

[First Reprint]

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 reported by the Assembly Labor Committee on December 13, 2021, with amendments.



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**[**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
45 working day during each of 20 or more calendar workweeks in the
46 then current or immediately preceding calendar year; and

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted December 13, 2021.

1 (4) With respect to any period of time on or after June 30, 2019,
2 employs 30 or more employees for each working day during each of
3 20 or more calendar workweeks in the then current or immediately
4 preceding calendar year.

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

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

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

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

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

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

29 (3) the serious health condition of a family member of the
30 employee.

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

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

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

43 (1) inpatient care in a hospital, hospice, or residential medical
44 care facility; or

45 (2) continuing medical treatment or continuing supervision by a
46 health care provider.

47 m. "State of emergency" means a natural or man-made disaster
48 or emergency for which a state of emergency has been declared by

1 the President of the United States or the Governor, or for which a
2 state of emergency has been declared by a municipal emergency
3 management coordinator.

4 (cf: P.L.2019, c.37, s.1)I¹

5
6 ¹【2.Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 individual earns remuneration equal to not less than the amount
2 defined in this paragraph during that week.

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

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

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

1 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
2 (a) of section 25 of P.L.1948, c.110 (C.43:21-49).

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

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

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

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

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

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

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

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

47 (2) be with a child during the first 12 months after the child's
48 birth, if the individual, or the domestic partner or civil union partner

1 of the individual, is a biological parent of the child, or is a parent of
2 the child pursuant to a valid gestational carrier agreement, or the
3 first 12 months after the placement of the child for adoption or as a
4 foster child with the individual; **【or】**

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

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

23 "Family temporary disability leave" does not include any period
24 of 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, or who became
35 the parent of the covered individual pursuant to a valid written
36 agreement between the parent and a gestational carrier.

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

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

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

1 begin with the first day that the individual first establishes the
2 claim.

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

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

38 (cf: P.L.2019, c.37, s.8) ¹

39

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

42 3. As used in this act:

43 a. "Child" means a biological, adopted, foster child, or resource
44 family child, stepchild, legal ward, or child of a parent, including a
45 child who becomes the child of a parent pursuant to a valid written
46 agreement between the parent and a gestational carrier.

47 b. "Director" means the Director of the Division on Civil Rights.

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

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

7 e. "Employee" means a person who is employed for at least 12
8 months by an employer, with respect to whom benefits are sought
9 under this act, for not less than 1,000 base hours during the
10 immediately preceding 12-month period. Any time, up to a maximum
11 of 90 calendar days, during which a person is laid off or furloughed by
12 an employer due to that employer curtailing operations because of a
13 state of emergency declared after October 22, 2012, shall be regarded
14 as time in which the person is employed for the purpose of
15 determining eligibility for leave time under this act. In making the
16 determination, the base hours per week during the layoff or furlough
17 shall be deemed to be the same as the average number of hours worked
18 per week during the rest of the 12-month period.

19 f. "Employer" means a person or corporation, partnership,
20 individual proprietorship, joint venture, firm or company or other
21 similar legal entity which engages the services of an employee and
22 which:

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

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

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

30 (4) With respect to any period of time on or after June 30, 2019,
31 employs 30 or more employees for each working day during each of
32 20 or more calendar workweeks in the then current or immediately
33 preceding calendar year.

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

36 g. "Employment benefits" means all benefits and policies
37 provided or made available to employees by an employer, and includes
38 group life insurance, health insurance, disability insurance, sick leave,
39 annual leave, pensions, or other similar benefits.

40 h. "Parent" means a person who is the biological parent, adoptive
41 parent, foster parent, resource family parent, step-parent, parent-in-law
42 or legal guardian, having a "parent-child relationship" with a child as
43 defined by law, or having sole or joint legal or physical custody, care,
44 guardianship, or visitation with a child, or who became the parent of
45 the child pursuant to a valid written agreement between the parent and
46 a gestational carrier.

