

ASSEMBLY, No. 4153

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 14, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Enhances certain worker benefits and protections, including in public emergencies.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the provision to workers of certain benefits and
2 protections, including in states of emergency, amending
3 R.S.43:21-5 and P.L.1948, c.110, and supplementing P.L.1989, c.
4 261 (C.34:11B-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. R.S.43:21-5 is amended to read as follows:
10 43:21-5. An individual shall be disqualified for benefits:

11 (a) For the week in which the individual has left work voluntarily
12 without good cause attributable to such work, and for each week
13 thereafter until the individual becomes reemployed and works eight
14 weeks in employment, which may include employment for the
15 federal government, and has earned in employment at least ten times
16 the individual's weekly benefit rate, as determined in each case.
17 Good cause for voluntarily leaving work includes being compelled to
18 work in circumstances that violate health and safety standards or
19 otherwise jeopardize the health of the individual or members of the
20 individual's family, either because the employer has not taken
21 sufficient measures to alleviate exposures to communicable disease
22 or other health or safety hazards, or because such measures are not
23 feasible with respect to the available work and the individual, as in
24 the case of the individual driving passengers in a personal vehicle, or
25 in the case of an individual with high vulnerability to serious adverse
26 health effects from the health or safety hazard. This subsection shall
27 apply to any individual seeking unemployment benefits on the basis
28 of employment in the production and harvesting of agricultural crops,
29 including any individual who was employed in the production and
30 harvesting of agricultural crops on a contract basis and who has
31 refused an offer of continuing work with that employer following the
32 completion of the minimum period of work required to fulfill the
33 contract. This subsection shall not apply to an individual who
34 voluntarily leaves work with one employer to accept from another
35 employer employment which commences not more than seven days
36 after the individual leaves employment with the first employer, if the
37 employment with the second employer has weekly hours or pay not
38 less than the hours or pay of the employment of the first employer,
39 except that if the individual gives notice to the first employer that the
40 individual will leave employment on a specified date and the first
41 employer terminates the individual before that date, the seven-day
42 period will commence from the specified date.

43 (b) For the week in which the individual has been suspended or
44 discharged for misconduct connected with the work, and for the five

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 weeks which immediately follow that week, as determined in each
2 case.

3 "Misconduct" means conduct which is improper, intentional,
4 connected with the individual's work, within the individual's control,
5 not a good faith error of judgment or discretion, and is either a
6 deliberate refusal, without good cause, to comply with the employer's
7 lawful and reasonable rules made known to the employee or a
8 deliberate disregard of standards of behavior the employer has a
9 reasonable right to expect, including reasonable safety standards and
10 reasonable standards for a workplace free of drug and substance
11 abuse.

12 In the event the discharge should be rescinded by the employer
13 voluntarily or as a result of mediation or arbitration, this subsection
14 (b) shall not apply, provided, however, an individual who is restored
15 to employment with back pay shall return any benefits received under
16 this chapter for any week of unemployment for which the individual
17 is subsequently compensated by the employer.

18 If the discharge was for gross misconduct connected with the work
19 because of the commission of an act punishable as a crime of the first,
20 second, third or fourth degree under the "New Jersey Code of
21 Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be
22 disqualified in accordance with the disqualification prescribed in
23 subsection (a) of this section and no benefit rights shall accrue to any
24 individual based upon wages from that employer for services
25 rendered prior to the day upon which the individual was discharged.

26 The director shall insure that any appeal of a determination
27 holding the individual disqualified for gross misconduct in
28 connection with the work shall be expeditiously processed by the
29 appeal tribunal.

30 To sustain disqualification from benefits because of misconduct
31 under this subsection (b), the burden of proof is upon the employer,
32 who shall, prior to a determination by the department of misconduct,
33 provide written documentation demonstrating that the employee's
34 actions constitute misconduct or gross misconduct.

35 Nothing within this subsection (b) shall be construed to interfere
36 with the exercise of rights protected under the "National Labor
37 Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey
38 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et
39 seq.).

