

**ASSEMBLY, No. 3816**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED FEBRUARY 22, 2024

**Sponsored by:**

**Assemblywoman MICHELE MATSIKOURIS**  
**District 21 (Middlesex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblyman Barlas**

**SYNOPSIS**

Concerns bereavement leave for miscarriage and stillbirth.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/22/2024)**

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2

1 AN ACT concerning bereavement leave for miscarriage and stillbirth  
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.

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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 or may take time to grieve that is made  
20 necessary by reason of:

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

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

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

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

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

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

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

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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 due to the  
4 death of a child or the miscarriage or stillbirth of a child of the  
5 employee or a gestational carrier.

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

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

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

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

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

22 m. "State of emergency" means a natural or man-made disaster  
23 or emergency for which a state of emergency has been declared by  
24 the President of the United States or the Governor, or for which a  
25 state of emergency has been declared by a municipal emergency  
26 management coordinator.

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

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

31

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

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

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

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

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

4 d. Family leave required by this act may be paid, unpaid, or a  
5 combination of paid and unpaid leave. If an employer provides paid  
6 family leave for fewer than 12 workweeks, the additional weeks of  
7 leave added to attain the 12-workweek total required by this act  
8 may be unpaid.

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

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

26 (2) Where the certification is for the birth or placement of the  
27 child, the certification need only state the date of birth or date of  
28 placement, whichever is appropriate;

29 (3) Where the certification is for an epidemic of a  
30 communicable disease, a known or suspected exposure to the  
31 communicable disease, or efforts to prevent spread of the  
32 communicable disease, the certification shall be sufficient if it  
33 includes:

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

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

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1 (c) for leave taken because a health care provider or public  
2 health authority recommends that a family member in need of care  
3 by the employee voluntarily undergo self-quarantine as a result of  
4 suspected exposure to a communicable disease because the presence  
5 in the community of that family member in need of care by the  
6 employee would jeopardize the health of others, the date of the  
7 recommendation, the probable duration of the condition, and the  
8 medical or other facts within the health care provider or public  
9 health authority's knowledge regarding the condition.

10 (4) Where the certification is for the death, miscarriage, or  
11 stillbirth of the child, the certification need only state the date of  
12 death, miscarriage, or stillbirth, whichever is appropriate.

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

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

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

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

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

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

43 (3) The employer notifies the employee of its intent to deny the  
44 leave at the time the employer determines that the denial is  
45 necessary.

46 The provisions of this subsection shall not apply when, in the  
47 event of a state of emergency declared by the Governor or when  
48 indicated to be needed by the Commissioner of Health or other

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1 public health authority, the family leave is for an epidemic of a  
2 communicable disease, a known or suspected exposure to a  
3 communicable disease, or efforts to prevent spread of a  
4 communicable disease.

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

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

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

21

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

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

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

42 "Covered employer" means, after June 30, 2009, with respect to  
43 whether the employer is an employer whose employees are eligible  
44 for benefits during periods of family temporary disability leave  
45 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December  
46 31, 2008, whether employees of the employer are required to make  
47 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual  
48 or type of organization, including any partnership, association,

1 trust, estate, joint-stock company, insurance company or domestic  
2 or foreign corporation, or the receiver, trustee in bankruptcy, trustee  
3 or successor thereof, or the legal representative of a deceased  
4 person, who is an employer subject to the "unemployment  
5 compensation law" (R.S.43:21-1 et seq.), including any  
6 governmental entity or instrumentality which is an employer under  
7 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or  
8 instrumentality has not elected to be a covered employer pursuant to  
9 paragraph (2) of this subsection (a).

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

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



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1 except that the individual shall not be required to use the  
2 individual's last week's worth of accumulated sick time before  
3 receiving the benefits.

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

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

17 (c) "Division" or "commission" means the Division of  
18 **【Unemployment and】** Temporary Disability and Family Leave  
19 Insurance of the Department of Labor and Workforce Development,  
20 and any transaction or exercise of authority by the director of the  
21 division shall be deemed to be performed by the division.

