ASSEMBLY, No. 4695



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED OCTOBER 3, 2022

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

SYNOPSIS

Concerns worker leave.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning leave for workers in connection with pregnancy loss, assisted reproductive technology procedures, adoption, or surrogacy arrangements, or other events impacting pregnancy or fertility, and amending various sections of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

3. As used in this act:

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

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

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

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

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

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

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

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

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

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

(5) With respect to any period of time on or after the effective date of P.L. , c. (C. )(pending before the Legislature as this bill), employs one or more employees.

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

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

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

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

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

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

(3) the serious health condition of a family member of the employee; **[**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 a communicable disease, which:

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

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

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

(5) a spouse or domestic partner of the employee experiencing a pregnancy loss, an unsuccessful round of intrauterine insemination or other assisted reproductive technology procedure, a failed adoption match, including an adoption not finalized because it is contested by another party, a failed surrogacy arrangement; or a diagnosis or event that impacts pregnancy or fertility.

j. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, 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.

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

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

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

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

m. "State of emergency" means a natural or man-made disaster or 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.

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

(cf: P.L.2020, c.23, s.1)

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

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

(1) time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or pregnancy and recovery from pregnancy, even if the pregnancy does not result in a successful birth, or for preventive medical care for the employee;

(2) time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or pregnancy and recovery from pregnancy, even if the pregnancy does not result in a successful birth, or during preventive medical care for the family member;

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

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

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

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

(c) during a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others; **[**or**]**

(5) time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability;

(6) time needed by the employee for a intrauterine insemination or other assisted reproductive technology procedure, or related diagnosis, of the employee or the spouse, domestic partner or civil union partner of the employee, whether or not the procedure is successful;

(7) time needed for the placement of a child with the employee by adoption or placement in foster care, including if the placement is not finalized because it is contested by another party;

(8) time needed by the employee, in connection with pregnancy loss, an unsuccessful round of intrauterine insemination or other assisted reproductive technology procedure, a failed adoption, a failed surrogacy arrangement, or a diagnosis or event that impacts pregnancy or fertility, to receive comprehensive mental health supports, necessary procedures and medications, and culturally responsive supports including pregnancy-loss doula care;

(9) time needed, up to three working days, for any instance of bereavement for the death of a family member of an employee, or time needed for bereavement for a pregnancy loss;.

(10) time needed to provide care for a spouse or domestic partner during pregnancy and recovery from childbirth, whether or not the childbirth is successful, or, if the employee is anticipated to become the parent of a child under a valid written agreement with a gestational carrier, for the woman whose pregnancy will result in the child during the woman’s pregnancy and recovery from childbirth, whether or not the childbirth is successful; or

(11) time needed for an employee to provide care for spouse or domestic or civil union partner of the employee who experiences a pregnancy loss, an unsuccessful round of intrauterine insemination or other assisted reproductive technology procedure, a failed adoption match, including an adoption not finalized because it is contested by another party, a failed surrogacy arrangement; or a diagnosis or event that impacts pregnancy or fertility.

b. If an employee's need to use earned sick leave is foreseeable, an employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin, of the intention to use the leave and its expected duration, and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. If the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable, if the employer has notified the employee of this requirement. Employers may prohibit employees from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates. For earned sick leave of three or more consecutive days, an employer may require reasonable documentation that the leave is being taken for the purpose permitted under subsection a. of this section. If the leave is permitted under paragraph (1) or (2) of subsection a. of this section, documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation. If the leave is permitted under paragraph (3) of subsection a. of this section because of domestic or sexual violence, any of the following shall be considered reasonable documentation of the domestic or sexual violence: medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a social worker, counselor, member of the clergy, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member in dealing with the domestic or sexual violence. If the leave is permitted under paragraph (4) of subsection a. of this section, a copy of the order of the public official or the determination by the health authority shall be considered reasonable documentation.

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

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

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

f. An employee who is eligible for both earned sick leave pursuant to P.L.2018, c.10 (C.34:11D-1 et seq.). and either temporary disability benefits pursuant to P.L.1948, c. 110 (C.43:21-25 et al.), or family temporary disability leave benefits pursuant to P.L.2008, c. 17 (C.43:21-39.1 et al.) shall have the option of using either the earned sick leave or whichever is applicable of temporary disability benefits or family temporary disability leave benefits, or both earned sick leave and disability or family leave benefits, and may select the order in which the different kinds of leave are taken, but shall not receive more than one kind of leave simultaneously, and shall not be entitled to a total of more than three days of leave for any one instance of the events indicated in paragraph (9) of subsection a. of this section.

