

ASSEMBLY, No. 3913

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

**Assemblymen DeAngelo, Benson, Assemblywomen Reynolds-Jackson,
McKnight, Pinkin and Downey**

SYNOPSIS

Concerns family leave benefits during epidemic-related emergencies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/13/2020)

1 AN ACT concerning family leave and amending P.L.1989, c.261 and
2 P.L.1948, c.110.

3

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

6

7 1. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to read
8 as follows:

9 3. As used in this act:

10 a. "Child" means a biological, adopted, foster child, or resource
11 family child, stepchild, legal ward, or child of a parent, including a
12 child who becomes the child of a parent pursuant to a valid written
13 agreement between the parent and a gestational carrier.

14 b. "Director" means the Director of the Division on Civil Rights.

15 c. "Division" means the Division on Civil Rights in the
16 Department of Law and Public Safety.

17 d. "Employ" means to suffer or permit to work for
18 compensation, and includes ongoing, contractual relationships in
19 which the employer retains substantial direct or indirect control over
20 the employee's employment opportunities or terms and conditions of
21 employment.

22 e. "Employee" means a person who is employed for at least 12
23 months by an employer, with respect to whom benefits are sought
24 under this act, for not less than 1,000 base hours during the
25 immediately preceding 12-month period. Any time, up to a maximum
26 of 90 calendar days, during which a person is laid off or furloughed
27 by an employer due to that employer curtailing operations because of
28 a state of emergency declared after October 22, 2012, shall be
29 regarded as time in which the person is employed for the purpose of
30 determining eligibility for leave time under this act. In making the
31 determination, the base hours per week during the layoff or furlough
32 shall be deemed to be the same as the average number of hours
33 worked per week during the rest of the 12-month period.

34 f. "Employer" means a person or corporation, partnership,
35 individual proprietorship, joint venture, firm or company or other
36 similar legal entity which engages the services of an employee and
37 which:

38 (1) (Deleted by amendment, P.L.2019, c.37);

39 (2) (Deleted by amendment, P.L.2019, c.37);

40 (3) With respect to the period of time from the 1,095th day
41 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)
42 through June 30, 2019, employs 50 or more employees for each
43 working day during each of 20 or more calendar workweeks in the
44 then current or immediately preceding calendar year; and

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 (4) With respect to any period of time on or after June 30, 2019,
2 employs 30 or more employees for each working day during each of
3 20 or more calendar workweeks in the then current or immediately
4 preceding calendar year.

5 "Employer" includes the State, any political subdivision thereof,
6 and all public offices, agencies, boards or bodies.

7 g. "Employment benefits" means all benefits and policies
8 provided or made available to employees by an employer, and
9 includes group life insurance, health insurance, disability insurance,
10 sick leave, annual leave, pensions, or other similar benefits.

11 h. "Parent" means a person who is the biological parent,
12 adoptive parent, foster parent, resource family parent, step-parent,
13 parent-in-law or legal guardian, having a "parent-child relationship"
14 with a child as defined by law, or having sole or joint legal or physical
15 custody, care, guardianship, or visitation with a child, or who became
16 the parent of the child pursuant to a valid written agreement between
17 the parent and a gestational carrier.

18 i. "Family leave" means leave from employment so that the
19 employee may provide care made necessary by reason of:

20 (1) the birth of a child of the employee, including a child born
21 pursuant to a valid written agreement between the employee and a
22 gestational carrier;

23 (2) the placement of a child into foster care with the employee or
24 in connection with adoption of such child by the employee; **[or]**

25 (3) the serious health condition of a family member of the
26 employee ; or

27 (4) in the event of a state of emergency declared by the Governor,
28 or when indicated to be needed by the Commissioner of Health or
29 other public health authority, an epidemic of a communicable
30 disease, a known or suspected exposure to the communicable disease,
31 or efforts to prevent spread of a communicable disease, which:

32 (a) requires in-home care or treatment of a child due to the closure
33 of the school or place of care of the child of the employee, by order
34 of a public official due to the epidemic or other public health
35 emergency;

36 (b) prompts the issuance by a public health authority of a
37 determination, including by mandatory quarantine, requiring or
38 imposing responsive or prophylactic measures as a result of illness
39 caused by an epidemic of a communicable disease or known or
40 suspected exposure to the communicable disease because the
41 presence in the community of a family member in need of care by the
42 employee, would jeopardize the health of others; or

43 (c) results in the recommendation of a health care provider or
44 public health authority, that a family member in need of care by the
45 employee voluntarily undergo self-quarantine as a result of suspected
46 exposure to a communicable disease because the presence in the
47 community of that family member in need of care by the employee,
48 would jeopardize the health of others.

