

ASSEMBLY, No. 3173

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 22, 2016

Sponsored by:

Assemblyman R. BRUCE LAND

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Provides family leave insurance for certain first responders.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning family leave insurance for first responders
2 under certain circumstances and amending and supplementing
3 P.L.1948, c.110.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to
9 read as follows:

10 3. As used in this act, unless the context clearly requires
11 otherwise:

12 (a) (1) "Covered employer" means, with respect to whether an
13 employer is required to provide benefits during an employee's own
14 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
15 individual or type of organization, including any partnership,
16 association, trust, estate, joint-stock company, insurance company
17 or corporation, whether domestic or foreign, or the receiver, trustee
18 in bankruptcy, trustee or successor thereof, or the legal
19 representative of a deceased person, who is an employer subject to
20 the "unemployment compensation law" (R.S.43:21-1 et seq.),
21 except the State, its political subdivisions, and any instrumentality
22 of the State unless such governmental entity elects to become a
23 covered employer pursuant to paragraph (2) of this subsection (a);
24 provided, however, that commencing with the effective date of this
25 act, the State of New Jersey, including Rutgers, The State
26 University and the New Jersey Institute of Technology, shall be
27 deemed a covered employer, as defined herein.

28 "Covered employer" means, after June 30, 2009, with respect to
29 whether the employer is an employer whose employees are eligible
30 for benefits during periods of family temporary disability leave
31 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
32 31, 2008, whether employees of the employer are required to make
33 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
34 or type of organization, including any partnership, association,
35 trust, estate, joint-stock company, insurance company or domestic
36 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
37 or successor thereof, or the legal representative of a deceased
38 person, who is an employer subject to the "unemployment
39 compensation law" (R.S.43:21-1 et seq.), including any
40 governmental entity or instrumentality which is an employer under
41 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
42 instrumentality has not elected to be a covered employer pursuant to
43 paragraph (2) of this subsection (a).

44 (2) Any governmental entity or instrumentality which is an
45 employer under R.S.43:21-19(h)(5) may, with respect to the

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 provision of benefits during an employee's own disability pursuant
2 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
3 employer" under this subsection beginning with the date on which
4 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of
5 any year thereafter by filing written notice of such election with the
6 division within at least 30 days of the effective date. Such election
7 shall remain in effect for at least two full calendar years and may be
8 terminated as of January 1 of any year thereafter by filing with the
9 division a written notice of termination at least 30 days prior to the
10 termination date.

11 (b) (1) "Covered individual" means, with respect to whether an
12 individual is eligible for benefits during an individual's own
13 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
14 person who is in employment, as defined in the "unemployment
15 compensation law" (R.S.43:21-1 et seq.), for which the individual is
16 entitled to remuneration from a covered employer, or who has been
17 out of such employment for less than two weeks, except that a
18 "covered individual" who is employed by the State of New Jersey,
19 including Rutgers, The State University or the New Jersey Institute
20 of Technology, or by any governmental entity or instrumentality
21 which elects to become a "covered employer" pursuant to this
22 amendatory act, shall not be eligible to receive any benefits, except
23 first responder family temporary disability leave, under the
24 "Temporary Disability Benefits Law" until such individual has
25 exhausted all sick leave accumulated as an employee in the
26 classified service of the State or accumulated under terms and
27 conditions similar to classified employees or accumulated under the
28 terms and conditions pursuant to the laws of this State or as the
29 result of a negotiated contract with any governmental entity or
30 instrumentality which elects to become a "covered employer."

31 "Covered individual" shall not mean, with respect to whether an
32 individual is eligible for benefits during an individual's own
33 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
34 member of the Division of State Police in the Department of Law
35 and Public Safety.

36 (2) "Covered individual" means, with respect to whether an
37 individual is eligible for benefits during the individual's period of
38 family temporary disability leave pursuant to P.L.1948, c.110
39 (C.43:21-25 et al.), any individual who is in employment, as
40 defined in the "unemployment compensation law" (R.S.43:21-1 et
41 seq.), for which the individual is entitled to remuneration from a
42 covered employer, or who has been out of that employment for less
43 than two weeks.

