

SENATE, No. 2310

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Concerns reinstatement of workers after taking family leave.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning reinstatement of workers after taking family
2 leave and 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.1989, c.261 (C.34:11B-3) is amended to
8 read as follows:

9 3. As used in this act:

10 a. "Child" means a biological, adopted, foster child, or resource
11 family child, stepchild, legal ward, or child of a parent, including a
12 child who becomes the child of a parent pursuant to a valid written
13 agreement between the parent and a gestational carrier.

14 b. "Director" means the Director of the Division on Civil
15 Rights.

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

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

23 e. "Employee" means a person who is employed for at least 12
24 months by an employer, with respect to whom benefits are sought
25 under this act, for not less than 1,000 base hours during the
26 immediately preceding 12-month period. Any time, up to a
27 maximum of 90 calendar days, during which a person is laid off or
28 furloughed by an employer due to that employer curtailing
29 operations because of a state of emergency declared after October
30 22, 2012, shall be regarded as time in which the person is employed
31 for the purpose of determining eligibility for leave time under this
32 act. In making the determination, the base hours per week during
33 the layoff or furlough shall be deemed to be the same as the average
34 number of hours worked per week during the rest of the 12-month
35 period.

36 f. "Employer" means a person or corporation, partnership,
37 individual proprietorship, joint venture, firm or company or other
38 similar legal entity which engages the services of an employee and
39 which:

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

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

42 (3) **【**With respect to the period of time from the 1,095th day
43 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)
44 through June 30, 2019, employs 50 or more employees for each
45 working day during each of 20 or more calendar workweeks in the

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 then current or immediately preceding calendar year; and ~~](Deleted~~
2 ~~by amendment, P.L. , c.) (pending before the Legislature as~~
3 ~~this bill)~~

4 (4) With respect to any period of time ~~[on or after]~~ from June
5 30, 2019 ~~until the effective date of P.L. c. (pending before the~~
6 ~~Legislature as this bill)~~, employs 30 or more employees for each
7 working day during each of 20 or more calendar workweeks in the
8 then current or immediately preceding calendar year; ~~and~~

9 ~~(5) With respect to any period of time after the effective date of~~
10 ~~P.L. c. (pending before the Legislature as this bill), employs~~
11 ~~one or more employees for each working day during each of 20 or~~
12 ~~more calendar workweeks in the then current or immediately~~
13 ~~preceding calendar year.~~

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

16 g. "Employment benefits" means all benefits and policies
17 provided or made available to employees by an employer, and
18 includes group life insurance, health insurance, disability insurance,
19 sick leave, annual leave, pensions, or other similar benefits.

20 h. "Parent" means a person who is the biological parent,
21 adoptive parent, foster parent, resource family parent, step-parent,
22 parent-in-law or legal guardian, having a "parent-child relationship"
23 with a child as defined by law, or having sole or joint legal or
24 physical custody, care, guardianship, or visitation with a child, or
25 who became the parent of the child pursuant to a valid written
26 agreement between the parent and a gestational carrier.

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

29 (1) the birth of a child of the employee, including a child born
30 pursuant to a valid written agreement between the employee and a
31 gestational carrier;

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

34 (3) the serious health condition of a family member of the
35 employee.

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

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

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

48 (1) inpatient care in a hospital, hospice, or residential medical
49 care facility; or

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

3 During a state of emergency declared by the Governor, or when
4 indicated to be needed by the Commissioner of Health or other
5 public health authority, "serious health condition" shall also include
6 an illness caused by an epidemic of a communicable disease, a
7 known or suspected exposure to a communicable disease, or efforts
8 to prevent spread of a communicable disease, which requires in-
9 home care or treatment of a 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 a family member may jeopardize the health of
13 others; and

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

17 m. "State of emergency" means a natural or man-made disaster
18 or emergency for which a state of emergency has been declared by
19 the President of the United States or the Governor, or for which a
20 state of emergency has been declared by a municipal emergency
21 management coordinator.

22 (cf: P.L.2020, c.17, s.2)

23

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

26 2. Purpose. This act shall be liberally construed as remedial
27 legislation enacted upon the following declarations of public policy
28 and legislative findings of fact:

29 The public policy of this State, already established, is to protect
30 employees against the suffering and hardship generally caused by
31 involuntary unemployment. But the "unemployment compensation
32 law" provides benefit payments to replace wage loss caused by
33 involuntary unemployment only so long as an individual is "able to
34 work, and is available for work," and fails to provide any protection
35 against wage loss suffered because of inability to perform the duties
36 of a job interrupted by nonoccupational illness, injury, or other
37 disability of the individual or of members of the individual's family.
38 Nor is there any other comprehensive and systematic provision for
39 the protection of working people against loss of earnings due to a
40 nonoccupational sickness, accident, or other disability.