1 j. "Family member" means a child, parent, parent-in-law,
2 sibling, grandparent, grandchild, spouse, domestic partner, or one
3 partner in a civil union couple, or any other individual related by
4 blood to the employee, and any other individual that the employee
5 shows to have a close association with the employee which is the
6 equivalent of a family relationship.

7 k. "Reduced leave schedule" means leave scheduled for fewer
8 than an employee's usual number of hours worked per workweek but
9 not for fewer than an employee's usual number of hours worked per
10 workday, unless agreed to by the employee and the employer.

11 l. "Serious health condition" means an illness, injury,
12 impairment, or physical or mental condition which requires:

13 (1) inpatient care in a hospital, hospice, or residential medical
14 care facility; or

15 (2) continuing medical treatment or continuing supervision by a
16 health care provider.

17 **【**During a state of emergency declared by the Governor, or when
18 indicated to be needed by the Commissioner of Health or other public
19 health authority, "serious health condition" shall also include an
20 illness caused by an epidemic of a communicable disease, a known
21 or suspected exposure to a communicable disease, or efforts to
22 prevent spread of a communicable disease, which requires in-home
23 care or treatment of a family member of the employee due to:

24 (1) the issuance by a healthcare provider or the commissioner or
25 other public health authority of a determination that the presence in
26 the community of a family member may jeopardize the health of
27 others; and

28 (2) the recommendation, direction, or order of the provider or
29 authority that the family member be isolated or quarantined because
30 of suspected exposure to the communicable disease.**】**

31 m. "State of emergency" means a natural or man-made disaster
32 or emergency for which a state of emergency has been declared by
33 the President of the United States or the Governor, or for which a
34 state of emergency has been declared by a municipal emergency
35 management coordinator.

36 n. "Health care provider" means a duly licensed health care
37 provider or other health care provider deemed appropriate by the
38 director.

39 (cf: P.L.2020, c.17, s.2)

40

41 2. Section 4 of P.L.1989, c.261 (C.34:11B-4) is amended to read
42 as follows:

43 4. An employee of an employer in this State subject to the
44 provisions of this act shall be entitled to a family leave of 12 weeks
45 in any 24-month period upon advance notice to the employer in the
46 manner specified by the provisions of sections 11 and 12 of P.L.2008,
47 c.17 (C.43:21-39.2 and 43:21-39.3), unless the employer denies
48 family leave to the employee pursuant to subsection h. of this section.

1 a. In the case of a family member who has a serious health
2 condition, the leave may be taken intermittently when medically
3 necessary, in the manner specified by the provisions of section 11 of
4 P.L.2008, c.17 (C.43:21-39.2).

5 b. In the case of the foster care placement, birth or adoption of a
6 healthy child, the leave may be taken intermittently in the manner
7 specified by the provisions of paragraph (2) of subsection a. of
8 section 12 of P.L.2008, c.17 (C.43:21-39.3).

9 c. Leave taken because of the birth or placement for adoption of
10 a child may commence at any time within a year after the date of the
11 foster care placement, birth or placement for adoption.

12 d. Family leave required by this act may be paid, unpaid, or a
13 combination of paid and unpaid leave. If an employer provides paid
14 family leave for fewer than 12 workweeks, the additional weeks of
15 leave added to attain the 12-workweek total required by this act may
16 be unpaid.

17 e. An employer may require that any period of family leave be
18 supported by certification issued by a duly licensed health care
19 provider or any other health care provider determined by the director
20 to be capable of providing adequate certification as described in
21 paragraphs (1) and (2) of this subsection, or where the leave is for an
22 epidemic of a communicable disease, a known or suspected exposure
23 to a communicable disease, or efforts to prevent spread of a
24 communicable disease, certification issued by a school, place of care
25 for children, public health authority, public official, or health care
26 provider, as described in paragraph (3) of this subsection.

