

SENATE, No. 2044

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 4, 2012

Sponsored by:
Senator BARBARA BUONO
District 18 (Middlesex)

SYNOPSIS

Requires employers and health care providers to disseminate certain information regarding temporary disability leave benefits.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT requiring employers and health care providers to
2 disseminate certain information regarding temporary disability
3 leave benefits, amending P.L.2008, c.17 and P.L.1948, c.110,
4 and supplementing Title 43 of the Revised Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
10 read as follows:

11 10. a. Family temporary disability leave shall be compensable
12 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
13 any period of family temporary disability leave taken by a covered
14 individual which commences after June 30, 2009.

15 b. An individual shall not simultaneously receive disability
16 benefits for family temporary disability leave and any other
17 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
18 any unemployment compensation.

19 c. The employer of an individual may, notwithstanding any
20 other provision of law, including the provisions of N.J.S.18A:30-1
21 et seq., permit or require the individual, during a period of family
22 temporary disability leave, to use any paid sick leave, vacation time
23 or other leave at full pay made available by the employer before the
24 individual is eligible for disability benefits for family temporary
25 disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.),
26 except that the employer may not require the individual to use more
27 than two weeks worth of leave at full pay. The employer may also
28 have the total number of days worth of disability benefits paid
29 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) to the individual
30 during a period of family temporary disability leave reduced by the
31 number of days of leave at full pay paid by the employer to the
32 individual during that period. If the employer requires the
33 individual to use leave at full pay, the employee shall be permitted
34 to take that fully-paid leave during the waiting period required
35 pursuant to subsection (a) of section 15 of P.L.1948, c.110
36 (C.43:21-39). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall
37 be construed as nullifying any provision of an existing collective
38 bargaining agreement or employer policy, or preventing any new
39 provision of a collective bargaining agreement or employer policy,
40 which provides employees more generous leave or gives employees
41 greater rights to select which kind of leave is used or select the
42 order in which the different kinds of leave are used. Nothing in
43 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing
44 an employer from providing more generous benefits than are
45 provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 benefits which supplement the benefits provided under P.L.2008,
2 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
3 employees.

4 d. An individual who is entitled to leave under the provisions
5 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or
6 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
7 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
8 family temporary disability leave pursuant to P.L.2008, c.17
9 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
10 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
11 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
12 U.S.C. s.2601 et seq.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et
13 al.) shall be construed to grant an employee any entitlement to be
14 restored by the employer to employment held by the employee prior
15 to taking family temporary disability leave or any right to take
16 action against an employer who refuses to restore the employee to
17 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
18 39.1 et al.) shall be construed to increase, reduce or otherwise
19 modify any entitlement of an employee to return to employment or
20 right of the employee to take action under the provisions of the
21 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
22 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
23 U.S.C. s.2601 et seq.). If an employee receives benefits for family
24 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
25 et al.) with respect to employment with an employer who is not an
26 employer as defined in the "Family Leave Act," P.L.1989, c.261
27 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
28 employee to employment after the period of family temporary
29 disability leave, that failure or refusal shall not be a wrongful
30 discharge in violation of a clear mandate of public policy, and the
31 employee shall not have a cause of action against that employer, in
32 tort, or for breach of an implied provision of the employment
33 agreement, or under common law, for that failure or refusal.

34 e. An employee taking family temporary disability leave or an
35 employer from whom the employee is taking the leave shall have
36 the same right to appeal a determination of a benefit for the family
37 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
38 et al.) as an employee or employer has to appeal a determination of
39 a benefit for the disability of the employee under the "Temporary
40 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
41 any regulations adopted pursuant to the "Temporary Disability
42 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

43 f. In the event of a period of family temporary disability leave
44 of any individual covered under the State plan, the employer shall,
45 not later than the ninth day of the period of family temporary
46 disability leave, including any waiting period or time in which the
47 employer provides sick leave, vacation or other fully paid leave,
48 issue to the individual and to the division printed notices on

