

P.L. 2020, CHAPTER 17, *approved March 25, 2020*

Senate, No. 2304

1 **AN ACT** concerning family leave and disability benefits and
2 amending various parts of the statutory law.

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.2018, c.10 (C.34:11D-3) is amended to read
8 as follows:

9 3. a. An employer shall permit an employee to use the earned
10 sick leave accrued pursuant to this act for any of the following:

11 (1) time needed for diagnosis, care, or treatment of, or recovery
12 from, an employee's mental or physical illness, injury or other
13 adverse health condition, or for preventive medical care for the
14 employee;

15 (2) time needed for the employee to aid or care for a family
16 member of the employee during diagnosis, care, or treatment of, or
17 recovery from, the family member's mental or physical illness,
18 injury or other adverse health condition, or during preventive
19 medical care for the family member;

20 (3) absence necessary due to circumstances resulting from the
21 employee, or a family member of the employee, being a victim of
22 domestic or sexual violence, if the leave is to allow the employee to
23 obtain for the employee or the family member: medical attention
24 needed to recover from physical or psychological injury or
25 disability caused by domestic or sexual violence; services from a
26 designated domestic violence agency or other victim services
27 organization; psychological or other counseling; relocation; or legal
28 services, including obtaining a restraining order or preparing for, or
29 participating in, any civil or criminal legal proceeding related to the
30 domestic or sexual violence;

31 (4) time during which the employee is not able to work because
32 of:

33 (a) a closure of the employee's workplace, or the school or place
34 of care of a child of the employee by order of a public official or
35 because of a state of emergency declared by the Governor, due to an
36 epidemic or other public health emergency **[, or because of]**;

37 (b) the declaration of a state of emergency by the Governor, or
38 the issuance by a health care provider or the Commissioner of
39 Health or other public health authority of a determination that the
40 presence in the community of the employee, or a member of the
41 employee's family in need of care by the employee, would
42 jeopardize the health of others; **[or]**

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) during a state of emergency declared by the Governor, or
2 upon the recommendation, direction, or order of a healthcare
3 provider or the Commissioner of Health or other authorized public
4 official, the employee undergoes isolation or quarantine, or cares
5 for a family member in quarantine, as a result of suspected exposure
6 to a communicable disease and a finding by the provider or
7 authority that the presence in the community of the employee or
8 family member would jeopardize the health of others; or

9 (5) time needed by the employee in connection with a child of
10 the employee to attend a school-related conference, meeting,
11 function or other event requested or required by a school
12 administrator, teacher, or other professional staff member
13 responsible for the child's education, or to attend a meeting
14 regarding care provided to the child in connection with the child's
15 health conditions or disability.

16 b. If an employee's need to use earned sick leave is foreseeable,
17 an employer may require advance notice, not to exceed seven
18 calendar days prior to the date the leave is to begin, of the intention
19 to use the leave and its expected duration, and shall make a
20 reasonable effort to schedule the use of earned sick leave in a
21 manner that does not unduly disrupt the operations of the employer.
22 If the reason for the leave is not foreseeable, an employer may
23 require an employee to give notice of the intention as soon as
24 practicable, if the employer has notified the employee of this
25 requirement. Employers may prohibit employees from using
26 foreseeable earned sick leave on certain dates, and require
27 reasonable documentation if sick leave that is not foreseeable is
28 used during those dates. For earned sick leave of three or more
29 consecutive days, an employer may require reasonable
30 documentation that the leave is being taken for the purpose
31 permitted under subsection a. of this section. If the leave is
32 permitted under paragraph (1) or (2) of subsection a. of this section,
33 documentation signed by a health care professional who is treating
34 the employee or the family member of the employee indicating the
35 need for the leave and, if possible, number of days of leave, shall be
36 considered reasonable documentation. If the leave is permitted
37 under paragraph (3) of subsection a. of this section because of
38 domestic or sexual violence, any of the following shall be
39 considered reasonable documentation of the domestic or sexual
40 violence: medical documentation; a law enforcement agency record
41 or report; a court order; documentation that the perpetrator of the
42 domestic or sexual violence has been convicted of a domestic or
43 sexual violence offense; certification from a certified Domestic
44 Violence Specialist or a representative of a designated domestic
45 violence agency or other victim services organization; or other
46 documentation or certification provided by a social worker,
47 counselor, member of the clergy, shelter worker, health care
48 professional, attorney, or other professional who has assisted the