27 (1) Where the certification is for the serious health condition of a
28 family member of the employee, the certification shall be sufficient
29 if it states: (a) the date on which the serious health condition
30 commenced; (b) the probable duration of the condition; and (c) the
31 medical facts within the provider's knowledge regarding the
32 condition;

33 (2) Where the certification is for the birth or placement of the
34 child, the certification need only state the date of birth or date of
35 placement, whichever is appropriate;

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

40 (a) for leave taken to provide in-home care or treatment of a child
41 due to the closure of the school or place of care of the child of the
42 employee, by order of a public official due to the epidemic or other
43 public health emergency, the date on which the closure of the school
44 or place of care of the child of the employee commenced and the
45 reason for such closure;

46 (b) for leave taken due to a public health authority's issuance of a
47 determination requiring or imposing responsive or prophylactic
48 measures as a result of illness caused by an epidemic of a

1 communicable disease or known or suspected exposure to the
2 communicable disease because the presence in the community of a
3 family member in need of care by the employee would jeopardize the
4 health of others, the date of issuance of the determination and the
5 probable duration of the determination; or

6 (c) for leave taken because a health care provider or public health
7 authority recommends that a family member in need of care by the
8 employee voluntarily undergo self-quarantine as a result of suspected
9 exposure to a communicable disease because the presence in the
10 community of that family member in need of care by the employee
11 would jeopardize the health of others, the date of the
12 recommendation, the probable duration of the condition, and the
13 medical or other facts within the health care provider or public health
14 authority's knowledge regarding the condition.

15 In any case in which the employer has reason to doubt the validity
16 of the certification provided pursuant to paragraph (1) of this
17 subsection, the employer may require, at its own expense, that an
18 employee obtain an opinion regarding the serious health condition
19 from a second health care provider designated or approved, but not
20 employed on a regular basis, by the employer. If the second opinion
21 differs from the certification provided pursuant to paragraph (1) of
22 this subsection, the employer may require, at its own expense, that
23 the employee obtain the opinion of a third health care provider
24 designated or approved jointly by the employer and the employee
25 concerning the serious health condition. The opinion of the third
26 health care provider shall be considered to be final and shall be
27 binding on the employer and the employee.

28 f. In any case in which the necessity for leave under this act is
29 foreseeable, based upon placement of a child into foster care an
30 expected birth or placement of the child for adoption, the employee
31 shall provide the employer with prior notice of the expected birth or
32 placement of the child for adoption or foster care in the manner
33 specified by the provisions of section 11 of P.L.2008, c.17 (C.43:21-
34 39.2).

35 g. No employee shall, during any period of leave taken pursuant
36 to this section, perform services on a full-time basis for any person
37 for whom the employee did not provide those services immediately
38 prior to commencement of the leave.

39 h. An employer may deny family leave to the employee if:

40 (1) The employee is a salaried employee who is among the
41 highest paid 5% of the employer's employees or the seven highest
42 paid employees of the employer, whichever is greater;

43 (2) The denial is necessary to prevent substantial and grievous
44 economic injury to the employer's operations; and

45 (3) The employer notifies the employee of its intent to deny the
46 leave at the time the employer determines that the denial is necessary.

47 The provisions of this subsection shall not apply when , in the
48 event of a state of emergency declared by the Governor or when

1 indicated to be needed by the Commissioner of Health or other public
2 health authority, the family leave is **【**due to a health care provider,
3 the Commissioner of Health or other authorized public official
4 having ordered, directed, or recommended that a family member of
5 the employee in need of care by the employee be isolated or
6 quarantined, or is due to a place of care of a member of the
7 employee's family being closed because of a state of emergency
8 declared by the Governor or order of the Commissioner of Health or
9 other authorized public official, **】** for an epidemic of a
10 communicable disease, **【**or**】** a known or suspected exposure to a
11 communicable disease, or efforts to prevent spread of a
12 communicable disease.

13 i. In any case in which the leave has already commenced at the
14 time of the notification pursuant to paragraph (3) of subsection h. of
15 this section, the employee shall return to work within 10 working
16 days of the date of notification.

17 j. In the case of leave taken due to an epidemic of a
18 communicable disease, a known or suspected exposure to the
19 communicable disease, or efforts to prevent spread of the
20 communicable disease, the leave may be taken intermittently if: (1)
21 the covered individual provides the employer with prior notice of the
22 leave as soon as practicable; and (2) the covered individual makes a
23 reasonable effort to schedule the leave so as not to unduly disrupt the
24 operations of the employer and, if possible, provide the employer,
25 prior to the commencement of the intermittent leave, with a regular
26 schedule of the day or days of the week on which the intermittent
27 leave will be taken.