(cf: P.L.2020, c.17, s.1)

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

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

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

The prevalence and incidence of non-occupational sickness, accident, and other disability among employed people is greatest among the lower income groups, who either cannot or will not voluntarily provide out of their own resources against the hazard of an earnings loss caused by non-occupational sickness, accident, or other disability. Disabling sickness or accident occurs throughout the working population at one time or another, and approximately fifteen per centum (15%) of the number of people at work may be expected to suffer disabling illness of more than one week each year.

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

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

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

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

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

(cf: P.L.2019, c.37, s.7)

4. 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 weeks’ 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:

(i) of the covered individual's own disability except that two periods of the individual’s own 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;

(ii) time needed by the individual for a intrauterine insemination or other assisted reproductive technology procedure, or related diagnosis, of the employee or the spouse, domestic partner or civil union partner of the employee, whether or not the procedure is successful;

(iii) time needed by the individual, in connection with pregnancy loss, unsuccessful intrauterine insemination or other assisted reproductive technology procedure, a failed adoption, a failed surrogacy arrangement, or a diagnosis or event that impacts pregnancy or fertility, to receive needed procedures, medications, mental health supports, and culturally responsive supports including pregnancy-loss doula care; or

(iv) time needed, up to three working days, for any instance of bereavement for the death of a family member of an employee, or time needed for bereavement for a pregnancy loss; 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, 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.

(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;

(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;

(5) provide care for a spouse or domestic partner during pregnancy and recovery from childbirth, whether or not the childbirth is successful, or, if the employee is anticipated to become the parent of a child under a valid written agreement with a gestational carrier or otherwise, for the woman whose pregnancy will result in the child during the woman’s pregnancy and recovery from childbirth, whether or not the childbirth is successful;

(6) to provide care for spouse or domestic or civil union partner of the employee who experiences a pregnancy loss, unsuccessful intrauterine insemination or other assisted reproductive technology procedure, a failed adoption match, including an adoption not finalized because it is contested by another party, a failed surrogacy arrangement; or a diagnosis or event that impacts pregnancy or fertility; or

(7) time needed for the placement of a child with the employee by adoption or placement in foster care, including if the placement is not finalized because it is contested by another party.

"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 disaster or 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.

(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)

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

14. a. With respect to any period of disability for an individual's own disability commencing on or after January 1, 1953, disability benefits, not in excess of an individual's maximum benefits, shall be payable with respect to disability which commences while a person is a covered individual under the Temporary Disability Benefits Law, and shall be payable with respect to the eighth consecutive day of such disability and each day thereafter that such period of disability continues; and if benefits shall be payable for three consecutive weeks with respect to any period of disability commencing on or after January 1, 1968, then benefits shall also be payable with respect to the first seven days thereof. With respect to any period of disability for an individual's own disability commencing on or after the effective date of P.L.2020, c.17 the disability benefits shall be payable with respect to the first day of the disability, if the disability is as described in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is for leave as described in subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29). With respect to any period of disability for an individual's own disability commencing on or after the effective date of P.L. , c. (C. )(pending before the Legislature as this bill), disability benefits shall be payable with respect to the first day and each subsequent day during the period of disability.

b. With respect to any period of family temporary disability leave commencing on or after July 1, 2009 and while an individual is a covered individual, family temporary disability benefits, not in excess of the individual's maximum benefits, shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with respect to any leave taken during the first one-week period in which leave is taken. With respect to any period of family temporary disability leave commencing on or after July 1, 2019 and while an individual is a covered individual, family temporary disability benefits, not in excess of the individual's maximum benefits, shall be payable with respect to the first day of leave taken upon the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave. The maximum total benefits payable to any eligible individual for any period of disability of the individual commencing on or after January 1, 1968, shall be either 26 times his weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that such maximum amount shall be computed in the next lower multiple of $1.00 if not already a multiple thereof. The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2009 and before July 1, 2020, shall be six times the individual's weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that the maximum amount shall be computed in the next lower multiple of $1.00, if not already a multiple thereof. The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2020, shall be twelve times the individual's weekly benefit amount; provided that the maximum amount shall be computed in the next lower multiple of $1.00, if not already a multiple thereof.

