expanded, in line with P.L. 2019, c. 380, to include a person who suffers personal, physical, or psychological injury or death as a result of the conduct of another person who commits against that person any of the offenses specified at N.J.S.A. 52:4B-11, or an act by a juvenile that, if committed by an adult, would constitute a violation of any of these offenses. As provided by the Act, the term would include, in the case of a criminal homicide or an act by a juvenile that, if committed by an adult, would constitute a criminal homicide, the spouse, parent, legal guardian, grandparent, child, sibling, domestic or civil union partner of the decedent, or parent of the decedent's child. The term would also include direct witnesses of crimes who suffered personal, physical, or psychological injury or death as a result of a crime.

The Office also proposes to amend N.J.A.C. 13:75-2.1(b), to include simple assault and disorderly conduct. The Act, as amended, now prohibits the Office from denying an award for unpaid assessments or restitution, but the Office may reduce the award instead to satisfy assessments or restitution owed by the victim or claimant. This statutory change is reflected in the proposed amendments to Subchapter 2. Specifically, the Office proposes to delete existing subsections (c) and (j), as the substance of this subsection is incorporated elsewhere in the section. Recodified subsection (g) would be amended to no longer allow the Office to deny a claim where the victim has not fully paid assessments or restitution following a criminal conviction. Under the amendment, the Office will have the authority to deduct and satisfy these obligations from an award of compensation and make payments towards those obligations prior to providing payments to the victim. Recodified subsection (h) would be amended to allow the Office to make an award due to emergent need despite the presence of warrants for indicatable offenses. The amendments also ensure that compensation for emergency housing in order to protect the victim's physical safety shall never be denied due to a victim's criminal status. The proposed amendments also removes the Office's ability to withhold payment to crime victims for active criminal charges. Proposed new N.J.A.C. 13:75-2.1(j)6 would state that, in determining whether to limit or deny an award, the Office may consider any facts that provide relevant evidence as to whether a victim's conduct was the proximate cause of a victim's injury or death. Relevant evidence shall not include rumor, supposition, speculation, hearsay or opinion, except when admissible under the rules of evidence.

Proposed amendments at N.J.A.C. 13:75-2.6 would no longer require a preponderance of the credible evidence to support an application. The burden of proof will now be met by presenting credible evidence to support the application. At subsection (b), the amendment would narrow the scope of evidence to be included under this subsection to relevant evidence.

The Office proposes to amend Subchapter 3, Filing Claims, to extend the time for filing a claim from three to five years after the incident, to allow a delayed filing where the victim or their dependents were not properly informed of the benefits offered by the Office, and to provide victims the option to report an incident not only to the police, but to another appropriate law enforcement agency.

The Office proposes to amend Subchapter 4, Compensation Benefits, to allow an award to be reduced or denied where the victim was the proximate cause of their injuries, except in homicide cases where the Office may still make limited awards for certain expenses. The expiration dates for submitting additional expenses after the first claim payment is