

ASSEMBLY, No. 3505

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 5, 2024

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex and Hudson)

Assemblyman WILLIAM B. SAMPSON, IV

District 31 (Hudson)

Assemblywoman GARNET R. HALL

District 28 (Essex and Union)

Co-Sponsored by:

Assemblywoman Sumter, Assemblymen Atkins, Miller, Rodriguez and

Assemblywoman Katz

SYNOPSIS

Concerns bereavement leave for death of child, miscarriage, stillbirth, and certain other circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2024)

1 AN ACT concerning bereavement leave for certain circumstances
2 and amending P.L.1989, c.261 and P.L.1948, c.110.

3

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

6

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

9 3. As used in **[this act]** P.L.1989, c.261 (C.34:11B-3):

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

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

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

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (4) With respect to any period of time on or after June 30, 2019,
2 employs 30 or more employees for each working day during each of
3 20 or more calendar workweeks in the then current or immediately
4 preceding calendar year.

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

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

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

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

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

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

25 (3) the serious health condition of a family member of the
26 employee; or

27 (4) in the event of a state of emergency declared by the
28 Governor, or when indicated to be needed by the Commissioner of
29 Health or other public health authority, an epidemic of a
30 communicable disease, a known or suspected exposure to the
31 communicable disease, or efforts to prevent spread of a
32 communicable disease, which:

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

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

44 (c) results in the recommendation of a health care provider or
45 public health authority, that a family member in need of care by the
46 employee voluntarily undergo self-quarantine as a result of
47 suspected exposure to a communicable disease because the presence

1 in the community of that family member in need of care by the
2 employee, would jeopardize the health of others.

3 “Family leave” also means leave from employment for
4 bereavement purposes due to the death or stillbirth of a child of the
5 employee or a gestational carrier, or an unsuccessful adoption that
6 had been pending and planned by the employee.

7 “Family leave” also means leave from employment for
8 bereavement purposes due to the miscarriage, including chemical
9 pregnancy, ectopic pregnancy, and molar pregnancy, or termination
10 for medical reasons of a pregnancy of:

11 (1) the employee;

12 (2) the spouse, domestic partner, or civil union partner of the
13 employee;

14 (3) a person with whom the employee anticipated having a
15 child; or

16 (4) a gestational carrier.

17 “Family leave” also means leave for bereavement purposes due
18 to a failed fertility treatment of the employee, the spouse, domestic
19 partner, or civil union partner of the employee, including, but not
20 limited to, intrauterine insemination and assisted reproductive
21 technology.

22 With respect to employees who are eligible for leave pursuant to
23 the “Family Leave Act,” P.L.1989, c.261 (C.34:11B-1 et seq.),
24 notwithstanding any other provision to the contrary, leave for
25 bereavement purposes shall be limited as follows:

26 (1) For bereavement related to a circumstance for which the
27 employee would not otherwise be eligible for any other kind of
28 leave and benefits under the “Family Leave Act,” P.L.1989, c.261
29 (C.34:11B-1 et seq.), the “Temporary Disability Benefits Law,”
30 P.L.1948, c.110 (C.43:21-25 et al.), or P.L.2008, c.17 (C.43:21-39.1
31 et seq.), the employee may take leave for not more than 21 days
32 immediately following the date of the event which is the reason for
33 the bereavement.

34 (2) For bereavement related to a circumstance for which the
35 employee would be otherwise eligible for leave or benefits under
36 the “Family Leave Act,” P.L.1989, c.261 (C.34:11B-1 et seq.), the
37 “Temporary Disability Benefits Law,” P.L.1948, c.110 (C.43:21-25
38 et al.), or P.L.2008, c.17 (C.43:21-39.1 et seq.), the employee may
39 take leave for not more than seven days immediately following the
40 date of the event which is the reason for the bereavement.

41 j. “Family member” means a child, parent, parent-in-law,
42 sibling, grandparent, grandchild, spouse, domestic partner, or one
43 partner in a civil union couple, or any other individual related by
44 blood to the employee, and any other individual that the employee
45 shows to have a close association with the employee which is the
46 equivalent of a family relationship.

47 k. “Reduced leave schedule” means leave scheduled for fewer
48 than an employee's usual number of hours worked per workweek

1 but not for fewer than an employee's usual number of hours worked
2 per workday, unless agreed to by the employee and the employer.

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

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

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

9 m. "State of emergency" means a natural or man-made disaster
10 or emergency for which a state of emergency has been declared by
11 the President of the United States or the Governor, or for which a
12 state of emergency has been declared by a municipal emergency
13 management coordinator.

