

ASSEMBLY, No. 3900

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman ANNETTE CHAPARRO

District 33 (Hudson)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

Assemblywoman Jasey, Assemblymen Verrelli, Zwicker, Assemblywoman Downey, Assemblyman Benson and Assemblywoman McKnight

SYNOPSIS

Concerns family leave and disability benefits during epidemic-related emergencies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/25/2020)

A3900 SUMTER, CHAPARRO

2

1 AN ACT concerning family leave and disability benefits and
2 amending various parts of the statutory law.

3

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

6

7 1. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read
8 as follows:

9 3. a. An employer shall permit an employee to use the earned
10 sick leave accrued pursuant to this act for any of the following:

11 (1) time needed for diagnosis, care, or treatment of, or recovery
12 from, an employee's mental or physical illness, injury or other
13 adverse health condition, or for preventive medical care for the
14 employee;

15 (2) time needed for the employee to aid or care for a family
16 member of the employee during diagnosis, care, or treatment of, or
17 recovery from, the family member's mental or physical illness, injury
18 or other adverse health condition, or during preventive medical care
19 for the family member;

20 (3) absence necessary due to circumstances resulting from the
21 employee, or a family member of the employee, being a victim of
22 domestic or sexual violence, if the leave is to allow the employee to
23 obtain for the employee or the family member: medical attention
24 needed to recover from physical or psychological injury or disability
25 caused by domestic or sexual violence; services from a designated
26 domestic violence agency or other victim services organization;
27 psychological or other counseling; relocation; or legal services,
28 including obtaining a restraining order or preparing for, or
29 participating in, any civil or criminal legal proceeding related to the
30 domestic or sexual violence;

31 (4) time during which the employee is not able to work because
32 of:

33 (a) a closure of the employee's workplace, or the school or place
34 of care of a child of the employee by order of a public official or
35 because of a state of emergency declared by the Governor, due to an
36 epidemic or other public health emergency **[**, or because of**]**;

37 (b) the declaration of a state of emergency by the Governor, or
38 the issuance by a health care provider or the Commissioner of Health
39 or other public health authority of a determination that the presence
40 in the community of the employee, or a member of the employee's
41 family in need of care by the employee, would jeopardize the health
42 of others; [or]

43 (c) during a state of emergency declared by the Governor, or upon
44 the recommendation, direction, or order of a healthcare provider or
45 the Commissioner of Health or other authorized public official, 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 employee undergoes isolation or quarantine, or cares for a family
2 member in quarantine, as a result of suspected exposure to a
3 communicable disease and a finding by the provider or authority that
4 the presence in the community of the employee or family member
5 would jeopardize the health of others; or
6 (5) time needed by the employee in connection with a child of the
7 employee to attend a school-related conference, meeting, function or
8 other event requested or required by a school administrator, teacher,
9 or other professional staff member responsible for the child's
10 education, or to attend a meeting regarding care provided to the child
11 in connection with the child's health conditions or disability.
12 b. If an employee's need to use earned sick leave is foreseeable,
13 an employer may require advance notice, not to exceed seven
14 calendar days prior to the date the leave is to begin, of the intention
15 to use the leave and its expected duration, and shall make a
16 reasonable effort to schedule the use of earned sick leave in a manner
17 that does not unduly disrupt the operations of the employer. If the
18 reason for the leave is not foreseeable, an employer may require an
19 employee to give notice of the intention as soon as practicable, if the
20 employer has notified the employee of this requirement. Employers
21 may prohibit employees from using foreseeable earned sick leave on
22 certain dates, and require reasonable documentation if sick leave that
23 is not foreseeable is used during those dates. For earned sick leave
24 of three or more consecutive days, an employer may require
25 reasonable documentation that the leave is being taken for the
26 purpose permitted under subsection a. of this section. If the leave is
27 permitted under paragraph (1) or (2) of subsection a. of this section,
28 documentation signed by a health care professional who is treating
29 the employee or the family member of the employee indicating the
30 need for the leave and, if possible, number of days of leave, shall be
31 considered reasonable documentation. If the leave is permitted under
32 paragraph (3) of subsection a. of this section because of domestic or
33 sexual violence, any of the following shall be considered reasonable
34 documentation of the domestic or sexual violence: medical
35 documentation; a law enforcement agency record or report; a court
36 order; documentation that the perpetrator of the domestic or sexual
37 violence has been convicted of a domestic or sexual violence offense;
38 certification from a certified Domestic Violence Specialist or a
39 representative of a designated domestic violence agency or other
40 victim services organization; or other documentation or certification
41 provided by a social worker, counselor, member of the clergy, shelter
42 worker, health care professional, attorney, or other professional who
43 has assisted the employee or family member in dealing with the
44 domestic or sexual violence. If the leave is permitted under
45 paragraph (4) of subsection a. of this section, a copy of the order of
46 the public official or the determination by the health authority shall
47 be considered reasonable documentation.