28 (cf: P.L.2020, c.17, s.3)

29

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

32 3. As used in this act, unless the context clearly requires
33 otherwise:

34 (a) (1) "Covered employer" means, with respect to whether an
35 employer is required to provide benefits during an employee's own
36 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
37 individual or type of organization, including any partnership,
38 association, trust, estate, joint-stock company, insurance company or
39 corporation, whether domestic or foreign, or the receiver, trustee in
40 bankruptcy, trustee or successor thereof, or the legal representative
41 of a deceased person, who is an employer subject to the
42 "unemployment compensation law" (R.S.43:21-1 et seq.), except the
43 State, its political subdivisions, and any instrumentality of the State
44 unless such governmental entity elects to become a covered employer
45 pursuant to paragraph (2) of this subsection (a); provided, however,
46 that commencing with the effective date of this act, the State of New
47 Jersey, including Rutgers, The State University and the New Jersey

1 Institute of Technology, shall be deemed a covered employer, as
2 defined herein.

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

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

31 (b) (1) "Covered individual" means, 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 person
34 who is in employment, as defined in the "unemployment
35 compensation law" (R.S.43:21-1 et seq.), for which the individual is
36 entitled to remuneration from a covered employer, or who has been
37 out of such employment for less than two weeks, except that a
38 "covered individual" who is employed by the State of New Jersey,
39 including Rutgers, The State University or the New Jersey Institute
40 of Technology, or by any governmental entity or instrumentality
41 which elects to become a "covered employer" pursuant to P.L.1948.
42 c.110 (C.43:21-25 et al.) prior to July 1, 2019 shall not be eligible to
43 receive any benefits under the "Temporary Disability Benefits Law"
44 until such individual has exhausted all sick leave accumulated as an
45 employee in the classified service of the State or accumulated under
46 terms and conditions similar to classified employees or accumulated
47 under the terms and conditions pursuant to the laws of this State or
48 as the result of a negotiated contract with any governmental entity or

1 instrumentality which elects to become a "covered employer"; and,
2 after June 30, 2019 may be required, prior to receiving any benefits
3 under the "Temporary Disability Benefits Law," to use up to two
4 weeks of sick leave accumulated as an employee in the classified
5 service of the State or accumulated under terms and conditions
6 similar to classified employees or accumulated under the terms and
7 conditions pursuant to the laws of this State or as the result of a
8 negotiated contract with any governmental entity or instrumentality
9 which elects to become a "covered employer," except that the
10 individual shall not be required to use the individual's last week's
11 worth of accumulated sick time before receiving the benefits.

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

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

25 (c) "Division" or "commission" means the Division of
26 Unemployment and Temporary Disability Insurance of the
27 Department of Labor and Workforce Development, and any
28 transaction or exercise of authority by the director of the division
29 shall be deemed to be performed by the division.

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

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

34 (1) "Disability" shall, in the event of a state of emergency
35 declared by the Governor, or when indicated to be needed by the
36 Commissioner of Health or other public health authority, also include
37 an illness caused by an epidemic of a communicable disease, a known
38 or suspected exposure to the communicable disease, or efforts to
39 prevent spread of the communicable disease, which requires in-home
40 care or treatment of the employee due to:

41 (i) the issuance by a healthcare provider or the commissioner or
42 other public health authority of a determination that the presence in
43 the community of the employee may jeopardize the health of others;
44 and

45 (ii) the recommendation, direction, or order of the provider or
46 authority that the employee be isolated or quarantined as a result of
47 suspected exposure to a communicable disease.

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

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

6 (1) The entire period of time during which the covered individual
7 is continuously and totally unable to perform the duties of the
8 covered individual's employment because of the covered individual's
9 own disability, except that two periods of disability due to the same
10 or related cause or condition and separated by a period of not more
11 than 14 days shall be considered as one continuous period of
12 disability; provided the individual has earned wages during such 14-
13 day period with the employer who was the individual's last employer
14 immediately preceding the first period of disability; and

15 (2) On or after July 1, 2009, the entire period of family temporary
16 disability leave taken from employment by the covered individual.

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

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

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

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

24 (4) "Base week" with respect to periods of disability commencing
25 on or after January 1, 2001, means any calendar week of a covered
26 individual's base year during which the covered individual earned in
27 employment from a covered employer remuneration not less than an
28 amount 20 times the minimum wage in effect pursuant to section 5
29 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
30 preceding the calendar year in which the benefit year commences,
31 which amount shall be adjusted to the next higher multiple of \$1.00
32 if not already a multiple thereof, except that if in any calendar week
33 an individual subject to this paragraph is in employment with more
34 than one employer, the covered individual may in that calendar week
35 establish a base week with respect to each of the employers from
36 whom the covered individual earns remuneration equal to not less
37 than the amount defined in this paragraph during that week.