1 employee or family member in dealing with the domestic or sexual
2 violence. If the leave is permitted under paragraph (4) of
3 subsection a. of this section, a copy of the order of the public
4 official or the determination by the health authority shall be
5 considered reasonable documentation.

6 c. Nothing in this act shall be deemed to require an employer to
7 provide earned sick leave for an employee's leave for purposes
8 other than those identified in this section, or prohibit the employer
9 from taking disciplinary action against an employee who uses
10 earned sick leave for purposes other than those identified in this
11 section. An employer may provide an offer to an employee for a
12 payment of unused earned sick leave in the final month of the
13 employer's benefit year. The employee shall choose, no later than
14 10 calendar days from the date of the employer's offer, whether to
15 accept a payment or decline a payment. If the employee agrees to
16 receive a payment, the employee shall choose a payment for the full
17 amount of unused earned sick leave or for 50 percent of the amount
18 of unused earned sick leave. The payment amount shall be based on
19 the same rate of pay that the employee earns at the time of the
20 payment. If the employee declines a payment for unused earned
21 sick leave, or agrees to a payment for 50 percent of the amount of
22 unused sick leave, the employee shall be entitled to carry forward
23 any unused or unpaid earned sick leave to the proceeding benefit
24 year as provided pursuant to subsection a. of section 2 of this act. If
25 the employee agrees to a payment for the full amount of unused
26 earned sick leave, the employee shall not be entitled to carry
27 forward any earned sick leave to the proceeding benefit year
28 pursuant to subsection a. of section 2 of this act.

29 d. If an employer foregoes the accrual process for earned sick
30 leave hours pursuant to subsection a. of section 2 of this act and
31 provides an employee with the full complement of earned sick leave
32 for a benefit year on the first day of each benefit year, then the
33 employer shall either provide to the employee a payment for the full
34 amount of unused earned sick leave in the final month of the
35 employer's benefit year or carry forward any unused sick leave to
36 the next benefit year. The employer may pay the employee the full
37 amount of unused earned sick leave in the final month of a benefit
38 year pursuant to this subsection only if the employer forgoes, with
39 respect to that employee, the accrual process for earned sick leave
40 during the next benefit year. Unless an employer policy or
41 collective bargaining agreement provides for the payment of
42 accrued earned sick leave upon termination, resignation, retirement
43 or other separation from employment, an employee shall not be
44 entitled under this section to payment of unused earned sick leave
45 upon the separation from employment.

46 e. Any information an employer possesses regarding the health
47 of an employee or any family member of the employee or domestic
48 or sexual violence affecting an employee or employee's family

1 member shall be treated as confidential and not disclosed except to
2 the affected employee or with the written permission of the affected
3 employee.

4 (cf: P.L.2018, c.10, s.3)

5

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

8 3. As used in this act:

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

13 b. "Director" means the Director of the Division on Civil
14 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
20 over the employee's employment opportunities or terms and
21 conditions of 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
26 maximum of 90 calendar days, during which a person is laid off or
27 furloughed by an employer due to that employer curtailing
28 operations because of a state of emergency declared after October
29 22, 2012, shall be regarded as time in which the person is employed
30 for the purpose of determining eligibility for leave time under this
31 act. In making the determination, the base hours per week during
32 the layoff or furlough shall be deemed to be the same as the average
33 number of hours worked per week during the rest of the 12-month
34 period.