1 c. Nothing in this act shall be deemed to require an employer to
2 provide earned sick leave for an employee's leave for purposes other
3 than those identified in this section, or prohibit the employer from
4 taking disciplinary action against an employee who uses earned sick
5 leave for purposes other than those identified in this section. An
6 employer may provide an offer to an employee for a payment of
7 unused earned sick leave in the final month of the employer's benefit
8 year. The employee shall choose, no later than 10 calendar days from
9 the date of the employer's offer, whether to accept a payment or
10 decline a payment. If the employee agrees to receive a payment, the
11 employee shall choose a payment for the full amount of unused
12 earned sick leave or for 50 percent of the amount of unused earned
13 sick leave. The payment amount shall be based on the same rate of
14 pay that the employee earns at the time of the payment. If the
15 employee declines a payment for unused earned sick leave, or agrees
16 to a payment for 50 percent of the amount of unused sick leave, the
17 employee shall be entitled to carry forward any unused or unpaid
18 earned sick leave to the proceeding benefit year as provided pursuant
19 to subsection a. of section 2 of this act. If the employee agrees to a
20 payment for the full amount of unused earned sick leave, the
21 employee shall not be entitled to carry forward any earned sick leave
22 to the proceeding benefit year pursuant to subsection a. of section 2
23 of this act.

24 d. If an employer foregoes the accrual process for earned sick
25 leave hours pursuant to subsection a. of section 2 of this act and
26 provides an employee with the full complement of earned sick leave
27 for a benefit year on the first day of each benefit year, then the
28 employer shall either provide to the employee a payment for the full
29 amount of unused earned sick leave in the final month of the
30 employer's benefit year or carry forward any unused sick leave to the
31 next benefit year. The employer may pay the employee the full
32 amount of unused earned sick leave in the final month of a benefit
33 year pursuant to this subsection only if the employer forgoes, with
34 respect to that employee, the accrual process for earned sick leave
35 during the next benefit year. Unless an employer policy or collective
36 bargaining agreement provides for the payment of accrued earned
37 sick leave upon termination, resignation, retirement or other
38 separation from employment, an employee shall not be entitled under
39 this section to payment of unused earned sick leave upon the
40 separation from employment.

41 e. Any information an employer possesses regarding the health
42 of an employee or any family member of the employee or domestic
43 or sexual violence affecting an employee or employee's family
44 member shall be treated as confidential and not disclosed except to
45 the affected employee or with the written permission of the affected
46 employee.

47 (cf: P.L.2018, c.10, s.3)

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

3 3. As used in this act:

4 a. "Child" means a biological, adopted, foster child, or resource
5 family child, stepchild, legal ward, or child of a parent, including a
6 child who becomes the child of a parent pursuant to a valid written
7 agreement between the parent and a gestational carrier.

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

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

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

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

28 f. "Employer" means a person or corporation, partnership,
29 individual proprietorship, joint venture, firm or company or other
30 similar legal entity which engages the services of an employee and
31 which:

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

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

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

39 (4) With respect to any period of time on or after June 30, 2019,
40 employs 30 or more employees for each working day during each of
41 20 or more calendar workweeks in the then current or immediately
42 preceding calendar year.

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

45 g. "Employment benefits" means all benefits and policies
46 provided or made available to employees by an employer, and
47 includes group life insurance, health insurance, disability insurance,
48 sick leave, annual leave, pensions, or other similar benefits.

1 h. "Parent" means a person who is the biological parent,
2 adoptive parent, foster parent, resource family parent, step-parent,
3 parent-in-law or legal guardian, having a "parent-child relationship"
4 with a child as defined by law, or having sole or joint legal or physical
5 custody, care, guardianship, or visitation with a child, or who became
6 the parent of the child pursuant to a valid written agreement between
7 the parent and a gestational carrier.

