

ASSEMBLY, No. 3451

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 1, 2024

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Co-Sponsored by:

Assemblywomen Hall and McCoy

SYNOPSIS

Revises law concerning family leave to extend protection by reducing, over time, employee threshold from 30 employees to five employees in definition of employer.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2024)

1 AN ACT concerning reinstatement of employees after taking family
2 leave and 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.1989, c.261 (C.34:11B-3) is amended to
8 read 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
15 Rights.

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

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

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

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

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

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

42 (3) With respect to the period of time from the 1,095th day
43 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)
44 through June 30, 2019, employs 50 or more employees for each

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 working day during each of 20 or more calendar workweeks in the
2 then current or immediately preceding calendar year; and

3 (4) With respect to any period of time **【on or after】** from June
4 30, 2019 until the effective date of P.L. , c. (pending before the
5 Legislature as this bill), employs 30 or more employees for each
6 working day during each of 20 or more calendar workweeks in the
7 then current or immediately preceding calendar year;

8 (5) With respect to any period of time after the effective date of
9 P.L. , c. (pending before the Legislature as this bill), employs
10 20 or more employees for each working day during each of 20 or
11 more calendar workweeks in the then current or immediately
12 preceding calendar year;

13 (6) With respect to any period of time after the 365th day
14 following the effective date of P.L. , c. (pending before the
15 Legislature as this bill), employs 10 or more employees for each
16 working day during each of 20 or more calendar workweeks in the
17 then current or immediately preceding calendar year; and

18 (7) With respect to any period of time after the 730th day after
19 the effective date of P.L. , c. (pending before the Legislature as
20 this bill), employs five or more employees for each working day
21 during each of 20 or more calendar workweeks in the then current
22 or immediately preceding calendar year.

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

25 g. "Employment benefits" means all benefits and policies
26 provided or made available to employees by an employer, and
27 includes group life insurance, health insurance, disability insurance,
28 sick leave, annual leave, pensions, or other similar benefits.

29 h. "Parent" means a person who is the biological parent,
30 adoptive parent, foster parent, resource family parent, step-parent,
31 parent-in-law or legal guardian, having a "parent-child relationship"
32 with a child as defined by law, or having sole or joint legal or
33 physical custody, care, guardianship, or visitation with a child, or
34 who became the parent of the child pursuant to a valid written
35 agreement between the parent and a gestational carrier.

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

38 (1) the birth of a child of the employee, including a child born
39 pursuant to a valid written agreement between the employee and a
40 gestational carrier;

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

43 (3) the serious health condition of a family member of the
44 employee; or

45 (4) in the event of a state of emergency declared by the
46 Governor, or when indicated to be needed by the Commissioner of
47 Health or other public health authority, an epidemic of a
48 communicable disease, a known or suspected exposure to the

1 communicable disease, or efforts to prevent spread of a
2 communicable disease, which:

3 (a) requires in-home care or treatment of a child due to the
4 closure of the school or place of care of the child of the employee,
5 by order of a public official due to the epidemic or other public
6 health emergency;

7 (b) prompts the issuance by a public health authority of a
8 determination, including by mandatory quarantine, requiring or
9 imposing responsive or prophylactic measures as a result of illness
10 caused by an epidemic of a communicable disease or known or
11 suspected exposure to the communicable disease because the
12 presence in the community of a family member in need of care by
13 the employee, would jeopardize the health of others; or

14 (c) results in the recommendation of a health care provider or
15 public health authority, that a family member in need of care by the
16 employee voluntarily undergo self-quarantine as a result of
17 suspected exposure to a communicable disease because the presence
18 in the community of that family member in need of care by the
19 employee, would jeopardize the health of others.

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

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

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

32 (1) inpatient care in a hospital, hospice, or residential medical
33 care facility; or

34 (2) continuing medical treatment or continuing supervision by a
35 health care provider.

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

41 n. "Health care provider" means a duly licensed health care
42 provider or other health care provider deemed appropriate by the
43 director.

44 (cf: P.L.2020, c.23, s.1)

45

46 2. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to
47 read as follows:

1 24. a. Any covered individual who took any temporary disability
2 benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.), or family
3 temporary disability leave benefits pursuant to P.L.2008, c.17
4 (C.43:21-39.1 et al.), shall, upon the expiration of the leave, be
5 entitled to be restored by the employer to the position held by the
6 employee when the leave commenced or to an equivalent position
7 of like seniority, status, employment benefits, pay, and other terms
8 and conditions of employment, except that nothing in this section or
9 any section of P.L.2008, c.17 (C.43:21-39.1 et al.) shall be
10 construed as increasing, reducing or otherwise modifying any
11 entitlement provided to a worker by the provisions of the "Family
12 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to be restored to
13 employment by the employer after a period of family temporary
14 disability leave. The employee shall retain all rights under any
15 applicable layoff and recall system, including a system under a
16 collective bargaining agreement, as if the employee had not taken
17 the leave.