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

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

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

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

46 (4) With respect to any period of time on or after June 30, 2019,
47 employs 30 or more employees for each working day during each of

1 20 or more calendar workweeks in the then current or immediately
2 preceding calendar year.

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

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

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

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

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

21 (2) the placement of a child into foster care with the employee
22 or in connection with adoption of such child by the employee; or

23 (3) the serious health condition of a family member of the
24 employee.

25 j. "Family member" means a child, parent, parent-in-law,
26 sibling, grandparent, grandchild, spouse, domestic partner, or one
27 partner in a civil union couple, or any other individual related by
28 blood to the employee, and any other individual that the employee
29 shows to have a close association with the employee which is the
30 equivalent of a family relationship.

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

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

37 (1) inpatient care in a hospital, hospice, or residential medical
38 care facility; or

39 (2) continuing medical treatment or continuing supervision by a
40 health care provider.

41 During a state of emergency declared by the Governor, or when
42 indicated to be needed by the Commissioner of Health or other
43 public health authority, "serious health condition" shall also include
44 an illness caused by an epidemic of a communicable disease, a
45 known or suspected exposure to a communicable disease, or efforts
46 to prevent spread of a communicable disease, which requires in-
47 home care or treatment of a family member of the employee due to:

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

5 (2) the recommendation, direction, or order of the provider or
6 authority that the family member be isolated or quarantined because
7 of suspected exposure to the communicable disease.

8 m. "State of emergency" means a natural or man-made disaster
9 or emergency for which a state of emergency has been declared by
10 the President of the United States or the Governor, or for which a
11 state of emergency has been declared by a municipal emergency
12 management coordinator.

13 (cf: P.L.2019, c.37, s.1)

14
15 3. Section 4 of P.L.1989, c.261 (C.34:11B-4) is amended to
16 read as follows:

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

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

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

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

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

40 e. An employer may require that any period of family leave be
41 supported by certification issued by a duly licensed health care
42 provider or any other health care provider determined by the
43 director to be capable of providing adequate certification.

44 (1) Where the certification is for the serious health condition of
45 a family member of the employee, the certification shall be
46 sufficient if it states: (a) the date on which the serious health
47 condition commenced; (b) the probable duration of the condition;

1 and (c) the medical facts within the provider's knowledge regarding
2 the condition;

3 (2) Where the certification is for the birth or placement of the
4 child, the certification need only state the date of birth or date of
5 placement, whichever is appropriate.

6 In any case in which the employer has reason to doubt the
7 validity of the certification provided pursuant to paragraph (1) of
8 this subsection, the employer may require, at its own expense, that
9 an employee obtain an opinion regarding the serious health
10 condition from a second health care provider designated or
11 approved, but not employed on a regular basis, by the employer. If
12 the second opinion differs from the certification provided pursuant
13 to paragraph (1) of this subsection, the employer may require, at its
14 own expense, that the employee obtain the opinion of a third health
15 care provider designated or approved jointly by the employer and
16 the employee concerning the serious health condition. The opinion
17 of the third health care provider shall be considered to be final and
18 shall be binding on the employer and the employee.

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

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

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

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

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

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

39 The provisions of this subsection shall not apply when the family
40 leave is due to a health care provider, the Commissioner of Health
41 or other authorized public official having ordered, directed, or
42 recommended that a family member of the employee in need of care
43 by the employee be isolated or quarantined, or is due to a place of
44 care of a member of the employee's family being closed because of
45 a state of emergency declared by the Governor or order of the
46 Commissioner of Health or other authorized public official, during
47 an epidemic of a communicable disease, or a known or suspected
48 exposure to a communicable disease.

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

5 (cf: P.L.2019, c.37, s.2)

6
7 4. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to
8 read as follows:

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

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

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

43 (2) Any governmental entity or instrumentality which is an
44 employer under R.S.43:21-19(h)(5) may, with respect to the
45 provision of benefits during an employee's own disability pursuant
46 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
47 employer" under this subsection beginning with the date on which
48 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of

1 any year thereafter by filing written notice of such election with the
2 division within at least 30 days of the effective date. Such election
3 shall remain in effect for at least two full calendar years and may be
4 terminated as of January 1 of any year thereafter by filing with the
5 division a written notice of termination at least 30 days prior to the
6 termination date.