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

10 (1) the birth of a child of the employee, including a child born
11 pursuant to a valid written agreement between the employee and a
12 gestational carrier;

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

15 (3) the serious health condition of a family member of the
16 employee.

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

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

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

29 (1) inpatient care in a hospital, hospice, or residential medical
30 care facility; or

31 (2) continuing medical treatment or continuing supervision by a
32 health care provider.

33 During a state of emergency declared by the Governor, or when
34 indicated to be needed by the Commissioner of Health or other public
35 health authority, "serious health condition" shall also include an
36 illness caused by an epidemic of a communicable disease, a known
37 or suspected exposure to a communicable disease, or efforts to
38 prevent spread of a communicable disease, which requires in-home
39 care or treatment of a family member of the employee due to:

40 (1) the issuance by a healthcare provider or the commissioner or
41 other public health authority of a determination that the presence in
42 the community of a family member may jeopardize the health of
43 others; and

44 (2) the recommendation, direction, or order of the provider or
45 authority that the family member be isolated or quarantined because
46 of suspected exposure to the communicable disease.

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)

5
6 3. Section 4 of P.L.1989, c.261 (C.34:11B-4) is amended to read
7 as follows:

8 4. An employee of an employer in this State subject to the
9 provisions of this act shall be entitled to a family leave of 12 weeks
10 in any 24-month period upon advance notice to the employer in the
11 manner specified by the provisions of sections 11 and 12 of P.L.2008,
12 c.17 (C.43:21-39.2 and 43:21-39.3), unless the employer denies
13 family leave to the employee pursuant to subsection h. of this section.

14 a. In the case of a family member who has a serious health
15 condition, the leave may be taken intermittently when medically
16 necessary, in the manner specified by the provisions of section 11 of
17 P.L.2008, c.17 (C.43:21-39.2).

18 b. In the case of the foster care placement, birth or adoption of a
19 healthy child, the leave may be taken intermittently in the manner
20 specified by the provisions of paragraph (2) of subsection a. of
21 section 12 of P.L.2008, c.17 (C.43:21-39.3).

22 c. Leave taken because of the birth or placement for adoption of
23 a child may commence at any time within a year after the date of the
24 foster care placement, birth or placement for adoption.

25 d. Family leave required by this act may be paid, unpaid, or a
26 combination of paid and unpaid leave. If an employer provides paid
27 family leave for fewer than 12 workweeks, the additional weeks of
28 leave added to attain the 12-workweek total required by this act may
29 be unpaid.

30 e. An employer may require that any period of family leave be
31 supported by certification issued by a duly licensed health care
32 provider or any other health care provider determined by the director
33 to be capable of providing adequate certification.

34 (1) Where the certification is for the serious health condition of a
35 family member of the employee, the certification shall be sufficient
36 if it states: (a) the date on which the serious health condition
37 commenced; (b) the probable duration of the condition; and (c) the
38 medical facts within the provider's knowledge regarding the
39 condition;

40 (2) Where the certification is for the birth or placement of the
41 child, the certification need only state the date of birth or date of
42 placement, whichever is appropriate.

43 In any case in which the employer has reason to doubt the validity
44 of the certification provided pursuant to paragraph (1) of this
45 subsection, the employer may require, at its own expense, that an
46 employee obtain an opinion regarding the serious health condition
47 from a second health care provider designated or approved, but not
48 employed on a regular basis, by the employer. If the second opinion

1 differs from the certification provided pursuant to paragraph (1) of
2 this subsection, the employer may require, at its own expense, that
3 the employee obtain the opinion of a third health care provider
4 designated or approved jointly by the employer and the employee
5 concerning the serious health condition. The opinion of the third
6 health care provider shall be considered to be final and shall be
7 binding on the employer and the employee.

8 f. In any case in which the necessity for leave under this act is
9 foreseeable, based upon placement of a child into foster care an
10 expected birth or placement of the child for adoption, the employee
11 shall provide the employer with prior notice of the expected birth or
12 placement of the child for adoption or foster care in the manner
13 specified by the provisions of section 11 of P.L.2008, c.17 (C.43:21-
14 39.2).

15 g. No employee shall, during any period of leave taken pursuant
16 to this section, perform services on a full-time basis for any person
17 for whom the employee did not provide those services immediately
18 prior to commencement of the leave.