(cf: P.L.2020, c.23, s.5)

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

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

(a) for periods of disability commencing on or before the effective date of P.L. , c. (C. )(pending before the Legislature as this bill), for the first seven consecutive days of each period of disability; except that:

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

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

(3) in the case of an individual taking family temporary disability leave, there shall be no waiting period;

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

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

After the effective date of P.L. , c. (C. )(pending before the Legislature as this bill), there shall be no waiting period before benefits are paid;

(b) (1) for more than 26 weeks with respect to any one period of disability of the individual;

(2) for more than six weeks with respect to any one period of family temporary disability leave commencing before July 1, 2020 and more than 12 weeks if the period of leave commences on or after July 1, 2020, or for more than 42 days with respect to any one period of family temporary disability leave commencing before July 1, 2020 and more than 56 days if the period of leave commences on or after July 1, 2020, and is taken on an intermittent basis; and

(3) for more than six weeks of family temporary disability leave during any 12-month period commencing before July 1, 2020 and more than 12 weeks for any 12-month period commencing on or after July 1, 2020, or for more than 42 days of family temporary disability leave taken during any 12-month period commencing before July 1, 2020 and more than 56 days if the period of leave commences on or after July 1, 2020, on an intermittent basis, including family temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while unemployed;

(c) for any period of disability which did not commence while the claimant was a covered individual;

(d) for any period of disability of a claimant during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge or for any period of family temporary disability leave for a serious health condition of a family member of the claimant, during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility or is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice, the serious health condition of the family member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge;

(e) (Deleted by amendment, P.L.1980, c.90.)

(f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, third, or fourth degree, or for any period during which a covered individual would be disqualified for unemployment compensation benefits for gross misconduct under subsection (b) of R.S.43:21-5;

(g) for any period during which the claimant performs any work for remuneration or profit, except that, in a case of a claim for benefits for a period of family temporary disability on or after July 1, 2020 in which the covered individual has more than one employer, the individual shall have the option of claiming benefits for leave taken from one employer, based on wages paid by that employer, on the condition that the individual does not, during the period for which the benefits are paid, increase the amount of employment time with any one employer;

(h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed regular weekly wages immediately prior to disability;

(i) for any period during which a covered individual would be disqualified for unemployment compensation benefits under subsection (d) of R.S.43:21-5, unless the disability commenced prior to such disqualification;

(j) for any period during which the claimant receives any paid sick leave, vacation time or other leave at full pay from the employer of the individual;

and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in P.L.1948, c.110 (C.43:21-25 et al.).

(cf: P.L.2020, c.23, s.6)

7. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to read as follows:

10. a. Family temporary disability leave shall be compensable subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for any period of family temporary disability leave taken by a covered individual which commences after June 30, 2009.

b. An individual shall not simultaneously receive disability benefits for family temporary disability leave and any other disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or any unemployment compensation, or any paid sick leave, vacation time or other leave at full pay from the employer of the individual.

c. The employer of an individual may, notwithstanding any other provision of law, including the provisions of N.J.S.18A:30-1 et seq., permit the individual, during a period of family temporary disability leave, to use any paid sick leave, vacation time or other leave at full pay made available by the employer before the individual uses disability benefits for family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying any provision of an existing collective bargaining agreement or employer policy, or preventing any new provision of a collective bargaining agreement or employer policy, which provides employees more generous leave or gives employees greater rights to select which kind of leave is used or select the order in which the different kinds of leave are used. Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing an employer from providing more generous benefits than are provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which supplement the benefits provided under P.L.2008, c.17 (C.43:21-39.1 et al.) for some or all of the employer's employees.

d. An individual who is entitled to leave under the provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.). **[**Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed to grant an employee any entitlement to be restored by the employer to employment held by the employee prior to taking family temporary disability leave or any right to take action against an employer who refuses to restore the employee to employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed to increase, reduce or otherwise modify any entitlement of an employee to return to employment or right of the employee to take action under the provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.). If an employee receives benefits for family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) with respect to employment with an employer who is not an employer as defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the employee to employment after the period of family temporary disability leave, that failure or refusal shall not be a wrongful discharge in violation of a clear mandate of public policy, and the employee shall not have a cause of action against that employer, in tort, or for breach of an implied provision of the employment agreement, or under common law, for that failure or refusal.**]**

