ASSEMBLY, No. 411

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS
Provides job security to certain organ and bone marrow donors.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT providing job security to individuals who are unable to work due to donating an organ or bone marrow, and amending and supplementing P.L.1948, c.110.

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

1. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read as follows:
   5. Compensable disability. (a) In the case of the disability of a covered individual, disability shall be compensable subject to the limitations of P.L.1948, c.110 (C.43:21-25 et al.) if the disability is the result of the covered individual suffering an accident or sickness not arising out of and in the course of the individual's employment or if so arising not compensable under the workers' compensation law, R.S.34:15-1 et seq., including if the disability is the result of the donation of any organ or bone marrow by the covered individual and resulting in the individual's total inability to perform the duties of employment.
   (b) In the case of an individual taking family temporary disability leave, the leave shall be compensable subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

2. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to read as follows:
   (a) for the first seven consecutive days of each period of disability; except that:
   (1) if benefits shall be payable for three consecutive weeks with respect to any period of disability, then benefits shall also be payable with respect to the first seven days thereof;
   (2) in the case of intermittent leave in a single period of family temporary disability leave taken to provide care for a family member of the individual with a serious health condition, benefits shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with

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.
with respect to any leave taken during the first one-week period in which leave is taken; and

(3) in the case of an individual taking family temporary disability leave immediately after the individual has a period of disability for the individual's own disability, there shall be no waiting period between the period of the individual's own disability and the period of family temporary disability; and

(4) if the benefits shall be payable for a period of disability which is the result of the donation of any organ or bone marrow by the covered individual, then benefits shall be payable with respect to the first seven days thereof;

(b) (1) for more than 26 weeks with respect to any one period of disability of the individual;

(2) for more than six weeks with respect to any one period of family temporary disability leave, or more than 42 days with respect to any one period of family temporary disability leave taken on an intermittent basis to provide care for a family member of the individual with a serious health condition; and

(3) for more than six weeks of family temporary disability leave during any 12-month period, or more than 42 days of family temporary disability leave taken during any 12-month period, on an intermittent basis to provide care for a family member of the individual with a serious health condition, including family temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while unemployed;

(c) for any period of disability which did not commence while the claimant was a covered individual;

(d) for any period of disability of a claimant during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge or for any period of family temporary disability leave for a serious health condition of a family member of the claimant, during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility or is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice, the serious health condition of the family member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge;

(e) (Deleted by amendment, P.L.1980, c.90.)

(f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, third, or fourth degree, or
for any period during which a covered individual would be disqualified for unemployment compensation benefits for gross misconduct under subsection (b) of R.S.43:21-5;
  (g) for any period during which the claimant performs any work for remuneration or profit;
  (h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed regular weekly wages immediately prior to disability;
  (i) for any period during which a covered individual would be disqualified for unemployment compensation benefits under subsection (d) of R.S.43:21-5, unless the disability commenced prior to such disqualification; and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in [this act] P.L.1948, c.110 (C.43:21-25 et al.).
  (cf: P.L.2009, c.114, s.1)

3. (New section) For a period of disability which is the result of donating any organ or bone marrow under section 5 of P.L.1948, c.110 (C.43:21-29), a covered individual shall, after the period of disability ends, be entitled to be restored by the individual’s employer to the position of employment held by the individual when the period of disability commenced or to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment. If during the period of disability which is the result of donating any organ or bone marrow, the employer experiences a reduction in force or layoff and the covered individual would have lost the position of employment had the individual not experienced the period of disability, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement where applicable, the individual shall not be entitled to reinstatement to the former or an equivalent position. The covered individual shall retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the individual had not experienced the period of disability.

4. This act shall take effect on the 120th day after enactment.

STATEMENT

This bill provides job security for an individual during a period of disability under the “Temporary Disability Benefits Law,” P.L.1948, c.110 (C.43:21-25 et al.), which is the result of an organ or bone marrow donation by the individual.
Currently, an individual who donates an organ or bone marrow is eligible for temporary disability benefits under the “Temporary Disability Benefits Law” during the period that the individual is unable to work due to the organ or bone marrow donation. However, the “Temporary Disability Benefits Law” does not provide an express guarantee of job security for an individual who is unable to work during a period of disability under the law.

This bill provides, for the purposes of donating an organ or bone marrow, that an individual who experiences a period of disability pursuant to the “Temporary Disability Benefits Law” will be entitled to be restored to the individual’s position of employment upon the end of the period of disability, or to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment. Also, for the purposes of donating an organ or bone marrow, the bill eliminates the one week waiting period for the payment of temporary disability benefits.