

[First Reprint]

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:

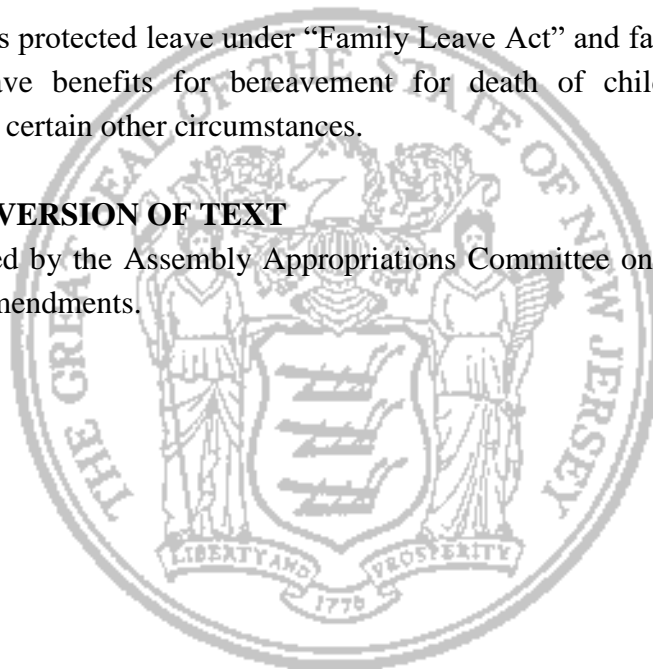
**Assemblywoman Sumter, Assemblymen Atkins, Miller, Rodriguez,
Assemblywomen Katz, Swain, Assemblyman Karabinchak,
Assemblywomen Reynolds-Jackson, Haider, Carter, Peterpaul, Donlon,
Lampitt, Ramirez, Park and McCoy**

SYNOPSIS

Establishes protected leave under “Family Leave Act” and family temporary disability leave benefits for bereavement for death of child, miscarriage, stillbirth, and certain other circumstances.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on September 23, 2024, with amendments.



(Sponsorship Updated As Of: 10/17/2024)

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 ¹**[this act]** P.L.1989, c.261 (C.34:11B-1 et seq.)¹, for not less
26 than 1,000 base hours during the immediately preceding 12-month
27 period. Any time, up to a maximum of 90 calendar days, during
28 which a person is laid off or furloughed by an employer due to that
29 employer curtailing operations because of a state of emergency
30 declared after October 22, 2012, shall be regarded as time in which
31 the person is employed for the purpose of determining eligibility for
32 leave time under ¹**[this act]** P.L.1989, c.261 (C.34:11B-1 et seq.)¹.
33 In making the determination, the base hours per week during the
34 layoff or furlough shall be deemed to be the same as the average
35 number of hours worked per week during the rest of the 12-month
36 period.

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

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

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

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

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted September 23, 2024.

1 working day during each of 20 or more calendar workweeks in the
2 then current or immediately preceding calendar year; and

3 (4) With respect to any period of time on or after June 30, 2019,
4 employs 30 or more employees for each working day during each of
5 20 or more calendar workweeks in the then current or immediately
6 preceding calendar year.

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

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

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

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

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

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

27 (3) the serious health condition of a family member of the
28 employee; or

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

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

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

46 (c) results in the recommendation of a health care provider or
47 public health authority, that a family member in need of care by the
48 employee voluntarily undergo self-quarantine as a result of

1 suspected exposure to a communicable disease because the presence
2 in the community of that family member in need of care by the
3 employee, would jeopardize the health of others.

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

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

12 (1) the employee;

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

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

17 (4) a gestational carrier.

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

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

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

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

42 ¹Benefits payable to an employee who takes leave for
43 bereavement purposes under this subsection i. shall be paid as
44 family temporary disability leave benefits in accordance with
45 P.L.2008, c.17 (C.43:21-39.1 et seq.).