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

1 (j) (1) "Average weekly wage" means, with respect to the
2 payment of benefits commencing before the effective date of
3 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
4 a covered individual's total wages earned from the individual's most
5 recent covered employer during the base weeks in the eight calendar
6 weeks immediately preceding the calendar week in which a period of
7 disability commenced, by the number of such base weeks, and, with
8 respect to the payment of benefits commencing on or after the
9 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
10 derived by dividing a covered individual's total wages earned from
11 the individual's most recent covered employer during the base weeks
12 in the base year immediately preceding the calendar week in which a
13 period of disability commenced, or in which the individual submits a
14 claim for the benefits pursuant to subsection h. of section 10 of
15 P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a) of
16 section 25 of P.L.1948, c.110 (C.43:21-49), by the number of base
17 weeks.

18 (2) With respect to the payment of benefits commencing before
19 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
20 computation in paragraph (1) of this subsection (j) yields a result
21 which is less than the individual's average weekly earnings in
22 employment with all covered employers during the base weeks in
23 such eight calendar weeks, then the average weekly wage shall be
24 computed on the basis of earnings from all covered employers during
25 the base weeks in the eight calendar weeks immediately preceding
26 the week in which the period of disability commenced, and, with
27 respect to the payment of benefits commencing on or after the
28 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
29 computation in paragraph (1) of this subsection (j) yields a result
30 which is less than the individual's average weekly earnings in
31 employment with all covered employers during the base weeks in the
32 base year, then the average weekly wage shall be computed on the
33 basis of earnings from all covered employers during the base weeks
34 in the base year immediately preceding the week in which the period
35 of disability commences, or in which the individual submits a claim
36 for the benefits pursuant to subsection h. of section 10 of P.L.2008,
37 c.17 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25
38 of P.L.1948, c.110 (C.43:21-49).

39 (3) For periods of disability commencing on or after July 1, 2009
40 and before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),
41 if the computations in paragraphs (1) and (2) of this subsection (j)
42 both yield a result which is less than the individual's average weekly
43 earnings in employment with all covered employers during the base
44 weeks in the 26 calendar weeks immediately preceding the week in
45 which the period of disability commenced, then the average weekly
46 wage shall, upon a written request to the department by the individual
47 on a form provided by the department, be computed by the
48 department on the basis of earnings from all covered employers of

1 the individual during the base weeks in those 26 calendar weeks, and,
2 in the case of a claim for benefits from a private plan, that
3 computation of the average weekly wage shall be provided by the
4 department to the individual and the individual's employer.

5 When determining the "average weekly wage" with respect to a
6 period of family temporary disability leave for an individual who has
7 a period of family temporary disability immediately after the
8 individual has a period of disability for the individual's own
9 disability, the period of disability is deemed to have commenced at
10 the beginning of the period of disability for the individual's own
11 disability, not the period of family temporary disability.

12 (k) "Child" means a biological, adopted, or foster child, stepchild
13 or legal ward of a covered individual, child of a domestic partner of
14 the covered individual, or child of a civil union partner of the covered
15 individual, including a child who becomes the child of a parent
16 pursuant to a valid written agreement between the parent and a
17 gestational carrier.

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

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

22 (n) "Family member" means a sibling, grandparent, grandchild,
23 child, spouse, domestic partner, civil union partner, parent-in-law, or
24 parent of a covered individual, or any other individual related by
25 blood to the employee, and any other individual that the employee
26 shows to have a close association with the employee which is the
27 equivalent of a family relationship.

28 (o) "Family temporary disability leave" means leave taken by a
29 covered individual from work with an employer to:

30 (1) participate in the providing of care, as defined in the "Family
31 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations
32 adopted pursuant to that act, for a family member of the individual
33 made necessary by a serious health condition of the family member;

34 (2) be with a child during the first 12 months after the child's
35 birth, if the individual, or the domestic partner or civil union partner
36 of the individual, is a biological parent of the child, or is a parent of
37 the child pursuant to a valid gestational carrier agreement, or the first
38 12 months after the placement of the child for adoption or as a foster
39 child with the individual; **[or]**

40 (3) engage in activities for which unpaid leave may be taken
41 pursuant to section 3 of the "New Jersey Security and Financial
42 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's
43 own behalf, if the individual is a victim of an incident of domestic
44 violence, a sexually violent offense, or to assist a family member of
45 the individual who has been a victim of an incident of domestic
46 violence, or a sexually violent offense, provided that any time taken
47 by an individual who has been a victim of an incident of domestic
48 violence, or a sexually violent offense for which the individual

1 receives benefits for a disability caused by the violence or offense
2 shall be regarded as a period of disability of the individual and not as
3 a period of family temporary disability leave; or

4 (4) in the event of a state of emergency declared by the Governor,
5 or when indicated to be needed by the Commissioner of Health or
6 other public health authority, an epidemic of a communicable
7 disease, a known or suspected exposure to the communicable disease,
8 or efforts to prevent spread of the communicable disease, provide in-
9 home care or treatment of the family member of the employee
10 required due to:

11 (i) the issuance by a healthcare provider or the commissioner or
12 other public health authority of a determination that the presence in
13 the community of the family member may jeopardize the health of
14 others; and

15 (ii) the recommendation, direction, or order of the provider or
16 authority that the family member be isolated or quarantined as a
17 result of suspected exposure to a communicable disease.