40 (c) If it is found that the individual has failed, without good
41 cause, either to apply for available, suitable work when so directed
42 by the employment office or the director or to accept suitable work
43 when it is offered, or to return to the individual's customary self-
44 employment (if any) when so directed by the director. The
45 disqualification shall continue for the week in which the failure
46 occurred and for the three weeks which immediately follow that
47 week, as determined:

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1 (1) In determining whether or not any work is suitable for an
2 individual, consideration shall be given to the degree of risk involved
3 to health, safety, and morals, the individual's physical fitness and
4 prior training, experience and prior earnings, the individual's length
5 of unemployment and prospects for securing local work in the
6 individual's customary occupation, and the distance of the available
7 work from the individual's residence. Work shall not be regarded as
8 suitable if it would result in the individual being compelled to work
9 in circumstances that violate health and safety standards or otherwise
10 jeopardize the health of the individual or members of the individual's
11 family, either because the employer has not taken sufficient measures
12 to alleviate exposures to communicable disease or other health or
13 safety hazards, or because such measures are not feasible with respect
14 to the available work and the individual, as in the case of the
15 individual driving passengers in a personal vehicle, or in the case of
16 an individual with high vulnerability to serious adverse health effects
17 from the health or safety hazard. In the case of work in the
18 production and harvesting of agricultural crops, the work shall be
19 deemed to be suitable without regard to the distance of the available
20 work from the individual's residence if all costs of transportation are
21 provided to the individual and the terms and conditions of hire are as
22 favorable or more favorable to the individual as the terms and
23 conditions of the individual's base year employment.

24 (2) Notwithstanding any other provisions of this chapter, no work
25 shall be deemed suitable and benefits shall not be denied under this
26 chapter to any otherwise eligible individual for refusing to accept
27 new work under any of the following conditions: the position offered
28 is vacant due directly to a strike, lockout, or other labor dispute; the
29 remuneration, hours, or other conditions of the work offered are
30 substantially less favorable to the individual than those prevailing for
31 similar work in the locality; or, the individual, as a condition of being
32 employed, would be required to join a company union or to resign
33 from or refrain from joining any bona fide labor organization.

34 (d) If it is found that this unemployment is due to a stoppage of
35 work which exists because of a labor dispute at the factory,
36 establishment or other premises at which the individual is or was last
37 employed, except as otherwise provided by this subsection (d).

38 (1) No disqualification under this subsection (d) shall apply if it
39 is shown that:

40 (a) The individual is not participating in or financing or directly
41 interested in the labor dispute which caused the stoppage of work;
42 and

43 (b) The individual does not belong to a grade or class of workers
44 of which, immediately before the commencement of the stoppage,
45 there were members employed at the premises at which the stoppage
46 occurs, any of whom are participating in or financing or directly
47 interested in the dispute; provided that if in any case in which (a) or
48 (b) above applies, separate branches of work which are commonly

1 conducted as separate businesses in separate premises are conducted
2 in separate departments of the same premises, each department shall,
3 for the purpose of this subsection, be deemed to be a separate factory,
4 establishment, or other premises.

5 (2) For any claim for a period of unemployment commencing on
6 or after December 1, 2004, no disqualification under this subsection
7 (d) shall apply if it is shown that the individual has been prevented
8 from working by the employer, even though the individual's
9 recognized or certified majority representative has directed the
10 employees in the individual's collective bargaining unit to work
11 under the preexisting terms and conditions of employment, and the
12 employees had not engaged in a strike immediately before being
13 prevented from working.

14 (3) For any claim for a period of unemployment commencing on
15 or after July 1, 2018, no disqualification under this subsection (d)
16 shall apply if the labor dispute is caused by the failure or refusal of
17 the employer to comply with an agreement or contract between the
18 employer and the claimant, including a collective bargaining
19 agreement with a union representing the claimant, or a State or
20 federal law pertaining to hours, wages, or other conditions of work.

