

34:11B-3

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2013 **CHAPTER:** 221
NJSA: 34:11B-3 (Concerns eligibility for certain leave and benefit programs)
BILL NO: S2996 (Substituted for A4527)
SPONSOR(S) Whelan and others
DATE INTRODUCED: September 30, 2013
COMMITTEE: **ASSEMBLY:** Labor
 SENATE: Labor
AMENDED DURING PASSAGE: No
DATE OF PASSAGE: **ASSEMBLY:** January 6, 2014
 SENATE: November 18, 2013
DATE OF APPROVAL: January 17, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted)

S2996

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill)	Yes
COMMITTEE STATEMENT:	
ASSEMBLY:	Yes
SENATE:	Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A4527

SPONSOR'S STATEMENT: (Begins on page 9 of introduced bill)	Yes
COMMITTEE STATEMENT:	
ASSEMBLY:	Yes
SENATE:	No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 221, *approved January 17, 2014*

Senate, No. 2996

1 AN ACT concerning eligibility for certain leave and benefits and
2 amending P.L.1989, c.261, P.L.2013, c.82, 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:

10 a. "Child" means a biological, adopted, or resource family
11 child, stepchild, legal ward, or child of a parent who is

12 (1) under 18 years of age; or

13 (2) 18 years of age or older but incapable of self-care because of
14 a mental or physical impairment.

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

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

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

24 e. "Employee" means a person who is employed for at least 12
25 months by an employer, with respect to whom benefits are sought
26 under this act, for not less than 1,000 base hours during the
27 immediately preceding 12-month period. Any time, up to a
28 maximum of 90 calendar days, during which a person is laid off or
29 furloughed by an employer due to that employer curtailing
30 operations because of a state of emergency declared after October
31 22, 2012, shall be regarded as time in which the person is employed
32 for the purpose of determining eligibility for leave time under this
33 act. In making the determination, the base hours per week during
34 the 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) With respect to the period of time from the effective date of
42 this act until the 365th day following the effective date of this act,

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 employs 100 or more employees for each working day during each
2 of 20 or more calendar workweeks in the then current or
3 immediately preceding calendar year;

4 (2) With respect to the period of time from the 366th day
5 following the effective date of this act until the 1,095th day
6 following the effective date of this act, employs 75 or more
7 employees for each working day during each of 20 or more calendar
8 workweeks in the then current or immediately preceding calendar
9 year; and

10 (3) With respect to any time after the 1,095th day following the
11 effective date of this act, employs 50 or more employees for each
12 working day during each of 20 or more calendar workweeks in the
13 then current or immediately preceding calendar year. "Employer"
14 includes the State, any political subdivision thereof, and all public
15 offices, agencies, boards or bodies.

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

20 h. "Parent" means a person who is the biological parent,
21 adoptive parent, resource family parent, step-parent, parent-in-law
22 or legal guardian, having a "parent-child relationship" with a child
23 as defined by law, or having sole or joint legal or physical custody,
24 care, guardianship, or visitation with a child.

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

27 (1) the birth of a child of the employee;

28 (2) the placement of a child with the employee in connection
29 with adoption of such child by the employee; or

30 (3) the serious health condition of a family member of the
31 employee.

32 j. "Family member" means a child, parent, spouse, or one
33 partner in a civil union couple.

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

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

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

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

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

1 management coordinator.
2 (cf: P.L.2006, c.103, s.89)

3

4 2. Section 2 of P.L.2013, c.82 (C.34:11C-2) is amended to read
5 as follows:

6 2. As used in this act:

7 "Employee" means a person who is employed for at least 12
8 months by an employer, with respect to whom benefits are sought
9 under this act, for not less than 1,000 base hours during the
10 immediately preceding 12-month period. Any time, up to a
11 maximum of 90 calendar days, during which a person is laid off or
12 furloughed by an employer due to that employer curtailing
13 operations because of a state of emergency declared after October
14 22, 2012, shall be regarded as time in which the person is employed
15 for the purpose of determining eligibility for leave time under this
16 act. In making the determination, the base hours per week during
17 the layoff or furlough shall be deemed to be the same as the average
18 number of hours worked per week during the rest of the 12-month
19 period.]; and]

20 "Employer" means a person or corporation, partnership,
21 individual proprietorship, joint venture, firm or company, or other
22 similar legal entity which engages the services of an employee and
23 employs 25 or more employees for each working day during each of
24 20 or more calendar workweeks in the then current or immediately
25 preceding calendar year. "Employer" includes the State, any
26 political subdivision thereof, and all public offices, agencies,
27 boards, or bodies.