18 "Family temporary disability leave" does not include any period
19 of time in which a covered individual is paid benefits pursuant to
20 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
21 to perform the duties of the individual's employment due to the
22 individual's own disability.

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

26 (q) "Parent of a covered individual" means a biological parent,
27 foster parent, adoptive parent, or stepparent of the covered individual
28 or a person who was a legal guardian of the covered individual when
29 the covered individual was a child, or who became the parent of the
30 covered individual pursuant to a valid written agreement between the
31 parent and a gestational carrier.

32 (r) "Placement for adoption" means the time when a covered
33 individual adopts a child or becomes responsible for a child pending
34 adoption by the covered individual.

35 (s) "Serious health condition" means an illness, injury,
36 impairment or physical or mental condition which requires: inpatient
37 care in a hospital, hospice, or residential medical care facility; or
38 continuing medical treatment or continuing supervision by a health
39 care provider. **【**During a state of emergency declared by the
40 Governor, or when indicated to be needed by the Commissioner of
41 Health or other public health authority, "serious health condition"
42 shall also include an illness caused by an epidemic of a
43 communicable disease, a known or suspected exposure to a
44 communicable disease, or efforts to prevent spread of a
45 communicable disease, which requires in-home care or treatment of
46 the employee or family member of the employee due to:

47 (1) the issuance by a healthcare provider or the commissioner or
48 other public health authority of a determination that the presence in

1 the community of the employee or family member may jeopardize
2 the health of others; and

3 (2) the recommendation, direction, or order of the provider or
4 authority that the employee or family member be isolated or
5 quarantined as a result of suspected exposure to a communicable
6 disease.】

7 (t) "12-month period" means, with respect to an individual who
8 establishes a valid claim for disability benefits during a period of
9 family temporary disability leave, the 365 consecutive days that
10 begin with the first day that the individual first establishes the claim.

11 (u) "State of emergency" means a natural or man-made disaster
12 or emergency for which a state of emergency has been declared by
13 the President of the United States or the Governor, or for which a
14 state of emergency has been declared by a municipal emergency
15 management coordinator.

16 (v) "Base year" with respect to benefit years commencing on or
17 after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), means
18 the first four of the last five completed calendar quarters immediately
19 preceding the period of disability, except that, if the individual does
20 not have sufficient qualifying weeks or wages in the individual's base
21 year to qualify for benefits, the individual shall have the option of
22 designating that the individual's base year shall be the "alternative
23 base year," which means the last four completed calendar quarters
24 immediately preceding the period of disability; and except that if the
25 individual also does not have sufficient qualifying weeks or wages in
26 the last four completed calendar quarters immediately preceding the
27 period of disability, "alternative base year" means the last three
28 completed calendar quarters immediately preceding the individual's
29 benefit year and, of the calendar quarter in which the period of
30 disability commences, the portion of the quarter which occurs before
31 the commencing of the period of disability. The division shall inform
32 the individual of the individual's options under this subsection. If
33 information regarding weeks and wages for the calendar quarter or
34 quarters immediately preceding the period of disability is not
35 available to the division from the regular quarterly reports of wage
36 information and the division is not able to obtain the information
37 using other means pursuant to State or federal law, the division may
38 base the determination of eligibility for benefits on the affidavit of
39 an individual with respect to weeks and wages for that calendar
40 quarter. The individual shall furnish payroll documentation, if
41 available, in support of the affidavit. A determination of benefits
42 based on an alternative base year shall be adjusted when the quarterly
43 report of wage information from the employer is received if that
44 information causes a change in the determination.

45 (cf: P.L.2020, c.17, s.4)

46

47 4. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read
48 as follows:

1 5. Compensable disability.

2 (a) In the case of the disability of a covered individual, disability
3 shall be compensable subject to the limitations of P.L.1948, c.110
4 (C.43:21-25 et al.) if: the disability is the result of the covered
5 individual suffering an accident or sickness not arising out of and in
6 the course of the individual's employment or if so arising not
7 compensable under the workers' compensation law, R.S.34:15-1 et
8 seq., including if the disability is the result of the donation of any
9 organ or bone marrow by the covered individual, and the disability
10 results in the individual's total inability to perform the duties of
11 employment, except that an individual who is otherwise eligible for
12 benefits but only able to return to work on a reduced basis while
13 recovering from the disability may receive benefits pursuant to the
14 provisions of subsection (b) of section 16 of P.L.1948, c.110
15 (C.43:21-40).