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

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

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

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

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

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

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

45 (1) The entire period of time during which the covered  
46 individual is continuously and totally unable to perform the duties  
47 of the covered individual's employment because of the covered  
48 individual's own disability, except that two periods of disability due

1 to the same or related cause or condition and separated by a period  
2 of not more than 14 days shall be considered as one continuous  
3 period of disability; provided the individual has earned wages  
4 during such 14-day period with the employer who was the  
5 individual's last employer immediately preceding the first period of  
6 disability; and

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

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

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

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

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

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

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

42 (j) (1) "Average weekly wage" means, with respect to the  
43 payment of benefits commencing before the effective date of  
44 P.L.2019, c.37 (C.43:21-45.2 et al.), the amount derived by dividing  
45 a covered individual's total wages earned from the individual's most  
46 recent covered employer during the base weeks in the eight calendar  
47 weeks immediately preceding the calendar week in which a period  
48 of disability commenced, by the number of such base weeks, and,

1 with respect to the payment of benefits commencing on or after the  
2 effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), the amount  
3 derived by dividing a covered individual's total wages earned from  
4 the individual's most recent covered employer during the base  
5 weeks in the base year immediately preceding the calendar week in  
6 which a period of disability commenced, or in which the individual  
7 submits a claim for the benefits pursuant to subsection h. of section  
8 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection  
9 (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the number of  
10 base weeks.

11 (2) With respect to the payment of benefits commencing before  
12 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the  
13 computation in paragraph (1) of this subsection (j) yields a result  
14 which is less than the individual's average weekly earnings in  
15 employment with all covered employers during the base weeks in  
16 such eight calendar weeks, then the average weekly wage shall be  
17 computed on the basis of earnings from all covered employers  
18 during the base weeks in the eight calendar weeks immediately  
19 preceding the week in which the period of disability commenced,  
20 and, with respect to the payment of benefits commencing on or after  
21 the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the  
22 computation in paragraph (1) of this subsection (j) yields a result  
23 which is less than the individual's average weekly earnings in  
24 employment with all covered employers during the base weeks in  
25 the base year, then the average weekly wage shall be computed on  
26 the basis of earnings from all covered employers during the base  
27 weeks in the base year immediately preceding the week in which  
28 the period of disability commences, or in which the individual  
29 submits a claim for the benefits pursuant to subsection h. of section  
30 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection  
31 (a) of section 25 of P.L.1948, c.110 (C.43:21-49).

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

47 When determining the "average weekly wage" with respect to a  
48 period of family temporary disability leave for an individual who

1 has a period of family temporary disability immediately after the  
2 individual has a period of disability for the individual's own  
3 disability, the period of disability is deemed to have commenced at  
4 the beginning of the period of disability for the individual's own  
5 disability, not the period of family temporary disability.

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

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

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

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

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

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

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

34 (3) engage in activities for which unpaid leave may be taken  
35 pursuant to section 3 of the "New Jersey Security and Financial  
36 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the  
37 individual's own behalf, if the individual is a victim of an incident  
38 of domestic violence, a sexually violent offense, or to assist a  
39 family member of the individual who has been a victim of an  
40 incident of domestic violence, or a sexually violent offense,  
41 provided that any time taken by an individual who has been a victim  
42 of an incident of domestic violence, or a sexually violent offense for  
43 which the individual receives benefits for a disability caused by the  
44 violence or offense shall be regarded as a period of disability of the  
45 individual and not as a period of family temporary disability  
46 leave; **[or]**

47 (4) in the event of a state of emergency declared by the  
48 Governor, or when indicated to be needed by the Commissioner of

1 Health or other public health authority, an epidemic of a  
2 communicable disease, a known or suspected exposure to the  
3 communicable disease, or efforts to prevent spread of the  
4 communicable disease, provide in-home care or treatment of the  
5 family member of the employee required due to:

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

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

13 (5) grieve the death of a child or the loss of a child due to  
14 miscarriage or stillbirth, if the individual, or the domestic partner or  
15 civil union partner of the individual, is a biological parent of the  
16 child, or is a parent of the child pursuant to a valid gestational  
17 carrier agreement.

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

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

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

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

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

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

45 (u) "State of emergency" means a natural or man-made disaster  
46 or emergency for which a state of emergency has been declared by  
47 the President of the United States or the Governor, or for which a

1 state of emergency has been declared by a municipal emergency  
2 management coordinator.

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

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

34

35 4. This act shall take effect immediately.

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#### STATEMENT

39

40 This bill provides that an employee shall be permitted to take  
41 family leave granted by the "New Jersey Family Leave Act" to  
42 grieve the loss of a child due to miscarriage or stillbirth. This bill  
43 allows an employee to take family temporary disability leave  
44 granted by the "Temporary Disability Benefits Law" to bereave the  
45 loss of a child due to miscarriage or stillbirth if the individual, or  
46 the domestic partner or civil union partner of the individual, is a  
47 biological parent of the child or is a parent of the child pursuant to a  
48 valid gestational carrier agreement.