28 "State of emergency" means a natural or man-made disaster or
29 emergency for which a state of emergency has been declared by the
30 President of the United States or the Governor, or for which a state
31 of emergency has been declared by a municipal emergency
32 management coordinator.
33 (cf: P.L.2013, c.82, s.2)

34

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

37 3. As used in this act, unless the context clearly requires
38 otherwise:

39 (a) (1) "Covered employer" means, with respect to whether an
40 employer is required to provide benefits during an employee's own
41 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
42 individual or type of organization, including any partnership,
43 association, trust, estate, joint-stock company, insurance company
44 or corporation, whether domestic or foreign, or the receiver, trustee
45 in bankruptcy, trustee or successor thereof, or the legal
46 representative of a deceased person, who is an employer subject to
47 the "unemployment compensation law" (R.S.43:21-1 et seq.),
48 except the State, its political subdivisions, and any instrumentality

1 of the State unless such governmental entity elects to become a
2 covered employer pursuant to paragraph (2) of this subsection (a);
3 provided, however, that commencing with the effective date of this
4 act, the State of New Jersey, including Rutgers, The State
5 University and the New Jersey Institute of Technology, shall be
6 deemed a covered employer, as defined herein.

7 "Covered employer" means, after June 30, 2009, with respect to
8 whether the employer is an employer whose employees are eligible
9 for benefits during periods of family temporary disability leave
10 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
11 31, 2008, whether employees of the employer are required to make
12 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
13 or type of organization, including any partnership, association,
14 trust, estate, joint-stock company, insurance company or domestic
15 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
16 or successor thereof, or the legal representative of a deceased
17 person, who is an employer subject to the "unemployment
18 compensation law" (R.S.43:21-1 et seq.), including any
19 governmental entity or instrumentality which is an employer under
20 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
21 instrumentality has not elected to be a covered employer pursuant to
22 paragraph (2) of this subsection (a).

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

35 (b) (1) "Covered individual" means, with respect to whether an
36 individual is eligible for benefits during an individual's own
37 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
38 person who is in employment, as defined in the "unemployment
39 compensation law" (R.S.43:21-1 et seq.), for which the individual is
40 entitled to remuneration from a covered employer, or who has been
41 out of such employment for less than two weeks, except that a
42 "covered individual" who is employed by the State of New Jersey,
43 including Rutgers, The State University or the New Jersey Institute
44 of Technology, or by any governmental entity or instrumentality
45 which elects to become a "covered employer" pursuant to this
46 amendatory act, shall not be eligible to receive any benefits under
47 the "Temporary Disability Benefits Law" until such individual has
48 exhausted all sick leave accumulated as an employee in the

1 classified service of the State or accumulated under terms and
2 conditions similar to classified employees or accumulated under the
3 terms and conditions pursuant to the laws of this State or as the
4 result of a negotiated contract with any governmental entity or
5 instrumentality which elects to become a "covered employer."

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

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

19 (c) "Division" or "commission" means the Division of
20 Temporary Disability Insurance of the Department of Labor and
21 Workforce Development, and any transaction or exercise of
22 authority by the director of the division shall be deemed to be
23 performed by the division.

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

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

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

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

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

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

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

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

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

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

5 (3) **["Base week"** with respect to periods of disability
6 commencing on or after October 1, 1985 and before January 1,
7 2001, means any calendar week during which a covered individual
8 earned in employment from a covered employer remuneration equal
9 to not less than 20% of the Statewide average weekly wage
10 determined under subsection (c) of R.S.43:21-3, which shall be
11 adjusted to the next higher multiple of \$1.00 if not already a
12 multiple thereof**】** (Deleted by amendment, P.L.____, c.) (pending
13 before the Legislature as this bill).