41 The prevalence and incidence of nonoccupational sickness,
42 accident, and other disability among employed people is greatest
43 among the lower income groups, who either cannot or will not
44 voluntarily provide out of their own resources against the hazard of
45 an earnings loss caused by nonoccupational sickness, accident, or
46 other disability. Disabling sickness or accident occurs throughout
47 the working population at one time or another, and approximately
48 fifteen per centum (15%) of the number of people at work may be

1 expected to suffer disabling illness of more than one week each
2 year.

3 It was found, prior to the enactment of the "Temporary Disability
4 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then
5 existing voluntary plans for the payment of cash sickness benefits
6 covered less than one-half of the number of working people of this
7 State who were covered by the "unemployment compensation law,"
8 and that even that degree of voluntary protection afforded uneven,
9 unequal and sometimes uncertain protection among the various
10 voluntary benefit programs.

11 While the enactment of that law has provided stable protection
12 for New Jersey's disabled workers, very few workers are protected
13 from income losses caused by the need to take time off from work
14 to care for family members who are incapable of self-care,
15 including newborn and newly-adopted children. The growing
16 portion of middle-income families in which all adult family
17 members work, largely due to economic necessity, points to the
18 desperate need for replacement income when a working family
19 member must take time to care for family members who are unable
20 to take care of themselves. Moreover, the United States is the only
21 industrialized nation in the world which does not have a mandatory
22 workplace-based program for such income support. It is therefore
23 desirable and necessary to fill the gap in existing provisions for
24 protection against the loss of earnings caused by involuntary
25 unemployment, by extending such protection to meet the hazard of
26 earnings loss due to inability to work caused by nonoccupational
27 sickness, accidents, or other disabilities of workers and members of
28 their families. Developing systems that help families adapt to the
29 competing interests of work and home not only benefits workers,
30 but also benefits employers by reducing employee turnover and
31 increasing worker productivity.

32 The foregoing facts and considerations require that there be a
33 uniform minimum program providing in a systematic manner for
34 the payment of reasonable benefits to replace partially such
35 earnings loss and to meet the continuing need for benefits where an
36 individual becomes disabled during unemployment or needs to care
37 for family members incapable of self-care. In order to maintain
38 consumer purchasing power, relieve the serious menace to health,
39 morals and welfare of the people caused by insecurity and the loss
40 of earnings, to reduce the necessity for public relief of needy
41 persons, to increase workplace productivity and alleviate the
42 enormous and growing stress on working families of balancing the
43 demands of work and family needs, and in the interest of the health,
44 welfare and security of the people of this State, such a system,
45 enacted under the police power, is hereby established, requiring the
46 payment of reasonable cash benefits to eligible individuals who are
47 subject to accident or illness which is not compensable under the
48 worker's compensation law or who need to care for family members
49 incapable of self-care.

1 【While the Legislature recognizes the pressing need for benefits
2 for workers taking leave to care for family members incapable of
3 self-care, it also finds that the need of workers for leave during their
4 own disability continues to be especially acute, as a disabled worker
5 has less discretion about taking time off from work than a worker
6 caring for a family member. Notwithstanding any interpretation of
7 law which may be construed as providing a worker with rights to
8 take action against an employer who fails or refuses to restore the
9 worker to employment after the worker's own disability, the
10 Legislature does not intend that the policy established by P.L.2008,
11 c.17 (C.43:21-39.1 et al.) of providing benefits for workers during
12 periods of family temporary disability leave to care for family
13 members incapable of self-care be construed as granting any worker
14 an entitlement to be restored by the employer to employment held
15 by the worker prior to taking family temporary disability leave or
16 any right to take action, in tort, or for breach of an implied
17 provision of the employment agreement, or under common law,
18 against an employer who fails or refuses to restore the worker to
19 employment after the family temporary disability leave, and the
20 Legislature does not intend that the policy of providing benefits
21 during family temporary disability leave be construed as increasing,
22 reducing or otherwise modifying any entitlement of a worker to
23 return to employment or right of the worker to take action under the
24 provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1
25 et seq.).】

26 Since the enactment of the "Temporary Disability Benefits Law,"
27 P.L.1948, c.110 (C.43:21-25 et al.), the State government-operated
28 State temporary disability benefits plan, or "State plan," has proven
29 to be highly efficient and cost effective in providing temporary
30 disability benefits to New Jersey workers. The State plan
31 guarantees the availability of coverage for all employers, regardless
32 of experience, with low overhead costs and a rapid processing of
33 claims and appeals by knowledgeable, impartial public employees.
34 Consequently, the percentage of all employers using the State plan
35 increased from 64% in 1952 to 98% in 2006, while the percentage
36 of employees covered by the State plan increased from 28% to 83%.
37 A publicly-operated, nonprofit State plan is therefore indispensable
38 to achieving the goals of the "Temporary Disability Benefits Law,"
39 P.L.1948, c.110 (C.43:21-25 et al.).
40 (cf: P.L.2019, c.37, s.7)

41
42 3. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to
43 read as follows:

44 24. a. An employer shall not discharge, harass, threaten, or
45 otherwise discriminate or retaliate against an employee with respect
46 to the compensation, terms, conditions, or privileges of employment
47 on the basis that the employee requested or took any temporary
48 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.),
49 or family temporary disability leave benefits pursuant to P.L.2008,

1 c.17 (C.43:21-39.1 et al.), including retaliation by refusing to
2 **【restore】** reinstate the employee to employment following a period
3 of leave**【**, except that, pursuant to section 2 of P.L.1948, c.110
4 (C.43:21-26), nothing in this section or any other section of
5 P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1
6 et al.) shall be construed as increasing, reducing or otherwise
7 modifying any entitlement provided to a worker by the provisions
8 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to
9 be restored to employment by the employer after a period of family
10 temporary disability leave**】** in the position held when the leave
11 commenced or an equivalent position of like seniority, status,
12 employment benefits, pay and other terms and conditions of
13 employment, except that if, during period of leave, the employer
14 experiences a layoff and the employee would have been laid off if
15 the employee had not been on leave, the employee shall not be
16 entitled to reinstatement, but only if the employer notifies the
17 employee of the employee's right to file a claim for unemployment
18 benefits after the leave period ends provided by paragraph (2) of
19 subsection (c) of R.S.43:21-19.

20 b. Upon a violation of subsection a. of this section, an
21 employee or former employee may, as an alternative to any action
22 that the employee is permitted to take for the violation pursuant to
23 the provisions of P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17
24 (C.43:21-39.1 et al.), or the "Family Leave Act," P.L.1989, c.261
25 (C.34:11B-1 et seq.), institute a civil action in the Superior Court
26 for relief**【**. **All**】**** in which all remedies available in common law
27 tort actions shall be available to a prevailing plaintiff. The court
28 may also order any or all of the following relief:

29 (1) an assessment of a civil fine of not less than \$1,000 and not
30 more than \$2,000 for the first violation of any of the provisions of
31 this section and not more than \$5,000 for each subsequent violation;

32 (2) an injunction to restrain the continued violation of any of the
33 provisions of this section;

34 (3) reinstatement of the employee to the same position or to a
35 position equivalent to that which the employee held prior to
36 unlawful discharge or retaliatory action;

37 (4) reinstatement of full fringe benefits and seniority rights;

38 (5) compensation for any lost wages, benefits and other
39 remuneration; and

40 (6) payment of reasonable costs and attorney's fees.

41 (cf: P.L.2019, c.37, s.24).

42

43 4. This act shall take effect immediately, provided that:

44 a. in the case of any employer who becomes subject to the
45 provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the
46 provisions of paragraph (5) of subsection f. of section 3 of
47 P.L.1989, c.261 (C.34:11B-3), the provisions of P.L.1989, c.261
48 (C.34:11B-1 et seq.) shall apply to the employer only with respect

1 to periods of family leave which commence after the effective date
2 of this act; and

3 b. in the case of any employer who becomes subject to the
4 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because
5 of the changes made in that section by P.L. , c. (C.)(now
6 pending before the Legislature as this bill) the provisions of section
7 24 of P.L.2019, c.37 (C.43:21-55.2) shall apply to the employer
8 only with respect to periods of disability for family temporary
9 disability leave which commence after the effective date of this act.

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11

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STATEMENT

13

14 This bill extends to employees of employers with less than 30
15 employees the right to be reinstated to employment after taking paid
16 or unpaid family leave, thus ensuring that all workers who pay for
17 family leave insurance (FLI) will be able to able to return to work
18 after taking FLI benefits.

19 The bill extends to employees, no matter how few employees
20 their employer has, the current provision of section 24 of P.L.2019,
21 c.37 (C.43:21-55.2) that an employee who takes FLI benefits to care
22 for a family member may not be retaliated against by their employer
23 refusing to reinstate them after the leave. Currently, an employer
24 who employs less than 30 workers, and is thus exempt from the
25 reinstatement requirements of the Family Leave Act (FLA), is also
26 exempt from the reinstatement requirements of that section. By
27 removing this exemption, the bill extends that section's
28 reinstatement rights to recipients of FLI benefits even if their
29 employers have less than 30 employees, in the same way that
30 section currently provides that reinstatement protection for
31 temporary disability insurance recipients no matter how few
32 employees the employer has.

33 The bill also amends the FLA to make employers, regardless of
34 how few employees they have, subject to that law's requirement to
35 reinstate leave takers, thereby extending that right of reinstatement
36 to employees of employers with less than 30 employees, whether or
37 not the employees receive FLI benefits.

38 Finally, the bill provides that an employer is not penalized for
39 failing to reinstate a leave taker if the employer has a layoff during
40 the leave period and the employee would have been laid off if not
41 on leave, but only if the employer notifies the employee of the
42 employee's rights under the unemployment insurance (UI) law to
43 claim UI benefits after the leave period ends.

44 The bill's provisions would apply only to periods of family leave
45 which commence after the effective date of the bill.