e. An employee taking family temporary disability leave or an employer from whom the employee is taking the leave shall have the same right to appeal a determination of a benefit for the family temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1 et al.) as an employee or employer has to appeal a determination of a benefit for the disability of the employee under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and any regulations adopted pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

f. In the event of a period of family temporary disability leave of any individual covered under the State plan, the employer shall, not later than the ninth day of the period of family temporary disability leave, or not later than the ninth day after the employee notifies the employer of an anticipated period of family temporary disability leave pursuant to subsection h. of this section, whichever comes first, including any time in which the employer provides sick leave, vacation or other fully paid leave, issue to the individual and to the division printed notices on division forms containing the name, address and Social Security number of the individual, such wage information as the division may require to determine the individual's eligibility for benefits, including any sick pay, vacation or other fully paid time off provided by the employer during the period of family temporary disability leave, and the name, address, and division identity number of the employer. Not later than 30 days after the commencement of the period of family temporary disability leave for which the notice is furnished by the employer, the individual shall furnish to the division a notice and claim for family temporary disability leave benefits. Upon the submission of the notices by the employer and the individual, and the commencement of the compensable portion of the family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may issue benefit payments. In the case of family temporary disability leave taken to care for a family member with a serious health condition, the benefits may be paid for periods not exceeding three weeks pending the receipt of the certification required pursuant to subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2). Failure to furnish notice and certification in the manner above provided shall not invalidate or reduce any claim if it shall be shown to the satisfaction of the division not to have been reasonably possible to furnish the notice and certification and that the notice and certification was furnished as soon as reasonably possible.

g. Each covered employer shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by regulation promulgated by the commissioner, of each covered employee's rights regarding benefits payable pursuant to this section. The employer shall also provide each employee of the employer with a written copy of the notification: (1) not later than 30 days after the form of the notification is issued by regulation; (2) at the time of the employee's hiring, if the employee is hired after the issuance; (3) whenever the employee notifies the employer that the employee is taking time off for circumstances under which the employee is eligible for benefits pursuant to this section; and (4) at any time, upon the first request of the employee.

h. With respect to any period of family temporary disability leave commencing on or after October 4, 2019 if an individual knows in advance when the period will commence, the individual may notify the employer of the anticipated period of family temporary disability leave and submit to the division a claim for benefits for that period, which shall include a statement of when the period will commence and any certification required pursuant to subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior to, but not more than 60 days prior to, the date that the period will commence. The division shall process that claim immediately and, upon finding that the claim is valid, shall pay the benefit upon the commencement of the period of family temporary disability leave, except that if the division receives the claim less than 30 days before the commencement of the period, the division shall make the payment not more than 30 days after the receipt of the claim. The periods of family temporary disability leave to which the provisions of this subsection apply shall include, but not be limited to, any of the following if the commencement date of the leave is known in advance: periods of leave for care of a child of the individual after adoption, the placement of a child into foster care, or childbirth, including childbirth under a valid agreement between the individual and a gestational carrier; periods of leave for scheduled medical procedures, treatments, or appointments for a family member of the individual; and periods of leave for scheduled ongoing care of a family member of the individual. If the individual 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 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 family temporary disability leave commences.

(cf: P.L.2019, c.37, s.13)

8. Section 21 of P.L.2019, c.37 (C.43:21-45.2) is amended to read as follows:

21. a. The division shall implement disability insurance goals for the timely determination and prompt payment of temporary disability benefits and family temporary disability benefits under the State plan, as follows:

(1) for temporary disability benefits, in each calendar year:

(a) not less than 40 percent of the original benefit determinations shall be completed within seven days after the commencement of the disability, or the receipt of the benefit claims by the division, whichever is later;

(b) not less than 75 percent of the original benefit determinations shall be completed within 14 days after the commencement of the disability, or the receipt of the benefit claims by the division, whichever is later;

(c) not less than 85 percent of the original benefit determinations shall be completed within 21 days after the commencement of the disability, or the receipt of the benefit claims by the division, whichever is later; and

(d) not less than 90 percent of the original benefit determinations shall be completed within 28 days after the commencement of the disability, or the receipt of the benefit claims by the division, whichever is later; and

(2) for family temporary disability benefits, in each calendar year:

(a) not less than 80 percent of the original benefit determinations shall be completed within seven days after the commencement of the period of family temporary disability leave, or the receipt of the benefit claims by the division, whichever is later;