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1 division forms containing the name, address and Social Security
2 number of the individual, such wage information as the division
3 may require to determine the individual's eligibility for benefits,
4 including any sick pay, vacation or other fully paid time off
5 provided by the employer during the period of family temporary
6 disability leave, and the name, address, and division identity
7 number of the employer. Not later than 30 days after the
8 commencement of the period of family temporary disability leave
9 for which the notice is furnished by the employer, the individual
10 shall furnish to the division a notice and claim for family temporary
11 disability leave benefits. Upon the submission of the notices by the
12 employer and the individual, the division may issue benefit
13 payments. In the case of family temporary disability leave taken to
14 care for a family member with a serious health condition, the
15 benefits may be paid for periods not exceeding three weeks pending
16 the receipt of the certification required pursuant to subsection b. of
17 section 11 of P.L.2008, c.17 (C.43:21-39.2). Failure to furnish
18 notice and certification in the manner above provided shall not
19 invalidate or reduce any claim if it shall be shown to the satisfaction
20 of the division not to have been reasonably possible to furnish the
21 notice and certification and that the notice and certification was
22 furnished as soon as reasonably possible.

23 g. Each covered employer shall conspicuously post
24 notification, in a place or places accessible to all employees in each
25 of the employer's workplaces, in a form issued by regulation
26 promulgated by the commissioner, of each covered employee's
27 rights regarding benefits payable pursuant to this section. The
28 notification shall also include information describing the
29 circumstances under which the employee may qualify for other
30 temporary disability benefits pursuant to P.L.1948, c.110 (C.43:21-
31 25 et al.), or benefits pursuant to the "unemployment compensation
32 law" (R.S.43:21-1 et seq.), in lieu of disability benefits for family
33 temporary disability leave payable pursuant to this section. This
34 information shall include, but not be limited to: information that an
35 employee expecting to receive benefits payable pursuant to this
36 section, for the purpose of caring for a child during the first 12
37 months after the child's birth, may be also eligible for temporary
38 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.)
39 during pregnancy and recovery for the period that a legally licensed
40 practitioner specified under subsection d. of section 15 of P.L.1948,
41 c.110 (C.43:21-39) deems necessary; information regarding an
42 employee's right to return to work pursuant to the "Family Leave
43 Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and the federal "Family
44 and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et
45 seq.), including an explanation of the types of employers subject to
46 each of those acts and an explanation of an employee's rights if the
47 employer is not subject to those acts; and information regarding the
48 conditions under which an employee claiming benefits payable

1 pursuant to this section or other temporary disability benefits
2 payable pursuant to P.L.1948, c.110 (C.43:21-25 et al.) may
3 become eligible for benefits pursuant to the “unemployment
4 compensation law” (R.S.43:21-1 et seq.) should loss of employment
5 occur during a period of temporary disability leave or family
6 temporary disability leave, including notice of the right to
7 unemployment compensation benefits, consistent with section 2 of
8 P.L.1991, c.486 (C.43:21-30.1), if an employer not subject to the
9 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
10 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
11 U.S.C. s.2601 et seq.) does not allow an employee to return to work
12 after a period of receiving benefits payable pursuant to this section
13 or other temporary disability benefits payable pursuant to P.L.1948,
14 c.110 (C.43:21-25 et al.). The notification shall readily indicate to
15 the employee whether the employer is subject to the "Family Leave
16 Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family
17 and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et
18 seq.). The employer shall also provide each employee of the
19 employer with a written copy of the notification: (1) not later than
20 30 days after the form of the notification is issued by regulation; (2)
21 at the time of the employee's hiring, if the employee is hired after
22 the issuance; (3) whenever the employee notifies the employer that
23 the employee is taking time off for circumstances under which the
24 employee is eligible for benefits pursuant to this section; [and] (4)
25 at any time, upon the first request of the employee; and (5) at least
26 twice annually.