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

1 (1) the birth of a child of the employee, including a child born
2 pursuant to a valid written agreement between the employee and a
3 gestational carrier, including, if the employee is intended to become
4 the parent of a child under a written agreement with a gestational
5 carrier or otherwise, leave in which the employee provides care for the
6 person whose pregnancy will result in the child during the person's
7 pregnancy and recovery from childbirth;

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

10 (3) the serious health condition of a family member of the
11 employee ; or

12 (4) in the event of a state of emergency declared by the Governor,
13 or when indicated to be needed by the Commissioner of Health or
14 other public health authority, an epidemic of a communicable disease,
15 a known or suspected exposure to the communicable disease, or efforts
16 to prevent spread of a communicable disease, which:

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

20 (b) prompts the issuance by a public health authority of a
21 determination, including by mandatory quarantine, requiring or
22 imposing responsive or prophylactic measures as a result of illness
23 caused by an epidemic of a communicable disease or known or
24 suspected exposure to the communicable disease because the presence
25 in the community of a family member in need of care by the employee,
26 would jeopardize the health of others; or

27 (c) results in the recommendation of a health care provider or
28 public health authority, that a family member in need of care by the
29 employee voluntarily undergo self-quarantine as a result of suspected
30 exposure to a communicable disease because the presence in the
31 community of that family member in need of care by the employee,
32 would jeopardize the health of others.

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

39 k. "Reduced leave schedule" means leave scheduled for fewer
40 than an employee's usual number of hours worked per workweek but
41 not for fewer than an employee's usual number of hours worked per
42 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 care
46 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 or
2 emergency for which a state of emergency has been declared by the
3 President of the United States or the Governor, or for which a state of
4 emergency has been declared by a municipal emergency management
5 coordinator.

6 n. "Health care provider" means a duly licensed health care
7 provider or other health care provider deemed appropriate by the
8 director.¹

9 (cf: P.L.2020, c.23, s.2)

10
11 ¹2. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read
12 as follows:

13 3. As used in this act, unless the context clearly requires
14 otherwise:

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

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

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

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

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

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

1 the "unemployment compensation law" (R.S.43:21-1 et seq.), for
2 which the individual is entitled to remuneration from a covered
3 employer, or who has been out of that employment for less than two
4 weeks.

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

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

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

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

21 (i) the issuance by a healthcare provider or the commissioner or
22 other public health authority of a determination that the presence in the
23 community of the employee may jeopardize the health of others; and

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

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

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

32 (1) The entire period of time during which the covered individual
33 is continuously and totally unable to perform the duties of the covered
34 individual's employment because of the covered individual's own
35 disability, except that two periods of disability due to the same or
36 related cause or condition and separated by a period of not more than
37 14 days shall be considered as one continuous period of disability;
38 provided the individual has earned wages during such 14-day period
39 with the employer who was the individual's last employer immediately
40 preceding the first period of disability; and

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

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

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

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

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

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

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

28 (j) (1) "Average weekly wage" means, with respect to the
29 payment of benefits commencing before the effective date of
30 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing a
31 covered individual's total wages earned from the individual's most
32 recent covered employer during the base weeks in the eight calendar
33 weeks immediately preceding the calendar week in which a period of
34 disability commenced, by the number of such base weeks, and, with
35 respect to the payment of benefits commencing on or after the
36 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
37 derived by dividing a covered individual's total wages earned from the
38 individual's most recent covered employer during the base weeks in
39 the base year immediately preceding the calendar week in which a
40 period of disability commenced, or in which the individual submits a
41 claim for the benefits pursuant to subsection h. of section 10 of
42 P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a) of
43 section 25 of P.L.1948, c.110 (C.43:21-49), by the number of base
44 weeks.

45 (2) With respect to the payment of benefits commencing before the
46 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the
47 computation in paragraph (1) of this subsection (j) yields a result
48 which is less than the individual's average weekly earnings in

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

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

32 When determining the "average weekly wage" with respect to a
33 period of family temporary disability leave for an individual who has a
34 period of family temporary disability immediately after the individual
35 has a period of disability for the individual's own disability, the period
36 of disability is deemed to have commenced at the beginning of the
37 period of disability for the individual's own disability, not the period of
38 family temporary disability.

39 (k) "Child" means a biological, adopted, or foster child, stepchild
40 or legal ward of a covered individual, child of a domestic partner of
41 the covered individual, or child of a civil union partner of the covered
42 individual, including a child who becomes the child of a parent
43 pursuant to a valid written agreement between the parent and a
44 gestational carrier.

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

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

1 (n) "Family member" means a sibling, grandparent, grandchild,
2 child, spouse, domestic partner, civil union partner, parent-in-law, or
3 parent of a covered individual, or any other individual related by blood
4 to the employee, and any other individual that the employee shows to
5 have a close association with the employee which is the equivalent of a
6 family relationship.