(b) not less than 85 percent of the original benefit determinations shall be completed within 14 days after the commencement of the period of family temporary disability leave, or the receipt of the benefit claims by the division, whichever is later;

(c) not less than 90 percent of the original benefit determinations shall be completed within 21 days after the commencement of the period of family temporary disability leave, or the receipt of the benefit claims by the division, whichever is later; and

(d) not less than 95 percent of the original benefit determinations shall be completed within 28 days after the commencement of the period of family temporary disability leave, or the receipt of the benefit claims by the division, whichever is later.

b. The commissioner shall, not later than September 30 of 2019 and each subsequent year, issue, provide to the Legislature, and make available to the public on the department's webpage, a report regarding division efforts in the preceding calendar year to attain the disability insurance goals set pursuant to this section for temporary disability benefits, and a report regarding those efforts for family temporary disability benefits. Each report shall include:

(1) the total number of claims and the number and percentage of original determinations completed within each number of days specified in the goals set pursuant to this section, and the number and percentage of original determinations completed within the following number of days after the receipt of the benefit claims or the commencement of disability or family temporary disability, whichever is later: 35 days, 42 days, 49 days and 56 days, and the number and percentage of original determinations completed more than 56 days after the receipt of the claims or the commencement of disability or family temporary disability and the average number of days to make the determinations for the claims that took more than 56 days;

(2) the number and percentage of claims received with insufficient information, what portion of those claims were because of failure of claimants to provide sufficient information, what portion of those claims were because of failures of medical providers of claimants to provide sufficient information, and what portion of those claims were because of failures of employers to provide sufficient information;

(3) the number and percentage of claims for which determinations were delayed because of employer failure to make the notifications or disclosures to employees and the division within the amount of time required by subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49) or subsection f. or g. of section 10 of P.L.2008, c.17 (C.43:21-39.1), the number of complaints received related to employer noncompliance with those requirements, and the number of employers which have been, because of the failures, required, pursuant to section 31 of P.L.1948, c.110 (C.43:21-55), to pay fines or penalties to the division or added amounts to claimants, the total amount of payments to the division, and the total amount of payments to claimants;

(4) the number of personnel in the division and the budgeted cost of salaries and benefits for those personnel; the number of personnel who are processing family temporary disability benefit claims, the number processing other temporary disability claims, and the budgeted cost of salaries and benefits for those personnel; what percentage of total division administrative costs is comprised of those categories of personnel costs; and a comparison of total division administrative costs to the maximum amount permitted to be expended for those division administrative costs pursuant to section 22 of P.L.1948, c.110 (C.43:21-46); and

(5) if any of the disability insurance goals set pursuant to this section were not attained during the year, or it is determined that there are other significant problems in the administration of the disability insurance system, the report shall provide an evaluation of the causes of the deficiencies and a plan to correct them and that plan shall include:

(a) any increase in personnel needed to process claims and make benefit payments expeditiously and accurately;

(b) any measures needed to enforce notification and reporting requirements;

(c) any measures needed to inform employers and employees of their responsibilities to facilitate the timely provision of benefits;

(d) any improvements needed in data processing, telephone and other communications technology, staff training, and other administrative services and equipment;

(e) any measures needed to improve service to claimants and beneficiaries, including implementing easy-to-use, user-friendly application processes, facilitating rapid response times to inquiries and applications, and providing easy access to assistance; and

(f) any other measures appropriate for a full modernization of the administration of all aspects of the disability insurance system.

The plan shall specify any added costs entailed in implementing the plan, which shall be regarded as costs of administration of family temporary disability benefits, and shall specify the amount of any resulting increase in the estimate made pursuant to R.S.43:21-7(d)(1)(G)(i), and (ii), of the amount needed to provide 100 percent of the cost of administration of family temporary disability benefits.