27 (cf: P.L.2008, c.17, s.10)

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29 2. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to
30 read as follows:

31 25. (a) (1) Every employer shall post, in prominent locations,
32 notices to employees in the form provided by the division of
33 whether the employer is permitted or required to participate in a
34 temporary disability benefits program pursuant to the "Temporary
35 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
36 whether the employer does or does not participate. For employers
37 who participate in a temporary disability benefits program, the
38 notice shall also describe the temporary disability benefits available
39 to the employees and prominently disclose that pregnancy is
40 regarded by law as a disability and that pregnant employees are
41 regarded as disabled and entitled to temporary disability benefits to
42 the same extent as other disabled employees. Upon the request of an
43 employer, the division shall, without charge, provide the employer
44 with a copy of each applicable notice, suitable for reproduction by
45 the employer. Each applicable notice provided by the division shall
46 include information describing the circumstances under which the
47 employee may qualify for family temporary disability leave benefits
48 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), or benefits

1 pursuant to the “unemployment compensation law” (R.S.43:21-1 et
2 seq.), in lieu of temporary disability benefits payable pursuant to
3 P.L.1948, c.110 (C.43:21-25 et al.). This information shall include,
4 but not be limited to: information that an employee expecting to
5 receive benefits payable pursuant to P.L.1948, c.110 (C.43:21-25 et
6 al.) for the purpose of pregnancy and recovery may be also eligible
7 for family temporary disability leave benefits pursuant to P.L.2008,
8 c.17 (C.43:21-39.1 et al.) for the purpose of caring for a child
9 during the first 12 months after the child's birth; information
10 regarding an employee’s right to return to work pursuant to the
11 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and the
12 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
13 U.S.C. s.2601 et seq.), including an explanation of the types of
14 employers subject to each of those acts and an explanation of an
15 employee’s rights if the employer is not subject to those acts; and
16 information regarding the conditions under which an employee
17 claiming temporary disability benefits payable pursuant to
18 P.L.1948, c.110 (C.43:21-25 et al.), or family temporary disability
19 leave benefits payable pursuant to P.L.2008, c.17 (C.43:21-39.1 et
20 al.), may become eligible for benefits pursuant to the
21 “unemployment compensation law” (R.S.43:21-1 et seq.) should
22 loss of employment occur during a period of temporary disability
23 leave or family temporary disability leave, including notice of the
24 right to unemployment compensation benefits, consistent with
25 section 2 of P.L.1991, c.486 (C.43:21-30.1), if an employer not
26 subject to the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et
27 seq.) or the federal "Family and Medical Leave Act of 1993,"
28 Pub.L.103-3 (29 U.S.C. s.2601 et seq.) does not allow an employee
29 to return to work after a period of receiving temporary disability
30 benefits payable pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
31 family temporary disability leave benefits payable pursuant to
32 P.L.2008, c.17 (C.43:21-39.1 et al.). Each applicable notice shall
33 readily indicate to the employee whether the employer is subject to
34 the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
35 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
36 U.S.C. s.2601 et seq.). The employer shall also provide each
37 employee with a written copy of each applicable notice: (i) not later
38 than 30 days after the form of the notice is issued by regulation; (ii)
39 at the time of the employee's hiring, if the employee is hired after
40 the issuance; (iii) whenever the employee notifies the employer that
41 the employee is taking time off for circumstances under which the
42 employee is eligible for temporary disability benefits pursuant to
43 P.L.1948, c.110 (C.43:21-25 et al.); (iv) at any time, upon the first
44 request of the employee; and (v) at least twice annually. Each
45 employer participating in the State plan or a private plan shall give
46 a printed copy of benefit instructions to any disabled employee as
47 soon as the employer becomes aware of the disability.

1 (2) In addition, in the event of the disability of any individual
2 covered under the State plan, the employer shall, on the ninth day of
3 disability, issue to the individual and to the division printed notices
4 on division forms containing the name, address and Social Security
5 number of the individual, such wage information as the division
6 may require to determine the individual's eligibility for benefits,
7 and the name, address, and division identity number of the
8 employer. Not later than 30 days after the commencement of the
9 period of disability for which such notice is furnished, the
10 individual shall furnish to the division a notice and claim for
11 disability benefits under the State plan or for disability during
12 unemployment. Upon the submission of such notices by the
13 employer and the individual, the division may issue benefit
14 payments for periods not exceeding three weeks pending the receipt
15 of medical proof. When requested by the division, such notice and
16 proof shall include certification of total disability by the attending
17 physician, or a record of hospital confinement. Failure to furnish
18 notice and proof within the time or in the manner above provided
19 shall not invalidate or reduce any claim if it shall be shown to the
20 satisfaction of the division not to have been reasonably possible to
21 furnish such notice and proof and that such notice and proof was
22 furnished as soon as reasonably possible.