21 (4) For any claim for a period of unemployment commencing on
22 or after July 1, 2018, if the unemployment is caused by a labor
23 dispute, including a strike or other concerted activities of employees
24 at the claimant's workplace, whether or not authorized or sanctioned
25 by a union representing the claimant, but not including a dispute
26 subject to the provisions of paragraph (2) or (3) of this subsection
27 (d), the claimant shall not be provided benefits for a period of the
28 first 30 days following the commencement of the unemployment
29 caused by the labor dispute, except that the period without benefits
30 shall not apply if the employer hires a permanent replacement worker
31 for the claimant's position. A replacement worker shall be presumed
32 to be permanent unless the employer certifies in writing that the
33 claimant will be permitted to return to his or her prior position upon
34 conclusion of the dispute. If the employer does not permit the return,
35 the claimant shall be entitled to recover any benefits lost as a result
36 of the 30-day waiting period before receiving benefits, and the
37 department may impose a penalty upon the employer of up to \$750
38 per employee per week of benefits lost. The penalty collected shall
39 be paid into the unemployment compensation auxiliary fund
40 established pursuant to subsection (g) of R.S.43:21-14.

41 (e) For any week with respect to which the individual is receiving
42 or has received remuneration in lieu of notice.

43 (f) For any week with respect to which or a part of which the
44 individual has received or is seeking unemployment benefits under
45 an unemployment compensation law of any other state or of the
46 United States; provided that if the appropriate agency of the other
47 state or of the United States finally determines that the individual is

1 not entitled to unemployment benefits, this disqualification shall not
2 apply.

3 (g) (1) For a period of one year from the date of the discovery by
4 the division of the illegal receipt or attempted receipt of benefits
5 contrary to the provisions of this chapter, as the result of any false or
6 fraudulent representation; provided that any disqualification may be
7 appealed in the same manner as any other disqualification imposed
8 hereunder; and provided further that a conviction in the courts of this
9 State arising out of the illegal receipt or attempted receipt of these
10 benefits in any proceeding instituted against the individual under the
11 provisions of this chapter or any other law of this State shall be
12 conclusive upon the appeals tribunal and the board of review.

13 (2) A disqualification under this subsection shall not preclude the
14 prosecution of any civil, criminal or administrative action or
15 proceeding to enforce other provisions of this chapter for the
16 assessment and collection of penalties or the refund of any amounts
17 collected as benefits under the provisions of R.S.43:21-16, or to
18 enforce any other law, where an individual obtains or attempts to
19 obtain by theft or robbery or false statements or representations any
20 money from any fund created or established under this chapter or any
21 negotiable or nonnegotiable instrument for the payment of money
22 from these funds, or to recover money erroneously or illegally
23 obtained by an individual from any fund created or established under
24 this chapter.

25 (h) (1) Notwithstanding any other provisions of this chapter
26 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
27 benefits for any week because the individual is in training approved
28 under section 236(a)(1) of the "Trade Act of 1974," Pub.L.93-618 (19
29 U.S.C. s.2296 (a)(1)) nor shall the individual be denied benefits by
30 reason of leaving work to enter this training, provided the work left
31 is not suitable employment, or because of the application to any week
32 in training of provisions in this chapter (R.S.43:21-1 et seq.), or any
33 applicable federal unemployment compensation law, relating to
34 availability for work, active search for work, or refusal to accept
35 work.

36 (2) For purposes of this subsection (h), the term "suitable"
37 employment means, with respect to an individual, work of a
38 substantially equal or higher skill level than the individual's past
39 adversely affected employment, as defined for purposes of the "Trade
40 Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and wages for
41 this work at not less than 80% of the individual's average weekly
42 wage, as determined for the purposes of the "Trade Act of 1974."