46 Nothing in this subsection i. increases the maximum amount of
47 family leave provided pursuant to the “Family Leave Act,”
48 P.L.1989, c.261 (C.34:11B-1 et seq.).¹

1 j. "Family member" means a child, parent, parent-in-law,
2 sibling, grandparent, grandchild, spouse, domestic partner, or one
3 partner in a civil union couple, or any other individual related by
4 blood to the employee, and any other individual that the employee
5 shows to have a close association with the employee which is the
6 equivalent of a family relationship.

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

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

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

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

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

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

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

26

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

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

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

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

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

47 d. Family leave required by this act may be paid, unpaid, or a
48 combination of paid and unpaid leave. If an employer provides paid

1 family leave for fewer than 12 workweeks, the additional weeks of
2 leave added to attain the 12-workweek total required by this act
3 may be unpaid.

4 e. An employer may require that any period of family leave be
5 supported by certification issued by a duly licensed health care
6 provider or any other health care provider determined by the
7 director to be capable of providing adequate certification as
8 described in paragraphs (1) and (2) of this subsection, or where the
9 leave is for an epidemic of a communicable disease, a known or
10 suspected exposure to a communicable disease, or efforts to prevent
11 spread of a communicable disease, certification issued by a school,
12 place of care for children, public health authority, public official, or
13 health care provider, as described in paragraph (3) of this
14 subsection.

15 (1) Where the certification is for the serious health condition of
16 a family member of the employee, the certification shall be
17 sufficient if it states: (a) the date on which the serious health
18 condition commenced; (b) the probable duration of the condition;
19 and (c) the medical facts within the provider's knowledge regarding
20 the condition;

21 (2) Where the certification is for the birth or placement of the
22 child, the certification need only state the date of birth or date of
23 placement, whichever is appropriate;

24 (3) Where the certification is for an epidemic of a
25 communicable disease, a known or suspected exposure to the
26 communicable disease, or efforts to prevent spread of the
27 communicable disease, the certification shall be sufficient if it
28 includes:

29 (a) for leave taken to provide in-home care or treatment of a
30 child due to the closure of the school or place of care of the child of
31 the employee, by order of a public official due to the epidemic or
32 other public health emergency, the date on which the closure of the
33 school or place of care of the child of the employee commenced and
34 the reason for such closure;

35 (b) for leave taken due to a public health authority's issuance of
36 a determination requiring or imposing responsive or prophylactic
37 measures as a result of illness caused by an epidemic of a
38 communicable disease or known or suspected exposure to the
39 communicable disease because the presence in the community of a
40 family member in need of care by the employee would jeopardize
41 the health of others, the date of issuance of the determination and
42 the probable duration of the determination; or

43 (c) for leave taken because a health care provider or public
44 health authority recommends that a family member in need of care
45 by the employee voluntarily undergo self-quarantine as a result of
46 suspected exposure to a communicable disease because the presence
47 in the community of that family member in need of care by the
48 employee would jeopardize the health of others, the date of the

1 recommendation, the probable duration of the condition, and the
2 medical or other facts within the health care provider or public
3 health authority's knowledge regarding the condition.

4 (4) Where the certification is for the death, miscarriage, or
5 stillbirth of the child, or termination of the pregnancy for medical
6 reasons, the certification need only state the date of death,
7 miscarriage, or stillbirth, or termination, whichever is appropriate.

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

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

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

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

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

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

38 (3) The employer notifies the employee of its intent to deny the
39 leave at the time the employer determines that the denial is
40 necessary.

41 The provisions of this subsection shall not apply when, in the
42 event of a state of emergency declared by the Governor or when
43 indicated to be needed by the Commissioner of Health or other
44 public health authority, the family leave is for an epidemic of a
45 communicable disease, a known or suspected exposure to a
46 communicable disease, or efforts to prevent spread of a
47 communicable disease.

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

5 j. In the case of leave taken due to an epidemic of a
6 communicable disease, a known or suspected exposure to the
7 communicable disease, or efforts to prevent spread of the
8 communicable disease, the leave may be taken intermittently if: (1)
9 the covered individual provides the employer with prior notice of
10 the leave as soon as practicable; and (2) the covered individual
11 makes a reasonable effort to schedule the leave so as not to unduly
12 disrupt the operations of the employer and, if possible, provide the
13 employer, prior to the commencement of the intermittent leave,
14 with a regular schedule of the day or days of the week on which the
15 intermittent leave will be taken.