23 (b) A person claiming benefits under the State plan or for
24 disability during unemployment shall, when requested by the
25 division, submit at intervals, but not more often than once a week,
26 to an examination by a legally licensed physician, dentist,
27 podiatrist, chiropractor, certified nurse midwife, advanced practice
28 nurse or public health nurse designated by the division. In all cases
29 of physical examination of a claimant, the examination shall be
30 made by a designee of the division, who shall be the same sex as the
31 claimant if so requested by the claimant. All such examinations by
32 physicians, dentists, podiatrists, chiropractors, certified nurse
33 midwives or nurses designated by the division shall be without cost
34 to the claimant and shall be held at a reasonable time and place.
35 Refusal to submit to such a requested examination shall disqualify
36 the claimant from all benefits for the period of disability in
37 question, except as to benefits already paid.

38 (c) All medical records of the division, except to the extent
39 necessary for the proper administration of this act, shall be
40 confidential and shall not be published or be open to public
41 inspection (other than to public employees in the performance of
42 their public duties) in any manner revealing the identity of the
43 claimant, or the nature or cause of disability nor admissible in
44 evidence in any action or special proceeding other than one arising
45 under this act.

46 (cf: P.L.2009, c.114, s.2)

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48 3. (New section) a. As used in this section:

1 “Department” means the Department of Labor and Workforce
2 Development.

3 “Family temporary disability leave benefits” means those family
4 temporary disability leave benefits payable pursuant to P.L.2008,
5 c.17 (C.43:21-39.1 et al.).

6 "Health care institution" means a hospital, public health center,
7 birthing center, nursing home, or any other health care facility
8 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a
9 psychiatric facility as defined in section 2 of P.L.1987, c.116
10 (C.30:4-27.2), or a State developmental center listed in R.S.30:1-7.

11 "Health care professional" means a physician, nurse midwife, or
12 any other health care professional who is licensed or otherwise
13 authorized to practice a health care profession pursuant to Title 45
14 or Title 52 of the Revised Statutes and is currently engaged in that
15 practice.

16 “Temporary disability leave benefits” means those temporary
17 disability leave benefits payable pursuant to P.L.1948, c.110
18 (C.43:21-25 et al.).

19 b. (1) The department shall prepare a brochure, in a form that is
20 suitable for distribution by health care professionals and health care
21 institutions to patients and their family members, providing
22 information about the following benefits and rights: temporary
23 disability leave benefits; family temporary disability leave benefits;
24 an individual’s right to return to work pursuant to the "Family
25 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and the federal
26 "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C.
27 s.2601 et seq.), including an explanation of the types of employers
28 subject to each of those acts and an explanation of an individual’s
29 rights if the employer is not subject to those acts; and the conditions
30 under which an individual claiming temporary disability leave
31 benefits or family temporary disability leave benefits may become
32 eligible for benefits pursuant to the “unemployment compensation
33 law” (R.S.43:21-1 et seq.) should loss of employment occur during
34 a period of temporary disability leave or family temporary disability
35 leave, including notice of the right to unemployment compensation
36 benefits, consistent with section 2 of P.L.1991, c.486 (C.43:21-
37 30.1), if an employer not subject to the "Family Leave Act,"
38 P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family and
39 Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et
40 seq.) does not allow an employee to return to work after a period of
41 receiving temporary disability benefits or family temporary
42 disability leave benefits.

43 (2) The department shall prepare English and Spanish language
44 versions of the brochure, update the brochure as necessary, and
45 provide the brochure in a form that can be downloaded from the
46 website of the department. Upon the request of a health care
47 professional or a health care institution, the department shall,
48 without charge, provide the health care professional or health care

1 institution with a printed copy of the brochure that is suitable for
2 reproduction.