43 (i) For benefit years commencing after June 30, 1984, for any
44 week in which the individual is a student in full attendance at, or on
45 vacation from, an educational institution, as defined in subsection (y)
46 of R.S.43:21-19; except that this subsection shall not apply to any
47 individual attending a training program approved by the division to
48 enhance the individual's employment opportunities, as defined under

1 subsection (c) of R.S.43:21-4; nor shall this subsection apply to any
2 individual who, during the individual's base year, earned sufficient
3 wages, as defined under subsection (e) of R.S.43:21-4, while
4 attending an educational institution during periods other than
5 established and customary vacation periods or holiday recesses at the
6 educational institution, to establish a claim for benefits. For purposes
7 of this subsection, an individual shall be treated as a full-time student
8 for any period:

9 (1) During which the individual is enrolled as a full-time student
10 at an educational institution, or

11 (2) Which is between academic years or terms, if the individual
12 was enrolled as a full-time student at an educational institution for
13 the immediately preceding academic year or term.

14 (j) Notwithstanding any other provisions of this chapter
15 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
16 benefits because the individual left work or was discharged due to
17 circumstances resulting from the individual being a victim of
18 domestic violence as defined in section 3 of P.L.1991, c.261
19 (C.2C:25-19). No employer's account shall be charged for the
20 payment of benefits to an individual who left work due to
21 circumstances resulting from the individual being a victim of
22 domestic violence.

23 For the purposes of this subsection (j), the individual shall be
24 treated as being a victim of domestic violence if the individual
25 provides one or more of the following:

26 (1) A restraining order or other documentation of equitable relief
27 issued by a court of competent jurisdiction;

28 (2) A police record documenting the domestic violence;

29 (3) Documentation that the perpetrator of the domestic violence
30 has been convicted of one or more of the offenses enumerated in
31 section 3 of P.L.1991, c.261 (C.2C:25-19);

32 (4) Medical documentation of the domestic violence;

33 (5) Certification from a certified Domestic Violence Specialist or
34 the director of a designated domestic violence agency that the
35 individual is a victim of domestic violence; or

36 (6) Other documentation or certification of the domestic violence
37 provided by a social worker, member of the clergy, shelter worker or
38 other professional who has assisted the individual in dealing with the
39 domestic violence.

40 For the purposes of this subsection (j):

41 "Certified Domestic Violence Specialist" means a person who has
42 fulfilled the requirements of certification as a Domestic Violence
43 Specialist established by the New Jersey Association of Domestic
44 Violence Professionals; and "designated domestic violence agency"
45 means a county-wide organization with a primary purpose to provide
46 services to victims of domestic violence, and which provides services
47 that conform to the core domestic violence services profile as defined
48 by the Division of Youth and Family Services in the Department of

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1 Children and Families and is under contract with the division for the
2 express purpose of providing such services.

3 (k) Notwithstanding any other provisions of this chapter
4 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied
5 benefits for any week in which the individual left work voluntarily
6 and without good cause attributable to the work, if the individual left
7 work to accompany his or her spouse who is an active member of the
8 United States Armed Forces, as defined in N.J.S.38A:1-1(g), to a new
9 place of residence outside the State, due to the armed forces member's
10 transfer to a new assignment in a different geographical location
11 outside the State, and the individual moves to the new place of
12 residence not more than nine months after the spouse is transferred,
13 and upon arrival at the new place of residence the individual was in
14 all respects available for suitable work. No employer's account shall
15 be charged for the payment of benefits to an individual who left work
16 under the circumstances contained in this subsection (k), except that
17 this shall not be construed as relieving the State of New Jersey and
18 any other governmental entity or instrumentality or nonprofit
19 organization electing or required to make payments in lieu of
20 contributions from its responsibility to make all benefit payments
21 otherwise required by law and from being charged for those benefits
22 as otherwise required by law.

23 (cf: P.L. 2018, c.112, s.1)

24

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

27 3. As used in this act, unless the context clearly requires
28 otherwise:

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

45 "Covered employer" means, after June 30, 2009, with respect to
46 whether the employer is an employer whose employees are eligible
47 for benefits during periods of family temporary disability leave
48 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December

1 31, 2008, whether employees of the employer are required to make
2 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual or
3 type of organization, including any partnership, association, trust,
4 estate, joint-stock company, insurance company or domestic or
5 foreign corporation, or the receiver, trustee in bankruptcy, trustee or
6 successor thereof, or the legal representative of a deceased person,
7 who is an employer subject to the "unemployment compensation law"
8 (R.S.43:21-1 et seq.), including any governmental entity or
9 instrumentality which is an employer under R.S.43:21-19(h)(5),
10 notwithstanding that the governmental entity or instrumentality has
11 not elected to be a covered employer pursuant to paragraph (2) of this
12 subsection (a).

