

SENATE, No. 2561

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED SEPTEMBER 26, 2016

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator M. TERESA RUIZ

District 29 (Essex)

SYNOPSIS

Requires determination of eligibility and payment of family temporary disability leave benefits within three weeks of filing notices of claims for benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/2/2017)

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1 AN ACT concerning family temporary disability leave and
2 amending P.L.2008, c.17.

3

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

6

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

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

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

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

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 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
2 employees.

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

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

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

1 number of the individual, such wage information as the division
2 may require to determine the individual's eligibility for benefits,
3 including any sick pay, vacation or other fully paid time off
4 provided by the employer during the period of family temporary
5 disability leave, and the name, address, and division identity
6 number of the employer. Not later than 30 days after the
7 commencement of the period of family temporary disability leave
8 for which the notice is furnished by the employer, the individual
9 shall furnish to the division a notice and claim for family temporary
10 disability leave benefits. Upon the submission of the notices by the
11 employer and the individual, the division **[may]** shall determine the
12 individual's eligibility for benefits, and issue benefit payments to
13 any eligible individual no later than three weeks from the date on
14 which the division receives the notices. In the case of family
15 temporary disability leave taken to care for a family member with a
16 serious health condition, the benefits may be paid for periods not
17 exceeding three weeks pending the receipt of the certification
18 required pursuant to subsection b. of section 11 of P.L.2008, c.17
19 (C.43:21-39.2). Failure to furnish notice and certification in the
20 manner above provided shall not invalidate or reduce any claim if it
21 shall be shown to the satisfaction of the division not to have been
22 reasonably possible to furnish the notice and certification and that
23 the notice and certification was furnished as soon as reasonably
24 possible.

25 g. Each covered employer shall conspicuously post
26 notification, in a place or places accessible to all employees in each
27 of the employer's workplaces, in a form issued by regulation
28 promulgated by the commissioner, of each covered employee's
29 rights regarding benefits payable pursuant to this section. The
30 employer shall also provide each employee of the employer with a
31 written copy of the notification: (1) not later than 30 days after the
32 form of the notification is issued by regulation; (2) at the time of the
33 employee's hiring, if the employee is hired after the issuance; (3)
34 whenever the employee notifies the employer that the employee is
35 taking time off for circumstances under which the employee is
36 eligible for benefits pursuant to this section; and (4) at any time,
37 upon the first request of the employee.
38 (cf: P.L.2008, c.17, s.10.)

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40 2. This act shall take effect immediately.

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STATEMENT

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45 This bill requires the Division of Unemployment and Temporary
46 Disability Insurance in the Department of Labor and Workforce
47 Development to determine eligibility and to issue benefit payments
48 to eligible individuals applying for family temporary disability

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- 1 leave benefits no later than three weeks from the date on which the
- 2 division receives notices of claims for benefits from the employer
- 3 and employee.