3 c. A health care professional shall provide to each patient to
4 whom that individual is providing care, upon initially diagnosing a
5 health condition resulting in, or likely to result in, the patient's total
6 inability to perform the duties of employment for a temporary
7 period as defined in P.L.1948, c.110 (C.43:21-25 et al.) or a serious
8 health condition as defined in P.L.2008, c.17 (C.43:21-39.1 et al.),
9 a copy of the brochure prepared by the department as described in
10 subsection b. of this section. If the health care professional is
11 providing prenatal care to a pregnant woman, the brochure shall be
12 provided as early as practicable in the health care professional's
13 therapeutic relationship with that patient, and preferably in the first
14 trimester. The health care professional shall provide the brochure
15 to a parent, family member, or other responsible party or guardian
16 when providing care to a child or to any patient whose condition
17 may render that individual unable to comprehend the information in
18 the brochure.

19 d. A health care institution shall post in at least one
20 conspicuous public place, including within each of its patient
21 waiting rooms, a copy of the brochure prepared by the department
22 as described in subsection b. of this section. A health care
23 professional practicing outside of a health care institution shall post
24 a copy of the brochure in at least one conspicuous public place at
25 each of the practice locations owned or operated by that individual.

26 e. The department shall develop and implement a Statewide
27 plan to promote public awareness of State temporary disability
28 leave benefits, family temporary disability leave benefits, and
29 related unemployment compensation benefits. The Statewide plan
30 shall include efforts to further disseminate the information and
31 brochure described in subsection b. of this section by conducting
32 outreach to, and fostering cooperative efforts with, public agencies,
33 child care organizations, civic and community organizations,
34 educational institutions, faith-based organizations, health and
35 mental health organizations, labor unions, legal advocates and other
36 advocacy groups, senior citizen organizations, social service
37 organizations, trade and business associations, veterans'
38 organizations, voluntary and charitable organizations, women's
39 organizations, and any other appropriate associations, groups, or
40 organizations serving workers and their families. The Statewide
41 plan shall also describe specific department goals, anticipated
42 activities, and timelines related to these dissemination and outreach
43 efforts. The department shall update the Statewide plan on an
44 annual basis, and the plan shall be posted on the website of the
45 department.

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47 4. This act shall take effect on the first day of the seventh
48 month next following the date of enactment.

STATEMENT

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This bill requires employers and health care providers to disseminate certain information regarding State temporary disability leave benefits, family temporary disability leave benefits, unemployment compensation benefits, and family leave rights.

Currently, employers are required to conspicuously post information regarding temporary disability leave benefits and family temporary disability leave benefits and to provide copies of that information to employees by request and following certain events. This bill would require employers to provide copies of the information to employees at least twice annually and to ensure that these notifications include information about temporary disability leave benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.), family temporary disability leave benefits pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), and relevant benefits pursuant to the “unemployment compensation law” (R.S.43:21-1 et seq.). The bill would also require these notifications to include information about certain employee rights under the State "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.).

The bill also requires the Department of Labor and Workforce Development to prepare a downloadable brochure suitable for health care providers and health care institutions that provides information about temporary disability leave, family temporary disability leave, unemployment compensation, and certain rights under the State “Family Leave Act” and the federal “Family and Medical Leave Act.” Under this bill, health care institutions and health care professionals practicing outside of institutions are required to conspicuously post this brochure. In addition, health care professionals are required to provide copies of the brochure to patients who present health conditions resulting in, or likely to result in, the patient’s inability to perform the duties of employment for a temporary period, including pregnancy. Health care professionals are also required to provide parents, family members, or other responsible parties or guardians with copies of the brochure in certain cases.

To bolster these dissemination efforts, the bill requires the Department of Labor and Workforce Development to develop and implement a Statewide plan to promote public awareness of State temporary disability leave, family temporary disability leave, and related unemployment compensation benefits. The Statewide plan would include efforts to further disseminate information regarding these benefits by conducting outreach to, and fostering cooperative efforts with, various organizations serving workers and their families. The plan would also: specify department goals, activities,

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- 1 and timelines related to these efforts; be updated annually; and be
- 2 posted on the department's web site.