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

17
18 3. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read
19 as follows:

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

22 (a) (1) "Covered employer" means, with respect to whether an
23 employer is required to provide benefits during an employee's own
24 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
25 individual or type of organization, including any partnership,
26 association, trust, estate, joint-stock company, insurance company or
27 corporation, whether domestic or foreign, or the receiver, trustee in
28 bankruptcy, trustee or successor thereof, or the legal representative of
29 a deceased person, who is an employer subject to the "unemployment
30 compensation law" (R.S.43:21-1 et seq.), except the State, its political
31 subdivisions, and any instrumentality of the State unless such
32 governmental entity elects to become a covered employer pursuant to
33 paragraph (2) of this subsection (a); provided, however, that
34 commencing with the effective date of **[this act]** P.L.1989, c.261
35 (C.34:11B-1 et seq.)¹, the State of New Jersey, including Rutgers, The
36 State University and the New Jersey Institute of Technology, shall be
37 deemed a covered employer, as defined herein.

38 "Covered employer" means, after June 30, 2009, with respect to
39 whether the employer is an employer whose employees are eligible for
40 benefits during periods of family temporary disability leave pursuant
41 to P.L.1948, c.110 (C.43:21-25 et al.), and, after December 31, 2008,
42 whether employees of the employer are required to make contributions
43 pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual or type of
44 organization, including any partnership, association, trust, estate, joint-
45 stock company, insurance company or domestic or foreign
46 corporation, or the receiver, trustee in bankruptcy, trustee or successor
47 thereof, or the legal representative of a deceased person, who is an
48 employer subject to the "unemployment compensation law"

1 (R.S.43:21-1 et seq.), including any governmental entity or
2 instrumentality which is an employer under R.S.43:21-19(h)(5),
3 notwithstanding that the governmental entity or instrumentality has not
4 elected to be a covered employer pursuant to paragraph (2) of this
5 subsection (a).

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

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

46 "Covered individual" shall not mean, with respect to whether an
47 individual is eligible for benefits during an individual's own disability

1 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any member of the
2 Division of State Police in the Department of Law and Public Safety.

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

11 (c) "Division" or "commission" means the Division of
12 **【Unemployment and】** Temporary Disability and Family Leave
13 Insurance of the Department of Labor and Workforce Development,
14 and any transaction or exercise of authority by the director of the
15 division shall be deemed to be performed by the division.

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

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

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

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

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

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

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

38 (1) The entire period of time during which the covered individual
39 is continuously and totally unable to perform the duties of the covered
40 individual's employment because of the covered individual's own
41 disability, except that two periods of disability due to the same or
42 related cause or condition and separated by a period of not more than
43 14 days shall be considered as one continuous period of disability;
44 provided the individual has earned wages during such 14-day period
45 with the employer who was the individual's last employer immediately
46 preceding the first period of disability; and