The commissioner shall use that increased estimate in setting the rate of contributions pursuant to those subsections, except that the increase may not result in the total amount credited to those administrative costs exceeding the maximum amount permitted pursuant to subsection (a) of section 22 of P.L.1948, c.110 (C.43:21-46).

c. (1) The division shall, during each fiscal year commencing on or after July 1, 2019, allocate not less than $1,200,000 to disseminate information about the rights and responsibilities of employers and employees regarding temporary disability benefits and family temporary disability benefits by means of programs of educational outreach in communities and workplaces. Of that annual allocation, not less than $600,000 shall be used by the division to enter into contracts with community-based organizations to disseminate information to workers regarding temporary disability benefits and family temporary disability benefits. That allocation shall be regarded as a cost of administration of temporary disability and family temporary disability benefits and be charged to the administration account of the State disability benefit fund. Of the costs charged to the administration account of the State disability benefit fund pursuant to this subsection, the percentage which is charged to the Family Temporary Disability Leave Account shall be equal to the percentage that family temporary disability benefits represents of all temporary disability benefits paid from the State disability benefits fund during the preceding calendar year. The allocation made pursuant to this subsection, including any adjustments in the allocation specified in the plan provided pursuant to paragraph (2) of this subsection, shall not result in the total amount credited to administrative costs exceeding the maximum amount permitted pursuant to subsection (a) of section 22 of P.L.1948, c.110 (C.43:21-46).

(2) The commissioner shall, not later than September 30 of 2020 and September 30 of each subsequent year, issue, provide to the Legislature, and make available to the public on the department's webpage, a report regarding efforts made during the preceding calendar year by the division and by community-based organizations to disseminate information about the rights and responsibilities of employers and employees regarding temporary disability and family temporary disability benefits. Each report shall include, for that preceding calendar year:

(a) an accounting of all funds allocated pursuant to this subsection and all expenditures made from those funds by the division and each community-based organization entering into contracts with the division pursuant to this subsection, and estimates of the number of employers and the number of workers to which the information was disseminated;

(b) an estimate of the number of workers who were eligible for temporary disability and family temporary disability benefits and what percentage of those workers received those benefits, including an assessment of whatever progress was made to increase that percentage; and

(c) a plan to increase the percentage of workers who are aware of the benefits which specifies the amounts to be allocated to the division and community-based organizations for the purposes of this subsection during the subsequent calendar year, provided that the amounts specified shall not be less than or more than the minimum and maximum amounts indicated in paragraph (1) of this subsection.

d. The division, in collaboration with the Department of Health, shall:

(1) develop and disseminate to the public information regarding pregnancy loss, its incidence and prevalence, and access to evidence-based, medically appropriate treatment for pregnancy loss, including procedures, medications, mental health supports, and culturally responsive supports such as doula care, and all benefits available pursuant to P.L. , c. (C. )(pending before the Legislature as this bill). The division may disseminate the information directly or through agreements to collaborate with, and provide support to, governmental and non-governmental entities, including intra-agency initiatives, nonprofit organizations, consumer groups, community-based organizations, institutions of higher education, or Federal, State, or local public-private partnerships.

(2) develop and disseminate to perinatal health care workers current information on pregnancy loss and treatment, including both physical and mental health care. For purposes of this section, “perinatal health care workers” include any of the following providing services in connection with pregnancy: midwives, physician assistants, nurse practitioners, clinical nurse specialists, non-clinical perinatal health care workers, doulas, community health workers, peer supporters, childbirth, breastfeeding. or lactation educators and counselors, nutritionists, dietitians, and social workers; and.

(3) conduct, expand, support, and coordinate programs for evidence-based research on the causes of, and treatment options for, pregnancy loss, and collect and assess data regarding pregnancy loss, including data disaggregated by race, ethnicity, health insurance status, disability, income level, and geography.

The commissioner shall, not later than September 30 of 2023 and September 30 of each subsequent year, issue, provide to the Legislature, and make available to the public on the department's webpage, a report regarding efforts made in the preceding calendar year by the division and collaborating governmental and non-governmental entities to conduct or facilitate research and disseminate information for the purposes indicated in this subsection. Each report shall include, for the preceding calendar year, an accounting of all funds allocated pursuant to this subsection and all expenditures made from those funds by the division and each governmental or non-governmental entity entering into agreements with the division pursuant to this subsection, and estimates of the number of employers, employees, and perinatal health care workers to which the information was disseminated;

All costs of implementing the provisions of this subsection shall be regarded as a cost of administration of temporary disability and family temporary disability benefits and be charged to the administration account of the State disability benefit fund. Of the costs charged to the administration account of the State disability benefit fund pursuant to this subsection, the percentage which is charged to the Family Temporary Disability Leave Account shall be equal to the percentage that family temporary disability benefits represents of all temporary disability benefits paid from the State disability benefits fund during the preceding calendar year.

