

ASSEMBLY, No. 4118

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 7, 2018

Sponsored by:

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Senator M. TERESA RUIZ

District 29 (Essex)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Co-Sponsored by:

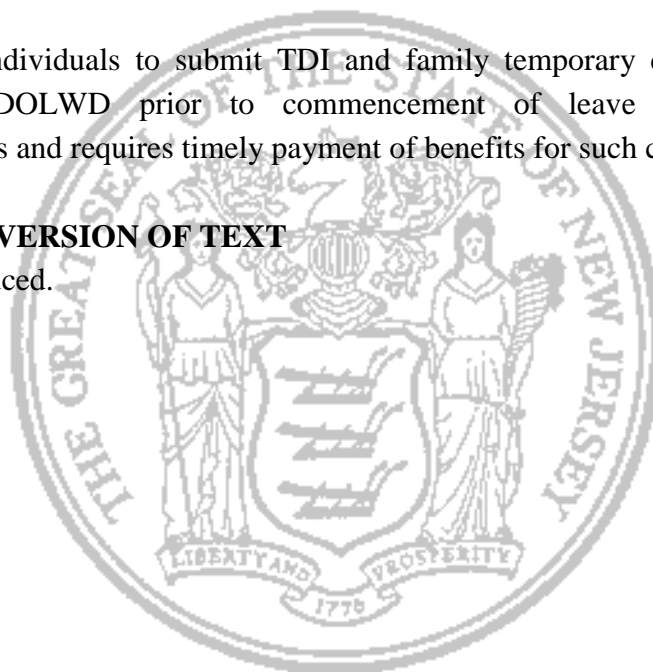
Assemblyman Mukherji, Assemblywoman Downey, Assemblyman Conaway, Senators Oroho and Singleton

SYNOPSIS

Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2018)

1 AN ACT concerning temporary disability and family temporary
2 disability leave, and amending P.L.1948, c.110 and P.L.2008,
3 c.17.

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 read
9 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

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

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

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

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

43 (c) "Division" or "commission" means the Division of
44 Unemployment and Temporary Disability Insurance of the
45 Department of Labor and Workforce Development, and any
46 transaction or exercise of authority by the director of the division
47 shall be deemed to be performed by the division.

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

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

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

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

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

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

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

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

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

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

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

43 (5) In the case of an individual who is laid off or furloughed by
44 an employer curtailing operations because of a state of emergency
45 declared after October 22, 2012, any week in which the individual
46 is separated from employment due to that layoff or furlough, up to a
47 maximum of 13 weeks, shall be regarded as a week which is a "base
48 week" for the purpose of determining whether the individual

1 becomes eligible for benefits pursuant to subsection (d) or (e) of
2 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
3 regarded as a base week when calculating the "average weekly
4 wage" pursuant to subsection (j) of this section.

5 (j) (1) "Average weekly wage" means the amount derived by
6 dividing a covered individual's total wages earned from the
7 individual's most recent covered employer during the base weeks in
8 the eight calendar weeks immediately preceding the calendar week
9 in which a period of disability commenced, or in which the
10 individual submits a claim for the benefits pursuant to subsection h.
11 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
12 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the
13 number of such base weeks.

14 (2) If the computation in paragraph (1) of this subsection (j)
15 yields a result which is less than the individual's average weekly
16 earnings in employment with all covered employers during the base
17 weeks in such eight calendar weeks, then the average weekly wage
18 shall be computed on the basis of earnings from all covered
19 employers during the base weeks in the eight calendar weeks
20 immediately preceding the week in which the period of disability
21 commenced, or in which the individual submits a claim for the
22 benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
23 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
24 P.L.1948, c.110 (C.43:21-49).

25 (3) For periods of disability commencing on or after July 1,
26 2009, if the computations in paragraphs (1) and (2) of this
27 subsection (j) both yield a result which is less than the individual's
28 average weekly earnings in employment with all covered employers
29 during the base weeks in the 26 calendar weeks immediately
30 preceding the week in which the period of disability commenced, or
31 in which the individual submits a claim for the benefits pursuant to
32 subsection h. of section 10 of P.L.2008, c.17 (C.43:21-39.1) or
33 paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110
34 (C.43:21-49), then the average weekly wage shall, upon a written
35 request to the department by the individual on a form provided by
36 the department, be computed by the department on the basis of
37 earnings from all covered employers of the individual during the
38 base weeks in those 26 calendar weeks, and, in the case of a claim
39 for benefits from a private plan, that computation of the average
40 weekly wage shall be provided by the department to the individual
41 and the individual's employer.