44 (3) "Covered individual" means, with respect to whether an
45 individual is eligible for benefits during the individual's period of
46 first responder family temporary disability leave pursuant to
47 P.L.1948, c.110 (C.43:21-25 et al.), any individual employed as a
48 first responder by an entity who has a family member killed in the

1 line of duty while employed as a first responder from the same
2 entity.

3 (c) "Division" or "commission" means the Division of
4 Temporary Disability Insurance of the Department of Labor and
5 Workforce Development, and any transaction or exercise of
6 authority by the director of the division shall be deemed to be
7 performed by the division.

8 (d) "Day" shall mean a full calendar day beginning and ending
9 at midnight.

10 (e) "Disability" shall mean such disability as is compensable
11 under section 5 of P.L.1948, c.110 (C.43:21-29).

12 (f) "Disability benefits" shall mean any cash payments which
13 are payable to a covered individual for all or part of a period of
14 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.).

15 (g) "Period of disability" with respect to any covered individual
16 shall mean:

17 (1) The entire period of time during which the covered
18 individual is continuously and totally unable to perform the duties
19 of the covered individual's employment because of the covered
20 individual's own disability, except that two periods of disability due
21 to the same or related cause or condition and separated by a period
22 of not more than 14 days shall be considered as one continuous
23 period of disability; provided the individual has earned wages
24 during such 14-day period with the employer who was the
25 individual's last employer immediately preceding the first period of
26 disability; **[and]**

27 (2) On or after July 1, 2009, the entire period of family
28 temporary disability leave taken from employment by the covered
29 individual; and

30 (3) On or after the date of enactment of P.L. _____,
31 c. (C. _____) (pending before the Legislature as this bill), the entire
32 period of first responder family temporary disability leave taken
33 from employment by the covered individual.

34 (h) "Wages" shall mean all compensation payable by covered
35 employers to covered individuals for personal services, including
36 commissions and bonuses and the cash value of all compensation
37 payable in any medium other than cash.

38 (i) (1) (Deleted by amendment, P.L.2001, c.17).

39 (2) (Deleted by amendment, P.L.2001, c.17).

40 (3) (Deleted by amendment, P.L.2013, c.221).

41 (4) "Base week" with respect to periods of disability
42 commencing on or after January 1, 2001, means any calendar week
43 of a covered individual's base year during which the covered
44 individual earned in employment from a covered employer
45 remuneration not less than an amount 20 times the minimum wage
46 in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on
47 October 1 of the calendar year preceding the calendar year in which
48 the benefit year commences, which amount shall be adjusted to the

1 next higher multiple of \$1.00 if not already a multiple thereof,
2 except that if in any calendar week an individual subject to this
3 paragraph is in employment with more than one employer, the
4 covered individual may in that calendar week establish a base week
5 with respect to each of the employers from whom the covered
6 individual earns remuneration equal to not less than the amount
7 defined in this paragraph during that week.

8 (5) In the case of an individual who is laid off or furloughed by
9 an employer curtailing operations because of a state of emergency
10 declared after October 22, 2012, any week in which the individual
11 is separated from employment due to that layoff or furlough, up to a
12 maximum of 13 weeks, shall be regarded as a week which is a "base
13 week" for the purpose of determining whether the individual
14 becomes eligible for benefits pursuant to subsection (d) or (e) of
15 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
16 regarded as a base week when calculating the "average weekly
17 wage" pursuant to subsection (j) of this section.

18 (j) (1) "Average weekly wage" means the amount derived by
19 dividing a covered individual's total wages earned from the
20 individual's most recent covered employer during the base weeks in
21 the eight calendar weeks immediately preceding the calendar week
22 in which a period of disability commenced, by the number of such
23 base weeks.

24 (2) If the computation in paragraph (1) of this subsection (j)
25 yields a result which is less than the individual's average weekly
26 earnings in employment with all covered employers during the base
27 weeks in such eight calendar weeks, then the average weekly wage
28 shall be computed on the basis of earnings from all covered
29 employers during the base weeks in the eight calendar weeks
30 immediately preceding the week in which the period of disability
31 commenced.