7 (b) (1) "Covered individual" means, with respect to whether an
8 individual is eligible for benefits during an individual's own
9 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
10 person who is in employment, as defined in the "unemployment
11 compensation law" (R.S.43:21-1 et seq.), for which the individual is
12 entitled to remuneration from a covered employer, or who has been
13 out of such employment for less than two weeks, except that a
14 "covered individual" who is employed by the State of New Jersey,
15 including Rutgers, The State University or the New Jersey Institute
16 of Technology, or by any governmental entity or instrumentality
17 which elects to become a "covered employer" pursuant to P.L.1948.
18 c.110 (C.43:21-25 et al.) prior to July 1, 2019 shall not be eligible
19 to receive any benefits under the "Temporary Disability Benefits
20 Law" until such individual has exhausted all sick leave accumulated
21 as an employee in the classified service of the State or accumulated
22 under terms and conditions similar to classified employees or
23 accumulated under the terms and conditions pursuant to the laws of
24 this State or as the result of a negotiated contract with any
25 governmental entity or instrumentality which elects to become a
26 "covered employer"; and, after June 30, 2019 may be required, prior
27 to receiving any benefits under the "Temporary Disability Benefits
28 Law," to use up to two weeks of sick leave accumulated as an
29 employee in the classified service of the State or accumulated under
30 terms and conditions similar to classified employees or accumulated
31 under the terms and conditions pursuant to the laws of this State or
32 as the result of a negotiated contract with any governmental entity
33 or instrumentality which elects to become a "covered employer,"
34 except that the individual shall not be required to use the
35 individual's last week's worth of accumulated sick time before
36 receiving the benefits.

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

42 (2) "Covered individual" means, with respect to whether an
43 individual is eligible for benefits during the individual's period of
44 family temporary disability leave pursuant to P.L.1948, c.110
45 (C.43:21-25 et al.), any individual who is in employment, as
46 defined in the "unemployment compensation law" (R.S.43:21-1 et
47 seq.), for which the individual is entitled to remuneration from a

1 covered employer, or who has been out of that employment for less
2 than two weeks.

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

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

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

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

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

37 (4) "Base week" with respect to periods of disability
38 commencing on or after January 1, 2001, means any calendar week
39 of a covered individual's base year during which the covered
40 individual earned in employment from a covered employer
41 remuneration not less than an amount 20 times the minimum wage
42 in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on
43 October 1 of the calendar year preceding the calendar year in which
44 the benefit year commences, which amount shall be adjusted to the
45 next higher multiple of \$1.00 if not already a multiple thereof,
46 except that if in any calendar week an individual subject to this
47 paragraph is in employment with more than one employer, the
48 covered individual may in that calendar week establish a base week

1 with respect to each of the employers from whom the covered
2 individual earns remuneration equal to not less than the amount
3 defined in this paragraph during that week.

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

14 (j) (1) "Average weekly wage" means, with respect to the
15 payment of benefits commencing before the effective date of
16 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
17 a covered individual's total wages earned from the individual's most
18 recent covered employer during the base weeks in the eight calendar
19 weeks immediately preceding the calendar week in which a period
20 of disability commenced, by the number of such base weeks, and,
21 with respect to the payment of benefits commencing on or after the
22 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
23 derived by dividing a covered individual's total wages earned from
24 the individual's most recent covered employer during the base
25 weeks in the base year immediately preceding the calendar week in
26 which a period of disability commenced, or in which the individual
27 submits a claim for the benefits pursuant to subsection h. of section
28 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
29 (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the number of
30 base weeks.