42 When determining the "average weekly wage" with respect to a
43 period of family temporary disability leave for an individual who
44 has a period of family temporary disability immediately after the
45 individual has a period of disability for the individual's own
46 disability, the period of disability is deemed to have commenced at
47 the beginning of the period of disability for the individual's own
48 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, who is less than 19 years of age or is 19
5 years of age or older but incapable of self-care because of mental or
6 physical impairment.

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 child, spouse, domestic partner,
12 civil union partner or parent of a covered individual.

13 (o) "Family temporary disability leave" means leave taken by a
14 covered individual from work with an employer to (1) participate in
15 the providing of care, as defined in the "Family Leave Act,"
16 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
17 pursuant to that act, for a family member of the individual made
18 necessary by a serious health condition of the family member; or (2)
19 be with a child during the first 12 months after the child's birth, if
20 the individual, or the domestic partner or civil union partner of the
21 individual, is a biological parent of the child, or the first 12 months
22 after the placement of the child for adoption with the individual.
23 "Family temporary disability leave" does not include any period of
24 time in which a covered individual is paid benefits pursuant to
25 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
26 to perform the duties of the individual's employment due to the
27 individual's own disability.

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

31 (q) "Parent of a covered individual" means a biological parent,
32 foster parent, adoptive parent, or stepparent of the covered
33 individual or a person who was a legal guardian of the covered
34 individual when the covered individual was a child.

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

38 (s) "Serious health condition" means an illness, injury,
39 impairment or physical or mental condition which requires:
40 inpatient care in a hospital, hospice, or residential medical care
41 facility; or continuing medical treatment or continuing supervision
42 by a health care provider.

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

48 (u) "State of emergency" means a natural or man-made disaster

1 or emergency for which a state of emergency has been declared by
2 the President of the United States or the Governor, or for which a
3 state of emergency has been declared by a municipal emergency
4 management coordinator.
5 (cf: P.L.2013, c.221, s.3)

6
7 2. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
8 read as follows:

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

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

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

47 d. An individual who is entitled to leave under the provisions
48 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or

1 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
2 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
3 family temporary disability leave pursuant to P.L.2008, c.17
4 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
5 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
6 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
7 U.S.C. s.2601 et seq.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et
8 al.) shall be construed to grant an employee any entitlement to be
9 restored by the employer to employment held by the employee prior
10 to taking family temporary disability leave or any right to take
11 action against an employer who refuses to restore the employee to
12 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
13 39.1 et al.) shall be construed to increase, reduce or otherwise
14 modify any entitlement of an employee to return to employment or
15 right of the employee to take action under the provisions of the
16 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
17 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
18 U.S.C. s.2601 et seq.). If an employee receives benefits for family
19 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
20 et al.) with respect to employment with an employer who is not an
21 employer as defined in the "Family Leave Act," P.L.1989, c.261
22 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
23 employee to employment after the period of family temporary
24 disability leave, that failure or refusal shall not be a wrongful
25 discharge in violation of a clear mandate of public policy, and the
26 employee shall not have a cause of action against that employer, in
27 tort, or for breach of an implied provision of the employment
28 agreement, or under common law, for that failure or refusal.

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

38 f. In the event of a period of family temporary disability leave
39 of any individual covered under the State plan, the employer shall,
40 not later than the ninth day of the period of family temporary
41 disability leave, or not later than the ninth day after the employee
42 notifies the employer of an anticipated period of family temporary
43 disability leave pursuant to subsection h. of this section, whichever
44 comes first, including any waiting period or time in which the
45 employer provides sick leave, vacation or other fully paid leave,
46 issue to the individual and to the division printed notices on
47 division forms containing the name, address and Social Security
48 number of the individual, such wage information as the division