(cf: P.L.2019, c.37, s.21)

9. Section 22 of P.L.1948, c.110 (C.43:21-46) is amended to read as follows:

22. State disability benefits fund. (a) The State disability benefits fund, hereinafter referred to as the fund, is hereby established. The fund shall remain in the custody of the State Treasurer, and to the extent of its cash requirements shall be deposited in authorized public depositories in the State of New Jersey. There shall be deposited in and credited to the fund the amount of worker and employer contributions provided under subparagraph (G) of paragraph (1) of subsection (d) of R.S.43:21-7 and subsection (e) of R.S.43:21-7, less refunds authorized by the chapter (R.S.43:21-1 et seq.) to which this act is a supplement, and the entire amount of interest and earnings from investments of the fund, and all assessments, fines and penalties collected under this act. The fund shall be held in trust for the payment of disability benefits pursuant to this act, for the payment of benefits pursuant to subsection (f) of R.S.43:21-4, and for the payment of any authorized refunds of contributions. All warrants for the payment of benefits shall be issued by and bear only the signature of the Director of the Division of Unemployment and Temporary Disability Insurance or his duly authorized agent for that purpose. All other moneys withdrawn from the fund shall be upon warrant signed by the State Treasurer and countersigned by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey. The Treasurer shall maintain books, records and accounts for the fund, appoint personnel and fix their compensation within the limits of available appropriations. The expenses of the Treasurer in administering the fund and its accounts shall be charged against the administration account, as hereinafter established. A separate account, to be known as the administration account, shall be maintained in the fund, and there shall be credited to such account an amount determined to be sufficient for proper administration, not to exceed, however, 1/10 of 1% of the wages with respect to which current contributions are payable into the fund pursuant to **[**paragraph (3), but not**]** paragraph (4)**[**,**]** of subsection **[**(a)**]** (b) of R.S.43:21-7, and the entire amount of any assessments against covered employers, as hereinafter provided, for costs of administration prorated among approved private plans. The costs of administration of this act, including R.S.43:21-4(f), shall be charged to the administration account.

(b) A further separate account, to be known as the unemployment disability account, shall be maintained in the fund. Such account shall be charged with all benefit payments under R.S.43:21-4(f).

Prior to July 1 of each calendar year, the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey shall determine the average rate of interest and other earnings on all investments of the State disability benefits fund for the preceding calendar year. An amount equal to the sum of the amounts withdrawn from the unemployment trust fund pursuant to section 23 hereof multiplied by such average rate shall be determined by the division and credited to the unemployment disability account as of the end of the preceding calendar year.

If the unemployment disability account shall show an accumulated deficit in excess of $200,000.00 at the end of any calendar year after interest and other earnings have been credited as provided hereinabove, the division shall determine the ratio of such deficit to the total of all taxable wages paid during the preceding calendar year, and shall make an assessment against all employers in an amount equal to the taxable wages paid by them during such preceding calendar year to employees, multiplied by such ratio, but in no event shall any such assessment exceed 1/10 or 1% of such wages; provided, however, that the assessment made against the State (including Rutgers, The State University and the New Jersey Institute of Technology) shall not exceed the sum of all benefits paid under the provisions of R.S.43:21-4(f) as the result of employment with the State. Such amounts shall be collectible by the division in the same manner as provided for the collection of employee contributions under this chapter (R.S.43:21-1 et seq.). In making this assessment, the division shall furnish to each affected employer a brief summary of the determination thereof. The amount of such assessments collected by the division shall be credited to the unemployment disability account.

As used in this section, "taxable wages" shall mean wages with respect to which employer contributions have been paid or are payable pursuant to subsections (a), (b) and (c) of R.S.43:21-7.

(c) A board of trustees, consisting of the State Treasurer, the Secretary of State, the Commissioner of Labor and Industry, the director of the division, and the State Comptroller, is hereby created. The board shall invest and reinvest all moneys in the fund in excess of its cash requirements, and such investments shall be made in obligations legal for savings banks; provided, however, that the provisions of this subsection shall in all respects be subject to the provisions of P.L.1950, c.270 (C.52:18A-79 et seq.).

(d) There is hereby appropriated, to be paid out of the fund, such amounts as may from time to time be required for the payment of disability benefits, and such amounts as may be required each year, as contained in the annual appropriation act, for the administration of this act, including R.S.43:21-4(f).