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

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

18

19 2. Section 4 of P.L.1989, c.261 (C.34:11B-4) is amended to
20 read as follows:

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

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

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

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

39 d. Family leave required by this act may be paid, unpaid, or a
40 combination of paid and unpaid leave. If an employer provides paid
41 family leave for fewer than 12 workweeks, the additional weeks of
42 leave added to attain the 12-workweek total required by this act
43 may be unpaid.

44 e. An employer may require that any period of family leave be
45 supported by certification issued by a duly licensed health care
46 provider or any other health care provider determined by the
47 director to be capable of providing adequate certification as
48 described in paragraphs (1) and (2) of this subsection, or where the

1 leave is for an epidemic of a communicable disease, a known or
2 suspected exposure to a communicable disease, or efforts to prevent
3 spread of a communicable disease, certification issued by a school,
4 place of care for children, public health authority, public official, or
5 health care provider, as described in paragraph (3) of this
6 subsection.

7 (1) Where the certification is for the serious health condition of
8 a family member of the employee, the certification shall be
9 sufficient if it states: (a) the date on which the serious health
10 condition commenced; (b) the probable duration of the condition;
11 and (c) the medical facts within the provider's knowledge regarding
12 the condition;

13 (2) Where the certification is for the birth or placement of the
14 child, the certification need only state the date of birth or date of
15 placement, whichever is appropriate;

16 (3) Where the certification is for an epidemic of a
17 communicable disease, a known or suspected exposure to the
18 communicable disease, or efforts to prevent spread of the
19 communicable disease, the certification shall be sufficient if it
20 includes:

21 (a) for leave taken to provide in-home care or treatment of a
22 child due to the closure of the school or place of care of the child of
23 the employee, by order of a public official due to the epidemic or
24 other public health emergency, the date on which the closure of the
25 school or place of care of the child of the employee commenced and
26 the reason for such closure;

27 (b) for leave taken due to a public health authority's issuance of
28 a determination requiring or imposing responsive or prophylactic
29 measures as a result of illness caused by an epidemic of a
30 communicable disease or known or suspected exposure to the
31 communicable disease because the presence in the community of a
32 family member in need of care by the employee would jeopardize
33 the health of others, the date of issuance of the determination and
34 the probable duration of the determination; or

35 (c) for leave taken because a health care provider or public
36 health authority recommends that a family member in need of care
37 by the employee voluntarily undergo self-quarantine as a result of
38 suspected exposure to a communicable disease because the presence
39 in the community of that family member in need of care by the
40 employee would jeopardize the health of others, the date of the
41 recommendation, the probable duration of the condition, and the
42 medical or other facts within the health care provider or public
43 health authority's knowledge regarding the condition.

44 (4) Where the certification is for the death, miscarriage, or
45 stillbirth of the child, or termination of the pregnancy for medical
46 reasons, the certification need only state the date of death,
47 miscarriage, or stillbirth, or termination, whichever is appropriate.

1 In any case in which the employer has reason to doubt the
2 validity of the certification provided pursuant to paragraph (1) of
3 this subsection, the employer may require, at its own expense, that
4 an employee obtain an opinion regarding the serious health
5 condition from a second health care provider designated or
6 approved, but not employed on a regular basis, by the employer. If
7 the second opinion differs from the certification provided pursuant
8 to paragraph (1) of this subsection, the employer may require, at its
9 own expense, that the employee obtain the opinion of a third health
10 care provider designated or approved jointly by the employer and
11 the employee concerning the serious health condition. The opinion
12 of the third health care provider shall be considered to be final and
13 shall be binding on the employer and the employee.

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

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

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

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

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

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

34 The provisions of this subsection shall not apply when, in the
35 event of a state of emergency declared by the Governor or when
36 indicated to be needed by the Commissioner of Health or other
37 public health authority, the family leave is for an epidemic of a
38 communicable disease, a known or suspected exposure to a
39 communicable disease, or efforts to prevent spread of a
40 communicable disease.

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

45 j. In the case of leave taken due to an epidemic of a
46 communicable disease, a known or suspected exposure to the
47 communicable disease, or efforts to prevent spread of the
48 communicable disease, the leave may be taken intermittently if: (1)

1 the covered individual provides the employer with prior notice of
2 the leave as soon as practicable; and (2) the covered individual
3 makes a reasonable effort to schedule the leave so as not to unduly
4 disrupt the operations of the employer and, if possible, provide the
5 employer, prior to the commencement of the intermittent leave,
6 with a regular schedule of the day or days of the week on which the
7 intermittent leave will be taken.