32 (3) For periods of disability commencing on or after July 1,
33 2009, if the computations in paragraphs (1) and (2) of this
34 subsection (j) both yield a result which is less than the individual's
35 average weekly earnings in employment with all covered employers
36 during the base weeks in the 26 calendar weeks immediately
37 preceding the week in which the period of disability commenced,
38 then the average weekly wage shall, upon a written request to the
39 department by the individual on a form provided by the department,
40 be computed by the department on the basis of earnings from all
41 covered employers of the individual during the base weeks in those
42 26 calendar weeks, and, in the case of a claim for benefits from a
43 private plan, that computation of the average weekly wage shall be
44 provided by the department to the individual and the individual's
45 employer.

46 When determining the "average weekly wage" with respect to a
47 period of family temporary disability leave for an individual who
48 has a period of family temporary disability immediately after the

1 individual has a period of disability for the individual's own
2 disability, the period of disability is deemed to have commenced at
3 the beginning of the period of disability for the individual's own
4 disability, not the period of family temporary disability.

5 (k) "Child" means a biological, adopted, or foster child,
6 stepchild or legal ward of a covered individual, child of a domestic
7 partner of the covered individual, or child of a civil union partner of
8 the covered individual, who is less than 19 years of age or is 19
9 years of age or older but incapable of self-care because of mental or
10 physical impairment.

11 (l) "Domestic partner" means a domestic partner as defined in
12 section 3 of P.L.2003, c.246 (C.26:8A-3).

13 (m) "Civil union" means a civil union as defined in section 2 of
14 P.L.2006, c.103 (C.37:1-29).

15 (n) "Family member" means a child, spouse, domestic partner,
16 civil union partner or parent of a covered individual.

17 (o) "Family temporary disability leave" means leave taken by a
18 covered individual from work with an employer to (1) participate in
19 the providing of care, as defined in the "Family Leave Act,"
20 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
21 pursuant to that act, for a family member of the individual made
22 necessary by a serious health condition of the family member; or (2)
23 be with a child during the first 12 months after the child's birth, if
24 the individual, or the domestic partner or civil union partner of the
25 individual, is a biological parent of the child, or the first 12 months
26 after the placement of the child for adoption with the individual.
27 "Family temporary disability leave" does not include any period of
28 time in which a covered individual is paid benefits pursuant to
29 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
30 to perform the duties of the individual's employment due to the
31 individual's own disability.

32 (p) "Health care provider" means a health care provider as
33 defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et
34 seq.), and any regulations adopted pursuant to that act.

35 (q) "Parent of a covered individual" means a biological parent,
36 foster parent, adoptive parent, or stepparent of the covered
37 individual or a person who was a legal guardian of the covered
38 individual when the covered individual was a child.

39 (r) "Placement for adoption" means the time when a covered
40 individual adopts a child or becomes responsible for a child pending
41 adoption by the covered individual.

42 (s) "Serious health condition" means an illness, injury,
43 impairment or physical or mental condition which requires:
44 inpatient care in a hospital, hospice, or residential medical care
45 facility; or continuing medical treatment or continuing supervision
46 by a health care provider.

47 (t) "12-month period" means, with respect to an individual who
48 establishes a valid claim for disability benefits during a period of

1 family temporary disability leave, the 365 consecutive days that
2 begin with the first day that the individual first establishes the
3 claim.

4 (u) "State of emergency" means a natural or man-made disaster
5 or emergency for which a state of emergency has been declared by
6 the President of the United States or the Governor, or for which a
7 state of emergency has been declared by a municipal emergency
8 management coordinator.

9 (v) "First responder" means a law enforcement officer, paid
10 firefighter, paid member of a duly incorporated first aid,
11 emergency, ambulance, or rescue squad association, or any other
12 individual who, in the course of his employment, is dispatched to
13 the scene of a motor vehicle accident or other emergency situation
14 for the purpose of providing medical care or other assistance.

15 (w) "First responder family temporary disability leave" means,
16 at a maximum, 52 weeks of leave taken by an individual employed
17 by an entity as a first responder after the death in the line of duty of
18 a family member, who was also employed as a first responder by
19 the same entity, pursuant to section 3 of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21 (cf: P.L.2013, c.221, s.3)

22

23 2. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to
24 read as follows:

25 14. Duration of benefits.