31 (2) With respect to the payment of benefits commencing before
32 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
33 computation in paragraph (1) of this subsection (j) yields a result
34 which is less than the individual's average weekly earnings in
35 employment with all covered employers during the base weeks in
36 such eight calendar weeks, then the average weekly wage shall be
37 computed on the basis of earnings from all covered employers
38 during the base weeks in the eight calendar weeks immediately
39 preceding the week in which the period of disability commenced,
40 and, with respect to the payment of benefits commencing on or after
41 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
42 computation in paragraph (1) of this subsection (j) yields a result
43 which is less than the individual's average weekly earnings in
44 employment with all covered employers during the base weeks in
45 the base year, then the average weekly wage shall be computed on
46 the basis of earnings from all covered employers during the base
47 weeks in the base year immediately preceding the week in which
48 the period of disability commences, or in which the individual

1 submits a claim for the benefits pursuant to subsection h. of section
2 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
3 (a) of section 25 of P.L.1948, c.110 (C.43:21-49).

4 (3) For periods of disability commencing on or after July 1,
5 2009 and before the effective date of P.L.2019, c.37 (C.43:21-45.2
6 et al.), if the computations in paragraphs (1) and (2) of this
7 subsection (j) both yield a result which is less than the individual's
8 average weekly earnings in employment with all covered employers
9 during the base weeks in the 26 calendar weeks immediately
10 preceding the week in which the period of disability commenced,
11 then the average weekly wage shall, upon a written request to the
12 department by the individual on a form provided by the department,
13 be computed by the department on the basis of earnings from all
14 covered employers of the individual during the base weeks in those
15 26 calendar weeks, and, in the case of a claim for benefits from a
16 private plan, that computation of the average weekly wage shall be
17 provided by the department to the individual and the individual's
18 employer.

19 When determining the "average weekly wage" with respect to a
20 period of family temporary disability leave for an individual who
21 has a period of family temporary disability immediately after the
22 individual has a period of disability for the individual's own
23 disability, the period of disability is deemed to have commenced at
24 the beginning of the period of disability for the individual's own
25 disability, not the period of family temporary disability.

26 (k) "Child" means a biological, adopted, or foster child,
27 stepchild or legal ward of a covered individual, child of a domestic
28 partner of the covered individual, or child of a civil union partner of
29 the covered individual, including a child who becomes the child of
30 a parent pursuant to a valid written agreement between the parent
31 and a gestational carrier.

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

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

36 (n) "Family member" means a sibling, grandparent, grandchild,
37 child, spouse, domestic partner, civil union partner, parent-in-law,
38 or parent of a covered individual, or any other individual related by
39 blood to the employee, and any other individual that the employee
40 shows to have a close association with the employee which is the
41 equivalent of a family relationship.

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

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

1 (2) be with a child during the first 12 months after the child's
2 birth, if the individual, or the domestic partner or civil union partner
3 of the individual, is a biological parent of the child, or is a parent of
4 the child pursuant to a valid gestational carrier agreement, or the
5 first 12 months after the placement of the child for adoption or as a
6 foster child with the individual; or

7 (3) engage in activities for which unpaid leave may be taken
8 pursuant to section 3 of the "New Jersey Security and Financial
9 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the
10 individual's own behalf, if the individual is a victim of an incident
11 of domestic violence, a sexually violent offense, or to assist a
12 family member of the individual who has been a victim of an
13 incident of domestic violence, or a sexually violent offense,
14 provided that any time taken by an individual who has been a victim
15 of an incident of domestic violence, or a sexually violent offense for
16 which the individual receives benefits for a disability caused by the
17 violence or offense shall be regarded as a period of disability of the
18 individual and not as a period of family temporary disability leave.

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

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

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

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

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

1 (1) the issuance by a healthcare provider or the commissioner or
2 other public health authority of a determination that the presence in
3 the community of the employee or family member may jeopardize
4 the health of others; and

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

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

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

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

1 if that information causes a change in the determination.

2 (cf: P.L.2019, c.37, s.8)

3

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

6 5. Compensable disability.