8 (cf: P.L.2020, c.23, s.2)

9

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

12 3. As used in **[this act]** P.L.1948, c.110 (C.43:21-25 et al.),
13 unless the context clearly requires otherwise:

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

30 "Covered employer" means, after June 30, 2009, with respect to
31 whether the employer is an employer whose employees are eligible
32 for benefits during periods of family temporary disability leave
33 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
34 31, 2008, whether employees of the employer are required to make
35 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
36 or type of organization, including any partnership, association,
37 trust, estate, joint-stock company, insurance company or domestic
38 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
39 or successor thereof, or the legal representative of a deceased
40 person, who is an employer subject to the "unemployment
41 compensation law" (R.S.43:21-1 et seq.), including any
42 governmental entity or instrumentality which is an employer under
43 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
44 instrumentality has not elected to be a covered employer pursuant to
45 paragraph (2) of this subsection (a).

46 (2) Any governmental entity or instrumentality which is an
47 employer under R.S.43:21-19(h)(5) may, with respect to the
48 provision of benefits during an employee's own disability pursuant

1 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
2 employer" under this subsection beginning with the date on which
3 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of
4 any year thereafter by filing written notice of such election with the
5 division within at least 30 days of the effective date. Such election
6 shall remain in effect for at least two full calendar years and may be
7 terminated as of January 1 of any year thereafter by filing with the
8 division a written notice of termination at least 30 days prior to the
9 termination date.

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

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

45 (2) "Covered individual" means, with respect to whether an
46 individual is eligible for benefits during the individual's period of
47 family temporary disability leave pursuant to P.L.1948, c.110
48 (C.43:21-25 et al.), any individual who is in employment, as

1 defined in the "unemployment compensation law" (R.S.43:21-1 et
2 seq.), for which the individual is entitled to remuneration from a
3 covered employer, or who has been out of that employment for less
4 than two weeks.

5 (c) "Division" or "commission" means the Division of
6 **【Unemployment and】** Temporary Disability and Family Leave
7 Insurance of the Department of Labor and Workforce Development,
8 and any transaction or exercise of authority by the director of the
9 division shall be deemed to be performed by the division.

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

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

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

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

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

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

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

33 (1) The entire period of time during which the covered
34 individual is continuously and totally unable to perform the duties
35 of the covered individual's employment because of the covered
36 individual's own disability, except that two periods of disability due
37 to the same or related cause or condition and separated by a period
38 of not more than 14 days shall be considered as one continuous
39 period of disability; provided the individual has earned wages
40 during such 14-day period with the employer who was the
41 individual's last employer immediately preceding the first period of
42 disability; and

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

46 (h) "Wages" shall mean all compensation payable by covered
47 employers to covered individuals for personal services, including

1 commissions and bonuses and the cash value of all compensation
2 payable in any medium other than cash.

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

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

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

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

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

31 (j) (1) "Average weekly wage" means, with respect to the
32 payment of benefits commencing before the effective date of
33 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing
34 a covered individual's total wages earned from the individual's most
35 recent covered employer during the base weeks in the eight calendar
36 weeks immediately preceding the calendar week in which a period
37 of disability commenced, by the number of such base weeks, and,
38 with respect to the payment of benefits commencing on or after the
39 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount
40 derived by dividing a covered individual's total wages earned from
41 the individual's most recent covered employer during the base
42 weeks in the base year immediately preceding the calendar week in
43 which a period of disability commenced, or in which the individual
44 submits a claim for the benefits pursuant to subsection h. of section
45 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
46 (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the number of
47 base weeks.

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

22 (3) For periods of disability commencing on or after July 1,
23 2009 and before the effective date of P.L.2019, c.37 (C.43:21-45.2
24 et al.), if the computations in paragraphs (1) and (2) of this
25 subsection (j) both yield a result which is less than the individual's
26 average weekly earnings in employment with all covered employers
27 during the base weeks in the 26 calendar weeks immediately
28 preceding the week in which the period of disability commenced,
29 then the average weekly wage shall, upon a written request to the
30 department by the individual on a form provided by the department,
31 be computed by the department on the basis of earnings from all
32 covered employers of the individual during the base weeks in those
33 26 calendar weeks, and, in the case of a claim for benefits from a
34 private plan, that computation of the average weekly wage shall be
35 provided by the department to the individual and the individual's
36 employer.

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

44 (k) "Child" means a biological, adopted, or foster child,
45 stepchild or legal ward of a covered individual, child of a domestic
46 partner of the covered individual, or child of a civil union partner of
47 the covered individual, including a child who becomes the child of

1 a parent pursuant to a valid written agreement between the parent
2 and a gestational carrier.