1 may require to determine the individual's eligibility for benefits,
2 including any sick pay, vacation or other fully paid time off
3 provided by the employer during the period of family temporary
4 disability leave, and the name, address, and division identity
5 number of the employer. Not later than 30 days after the
6 commencement of the period of family temporary disability leave
7 for which the notice is furnished by the employer, the individual
8 shall furnish to the division a notice and claim for family temporary
9 disability leave benefits. Upon the submission of the notices by the
10 employer and the individual, and the commencement of the
11 compensable portion of the family temporary disability leave
12 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may
13 issue benefit payments. In the case of family temporary disability
14 leave taken to care for a family member with a serious health
15 condition, the benefits may be paid for periods not exceeding three
16 weeks pending the receipt of the certification required pursuant to
17 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2).
18 Failure to furnish notice and certification in the manner above
19 provided shall not invalidate or reduce any claim if it shall be
20 shown to the satisfaction of the division not to have been
21 reasonably possible to furnish the notice and certification and that
22 the notice and certification was furnished as soon as reasonably
23 possible.

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

37 h. With respect to any period of family temporary disability
38 leave commencing on or after January 1, 2018, if an individual
39 knows in advance when the period will commence, the individual
40 may notify the employer of the anticipated period of family
41 temporary disability leave and submit to the division a claim for
42 benefits for that period, which shall include a statement of when the
43 period will commence and any certification required pursuant to
44 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior
45 to, but not more than 60 days prior to, the date that the period will
46 commence. The division shall process that claim immediately and,
47 upon finding that the claim is valid, shall pay the benefit upon the
48 commencement of the period of family temporary disability leave

1 or after any applicable one week waiting period, except that if
2 division receives the claim less than 30 days before the
3 commencement of the period, the division shall make the payment
4 not more than 30 days after the receipt of the claim. The periods of
5 family temporary disability leave to which the provisions of this
6 subsection apply shall include, but not be limited to, any of the
7 following if the commencement date of the leave is known in
8 advance: periods of leave for care of a child of the individual after
9 adoption or childbirth; periods of leave for scheduled medical
10 procedures, treatments, or appointments for a family member of the
11 individual; and periods of leave for scheduled ongoing care of a
12 family member of the individual. If the individual did not establish
13 enough base weeks or have enough total earnings during the 52
14 weeks preceding the week the individual submits the claim, the
15 division shall notify the individual that the individual may file the
16 claim again upon or after the commencement of the period of
17 family temporary disability leave and the division shall then
18 reconsider the individual's eligibility for benefits based on the 52
19 weeks preceding the week in which the period of family temporary
20 disability leave commences.

21 (cf: P.L.2008, c.17, s.10)

22
23 3. Section 17 of P.L.1948, c.110 (C.43:21-41) is amended to
24 read as follows:

25 17. (a) (Deleted by amendment, P.L.1975, c.355.)

26 (b) (Deleted by amendment, P.L.2001, c.17).

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

28 (d) (1) (Deleted by amendment, P.L.2008, c.17).

29 (2) With respect to periods of disability commencing on or after
30 January 1, 2001, no individual shall be entitled to benefits under
31 this act unless the individual has, within the 52 calendar weeks
32 preceding the week in which the individual's period of disability
33 commenced, or within the 52 weeks preceding the week in which
34 the individual submits a claim for benefits pursuant to subsection h.
35 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
36 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49),
37 established at least 20 base weeks or earned not less than 1,000
38 times the minimum wage in effect pursuant to section 5 of
39 P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar year
40 preceding the calendar year in which the disability commences,
41 which amount shall be adjusted to the next higher multiple of
42 \$100.00, if not already a multiple thereof. If an individual who
43 submits a claim for benefits pursuant to subsection h. of section 10
44 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a)
45 of section 25 of P.L.1948, c.110 (C.43:21-49) did not establish
46 enough base weeks or have enough total earnings during the 52
47 weeks preceding the week the individual submits the claim, the
48 division shall notify the individual that the individual may file the

1 claim again upon or after the commencement of the period of
2 disability or family temporary disability leave and the division shall
3 then reconsider the individual's eligibility for benefits based on the
4 52 weeks preceding the week in which the period of disability or
5 family temporary disability leave commences.