19 h. An employer may deny family leave to the employee if:

20 (1) The employee is a salaried employee who is among the
21 highest paid 5% of the employer's employees or the seven highest
22 paid employees of the employer, whichever is greater;

23 (2) The denial is necessary to prevent substantial and grievous
24 economic injury to the employer's operations; and

25 (3) The employer notifies the employee of its intent to deny the
26 leave at the time the employer determines that the denial is necessary.

27 The provisions of this subsection shall not apply when the family
28 leave is due to a health care provider, the Commissioner of Health or
29 other authorized public official having ordered, directed, or
30 recommended that a family member of the employee in need of care
31 by the employee be isolated or quarantined, or is due to a place of
32 care of a member of the employee's family being closed because of
33 a state of emergency declared by the Governor or order of the
34 Commissioner of Health or other authorized public official, during
35 an epidemic of a communicable disease, or a known or suspected
36 exposure to a communicable disease.

37 i. In any case in which the leave has already commenced at the
38 time of the notification pursuant to paragraph (3) of subsection h. of
39 this section, the employee shall return to work within 10 working
40 days of the date of notification.

41 (cf: P.L.2019, c.37, s.2)

42

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

45 3. As used in this act, unless the context clearly requires
46 otherwise:

47 (a) (1) "Covered employer" means, with respect to whether an
48 employer is required to provide benefits during an employee's own

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

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

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

43 (b) (1) "Covered individual" means, with respect to whether an
44 individual is eligible for benefits during an individual's own
45 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any person
46 who is in employment, as defined in the "unemployment
47 compensation law" (R.S.43:21-1 et seq.), for which the individual is
48 entitled to remuneration from a covered employer, or who has been

1 out of such employment for less than two weeks, except that a
2 "covered individual" who is employed by the State of New Jersey,
3 including Rutgers, The State University or the New Jersey Institute
4 of Technology, or by any governmental entity or instrumentality
5 which elects to become a "covered employer" pursuant to P.L.1948.
6 c.110 (C.43:21-25 et al.) prior to July 1, 2019 shall not be eligible to
7 receive any benefits under the "Temporary Disability Benefits Law"
8 until such individual has exhausted all sick leave accumulated as an
9 employee in the classified service of the State or accumulated under
10 terms and conditions similar to classified employees or accumulated
11 under the terms and conditions pursuant to the laws of this State or
12 as the result of a negotiated contract with any governmental entity or
13 instrumentality which elects to become a "covered employer"; and,
14 after June 30, 2019 may be required, prior to receiving any benefits
15 under the "Temporary Disability Benefits Law," to use up to two
16 weeks of sick leave accumulated as an employee in the classified
17 service of the State or accumulated under terms and conditions
18 similar to classified employees or accumulated under the terms and
19 conditions pursuant to the laws of this State or as the result of a
20 negotiated contract with any governmental entity or instrumentality
21 which elects to become a "covered employer," except that the
22 individual shall not be required to use the individual's last week's
23 worth of accumulated sick time before receiving the benefits.

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

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

37 (c) "Division" or "commission" means the Division of
38 Unemployment and Temporary Disability Insurance of the
39 Department of Labor and Workforce Development, and any
40 transaction or exercise of authority by the director of the division
41 shall be deemed to be performed by the division.

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

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

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

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

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

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

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

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

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

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

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

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

45 (j) (1) "Average weekly wage" means, with respect to the
46 payment of benefits commencing before the effective date of
47 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
48 a covered individual's total wages earned from the individual's most

1 recent covered employer during the base weeks in the eight calendar
2 weeks immediately preceding the calendar week in which a period of
3 disability commenced, by the number of such base weeks, and, with
4 respect to the payment of benefits commencing on or after the
5 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
6 derived by dividing a covered individual's total wages earned from
7 the individual's most recent covered employer during the base weeks
8 in the base year immediately preceding the calendar week in which a
9 period of disability commenced, or in which the individual submits a
10 claim for the benefits pursuant to subsection h. of section 10 of
11 P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a) of
12 section 25 of P.L.1948, c.110 (C.43:21-49), by the number of base
13 weeks.

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

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

1 When determining the "average weekly wage" with respect to a
2 period of family temporary disability leave for an individual who has
3 a period of family temporary disability immediately after the
4 individual has a period of disability for the individual's own
5 disability, the period of disability is deemed to have commenced at
6 the beginning of the period of disability for the individual's own
7 disability, not the period of family temporary disability.

