

SENATE, No. 2978

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MARCH 18, 2024

Sponsored by:

Senator VINCENT J. POLISTINA

District 2 (Atlantic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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

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

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

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

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

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

20

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

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

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

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

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

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

46 e. An employer may require that any period of family leave be
47 supported by certification issued by a duly licensed health care
48 provider or any other health care provider determined by the

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

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

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

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

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

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

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

46 (4) Where the certification is for the death, miscarriage, or
47 stillbirth of the child, or termination of the pregnancy for medical

1 reasons, the certification need only state the date of death,
2 miscarriage, or stillbirth, or termination, whichever is appropriate.

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

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

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

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

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

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

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

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

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

47 j. In the case of leave taken due to an epidemic of a
48 communicable disease, a known or suspected exposure to the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 submits a claim for the benefits pursuant to subsection h. of section
2 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection
3 (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the number of
4 base weeks.

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

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

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

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

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

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

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

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

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

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

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

41 **【or】**

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

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

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

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

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

16 (7) grieve an unsuccessful fertility treatment, including, but not
17 limited to, intrauterine insemination and assisted reproductive
18 technology of the individual, the spouse, domestic partner, or civil
19 union partner of the individual.

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

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

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

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

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

47 (q) "Parent of a covered individual" means a biological parent,
48 foster parent, adoptive parent, or stepparent of the covered

1 individual or a person who was a legal guardian of the covered
2 individual when the covered individual was a child, or who became
3 the parent of the covered individual pursuant to a valid written
4 agreement between the parent and a gestational carrier.

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

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

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

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

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

1 available, in support of the affidavit. A determination of benefits
2 based on an alternative base year shall be adjusted when the
3 quarterly report of wage information from the employer is received
4 if that information causes a change in the determination.

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

6
7 4. This act shall take effect immediately.

8
9
10 STATEMENT

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

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

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

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

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

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