

SENATE, No. 3914

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator BRIAN P. STACK

District 33 (Hudson)

SYNOPSIS

Permits United States Postal Service to participate in State TDI program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT permitting United States Postal Service employees to
2 participate in the State TDI program, and amending and
3 supplementing P.L.1948, c.110.

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

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

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

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

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

44 (2) Any governmental entity or instrumentality which is an
45 employer under R.S.43:21-19(h)(5) may, with respect to the
46 provision of benefits during an employee's own disability pursuant

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

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

40 "Covered individual" includes an employee of the United States
41 Postal Service who elects to participate in the State plan of
42 disability pursuant to the provisions of section 2 of P.L. _____,
43 c. (C. _____) (pending before the Legislature as this bill) to be
44 eligible for benefits during the individual's own disability pursuant
45 to P.L.1948, c.110 (C.43:21-25 et al.).

46 "Covered individual" shall not mean, with respect to whether an
47 individual is eligible for benefits during an individual's own
48 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any

1 member of the Division of State Police in the Department of Law
2 and Public Safety

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

11 (c) "Division" or "commission" means the Division of
12 Unemployment and Temporary Disability Insurance of the
13 Department of Labor and Workforce Development, and any
14 transaction or exercise of authority by the director of the division
15 shall be deemed to be performed by the division.

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

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

20 (1) "Disability" shall, in the event of a state of emergency
21 declared by the Governor, or when indicated to be needed by the
22 Commissioner of Health or other public health authority, also
23 include an illness caused by an epidemic of a communicable
24 disease, a known or suspected exposure to the communicable
25 disease, or efforts to prevent spread of the communicable disease,
26 which requires in-home care or treatment of the employee due to:

27 (i) the issuance by a healthcare provider or the commissioner or
28 other public health authority of a determination that the presence in
29 the community of the employee may jeopardize the health of others;
30 and

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

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

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

39 (1) The entire period of time during which the covered
40 individual is continuously and totally unable to perform the duties
41 of the covered individual's employment because of the covered
42 individual's own disability, except that two periods of disability due
43 to the same or related cause or condition and separated by a period
44 of not more than 14 days shall be considered as one continuous
45 period of disability; provided the individual has earned wages
46 during such 14-day period with the employer who was the
47 individual's last employer immediately preceding the first period of
48 disability; and

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

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

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

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

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

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

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

36 (j) (1) "Average weekly wage" means, with respect to the
37 payment of benefits commencing before the effective date of
38 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
39 a covered individual's total wages earned from the individual's most
40 recent covered employer during the base weeks in the eight calendar
41 weeks immediately preceding the calendar week in which a period
42 of disability commenced, by the number of such base weeks, and,
43 with respect to the payment of benefits commencing on or after the
44 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
45 derived by dividing a covered individual's total wages earned from
46 the individual's most recent covered employer during the base
47 weeks in the base year immediately preceding the calendar week in
48 which a period of disability commenced, 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), by the number of
4 base weeks.

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

26 (3) For periods of disability commencing on or after July 1,
27 2009 and before the effective date of P.L.2019, c.37 (C.43:21-45.2
28 et al.), if the computations in paragraphs (1) and (2) of this
29 subsection (j) both yield a result which is less than the individual's
30 average weekly earnings in employment with all covered employers
31 during the base weeks in the 26 calendar weeks immediately
32 preceding the week in which the period of disability commenced,
33 then the average weekly wage shall, upon a written request to the
34 department by the individual on a form provided by the department,
35 be computed by the department on the basis of earnings from all
36 covered employers of the individual during the base weeks in those
37 26 calendar weeks, and, in the case of a claim for benefits from a
38 private plan, that computation of the average weekly wage shall be
39 provided by the department to the individual and the individual's
40 employer.

41 When determining the "average weekly wage" with respect to a
42 period of family temporary disability leave for an individual who
43 has a period of family temporary disability immediately after the
44 individual has a period of disability for the individual's own
45 disability, the period of disability is deemed to have commenced at
46 the beginning of the period of disability for the individual's own
47 disability, not the period of family temporary disability.

1 (k) "Child" means a biological, adopted, or foster child,
2 stepchild or legal ward of a covered individual, child of a domestic
3 partner of the covered individual, or child of a civil union partner of
4 the covered individual, including a child who becomes the child of
5 a parent pursuant to a valid written agreement between the parent
6 and a gestational carrier.

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

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

11 (n) "Family member" means a sibling, grandparent, grandchild,
12 child, spouse, domestic partner, civil union partner, parent-in-law,
13 or parent of a covered individual, or any other individual related by
14 blood to the employee, and any other individual that the employee
15 shows to have a close association with the employee which is the
16 equivalent of a family relationship.