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

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

25 (c) During a state of emergency declared by the Governor, or
26 when indicated to be needed by the Commissioner of Health or
27 other public health authority, "sickness" also includes an illness
28 caused by an epidemic of a communicable disease, a known or
29 suspected exposure to a communicable disease, or efforts to prevent
30 spread of a communicable disease, which requires in-home care or
31 treatment of the employee or family member of the employee due
32 to:

33 (1) the issuance by a healthcare provider or the commissioner or
34 other public health authority of a determination that the presence in
35 the community of the family member or employee may jeopardize
36 the health of others; and

37 (2) the recommendation, direction, or order of the provider or
38 authority that the employee or family member be isolated or
39 quarantined as a result of suspected exposure to a communicable
40 disease.

41 (cf: P.L.2019, c.464, s.1)

42

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

45 14. a. With respect to any period of disability for an individual's
46 own disability commencing on or after January 1, 1953, disability
47 benefits, not in excess of an individual's maximum benefits, shall be
48 payable with respect to disability which commences while a person

1 is a covered individual under the Temporary Disability Benefits
2 Law, and shall be payable with respect to the eighth consecutive
3 day of such disability and each day thereafter that such period of
4 disability continues; and if benefits shall be payable for three
5 consecutive weeks with respect to any period of disability
6 commencing on or after January 1, 1968, then benefits shall also be
7 payable with respect to the first seven days thereof. With respect to
8 any period of disability for an individual's own disability
9 commencing on or after the effective date of P.L. , c. (pending
10 before the Legislature as this bill) the disability benefits shall be
11 payable with respect to the first day of the disability, if the
12 disability is for a sickness as described in subsection (c) of section 5
13 of P.L.1948, c.110 (C.43:21-29).

14 b. With respect to any period of family temporary disability
15 leave commencing on or after July 1, 2009 and while an individual
16 is a covered individual, family temporary disability benefits, not in
17 excess of the individual's maximum benefits, shall be payable with
18 respect to the first day of leave taken after the first one-week period
19 following the commencement of the period of family temporary
20 disability leave and each subsequent day of leave during that period
21 of family temporary disability leave; and if benefits become payable
22 on any day after the first three weeks in which leave is taken, then
23 benefits shall also be payable with respect to any leave taken during
24 the first one-week period in which leave is taken. With respect to
25 any period of family temporary disability leave commencing on or
26 after July 1, 2019 and while an individual is a covered individual,
27 family temporary disability benefits, not in excess of the
28 individual's maximum benefits, shall be payable with respect to the
29 first day of leave taken upon the commencement of the period of
30 family temporary disability leave and each subsequent day of leave
31 during that period of family temporary disability leave. The
32 maximum total benefits payable to any eligible individual for any
33 period of disability of the individual commencing on or after
34 January 1, 1968, shall be either 26 times his weekly benefit amount
35 or 1/3 of his total wages in his base year, whichever is the lesser;
36 provided that such maximum amount shall be computed in the next
37 lower multiple of \$1.00 if not already a multiple thereof. The
38 maximum total benefits payable to any eligible individual for any
39 period of family temporary disability leave commencing on or after
40 July 1, 2009 and before July 1, 2020, shall be six times the
41 individual's weekly benefit amount or 1/3 of his total wages in his
42 base year, whichever is the lesser; provided that the maximum
43 amount shall be computed in the next lower multiple of \$1.00, if not
44 already a multiple thereof. The maximum total benefits payable to
45 any eligible individual for any period of family temporary disability
46 leave commencing on or after July 1, 2020, shall be twelve times
47 the individual's weekly benefit amount; provided that the maximum

1 amount shall be computed in the next lower multiple of \$1.00, if not
2 already a multiple thereof.