8 (k) "Child" means a biological, adopted, or foster child, stepchild
9 or legal ward of a covered individual, child of a domestic partner of
10 the covered individual, or child of a civil union partner of the covered
11 individual, including a child who becomes the child of a parent
12 pursuant to a valid written agreement between the parent and a
13 gestational carrier.

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

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

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

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

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

30 (2) be with a child during the first 12 months after the child's
31 birth, if the individual, or the domestic partner or civil union partner
32 of the individual, is a biological parent of the child, or is a parent of
33 the child pursuant to a valid gestational carrier agreement, or the first
34 12 months after the placement of the child for adoption or as a foster
35 child with the individual; or

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

1 "Family temporary disability leave" does not include any period
2 of 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
4 to 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
7 defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et
8 seq.), and 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,
19 impairment or physical or mental condition which requires: inpatient
20 care in a hospital, hospice, or residential medical care facility; or
21 continuing medical treatment or continuing supervision by a health
22 care provider. During a state of emergency declared by the Governor,
23 or when indicated to be needed by the Commissioner of Health or
24 other public health authority, "serious health condition" shall also
25 include an illness caused by an epidemic of a communicable disease,
26 a known or suspected exposure to a communicable disease, or efforts
27 to prevent spread of a communicable disease, which requires in-home
28 care or treatment of the employee or family member of the employee
29 due to:

30 (1) the issuance by a healthcare provider or the commissioner or
31 other public health authority of a determination that the presence in
32 the community of the employee or family member may jeopardize
33 the health of others; and

34 (2) the recommendation, direction, or order of the provider or
35 authority that the employee or family member be isolated or
36 quarantined as a result of suspected exposure to a communicable
37 disease.

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

42 (u) "State of emergency" means a natural or man-made disaster
43 or emergency for which a state of emergency has been declared by
44 the President of the United States or the Governor, or for which a
45 state of emergency has been declared by a municipal emergency
46 management coordinator.

47 (v) "Base year" with respect to benefit years commencing on or
48 after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), means

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

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

29

30 5. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read
31 as follows:

32 5. Compensable disability.

33 (a) In the case of the disability of a covered individual, disability
34 shall be compensable subject to the limitations of P.L.1948, c.110
35 (C.43:21-25 et al.) if: the disability is the result of the covered
36 individual suffering an accident or sickness not arising out of and in
37 the course of the individual's employment or if so arising not
38 compensable under the workers' compensation law, R.S.34:15-1 et
39 seq., including if the disability is the result of the donation of any
40 organ or bone marrow by the covered individual, and the disability
41 results in the individual's total inability to perform the duties of
42 employment, except that an individual who is otherwise eligible for
43 benefits but only able to return to work on a reduced basis while
44 recovering from the disability may receive benefits pursuant to the
45 provisions of subsection (b) of section 16 of P.L.1948, c.110
46 (C.43:21-40).

47 (b) In the case of an individual taking family temporary disability
48 leave, the leave, including leave to care for family members suffering

1 from accident or sickness, shall be compensable subject to the
2 limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

3 (c) During a state of emergency declared by the Governor, or
4 when indicated to be needed by the Commissioner of Health or other
5 public health authority, “sickness” also includes an illness caused by
6 an epidemic of a communicable disease, a known or suspected
7 exposure to a communicable disease, or efforts to prevent spread of
8 a communicable disease, which requires in-home care or treatment
9 of the employee or family member of the employee due to:

10 (1) the issuance by a healthcare provider or the commissioner or
11 other public health authority of a determination that the presence in
12 the community of the family member or employee may jeopardize
13 the health of others; and

14 (2) the recommendation, direction, or order of the provider or
15 authority that the employee or family member be isolated or
16 quarantined as a result of suspected exposure to a communicable
17 disease.

18 (cf: P.L.2019, c.464, s.1)

19

20 6. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to
21 read as follows:

22 14. a. With respect to any period of disability for an individual's
23 own disability commencing on or after January 1, 1953, disability
24 benefits, not in excess of an individual's maximum benefits, shall be
25 payable with respect to disability which commences while a person
26 is a covered individual under the Temporary Disability Benefits Law,
27 and shall be payable with respect to the eighth consecutive day of
28 such disability and each day thereafter that such period of disability
29 continues; and if benefits shall be payable for three consecutive
30 weeks with respect to any period of disability commencing on or after
31 January 1, 1968, then benefits shall also be payable with respect to
32 the first seven days thereof. With respect to any period of disability
33 for an individual's own disability commencing on or after the
34 effective date of P.L. , c. (pending before the Legislature as this
35 bill) the disability benefits shall be payable with respect to the first
36 day of the disability, if the disability is for a sickness as described in
37 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