26 With respect to any period of disability for an individual's own
27 disability commencing on or after January 1, 1953, disability
28 benefits, not in excess of an individual's maximum benefits, shall be
29 payable with respect to disability which commences while a person
30 is a covered individual under the Temporary Disability Benefits
31 Law, and shall be payable with respect to the eighth consecutive
32 day of such disability and each day thereafter that such period of
33 disability continues; and if benefits shall be payable for three
34 consecutive weeks with respect to any period of disability
35 commencing on or after January 1, 1968, then benefits shall also be
36 payable with respect to the first seven days thereof. With respect to
37 any period of family temporary disability leave commencing on or
38 after July 1, 2009 and while an individual is a covered individual,
39 family temporary disability benefits, not in excess of the
40 individual's maximum benefits, shall be payable with respect to the
41 first day of leave taken after the first one-week period following the
42 commencement of the period of family temporary disability leave
43 and each subsequent day of leave during that period of family
44 temporary disability leave; and if benefits become payable on any
45 day after the first three weeks in which leave is taken, then benefits
46 shall also be payable with respect to any leave taken during the first
47 one-week period in which leave is taken. The maximum total
48 benefits payable to any eligible individual for any period of

1 disability of the individual commencing on or after January 1, 1968,
2 shall be either 26 times his weekly benefit amount or 1/3 of his total
3 wages in his base year, whichever is the lesser; provided that such
4 maximum amount shall be computed in the next lower multiple of
5 \$1.00 if not already a multiple thereof. The maximum total benefits
6 payable to any eligible individual for any period of family
7 temporary disability leave commencing on or after July 1, 2009,
8 shall be six times the individual's weekly benefit amount or 1/3 of
9 his total wages in his base year, whichever is the lesser; provided
10 that the maximum amount shall be computed in the next lower
11 multiple of \$1.00, if not already a multiple thereof. The maximum
12 total benefits payable to any eligible individual for any period of
13 first responder family temporary disability leave, commencing on or
14 after the date of enactment of P.L. , c. (C.) (pending
15 before the Legislature as this bill), shall be 52 times his weekly
16 benefit amount, provided that the amount shall be computed in the
17 next lower multiple of \$1.00 if not already a multiple thereof.
18 (cf: P.L. 2008, c.17, s.5)

19

20 3. (New section) The Commissioner of Labor and Workforce
21 Development shall establish a program providing first responder
22 family temporary disability leave benefits to covered individuals
23 who are employed by an entity as a first responder whose family
24 member is also employed as a first responder for the same entity
25 and is killed in the line of duty. The first responder family
26 temporary disability leave program shall include:

27 a. A maximum of 52 weeks of paid leave, which may be taken
28 within 24 months of the certified date of the death of the family
29 member;

30 b. A certification program to document the family relationship
31 and the date and cause of death;

32 c. The determination of the weekly benefit amount, which shall
33 be calculated in the same manner as the amount for individuals
34 receiving family temporary disability leave benefits, pursuant to
35 P.L.2008, c.17 (C.43:21-39.1 et al.); and

36 d. The provision of first responder family temporary disability
37 leave benefits funded from the "Family Temporary Disability Leave
38 Account" (R.S.43:21-7);

39 No first responder temporary disability leave benefits shall be
40 paid to an individual concurrently with benefits paid pursuant to:
41 the "Temporary Disability Benefits Law," P.L.1948, c.110
42 (C.43:21-25 et al.); the "unemployment compensation law,"
43 R.S.43:21-1 et seq.; the workers' compensation law, R.S.34:15-1 et
44 seq.; or any other paid leave from the individual's place of
45 employment.

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47 4. This act shall take effect immediately.

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STATEMENT

This bill provides a first responder, who has a family member, who was also a first responder for the same entity, and who was killed in the line of duty, with up to 52 weeks of paid family leave to be taken within 24 months of the incident.

First responders are defined under the bill as a law enforcement officer, paid firefighter, paid member of a duly incorporated first aid, emergency, ambulance, or rescue squad association, or any other individual who, in the course of employment, is dispatched to the scene of a motor vehicle accident or other emergency situation for the purpose of providing medical care or other assistance.

Family leave insurance benefits will provide compensation equal to 66 2/3% of the individual's average weekly wage, up to a maximum of \$615 (for calendar year 2016) per week. The program will be administered by the Department of Labor and Workforce Development.

It is the intent of this bill to provide support for those first responders to begin their recovery process from the loss of their loved one.