16 (b) In the case of an individual taking family temporary disability
17 leave, the leave **【**, including leave to care for family members
18 suffering from accident or sickness,**】** shall be compensable subject to
19 the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

20 (c) During a state of emergency declared by the Governor, or
21 when indicated to be needed by the Commissioner of Health or other
22 public health authority, **【**“sickness”**】** family temporary disability
23 leave also includes leave taken for an illness caused by an epidemic
24 of a communicable disease, a known or suspected exposure to a
25 communicable disease, or efforts to prevent spread of a
26 communicable disease, which requires in-home care or treatment of
27 the **【**employee or**】** family member of the employee due to:

28 (1) the issuance by a healthcare provider or the commissioner or
29 other public health authority of a determination that the presence in
30 the community of the family member **【**or employee**】** may jeopardize
31 the health of others; and

32 (2) the recommendation, direction, or order of the provider or
33 authority that the **【**employee or**】** family member be isolated or
34 quarantined as a result of suspected exposure to a communicable
35 disease.

36 (d) During a state of emergency declared by the Governor, or
37 when indicated to be needed by the Commissioner of Health or other
38 public health authority, disability also includes illness caused by an
39 epidemic of a communicable disease, a known or suspected exposure
40 to a communicable disease, or efforts to prevent spread of a
41 communicable disease, which requires in-home care or treatment of
42 the employee due to:

43 (1) the issuance by a healthcare provider or the commissioner or
44 other public health authority of a determination that the presence in
45 the community of the employee may jeopardize the health of others;
46 and

1 (2) the recommendation, direction, or order of the provider or
2 authority that the employee be isolated or quarantined as a result of
3 suspected exposure to a communicable disease.

4 (cf: P.L.2020, c.17, s.5)

5
6 5. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to
7 read as follows:

8 14. a. With respect to any period of disability for an individual's
9 own disability commencing on or after January 1, 1953, disability
10 benefits, not in excess of an individual's maximum benefits, shall be
11 payable with respect to disability which commences while a person
12 is a covered individual under the Temporary Disability Benefits Law,
13 and shall be payable with respect to the eighth consecutive day of
14 such disability and each day thereafter that such period of disability
15 continues; and if benefits shall be payable for three consecutive
16 weeks with respect to any period of disability commencing on or after
17 January 1, 1968, then benefits shall also be payable with respect to
18 the first seven days thereof. With respect to any period of disability
19 for an individual's own disability commencing on or after the
20 effective date of P.L.2020, c.17 the disability benefits shall be
21 payable with respect to the first day of the disability, if the disability
22 **【is for a sickness】** is as described in subsection (d) of section 5 of
23 P.L.1948, c.110 (C.43:21-29), or is for leave as described in
24 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

25 b. With respect to any period of family temporary disability
26 leave commencing on or after July 1, 2009 and while an individual is
27 a covered individual, family temporary disability benefits, not in
28 excess of the individual's maximum benefits, shall be payable with
29 respect to the first day of leave taken after the first one-week period
30 following the commencement of the period of family temporary
31 disability leave and each subsequent day of leave during that period
32 of family temporary disability leave; and if benefits become payable
33 on any day after the first three weeks in which leave is taken, then
34 benefits shall also be payable with respect to any leave taken during
35 the first one-week period in which leave is taken. With respect to
36 any period of family temporary disability leave commencing on or
37 after July 1, 2019 and while an individual is a covered individual,
38 family temporary disability benefits, not in excess of the individual's
39 maximum benefits, shall be payable with respect to the first day of
40 leave taken upon the commencement of the period of family
41 temporary disability leave and each subsequent day of leave during
42 that period of family temporary disability leave. The maximum total
43 benefits payable to any eligible individual for any period of disability
44 of the individual commencing on or after January 1, 1968, shall be
45 either 26 times his weekly benefit amount or 1/3 of his total wages in
46 his base year, whichever is the lesser; provided that such maximum
47 amount shall be computed in the next lower multiple of \$1.00 if not
48 already a multiple thereof. The maximum total benefits payable to

1 any eligible individual for any period of family temporary disability
2 leave commencing on or after July 1, 2009 and before July 1, 2020,
3 shall be six times the individual's weekly benefit amount or 1/3 of his
4 total wages in his base year, whichever is the lesser; provided that
5 the maximum amount shall be computed in the next lower multiple
6 of \$1.00, if not already a multiple thereof. The maximum total
7 benefits payable to any eligible individual for any period of family
8 temporary disability leave commencing on or after July 1, 2020, shall
9 be twelve times the individual's weekly benefit amount; provided that
10 the maximum amount shall be computed in the next lower multiple
11 of \$1.00, if not already a multiple thereof.