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

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

13 (2) be with a child during the first 12 months after the child's birth,
14 if the individual, or the domestic partner or civil union partner of the
15 individual, is a biological parent of the child, or is a parent of the child
16 pursuant to a valid gestational carrier agreement, or the first 12 months
17 after the placement of the child for adoption or as a foster child with
18 the individual;

19 (3) engage in activities for which unpaid leave may be taken
20 pursuant to section 3 of the "New Jersey Security and Financial
21 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's
22 own behalf, if the individual is a victim of an incident of domestic
23 violence, a sexually violent offense, or to assist a family member of
24 the individual who has been a victim of an incident of domestic
25 violence, or a sexually violent offense, provided that any time taken by
26 an individual who has been a victim of an incident of domestic
27 violence, or a sexually violent offense for which the individual
28 receives benefits for a disability caused by the violence or offense
29 shall be regarded as a period of disability of the individual and not as a
30 period of family temporary disability leave; **【or】**

31 (4) in the event of a state of emergency declared by the Governor,
32 or when indicated to be needed by the Commissioner of Health or
33 other public health authority, an epidemic of a communicable disease,
34 a known or suspected exposure to the communicable disease, or efforts
35 to prevent spread of the communicable disease, provide in-home care
36 or treatment of the family member of the employee required due to:

37 (i) the issuance by a healthcare provider or the commissioner or
38 other public health authority of a determination that the presence in the
39 community of the family member may jeopardize the health of others;
40 and

41 (ii) the recommendation, direction, or order of the provider or
42 authority that the family member be isolated or quarantined as a result
43 of suspected exposure to a communicable disease; or

44 (5) provide care, if the individual is intended to become the parent
45 of a child under a written agreement with a gestational carrier or
46 otherwise, for the person whose pregnancy will result in the child
47 during the person's pregnancy and recovery from childbirth.

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

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

9 (q) "Parent of a covered individual" means a biological parent,
10 foster parent, adoptive parent, or stepparent of the covered individual
11 or a person who was a legal guardian of the covered individual when
12 the covered individual was a child, or who became the parent of the
13 covered individual pursuant to a valid written agreement between the
14 parent and a gestational carrier.

15 (r) "Placement for adoption" means the time when a covered
16 individual adopts a child or becomes responsible for a child pending
17 adoption by the covered individual.

18 (s) "Serious health condition" means an illness, injury, impairment
19 or physical or mental condition which requires: inpatient care in a
20 hospital, hospice, or residential medical care facility; or continuing
21 medical treatment or continuing supervision by a health care provider.

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

26 (u) "State of emergency" means a natural or man-made disaster or
27 emergency for which a state of emergency has been declared by the
28 President of the United States or the Governor, or for which a state of
29 emergency has been declared by a municipal emergency management
30 coordinator.

31 (v) "Base year" with respect to benefit years commencing on or
32 after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), means
33 the first four of the last five completed calendar quarters immediately
34 preceding the period of disability, except that, if the individual does
35 not have sufficient qualifying weeks or wages in the individual's base
36 year to qualify for benefits, the individual shall have the option of
37 designating that the individual's base year shall be the "alternative base
38 year," which means the last four completed calendar quarters
39 immediately preceding the period of disability; and except that if the
40 individual also does not have sufficient qualifying weeks or wages in
41 the last four completed calendar quarters immediately preceding the
42 period of disability, "alternative base year" means the last three
43 completed calendar quarters immediately preceding the individual's
44 benefit year and, of the calendar quarter in which the period of
45 disability commences, the portion of the quarter which occurs before
46 the commencing of the period of disability. The division shall inform
47 the individual of the individual's options under this subsection. If
48 information regarding weeks and wages for the calendar quarter or

1 quarters immediately preceding the period of disability is not available
2 to the division from the regular quarterly reports of wage information
3 and the division is not able to obtain the information using other means
4 pursuant to State or federal law, the division may base the
5 determination of eligibility for benefits on the affidavit of an
6 individual with respect to weeks and wages for that calendar quarter.
7 The individual shall furnish payroll documentation, if available, in
8 support of the affidavit. A determination of benefits based on an
9 alternative base year shall be adjusted when the quarterly report of
10 wage information from the employer is received if that information
11 causes a change in the determination.¹
12 (cf: P.L.2020, c.23, s.3)
13
14 3. This act shall take effect immediately.