38 b. With respect to any period of family temporary disability
39 leave commencing on or after July 1, 2009 and while an individual is
40 a covered individual, family temporary disability benefits, not in
41 excess of the individual's maximum benefits, shall be payable with
42 respect to the first day of leave taken after the first one-week period
43 following the commencement of the period of family temporary
44 disability leave and each subsequent day of leave during that period
45 of family temporary disability leave; and if benefits become payable
46 on any day after the first three weeks in which leave is taken, then
47 benefits shall also be payable with respect to any leave taken during
48 the first one-week period in which leave is taken. With respect to

1 any period of family temporary disability leave commencing on or
2 after July 1, 2019 and while an individual is a covered individual,
3 family temporary disability benefits, not in excess of the individual's
4 maximum benefits, shall be payable with respect to the first day of
5 leave taken upon the commencement of the period of family
6 temporary disability leave and each subsequent day of leave during
7 that period of family temporary disability leave. The maximum total
8 benefits payable to any eligible individual for any period of disability
9 of the individual commencing on or after January 1, 1968, shall be
10 either 26 times his weekly benefit amount or 1/3 of his total wages in
11 his base year, whichever is the lesser; provided that such maximum
12 amount shall be computed in the next lower multiple of \$1.00 if not
13 already a multiple thereof. The maximum total benefits payable to
14 any eligible individual for any period of family temporary disability
15 leave commencing on or after July 1, 2009 and before July 1, 2020,
16 shall be six times the individual's weekly benefit amount or 1/3 of his
17 total wages in his base year, whichever is the lesser; provided that
18 the maximum amount shall be computed in the next lower multiple
19 of \$1.00, if not already a multiple thereof. The maximum total
20 benefits payable to any eligible individual for any period of family
21 temporary disability leave commencing on or after July 1, 2020, shall
22 be twelve times the individual's weekly benefit amount; provided that
23 the maximum amount shall be computed in the next lower multiple
24 of \$1.00, if not already a multiple thereof.

25 (cf: P.L.2019, c.37, s.11)

26

27 7. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
28 read as follows:

29 15. Limitation of benefits. Notwithstanding any other provision
30 of the "Temporary Disability Benefits Law," P.L.1948, c.110
31 (C.43:21-25 et al.), no benefits shall be payable under the State plan
32 to any individual:

33 (a) for the first seven consecutive days of each period of
34 disability; except that:

35 (1) if benefits shall be payable for three consecutive weeks with
36 respect to any period of disability, then benefits shall also be payable
37 with respect to the first seven days thereof;

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

39 (3) in the case of an individual taking family temporary disability
40 leave, there shall be no waiting period; **[and]**

41 (4) if the benefits shall be payable for a period of disability which
42 is the result of the donation of any organ or bone marrow by the
43 covered individual, then benefits shall be payable with respect to the
44 first seven days thereof; and

45 (5) the seven-day waiting period shall not apply to benefits for a
46 period of disability if the disability is for a sickness as described in
47 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29);