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

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

23 (2) be with a child during the first 12 months after the child's
24 birth, if the individual, or the domestic partner or civil union partner
25 of the individual, is a biological parent of the child, or is a parent of
26 the child pursuant to a valid gestational carrier agreement, or the
27 first 12 months after the placement of the child for adoption or as a
28 foster child with the individual;

29 (3) engage in activities for which unpaid leave may be taken
30 pursuant to section 3 of the "New Jersey Security and Financial
31 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the
32 individual's own behalf, if the individual is a victim of an incident
33 of domestic violence, a sexually violent offense, or to assist a
34 family member of the individual who has been a victim of an
35 incident of domestic violence, or a sexually violent offense,
36 provided that any time taken by an individual who has been a victim
37 of an incident of domestic violence, or a sexually violent offense for
38 which the individual receives benefits for a disability caused by the
39 violence or offense shall be regarded as a period of disability of the
40 individual and not as a period of family temporary disability leave;
41 or

42 (4) in the event of a state of emergency declared by the
43 Governor, or when indicated to be needed by the Commissioner of
44 Health or other public health authority, an epidemic of a
45 communicable disease, a known or suspected exposure to the
46 communicable disease, or efforts to prevent spread of the
47 communicable disease, provide in-home care or treatment of the
48 family member of the employee required due to:

1 (i) 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 family member may jeopardize the health of
4 others; and

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

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

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

16 (q) "Parent of a covered individual" means a biological parent,
17 foster parent, adoptive parent, or stepparent of the covered
18 individual or a person who was a legal guardian of the covered
19 individual when the covered individual was a child, or who became
20 the parent of the covered individual pursuant to a valid written
21 agreement between the parent and a gestational carrier.

22 (r) "Placement for adoption" means the time when a covered
23 individual adopts a child or becomes responsible for a child pending
24 adoption by the covered individual.

25 (s) "Serious health condition" means an illness, injury,
26 impairment or physical or mental condition which requires:
27 inpatient care in a hospital, hospice, or residential medical care
28 facility; or continuing medical treatment or continuing supervision
29 by a health care provider.

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

35 (u) "State of emergency" means a natural or man-made disaster
36 or emergency for which a state of emergency has been declared by
37 the President of the United States or the Governor, or for which a
38 state of emergency has been declared by a municipal emergency
39 management coordinator.

40 (v) "Base year" with respect to benefit years commencing on or
41 after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),
42 means the first four of the last five completed calendar quarters
43 immediately preceding the period of disability, except that, if the
44 individual does not have sufficient qualifying weeks or wages in the
45 individual's base year to qualify for benefits, the individual shall
46 have the option of designating that the individual's base year shall
47 be the "alternative base year," which means the last four completed
48 calendar quarters immediately preceding the period of disability;

1 and except that if the individual also does not have sufficient
2 qualifying weeks or wages in the last four completed calendar
3 quarters immediately preceding the period of disability, "alternative
4 base year" means the last three completed calendar quarters
5 immediately preceding the individual's benefit year and, of the
6 calendar quarter in which the period of disability commences, the
7 portion of the quarter which occurs before the commencing of the
8 period of disability. The division shall inform the individual of the
9 individual's options under this subsection. If information regarding
10 weeks and wages for the calendar quarter or quarters immediately
11 preceding the period of disability is not available to the division
12 from the regular quarterly reports of wage information and the
13 division is not able to obtain the information using other means
14 pursuant to State or federal law, the division may base the
15 determination of eligibility for benefits on the affidavit of an
16 individual with respect to weeks and wages for that calendar
17 quarter. The individual shall furnish payroll documentation, if
18 available, in support of the affidavit. A determination of benefits
19 based on an alternative base year shall be adjusted when the
20 quarterly report of wage information from the employer is received
21 if that information causes a change in the determination.

22 (cf: P.L. 2020, c.23, s.3)

23
24 2. (New section) An employee of the United States Postal
25 Service employed in New Jersey may, at any time after the 90th day
26 following the effective date of P.L. , c. (C.) (pending
27 before the Legislature as this bill), elect to participate in the State
28 plan to be eligible for benefits for the employee's disability. The
29 eligibility requirements for, and the amount and duration of, the
30 benefits shall be the same as for the State plan. The employee shall
31 make contributions to the State disability benefits fund equal to 190
32 percent of the amount of the worker contribution to the State
33 disability benefits fund required of workers under the State plan.
34 All procedures of P.L.1948, c.110 (C.43:21-25 et al) regarding
35 applying for and receiving disability benefits for the employee's
36 disability shall apply. An employee who elects to discontinue
37 participation in the State plan may not resume participation in the
38 State plan during the full calendar year following the employee's
39 election to discontinue participation.

40
41 3. This act shall take effect immediately.

42 43 44 STATEMENT

45
46 This bill permits employees of the United States Postal Service
47 (USPS) employed in New Jersey to participate in the State
48 temporary disability insurance (TDI) plan, and thus be eligible for

1 benefits for their own disability from illness or injury occurring
2 outside of employment.

3 The employee would make contributions to the State TDI fund
4 equal to 190 percent of the amount of the worker contribution to the
5 State TDI fund required of other workers under the State TDI plan.
6 The added 90 percent reflects the amount that the employers of
7 other employees pay, but cannot be charged to the USPS as an
8 employer, because states are prohibited from taxing federal
9 agencies. If the bill was currently in effect, a USPS employee who
10 chose to participate in the State TDI plan would pay to the TDI fund
11 0.91% of the employee's wages.

12 The eligibility requirements for, and the amount and duration of,
13 the benefits shall be the same as for the State TDI plan. The
14 employee would be eligible for 26 weeks of disability benefits at a
15 rate of 85 per cent of the employee's average weekly wage up to a
16 maximum of \$903 per week.