

ASSEMBLY, No. 3519

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Concerns family leave and gestational carriers.

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

7 1. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
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 June 30, 2019,
4 employs 30 or more employees for each working day during each of
5 20 or more calendar workweeks in the then current or immediately
6 preceding calendar year.

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

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

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

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

22 (1) the birth of a child of the employee, including a child born
23 pursuant to a valid written agreement between the employee and a
24 gestational carrier, including, if the employee is anticipated to
25 become the parent of a child under a written agreement with a
26 gestational carrier or otherwise, leave in which the employee
27 provides care for the woman whose pregnancy will result in the
28 child during the woman's pregnancy and recovery from childbirth;

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

31 (3) the serious health condition of a family member of the
32 employee.

33 j. "Family member" means a child, parent, parent-in-law,
34 sibling, grandparent, grandchild, spouse, domestic partner, or one
35 partner in a civil union couple, or any other individual related by
36 blood to the employee, and any other individual that the employee
37 shows to have a close association with the employee which is the
38 equivalent of a family relationship.

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

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

45 (1) inpatient care in a hospital, hospice, or residential medical
46 care facility; or

47 (2) continuing medical treatment or continuing supervision by a
48 health care provider.

1 m. "State of emergency" means a natural or man-made disaster
2 or emergency for which a state of emergency has been declared by
3 the President of the United States or the Governor, or for which a
4 state of emergency has been declared by a municipal emergency
5 management coordinator.

6 (cf: P.L.2019, c.37, s.1)
7

8 2. 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
47 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
48 employer" under this subsection beginning with the date on which

1 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of
2 any year thereafter by filing written notice of such election with the
3 division within at least 30 days of the effective date. Such election
4 shall remain in effect for at least two full calendar years and may be
5 terminated as of January 1 of any year thereafter by filing with the
6 division a written notice of termination at least 30 days prior to the
7 termination date.

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

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

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

20 (4) provide care, if the individual is anticipated to become the
21 parent of a child under a written agreement with a gestational
22 carrier or otherwise, for the woman whose pregnancy will result in
23 the child during the woman's pregnancy and recovery from
24 childbirth.

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

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

33 (q) "Parent of a covered individual" means a biological parent,
34 foster parent, adoptive parent, or stepparent of the covered
35 individual or a person who was a legal guardian of the covered
36 individual when the covered individual was a child, or who became
37 the parent of the covered individual pursuant to a valid written
38 agreement between the parent and a gestational carrier.

39 (r) "Placement for adoption" means the time when a covered
40 individual adopts a child or becomes responsible for a child pending
41 adoption by the covered individual.

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

47 (t) "12-month period" means, with respect to an individual who
48 establishes a valid claim for disability benefits during a period of

1 family temporary disability leave, the 365 consecutive days that
2 begin with the first day that the individual first establishes the
3 claim.

4 (u) "State of emergency" means a natural or man-made disaster
5 or emergency for which a state of emergency has been declared by
6 the President of the United States or the Governor, or for which a
7 state of emergency has been declared by a municipal emergency
8 management coordinator.

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

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

40

41 3. This act shall take effect immediately.

42

43

44

STATEMENT

45

46 This bill amends P.L.1948, c.110 and P.L.1989, c.261 to have the
47 paid and unpaid leave provided under those laws include leave time
48 in which an employee who is anticipated to become the parent of a

1 child under a written agreement with a gestational carrier or
2 otherwise provides care for the woman whose pregnancy will result
3 in the child during the woman's pregnancy and recovery from
4 childbirth.