(cf: P.L.2019, c.37, s.19)

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

24. a. An employer shall not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee requested or took any temporary disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.), or family temporary disability leave benefits pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), including retaliation by refusing to **[**restore**]** reinstate to equivalent employment the employee following a period of leave**[**, except that, pursuant to section 2 of P.L.1948, c.110 (C.43:21-26), nothing in this section or any other section of P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as increasing, reducing or otherwise modifying any entitlement provided to a worker by the provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to be restored to employment by the employer after a period of family temporary disability leave**]**.

b. Upon a violation of subsection a. of this section, as an alternative to any enforcement action that the employee is permitted to take pursuant to the provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), an employee or former employee may institute a civil action in the Superior Court for relief. All remedies available in common law tort actions shall be available to a prevailing plaintiff. The court may also order any or all of the following relief:

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

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

(3) reinstatement of the employee to the same position or to a position equivalent to that which the employee held prior to

unlawful discharge or retaliatory action, or other failure to reinstate the employee in violation of this section;

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

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

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

c. An employee who is eligible for both earned sick leave pursuant to P.L.2018, c.10 (C.34:11D-1 et seq.). and either temporary disability benefits pursuant to P.L.1948, c. 110 (C.43:21-25 et al.), or family temporary disability leave benefits pursuant to P.L.2008, c. 17 (C.43:21-39.1 et al.) shall have the option of using either the earned sick leave or whichever is applicable of temporary disability benefits or family temporary disability leave benefits, or both earned sick leave and disability or family leave benefits, and may select the order in which the different kinds of leave are taken, but shall not receive more than one kind of leave simultaneously.

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

11. This act shall take effect of the 90th day after enactment.

STATEMENT

This bill amends the State’s family leave, earned sick leave, temporary disability insurance, and family leave insurance laws to provide paid, protected, leave for each covered employees for:

1. time needed by the employee for an intrauterine insemination or other assisted reproductive technology procedure, or related diagnosis, for the employee or the spouse, domestic partner or civil union partner, whether or not the procedure is successful;

2. time needed to place a child with the employee by adoption or foster care, even if the placement is not finalized because it is contested by another party;

3. time needed by the employee, in connection with a pregnancy loss, unsuccessful intrauterine insemination or other assisted reproductive technology procedure, a failed adoption or surrogacy arrangement, or other event impacting pregnancy or fertility, to receive any needed procedures, medications, mental health supports, or culturally responsive supports;

4. time needed, up to three working days, for any instance of bereavement for the death of a family member, or for pregnancy loss;

5. time needed to provide care for a spouse, domestic or civil union partner, or gestational carrier during pregnancy and recovery from childbirth, whether or not the childbirth is successful; or

6. time needed for an employee to provide care for a spouse or domestic or civil union partner experiencing pregnancy loss, an unsuccessful assisted reproductive technology procedure, a failed adoption match or surrogacy arrangement, or other event impacting pregnancy or fertility;

The bill permits an employee who is eligible for both earned sick leave and either temporary disability benefits or family leave benefits to have the options of using either the earned sick leave or whichever is applicable of temporary disability benefits or family leave benefits, or both earned sick leave and disability or family leave benefits, and of selecting the order in which the different kinds of leave are taken. The bill eliminates the current seven-day waiting period for temporary disability benefits, to make those benefits more accessible to employees, including for the purposes to which benefits are extended under the bill. It also facilitates greater access to use of the benefits by eliminating the provisions of the Family Leave Act which exclude employees of companies employing less than 30 employees from that law’s provision of the right to be reinstated after leave.

The bill also directs the Department of Labor and Workforce Development, in collaboration with the Department of Health, to:

1. develop and disseminate to the public, directly or in collaboration with governmental or non-governmental entities, information regarding pregnancy loss, medically appropriate treatment options, and benefits made available pursuant to the bill;

2. develop and disseminate to perinatal health care workers, current information regarding pregnancy loss and treatment, including both physical and mental health care; and

3. expand and coordinate programs to research causes of, and treatment for, pregnancy loss, and collect and assess data regarding pregnancy loss, including demographic information.

The bill provides that all costs of the publicity and studies are regarded as a cost of administration of temporary disability and family leave insurance and charged to the administration account of the State disability benefit fund, and modifies the formula for determining the maximum assessment for those costs by updating the wage data on which they are assessed to reflect recent changes in the determining benefit amounts under those programs.