12 (cf: P.L.2020, c.17, s.6)

13

14 6. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
15 read as follows:

16 15. Limitation of benefits. Notwithstanding any other provision
17 of the "Temporary Disability Benefits Law," P.L.1948, c.110
18 (C.43:21-25 et al.), no benefits shall be payable under the State plan
19 to any individual:

20 (a) for the first seven consecutive days of each period of
21 disability; except that:

22 (1) if benefits shall be payable for three consecutive weeks with
23 respect to any period of disability, then benefits shall also be payable
24 with respect to the first seven days thereof;

25 (2) (Deleted by amendment, P.L.2019, c.37)

26 (3) in the case of an individual taking family temporary disability
27 leave, there shall be no waiting period;

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

32 (5) the seven-day waiting period shall not apply to benefits for a
33 period of disability if the disability is **【for a sickness】** as described
34 in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is
35 for leave as described in subsection (c) of section 5 of P.L.1948,
36 c.110 (C.43:21-29);

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

39 (2) for more than six weeks with respect to any one period of
40 family temporary disability leave commencing before July 1, 2020
41 and more than 12 weeks if the period of leave commences on or after
42 July 1, 2020, or for more than 42 days with respect to any one period
43 of family temporary disability leave commencing before July 1, 2020
44 and more than 56 days if the period of leave commences on or after
45 July 1, 2020, and is taken on an intermittent basis; and

46 (3) for more than six weeks of family temporary disability leave
47 during any 12-month period commencing before July 1, 2020 and
48 more than 12 weeks for any 12-month period commencing on or after

1 July 1, 2020, or for more than 42 days of family temporary disability
2 leave taken during any 12-month period commencing before July 1,
3 2020 and more than 56 days if the period of leave commences on or
4 after July 1, 2020, on an intermittent basis, including family
5 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while
6 unemployed;

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

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

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

26 (f) for any period of disability due to willfully and intentionally
27 self-inflicted injury, or to injury sustained in the perpetration by the
28 claimant of a crime of the first, second, third, or fourth degree, or for
29 any period during which a covered individual would be disqualified
30 for unemployment compensation benefits for gross misconduct under
31 subsection (b) of R.S.43:21-5;

32 (g) for any period during which the claimant performs any work
33 for remuneration or profit, except that, in a case of a claim for
34 benefits for a period of family temporary disability on or after July
35 1, 2020 in which the covered individual has more than one employer,
36 the individual shall have the option of claiming benefits for leave
37 taken from one employer, based on wages paid by that employer, on
38 the condition that the individual does not, during the period for which
39 the benefits are paid, increase the amount of employment time with
40 any one employer;

41 (h) in a weekly amount which together with any remuneration the
42 claimant continues to receive from the employer would exceed
43 regular weekly wages immediately prior to disability;

44 (i) for any period during which a covered individual would be
45 disqualified for unemployment compensation benefits under
46 subsection (d) of R.S.43:21-5, unless the disability commenced prior
47 to such disqualification;

1 (j) for any period during which the claimant receives any paid
2 sick leave, vacation time or other leave at full pay from the employer
3 of the individual;
4 and there shall be no other cause of disqualification or ineligibility to
5 receive disability benefits hereunder except as may be specifically
6 provided in P.L.1948, c.110 (C.43:21-25 et al.).
7 (cf: P.L.2019, c.464, s.2)

8
9 7. This act shall take effect immediately and shall be retroactive
10 to March 25, 2020.

11
12
13 STATEMENT

14
15 This bill expands the "Family Leave Act" ("FLA") to include leave
16 from employment so that an employee may provide care to a family
17 member made necessary by an epidemic of a communicable disease,
18 a known or suspected exposure to a communicable disease, or efforts
19 to prevent spread of a communicable disease. The amendments to
20 the FLA will allow employees forced to care for family members
21 during the COVID-19 outbreak to take up to 12 weeks of family leave
22 in a 24-month period without losing their jobs. In addition, the bill
23 makes technical corrections to provisions of the "Temporary
24 Disability Benefits Law" that were amended by P.L.2020, c.17. The
25 amendment to P.L.2020, c.17 made in section 4 of the bill will take
26 effect retroactively on the date of enactment of P.L.2020, c.17.