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

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

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

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

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

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

25 (3) engage in activities for which unpaid leave may be taken
26 pursuant to section 3 of the "New Jersey Security and Financial
27 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the
28 individual's own behalf, if the individual is a victim of an incident
29 of domestic violence, a sexually violent offense, or to assist a
30 family member of the individual who has been a victim of an
31 incident of domestic violence, or a sexually violent offense,
32 provided that any time taken by an individual who has been a victim
33 of an incident of domestic violence, or a sexually violent offense for
34 which the individual receives benefits for a disability caused by the
35 violence or offense shall be regarded as a period of disability of the
36 individual and not as a period of family temporary disability leave;

37 **[or]**

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

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

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

4 (5) grieve the death of a child or the loss of a child due to
5 miscarriage, stillbirth, or termination for medical reasons of a
6 pregnancy, if the individual, or the spouse, domestic partner, or
7 civil union partner of the individual, is a biological parent of the
8 child, or is a parent of the child pursuant to a valid gestational
9 carrier agreement;

10 (6) grieve an unsuccessful adoption that had been pending and
11 planned by the individual; or

12 (7) grieve an unsuccessful fertility treatment, including, but not
13 limited to, intrauterine insemination and assisted reproductive
14 technology of the individual, the spouse, domestic partner, or civil
15 union partner of the individual.

16 With respect to individuals who are eligible for benefits pursuant
17 to the "Temporary Disability Benefits Law," P.L.1948, c.110
18 (C.43:21-25 et al.), or P.L.2008, c.17 (C.43:21-39.1 et seq.),
19 notwithstanding any other provision to the contrary, family
20 temporary disability leave for bereavement purposes shall be
21 limited as follows:

22 (1) For bereavement related to a circumstance for which the
23 individual would not otherwise be eligible for benefits under the
24 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
25 et al.), or P.L.2008, c.17 (C.43:21-39.1 et seq.), the individual may
26 receive benefits for not more than 21 days immediately following
27 the date of the event which is the reason for the bereavement.

28 (2) For bereavement related to a circumstance for which the
29 individual would otherwise be eligible for benefits under the
30 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
31 et al.), or P.L.2008, c.17 (C.43:21-39.1 et seq.), the individual may
32 receive benefits for not more than seven days immediately
33 following the date of the event which is the reason for the
34 bereavement.

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

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

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

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

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

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

14 (u) "State of emergency" means a natural or man-made disaster
15 or emergency for which a state of emergency has been declared by
16 the President of the United States or the Governor, or for which a
17 state of emergency has been declared by a municipal emergency
18 management coordinator.

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

1 quarterly report of wage information from the employer is received
2 if that information causes a change in the determination.

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

4
5 4. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill provides that an employee may take family leave
11 granted by the “New Jersey Family Leave Act” to grieve the loss of
12 a child due to the death of the child, or miscarriage, stillbirth, or
13 termination of a pregnancy for medical reasons.

14 The bill also permits leave due to an unsuccessful adoption that
15 had been pending and planned by the employee or due to an
16 unsuccessful fertility treatment, including, but not limited to,
17 intrauterine insemination and assisted reproductive technology.

18 This bill allows an employee to take family temporary disability
19 leave benefits granted by the “Temporary Disability Benefits Law”
20 to bereave the loss of a child due to the death of the child, or
21 miscarriage, stillbirth, or termination of a pregnancy for medical
22 reasons, if the individual, or the spouse, domestic partner, or civil
23 union partner of the individual, is a biological parent of the child or
24 is a parent of the child pursuant to a valid gestational carrier
25 agreement. The bill allows an employee to take family temporary
26 disability leave benefits granted by the “Temporary Disability
27 Benefits Law” to bereave an unsuccessful adoption that had been
28 pending and planned by the employee or bereave an unsuccessful
29 fertility treatment, including, but not limited to, intrauterine
30 insemination and assisted reproductive technology.

31 The bill limits leave and benefits for bereavement as follows:

32 (1) For bereavement related to a circumstance for which the
33 employee would not otherwise be eligible for any other kind of
34 disability and family leave and benefits, the employee may take
35 leave and benefits, depending on the circumstances, for not more
36 than 21 days immediately following the date of the event which is
37 the reason for the bereavement.

38 (2) For bereavement related to a circumstance for which the
39 employee would be otherwise eligible for disability or family leave
40 or benefits, depending on the circumstances, the employee may take
41 leave and benefits for not more than seven days immediately
42 following the date of the event which is the reason for the
43 bereavement.