- 1 (b) (1) for more than 26 weeks with respect to any one period of
2 disability of the individual;
- 3 (2) for more than six weeks with respect to any one period of
4 family temporary disability leave commencing before July 1, 2020
5 and more than 12 weeks if the period of leave commences on or after
6 July 1, 2020, or for more than 42 days with respect to any one period
7 of family temporary disability leave commencing before July 1, 2020
8 and more than 56 days if the period of leave commences on or after
9 July 1, 2020, and is taken on an intermittent basis; and
- 10 (3) for more than six weeks of family temporary disability leave
11 during any 12-month period commencing before July 1, 2020 and
12 more than 12 weeks for any 12-month period commencing on or after
13 July 1, 2020, or for more than 42 days of family temporary disability
14 leave taken during any 12-month period commencing before July 1,
15 2020 and more than 56 days if the period of leave commences on or
16 after July 1, 2020, on an intermittent basis, including family
17 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while
18 unemployed;
- 19 (c) for any period of disability which did not commence while the
20 claimant was a covered individual;
- 21 (d) for any period of disability of a claimant during which the
22 claimant is not under the care of a legally licensed physician, dentist,
23 optometrist, podiatrist, practicing psychologist, advanced practice
24 nurse, certified nurse midwife, or chiropractor, who, when requested
25 by the division, shall certify within the scope of the practitioner's
26 practice, the disability of the claimant, the probable duration thereof,
27 and, where applicable, the medical facts within the practitioner's
28 knowledge or for any period of family temporary disability leave for
29 a serious health condition of a family member of the claimant, during
30 which the family member is not receiving inpatient care in a hospital,
31 hospice, or residential medical care facility or is not subject to
32 continuing medical treatment or continuing supervision by a health
33 care provider, who, when requested by the division, shall certify
34 within the scope of the provider's practice, the serious health
35 condition of the family member, the probable duration thereof, and,
36 where applicable, the medical facts within the provider's knowledge;
- 37 (e) (Deleted by amendment, P.L.1980, c.90.)
- 38 (f) for any period of disability due to willfully and intentionally
39 self-inflicted injury, or to injury sustained in the perpetration by the
40 claimant of a crime of the first, second, third, or fourth degree, or for
41 any period during which a covered individual would be disqualified
42 for unemployment compensation benefits for gross misconduct under
43 subsection (b) of R.S.43:21-5;
- 44 (g) for any period during which the claimant performs any work
45 for remuneration or profit, except that, in a case of a claim for
46 benefits for a period of family temporary disability on or after July
47 1, 2020 in which the covered individual has more than one employer,
48 the individual shall have the option of claiming benefits for leave

1 taken from one employer, based on wages paid by that employer, on
2 the condition that the individual does not, during the period for which
3 the benefits are paid, increase the amount of employment time with
4 any one employer;
5 (h) in a weekly amount which together with any remuneration the
6 claimant continues to receive from the employer would exceed
7 regular weekly wages immediately prior to disability;
8 (i) for any period during which a covered individual would be
9 disqualified for unemployment compensation benefits under
10 subsection (d) of R.S.43:21-5, unless the disability commenced prior
11 to such disqualification;
12 (j) for any period during which the claimant receives any paid
13 sick leave, vacation time or other leave at full pay from the employer
14 of the individual;
15 and there shall be no other cause of disqualification or ineligibility to
16 receive disability benefits hereunder except as may be specifically
17 provided in P.L.1948, c.110 (C.43:21-25 et al.).
18 (cf: P.L.2019, c.464, s.2)

19
20 8. This act shall take effect immediately.

21
22
23
24

STATEMENT

25 This bill is designed to assure that workers impacted by epidemics
26 of communicable diseases have access to leave needed to care for
27 themselves or for effected members of their families.

28 The bill expands the scope of the State's temporary disability
29 insurance (TDI) law, P.L.1948, c.110 (C.43:21-25 et al), so that
30 workers may obtain TDI or family leave insurance (FLI) benefits by
31 expanding that law's definition of a "serious health condition" for
32 which a worker may obtain the benefits, either for the worker's own
33 condition in the case of TDI benefits, or for the condition of a family
34 member of the worker cared for by the worker in the case of FLI
35 benefits. The bill states that during a state of emergency declared by
36 the Governor, or, as found to be needed by the Commissioner of
37 Health or other public health authority, a "serious health condition"
38 includes an illness caused by an epidemic of a communicable disease,
39 a known or suspected exposure to a communicable disease, or efforts
40 to prevent spread of a communicable disease, which:

41 1. in the case of FLI benefits, prompts the issuance by a public
42 health authority of a determination that the presence in the
43 community of the worker's family member in need of care by the
44 worker, would jeopardize the health of others; or

45 2. in the case of FLI or TDI benefits, results in the
46 recommendation of a healthcare provider or public health authority
47 that a worker, or a family member of the worker in need of care by
48 the worker, voluntarily undergo self-isolation or self-quarantine as a

1 result of suspected exposure to a communicable disease because the
2 presence in the community of that worker or family member would
3 jeopardize the health of others.

4 The bill also eliminates the current one-week waiting period for
5 disability benefits in the indicated epidemic-related cases.

6 The bill modifies the "Family Leave Act," P.L.1989, c.261
7 (C.34:11B-1 et seq.) so that the rights to reinstatement to employment
8 provided to workers by that act are applied to the epidemic-related
9 cases indicated in the bill, and modifies P.L.2018, c.10 (C.34:11D-1)
10 so that the earned sick leave provided by that law is provided in all
11 of the epidemic-related cases indicated in the bill.