SENATE, No. 2454

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

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

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

1. R.S.43:21-5 is amended to read as follows:

43:21-5. An individual shall be disqualified for benefits:

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

(b) For the week in which the individual has been suspended or 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A police record documenting the domestic violence;

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

(4) Medical documentation of the domestic violence;

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

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

For the purposes of this subsection (j):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. This act shall take effect immediately.

STATEMENT

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

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

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

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

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