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

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

1 conditions pursuant to the laws of this State or as the result of a
2 negotiated contract with any governmental entity or instrumentality
3 which elects to become a "covered employer," except that the
4 individual shall not be required to use the individual's last week's
5 worth of accumulated sick time before receiving the benefits.

6 "Covered individual" shall not mean, 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 member of the Division of State Police in the Department of Law and
10 Public Safety.

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

19 (c) "Division" or "commission" means the Division of
20 Unemployment and Temporary Disability Insurance of the
21 Department of Labor and Workforce Development, and any
22 transaction or exercise of authority by the director of the division
23 shall be deemed to be performed by the division.

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

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

28 (1) "Disability" shall, in the event of a state of emergency
29 declared by the Governor, or when indicated to be needed by the
30 Commissioner of Health or other public health authority, also include
31 an illness caused by an epidemic of a communicable disease, a known
32 or suspected exposure to the communicable disease, or efforts to
33 prevent spread of the communicable disease, which requires in-home
34 care or treatment of the employee due to:

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

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

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

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

47 (1) The entire period of time during which the covered individual
48 is continuously and totally unable to perform the duties of the

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1 covered individual's employment because of the covered individual's
2 own disability, except that two periods of disability due to the same
3 or related cause or condition and separated by a period of not more
4 than 14 days shall be considered as one continuous period of
5 disability; provided the individual has earned wages during such 14-
6 day period with the employer who was the individual's last employer
7 immediately preceding the first period of disability; and

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

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

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

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

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

17 (4) "Base week" with respect to periods of disability commencing
18 on or after January 1, 2001 and before June 1, 2020, means any
19 calendar week of a covered individual's base year during which the
20 covered individual earned in employment from a covered employer
21 remuneration not less than an amount 20 times the minimum wage in
22 effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on
23 October 1 of the calendar year preceding the calendar year in which
24 the benefit year commences, which amount shall be adjusted to the
25 next higher multiple of \$1.00 if not already a multiple thereof, except
26 that if in any calendar week an individual subject to this paragraph is
27 in employment with more than one employer, the covered individual
28 may in that calendar week establish a base week with respect to each
29 of the employers from whom the covered individual earns
30 remuneration equal to not less than the amount defined in this
31 paragraph during that week.

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

42 (6) "Base week" with respect to periods of disability commencing
43 on or after June 1, 2020, means any calendar week of a covered
44 individual's base year during which the covered individual earned in
45 employment from a covered employer remuneration not less than an
46 amount 10 times the minimum wage in effect pursuant to section 5
47 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
48 preceding the calendar year in which the benefit year commences,

1 which amount shall be adjusted to the next higher multiple of \$1.00
2 if not already a multiple thereof, except that if in any calendar week
3 an individual subject to this paragraph is in employment with more
4 than one employer, the covered individual may in that calendar week
5 establish a base week with respect to each of the employers from
6 whom the covered individual earns remuneration equal to not less
7 than the amount defined in this paragraph during that week.

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

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

46 (3) For periods of disability commencing on or after July 1, 2009
47 and before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),
48 if the computations in paragraphs (1) and (2) of this subsection (j)

1 both yield a result which is less than the individual's average weekly
2 earnings in employment with all covered employers during the base
3 weeks in the 26 calendar weeks immediately preceding the week in
4 which the period of disability commenced, then the average weekly
5 wage shall, upon a written request to the department by the individual
6 on a form provided by the department, be computed by the
7 department on the basis of earnings from all covered employers of
8 the individual during the base weeks in those 26 calendar weeks, and,
9 in the case of a claim for benefits from a private plan, that
10 computation of the average weekly wage shall be provided by the
11 department to the individual and the individual's employer.