3 (cf: P.L.2019, c.37, s.11)

4

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

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

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

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

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

17 (3) in the case of an individual taking family temporary
18 disability leave, there shall be no waiting period; **[and]**

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

23 (5) the seven-day waiting period shall not apply to benefits for a
24 period of disability if the disability is for a sickness as described in
25 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29);

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

28 (2) for more than six weeks with respect to any one period of
29 family temporary disability leave commencing before July 1, 2020
30 and more than 12 weeks if the period of leave commences on or
31 after July 1, 2020, or for more than 42 days with respect to any one
32 period of family temporary disability leave commencing before July
33 1, 2020 and more than 56 days if the period of leave commences on
34 or after July 1, 2020, and is taken on an intermittent basis; and

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

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

46 (d) for any period of disability of a claimant during which the
47 claimant is not under the care of a legally licensed physician,
48 dentist, optometrist, podiatrist, practicing psychologist, advanced

1 practice nurse, certified nurse midwife, or chiropractor, who, when
2 requested by the division, shall certify within the scope of the
3 practitioner's practice, the disability of the claimant, the probable
4 duration thereof, and, where applicable, the medical facts within the
5 practitioner's knowledge or for any period of family temporary
6 disability leave for a serious health condition of a family member of
7 the claimant, during which the family member is not receiving
8 inpatient care in a hospital, hospice, or residential medical care
9 facility or is not subject to continuing medical treatment or
10 continuing supervision by a health care provider, who, when
11 requested by the division, shall certify within the scope of the
12 provider's practice, the serious health condition of the family
13 member, the probable duration thereof, and, where applicable, the
14 medical facts within the provider's knowledge;

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

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

22 (g) for any period during which the claimant performs any work
23 for remuneration or profit, except that, in a case of a claim for
24 benefits for a period of family temporary disability on or after July
25 1, 2020 in which the covered individual has more than one
26 employer, the individual shall have the option of claiming benefits
27 for leave taken from one employer, based on wages paid by that
28 employer, on the condition that the individual does not, during the
29 period for which the benefits are paid, increase the amount of
30 employment time with any one employer;

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

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

38 (j) for any period during which the claimant receives any paid
39 sick leave, vacation time or other leave at full pay from the
40 employer of the individual;

41 and there shall be no other cause of disqualification or ineligibility
42 to receive disability benefits hereunder except as may be
43 specifically provided in P.L.1948, c.110 (C.43:21-25 et al.).

44 (cf: P.L.2019, c.464, s.2)

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46 8. This act shall take effect immediately.

STATEMENT

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This bill is designed to assure that workers impacted by epidemics of communicable diseases have access to leave needed to care for themselves or for effected members of their families.

The bill expands the scope of the State’s temporary disability insurance (TDI) law, P.L.1948, c.110 (C.43:21-25 et al), so that workers may obtain TDI or family leave insurance (FLI) benefits by expanding that law’s definition of a “serious health condition” for which a worker may obtain the benefits, either for the worker’s own condition in the case of TDI benefits, or for the condition of a family member of the worker cared for by the worker in the case of FLI benefits. The bill states that during a state of emergency declared by the Governor, or, as found to be needed by the Commissioner of Health or other public health authority, a “serious health condition” includes an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which:

1. in the case of FLI benefits, prompts the issuance by a public health authority of a determination that the presence in the community of the worker’s family member in need of care by the worker, would jeopardize the health of others; or
2. in the case of FLI or TDI benefits, results in the recommendation of a healthcare provider or public health authority that a worker, or a family member of the worker in need of care by the worker, voluntarily undergo self-isolation or self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that worker or family member would jeopardize the health of others.

The bill also eliminates the current one-week waiting period for disability benefits in the indicated epidemic-related cases.

The bill modifies the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) so that the rights to reinstatement to employment provided to workers by that act are applied to the epidemic-related cases indicated in the bill, and modifies P.L.2018, c.10 (C.34:11D-1) so that the earned sick leave provided by that law is provided in all of the epidemic-related cases indicated in the bill.



Concerns family leave and disability benefits during epidemic-related emergencies.