18 b. An employer shall not discharge, harass, threaten, or
19 otherwise discriminate or retaliate against an employee with respect
20 to the compensation, terms, conditions, or privileges of employment
21 on the basis that the employee requested or took any temporary
22 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.),
23 or family temporary disability leave benefits pursuant to P.L.2008,
24 c.17 (C.43:21-39.1 et al.), including retaliation by refusing to
25 **【restore】** reinstate the employee to employment following a period
26 of leave**【**, except that, pursuant to section 2 of P.L.1948, c.110
27 (C.43:21-26), nothing in this section or any other section of
28 P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1
29 et al.) shall be construed as increasing, reducing or otherwise
30 modifying any entitlement provided to a worker by the provisions
31 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to
32 be restored to employment by the employer after a period of family
33 temporary disability leave**】**, if, and as, required by subsection a. of
34 this section.

35 **【b.】** c. Upon a violation of subsection a. or b. of this section,
36 an employee or former employee may, as an alternative to any
37 action that the employee is permitted to take for the violation
38 pursuant to the provisions of P.L.1948, c.110 (C.43:21-25 et al.),
39 P.L.2008, c.17 (C.43:21-39.1 et al.), or the "Family Leave Act,"
40 P.L.1989, c.261 (C.34:11B-1 et seq.), institute a civil action in the
41 Superior Court for relief【. All】 in which all remedies available in
42 common law tort actions shall be available to a prevailing plaintiff.
43 The court may also order any or all of the following relief:

44 (1) an assessment of a civil fine of not less than \$1,000 and not
45 more than \$2,000 for the first violation of any of the provisions of
46 this section and not more than \$5,000 for each subsequent violation;

47 (2) an injunction to restrain the continued violation of any of the
48 provisions of this section;

1 (3) reinstatement of the employee to the same position or to a
2 position equivalent to that which the employee held prior to
3 unlawful discharge or retaliatory action, or other failure to reinstate
4 the employee in violation of this section;

5 (4) reinstatement of full fringe benefits and seniority rights;

6 (5) compensation for any lost wages, benefits and other
7 remuneration; and

8 (6) payment of reasonable costs and attorney's fees.

9 d. An employee who is eligible for both earned sick leave
10 pursuant to P.L.2018, c.10 (C.34:11D-1 et seq.), and either
11 temporary disability benefits pursuant to P.L.1948, c.110 (C.43:21-
12 25 et al.), or family temporary disability leave benefits pursuant to
13 P.L.2008, c.17 (C.43:21-39.1 et al.) shall have the option of using
14 either the earned sick leave or whichever is applicable of temporary
15 disability benefits or family temporary disability leave benefits, and
16 may select the order in which the different kinds of leave are taken,
17 but shall not receive more than one kind of paid leave
18 simultaneously during any period of time.

19 (cf: P.L.2019, c.37, s.24)

20
21 3. This act shall take effect immediately.

22
23
24 STATEMENT

25
26 This bill extends to employees of employers with less than 30
27 employees the right to be reinstated to employment after taking paid
28 or unpaid family leave, thus ensuring that all workers who pay for
29 family temporary disability leave insurance (FLI) will be able to
30 able to return to work after taking FLI benefits. The extension is
31 phased in, with the threshold reduced to 20 employees upon the
32 effective date of the bill, 10 employees one year later, and the
33 threshold is reduced to five employees two years after the effective
34 date.

35 Once the phase-in is complete, the bill extends to employees of
36 employers with five or more employees, the provision under current
37 law that provides that a covered employee who takes FLI benefits to
38 care for a family member may not be retaliated against by their
39 employer refusing to reinstate them after the leave. Currently, an
40 employer who employs less than 30 workers, and is thus exempt
41 from the reinstatement requirements of the Family Leave Act
42 (FLA), is also exempt from the reinstatement requirements of that
43 provision. By reducing this exemption, the bill extends that
44 provision's reinstatement rights to recipients of FLI benefits even if
45 their employers have less than 30 employees, in the same way that
46 provision currently provides that reinstatement protection for
47 temporary disability insurance recipients no matter how few
48 employees the employer has.

1 Once fully phased in, the bill also amends the FLA to make
2 employers of five or more employees subject to that law's
3 requirement to reinstate leave takers, thereby extending that right of
4 reinstatement to employees of employers with five or more
5 employees, whether or not the employees receive FLI benefits.

6 The bill provides that an employee who is eligible for both
7 earned sick leave, and either temporary disability benefits or family
8 temporary disability leave benefits will have the option of using
9 either the earned sick leave or whichever is applicable of temporary
10 disability benefits or family temporary disability leave benefits, and
11 may select the order in which the different kinds of leave are taken,
12 but may not receive more than one kind of paid leave
13 simultaneously during any period of time.