12 When determining the "average weekly wage" with respect to a
13 period of family temporary disability leave for an individual who has
14 a period of family temporary disability immediately after the
15 individual has a period of disability for the individual's own
16 disability, the period of disability is deemed to have commenced at
17 the beginning of the period of disability for the individual's own
18 disability, not the period of family temporary disability.

19 (k) "Child" means a biological, adopted, or foster child, stepchild
20 or legal ward of a covered individual, child of a domestic partner of
21 the covered individual, or child of a civil union partner of the covered
22 individual, including a child who becomes the child of a parent
23 pursuant to a valid written agreement between the parent and a
24 gestational carrier.

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

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

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

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

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

41 (2) be with a child during the first 12 months after the child's
42 birth, if the individual, or the domestic partner or civil union partner
43 of the individual, is a biological parent of the child, or is a parent of
44 the child pursuant to a valid gestational carrier agreement, or the first
45 12 months after the placement of the child for adoption or as a foster
46 child with the individual;

47 (3) engage in activities for which unpaid leave may be taken
48 pursuant to section 3 of the "New Jersey Security and Financial

1 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's
2 own behalf, if the individual is a victim of an incident of domestic
3 violence, a sexually violent offense, or to assist a family member of
4 the individual who has been a victim of an incident of domestic
5 violence, or a sexually violent offense, provided that any time taken
6 by an individual who has been a victim of an incident of domestic
7 violence, or a sexually violent offense for which the individual
8 receives benefits for a disability caused by the violence or offense
9 shall be regarded as a period of disability of the individual and not as
10 a period of family temporary disability leave; or

11 (4) in the event of a state of emergency declared by the Governor,
12 or when indicated to be needed by the Commissioner of Health or
13 other public health authority, an epidemic of a communicable
14 disease, a known or suspected exposure to the communicable disease,
15 or efforts to prevent spread of the communicable disease, provide in-
16 home care or treatment of the family member of the employee
17 required due to:

18 (i) the issuance by a healthcare provider or the commissioner or
19 other public health authority of a determination that the presence in
20 the community of the family member may jeopardize the health of
21 others; and

22 (ii) the recommendation, direction, or order of the provider or
23 authority that the family member be isolated or quarantined as a
24 result of suspected exposure to a communicable disease.

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

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

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

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

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

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

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

3 (u) "State of emergency" means a natural or **[man-made]** human-
4 made disaster or emergency, including an epidemic or other health
5 emergency, for which a state of emergency has been declared by the
6 President of the United States or the Governor, or for which a state
7 of emergency has been declared by a municipal emergency
8 management coordinator or other public authority permitted by law
9 to declare a state of emergency.

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

39 (cf: P.L.2020, c.23, s.3)

40

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

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

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

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

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

47 (2) With respect to periods of disability commencing on or after
48 January 1, 2001 and before the effective date of P.L.2019, c.37

1 (C.43:21-45.2 et al.), no individual shall be entitled to benefits under
2 this act unless the individual has, within the 52 calendar weeks
3 preceding the week in which the individual's period of disability
4 commenced, established at least 20 base weeks or earned not less
5 than 1,000 times the minimum wage in effect pursuant to section 5
6 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
7 preceding the calendar year in which the disability commences,
8 which amount shall be adjusted to the next higher multiple of
9 \$100.00, if not already a multiple thereof.

10 (3) With respect to periods of disability commencing on or after
11 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.) and before
12 June 1, 2020, no individual shall be entitled to benefits under this act
13 unless the individual has, within the base year preceding the week in
14 which the individual's period of disability commenced, or within the
15 base year preceding the week in which the individual submits a claim
16 for benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
17 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
18 P.L.1948, c.110 (C.43:21-49), established at least 20 base weeks or
19 earned not less than 1,000 times the minimum wage in effect pursuant
20 to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the
21 calendar year preceding the calendar year in which the disability
22 commences, which amount shall be adjusted to the next higher
23 multiple of \$100.00, if not already a multiple thereof.