6 (e) With respect to a period of family temporary disability leave
7 for an individual who has a period of family temporary disability
8 immediately after the individual has a period of disability for the
9 individual's own disability, the period of disability is deemed, for
10 the purposes of specifying the time of the 52-week period in which
11 base weeks or earnings are required to be established for benefit
12 eligibility pursuant to this subsection (e), to have commenced at the
13 beginning of the period of disability for the individual's own
14 disability, not the period of family temporary disability.
15 (cf: P.L.2008, c.17, s.7)

16
17 4. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to read
18 as follows:

19 25. (a) (1) Every employer shall post, in prominent locations,
20 notices to employees in the form provided by the division of
21 whether the employer is permitted or required to participate in a
22 temporary disability benefits program pursuant to the "Temporary
23 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and
24 whether the employer does or does not participate. For employers
25 who participate in a temporary disability benefits program, the
26 notice shall also describe the temporary disability benefits available
27 to the employees and prominently disclose that pregnancy is
28 regarded by law as a disability and that pregnant employees are
29 regarded as disabled and entitled to temporary disability benefits to
30 the same extent as other disabled employees. Upon the request of
31 an employer, the division shall, without charge, provide the
32 employer with a copy of each applicable notice, suitable for
33 reproduction by the employer. Each employer participating in the
34 State plan or a private plan shall give a printed copy of benefit
35 instructions to any disabled employee as soon as the employer
36 becomes aware of the disability.

37 (2) In addition, in the event of the disability of any individual
38 covered under the State plan, the employer shall, **[on]** not later than
39 the ninth day of disability, or not later than the ninth day after the
40 individual notifies the employer of an anticipated period of
41 disability pursuant to paragraph (3) of this section, whichever
42 comes first, issue to the individual and to the division printed
43 notices on division forms containing the name, address and Social
44 Security number of the individual, such wage information as the
45 division may require to determine the individual's eligibility for
46 benefits, and the name, address, and division identity number of the
47 employer. Not later than 30 days after the commencement of the
48 period of disability for which such notice is furnished, the

1 individual shall furnish to the division a notice and claim for
2 disability benefits under the State plan or for disability during
3 unemployment. Upon the submission of such notices by the
4 employer and the individual, and the commencement of the
5 compensable portion of the disability leave pursuant to the
6 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
7 et seq.), the division may issue benefit payments for periods not
8 exceeding three weeks pending the receipt of medical proof. When
9 requested by the division, such notice and proof shall include
10 certification of total disability by the attending physician, or a
11 record of hospital confinement. Failure to furnish notice and proof
12 within the time or in the manner above provided shall not invalidate
13 or reduce any claim if it shall be shown to the satisfaction of the
14 division not to have been reasonably possible to furnish such notice
15 and proof and that such notice and proof was furnished as soon as
16 reasonably possible.

17 (3) With respect to any period of disability commencing on or
18 after January 1, 2018, if an individual knows in advance when the
19 period will commence, the individual may notify the employer of
20 the anticipated period of disability and submit to the division a
21 claim for benefits for that period, which shall include a statement of
22 when the period will commence and any certification requested by
23 the division pursuant to this section, prior to, but not more than 60
24 days prior to, the date on which the period will commence. The
25 division shall process that claim immediately and, upon a finding
26 that the claim is valid, shall pay the benefit upon the
27 commencement of the period or after any applicable one week
28 waiting period, except that if the division receives the claim less
29 than 30 days before the commencement of the period, the division
30 shall make the payment not more than 30 days after the receipt of
31 the claim. The periods of disability leave to which the provisions of
32 this paragraph apply shall include, but not be limited to, any of the
33 following if the commencement date of the leave is known in
34 advance: disability related to pregnancy or childbirth; disability
35 related to scheduled medical procedures, treatments, or
36 appointments for the individual; and disability related to scheduled
37 ongoing care of the individual. If an individual did not establish
38 enough base weeks or have enough total earnings during the 52
39 weeks preceding the week the individual submits the claim for
40 benefits, the division shall notify the individual that the individual
41 may file the claim again upon or after the commencement of the
42 period of disability and the division shall then reconsider the
43 individual's eligibility for benefits based on the 52 weeks preceding
44 the week in which the period of disability commences.

45 (b) A person claiming benefits under the State plan or for
46 disability during unemployment shall, when requested by the
47 division, submit at intervals, but not more often than once a week,
48 to an examination by a legally licensed physician, dentist,

1 podiatrist, chiropractor, certified nurse midwife, advanced practice
2 nurse or public health nurse designated by the division. In all cases
3 of physical examination of a claimant, the examination shall be
4 made by a designee of the division, who shall be the same sex as the
5 claimant if so requested by the claimant. All such examinations by
6 physicians, dentists, podiatrists, chiropractors, certified nurse
7 midwives or nurses designated by the division shall be without cost
8 to the claimant and shall be held at a reasonable time and place.
9 Refusal to submit to such a requested examination shall disqualify
10 the claimant from all benefits for the period of disability in
11 question, except as to benefits already paid.