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (l) "Domestic partner" means a domestic partner as defined in
2 section 3 of P.L.2003, c.246 (C.26:8A-3).
- 3 (m) "Civil union" means a civil union as defined in section 2 of
4 P.L.2006, c.103 (C.37:1-29).
- 5 (n) "Family member" means a sibling, grandparent, grandchild,
6 child, spouse, domestic partner, civil union partner, parent-in-law, or
7 parent of a covered individual, or any other individual related by blood
8 to the employee, and any other individual that the employee shows to
9 have a close association with the employee which is the equivalent of a
10 family relationship.
- 11 (o) "Family temporary disability leave" means leave taken by a
12 covered individual from work with an employer to:
- 13 (1) participate in the providing of care, as defined in the "Family
14 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations
15 adopted pursuant to that act, for a family member of the individual
16 made necessary by a serious health condition of the family member;
- 17 (2) be with a child during the first 12 months after the child's birth,
18 if the individual, or the domestic partner or civil union partner of the
19 individual, is a biological parent of the child, or is a parent of the child
20 pursuant to a valid gestational carrier agreement, or the first 12 months
21 after the placement of the child for adoption or as a foster child with
22 the individual;
- 23 (3) engage in activities for which unpaid leave may be taken
24 pursuant to section 3 of the "New Jersey Security and Financial
25 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's
26 own behalf, if the individual is a victim of an incident of domestic
27 violence, a sexually violent offense, or to assist a family member of
28 the individual who has been a victim of an incident of domestic
29 violence, or a sexually violent offense, provided that any time taken by
30 an individual who has been a victim of an incident of domestic
31 violence, or a sexually violent offense for which the individual
32 receives benefits for a disability caused by the violence or offense
33 shall be regarded as a period of disability of the individual and not as a
34 period of family temporary disability leave; **【or】**
- 35 (4) in the event of a state of emergency declared by the Governor,
36 or when indicated to be needed by the Commissioner of Health or
37 other public health authority, an epidemic of a communicable disease,
38 a known or suspected exposure to the communicable disease, or efforts
39 to prevent spread of the communicable disease, provide in-home care
40 or treatment of the family member of the employee required due to:
- 41 (i) the issuance by a healthcare provider or the commissioner or
42 other public health authority of a determination that the presence in the
43 community of the family member may jeopardize the health of others;
44 and
- 45 (ii) the recommendation, direction, or order of the provider or
46 authority that the family member be isolated or quarantined as a result
47 of suspected exposure to a communicable disease;

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

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

8 (7) grieve an unsuccessful fertility treatment, including, but not
9 limited to, intrauterine insemination and assisted reproductive
10 technology of the individual, the spouse, domestic partner, or civil
11 union partner of the individual.

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

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

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

29 ¹Benefits payable to an employee who takes leave for bereavement
30 purposes under subparagraphs (5), (6), or (7) of this paragraph (o)
31 shall be paid as family temporary disability leave benefits in
32 accordance with P.L.2008, c.17 (C.43:21-39.1 et seq.).

33 Nothing in subparagraphs (5), (6), or (7) of this paragraph (o)
34 increases the maximum amount of family temporary disability leave
35 provided pursuant to P.L.2008, c.17 (C.43:21-39.1 et seq.).¹

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

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

44 (q) "Parent of a covered individual" means a biological parent,
45 foster parent, adoptive parent, or stepparent of the covered individual
46 or a person who was a legal guardian of the covered individual when
47 the covered individual was a child, or who became the parent of the

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

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

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

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

14 (u) "State of emergency" means a natural or man-made disaster or
15 emergency for which a state of emergency has been declared by the
16 President of the United States or the Governor, or for which a state of
17 emergency has been declared by a municipal emergency management
18 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.), means
21 the first four of the last five completed calendar quarters immediately
22 preceding the period of disability, except that, if the individual does
23 not have sufficient qualifying weeks or wages in the individual's base
24 year to qualify for benefits, the individual shall have the option of
25 designating that the individual's base year shall be the "alternative base
26 year," which means the last four completed calendar quarters
27 immediately preceding the period of disability; and except that if the
28 individual also does not have sufficient qualifying weeks or wages in
29 the last four completed calendar quarters immediately preceding the
30 period of disability, "alternative base year" means the last three
31 completed calendar quarters immediately preceding the individual's
32 benefit year and, of the calendar quarter in which the period of
33 disability commences, the portion of the quarter which occurs before
34 the commencing of the period of disability. The division shall inform
35 the individual of the individual's options under this subsection. If
36 information regarding weeks and wages for the calendar quarter or
37 quarters immediately preceding the period of disability is not available
38 to the division from the regular quarterly reports of wage information
39 and the division is not able to obtain the information using other means
40 pursuant to State or federal law, the division may base the
41 determination of eligibility for benefits on the affidavit of an
42 individual with respect to weeks and wages for that calendar quarter.
43 The individual shall furnish payroll documentation, if available, in
44 support of the affidavit. A determination of benefits based on an
45 alternative base year shall be adjusted when the quarterly report of
46 wage information from the employer is received if that information
47 causes a change in the determination.

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

A3505 [1R] SPEIGHT, SAMPSON

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1 4. This act shall take effect ¹**【immediately】** one year following
2 the date of enactment¹.