24 (4) With respect to periods of disability commencing on or after
25 June 1, 2020, no individual shall be entitled to benefits under this act
26 unless the individual has, within the base year preceding the week in
27 which the individual's period of disability commenced, or within the
28 base year preceding the week in which the individual submits a claim
29 for benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
30 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
31 P.L.1948, c.110 (C.43:21-49), established at least 10 base weeks or
32 earned not less than 500 times the minimum wage in effect pursuant
33 to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the
34 calendar year preceding the calendar year in which the disability
35 commences, which amount shall be adjusted to the next higher
36 multiple of \$100.00, if not already a multiple thereof.

37 If an individual who submits a claim for benefits pursuant to
38 subsection h. of section 10 of P.L.2008, c.17 (C.43:21-39.1) or
39 paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110
40 (C.43:21-49) did not establish enough base weeks or have enough
41 total earnings during the base year preceding the week the individual
42 submits the claim, the division shall notify the individual that the
43 individual may file the claim again upon or after the commencement
44 of the period of disability or family temporary disability leave and
45 the division shall then reconsider the individual's eligibility for
46 benefits based on the base year preceding the week in which the
47 period of disability or family temporary disability leave commences.

1 (e) With respect to a period of family temporary disability leave
2 for an individual who has a period of family temporary disability
3 immediately after the individual has a period of disability for the
4 individual's own disability, the period of disability is deemed, for the
5 purposes of specifying the time of the 52-week period or base year in
6 which base weeks or earnings are required to be established for
7 benefit eligibility pursuant to this subsection (e), to have commenced
8 at the beginning of the period of disability for the individual's own
9 disability, not the period of family temporary disability.
10 (cf: P.L.2019, c.37, s.18)

11
12 4. (New section) An employer who reduces the number of
13 employees of the employer by laying off one or more employees
14 during the public health emergency and state of emergency declared
15 by the Governor on March 9, 2020, and any subsequent extensions of
16 that public health emergency and state of emergency, shall give those
17 employees the right of first refusal for any subsequent employment
18 openings with the employer in positions for which they are qualified.
19 The employees who will have this right of first refusal shall include
20 all employees who receive, because of those layoffs, unemployment
21 benefits under the New Jersey "unemployment compensation law,"
22 R.S. 43:21-1 et seq.

23 An employer who violates the provisions of this section shall be
24 subject to the penalties provided by section 10 of P.L.1989, c.261
25 (C.34:11B-10) for violations of P.L.1989, c.261 (C.34:11B-1 et seq.),
26 and an employee aggrieved by the violation shall be entitled to the
27 remedies provided by section 11 of that act (C.34:11B-11).

28
29 5. This act shall take effect immediately.

30
31

32 STATEMENT

33
34 The bill enhances certain worker benefits and protections,
35 including in public emergencies, by:

36 1. Specifying that, for the sake of being eligible for
37 unemployment benefits, "good cause" for voluntarily leaving work
38 includes being compelled to work in circumstances that violate health
39 and safety standards or otherwise jeopardize health, either because
40 the employer has not taken sufficient measures to alleviate exposures
41 to communicable disease or other health or safety hazards, or because
42 such measures are not feasible with respect to the available work, and
43 that work is not "suitable" work for which an individual is
44 disqualified from benefits for not accepting if the work compels the
45 individual to work in those circumstances.

46 2. Reducing the minimum weekly earnings required in each of
47 20 base weeks for a worker to be eligible for family leave insurance
48 (FLI) and temporary disability insurance (TDI) benefits from 20 to

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1 10 times the State minimum wage, and reducing the alternative
2 annual earnings required for eligibility from 1,000 to 500 times the
3 State minimum wage.

4 3. Requiring that an employer who lays off employees during
5 the state of emergency declared by the Governor on March 9, 2020,
6 and any subsequent extensions of that state of emergency, to give
7 those employees the right of first refusal for any subsequent
8 employment openings with the employer in positions for which they
9 are qualified.