12 (c) All medical records of the division, except to the extent
13 necessary for the proper administration of this act, shall be
14 confidential and shall not be published or be open to public
15 inspection (other than to public employees in the performance of
16 their public duties) in any manner revealing the identity of the
17 claimant, or the nature or cause of disability nor admissible in
18 evidence in any action or special proceeding other than one arising
19 under this act.

20 (cf: P.L.2009, c.114, s.2)

21

22 5. This act shall take effect immediately, but its provisions
23 shall apply only to claims for benefits for periods of disability and
24 family temporary disability commencing on or after January 1,
25 2018.

26

27

28

STATEMENT

29

30 This bill permits individuals to submit temporary disability and
31 family temporary disability leave claims up to 60 days prior to the
32 commencement of leave if an individual knows in advance when
33 the leave will commence. Furthermore, this bill requires the
34 Division of Unemployment and Temporary Disability Insurance in
35 the Department of Labor and Workforce Development to pay the
36 benefit for such a claim upon the commencement of the leave. This
37 bill may apply to leaves that include, but are not limited to, the
38 following: a) periods of family temporary disability leave for care
39 of a child of the individual after adoption or childbirth, scheduled
40 medical procedures, treatments, or appointments for a family
41 member of the individual, and scheduled ongoing care of a family
42 member of the individual; and b) periods of temporary disability
43 leave related to pregnancy or childbirth, scheduled medical
44 procedures, treatments, or appointments for the individual, and
45 scheduled ongoing care of the individual.

46 Currently, the law does not explicitly prohibit a covered
47 individual from submitting a TDI or FLI claim prior to the
48 commencement of a leave. However, employers are not required to

1 provide the necessary information to determine the individual's
2 eligibility for TDI or FLI benefits until the ninth day following the
3 commencement of leave, and, therefore, the division cannot begin
4 to process a claim until such documentation is received.

5 This bill permits individuals covered under the State temporary
6 disability insurance (TDI) and family leave insurance (FLI)
7 programs, under circumstances in which the individual knows in
8 advance when the period of a FLI or TDI leave will commence, to
9 notify the employer of the anticipated period of leave and to apply
10 to the division for benefits for that leave prior to, but not more than
11 60 days prior to, the date that the leave will commence.
12 Furthermore, no later than nine days following the notification by
13 an individual of an anticipated period of leave, an employer is
14 required to submit to the individual and the division notices
15 containing such information as necessary to determine the
16 individual's eligibility for TDI and FLI benefits.

17 For such claims, the division must process the claim immediately
18 and, upon finding that the claim is valid, pay the benefit upon the
19 commencement of the leave or after any applicable one week
20 waiting period. However, if the division receives the claim less
21 than 30 days before the commencement of the leave, the division
22 shall make the benefit payment not more than 30 days after the
23 receipt of the claim. Under the bill, the TDI and FLI weekly benefit
24 for claims submitted prior to the commencement of the leave is
25 computed utilizing the individual's average weekly wage in relation
26 to when the individual submits the claim for benefits.

27 If an individual did not establish enough base weeks or have
28 enough total earnings during the 52 weeks preceding the week the
29 individual submits the claim to qualify for TDI or FLI benefits, the
30 division must notify the individual that the individual may file the
31 claim again upon or after the commencement of the leave, at which
32 point the division will reconsider the individual's eligibility for
33 benefits based on the 52 weeks preceding the commencement date
34 of the leave.

35 As claims processing times for both TDI and FLI claims have
36 slowed over recent years, covered individuals often receive their
37 initial benefit payments weeks after their leave has begun or even
38 after their leave has ended, causing financial hardship on claimants
39 and their families. The goal of this legislation is to prevent such
40 delays in payment by providing the division with advanced
41 notification in the case of claims in which the commencement date
42 is known prior to the period of leave; thereby allowing the division
43 sufficient time to process such claims and to issue benefit payments
44 upon the commencement of the leave.