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

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

39 (j) (1) "Average weekly wage" means the amount derived by
40 dividing a covered individual's total wages earned from the
41 individual's most recent covered employer during the base weeks in
42 the eight calendar weeks immediately preceding the calendar week
43 in which a period of disability commenced, by the number of such
44 base weeks.

45 (2) If the computation in paragraph (1) of this subsection (j)
46 yields a result which is less than the individual's average weekly
47 earnings in employment with all covered employers during the base
48 weeks in such eight calendar weeks, then the average weekly wage

1 shall be computed on the basis of earnings from all covered
2 employers during the base weeks in the eight calendar weeks
3 immediately preceding the week in which the period of disability
4 commenced.

5 (3) For periods of disability commencing on or after July 1,
6 2009, if the computations in paragraphs (1) and (2) of this
7 subsection (j) both yield a result which is less than the individual's
8 average weekly earnings in employment with all covered employers
9 during the base weeks in the 26 calendar weeks immediately
10 preceding the week in which the period of disability commenced,
11 then the average weekly wage shall, upon a written request to the
12 department by the individual on a form provided by the department,
13 be computed by the department on the basis of earnings from all
14 covered employers of the individual during the base weeks in those
15 26 calendar weeks, and, in the case of a claim for benefits from a
16 private plan, that computation of the average weekly wage shall be
17 provided by the department to the individual and the individual's
18 employer.

19 When determining the "average weekly wage" with respect to a
20 period of family temporary disability leave for an individual who
21 has a period of family temporary disability immediately after the
22 individual has a period of disability for the individual's own
23 disability, the period of disability is deemed to have commenced at
24 the beginning of the period of disability for the individual's own
25 disability, not the period of family temporary disability.

26 (k) "Child" means a biological, adopted, or foster child,
27 stepchild or legal ward of a covered individual, child of a domestic
28 partner of the covered individual, or child of a civil union partner of
29 the covered individual, who is less than 19 years of age or is 19
30 years of age or older but incapable of self-care because of mental or
31 physical impairment.

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

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

36 (n) "Family member" means a child, spouse, domestic partner,
37 civil union partner or parent of a covered individual.

38 (o) "Family temporary disability leave" means leave taken by a
39 covered individual from work with an employer to (1) participate in
40 the providing of care, as defined in the "Family Leave Act,"
41 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
42 pursuant to that act, for a family member of the individual made
43 necessary by a serious health condition of the family member; or (2)
44 be with a child during the first 12 months after the child's birth, if
45 the individual, or the domestic partner or civil union partner of the
46 individual, is a biological parent of the child, or the first 12 months
47 after the placement of the child for adoption with the individual.
48 "Family temporary disability leave" does not include any period of

1 time in which a covered individual is paid benefits pursuant to
2 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
3 to perform the duties of the individual's employment due to the
4 individual's own disability.

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

8 (q) "Parent of a covered individual" means a biological parent,
9 foster parent, adoptive parent, or stepparent of the covered
10 individual or a person who was a legal guardian of the covered
11 individual when the covered individual was a child.

12 (r) "Placement for adoption" means the time when a covered
13 individual adopts a child or becomes responsible for a child pending
14 adoption by the covered individual.

15 (s) "Serious health condition" means an illness, injury,
16 impairment or physical or mental condition which requires:
17 inpatient care in a hospital, hospice, or residential medical care
18 facility; or continuing medical treatment or continuing supervision
19 by a health care provider.

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

25 (u) "State of emergency" means a natural or man-made disaster
26 or emergency for which a state of emergency has been declared by
27 the President of the United States or the Governor, or for which a
28 state of emergency has been declared by a municipal emergency
29 management coordinator.

30 (cf: P.L.2012, c.45, s.125)

31

32 4. This act shall take effect immediately.

33

34

35

STATEMENT

36

37 This bill helps to maintain eligibility for workers who may
38 otherwise lose eligibility for certain leave and benefits due to loss
39 of employment during a disaster or emergency for which a state of
40 emergency is declared. The bill's provisions apply to eligibility
41 determinations for leave under the "Family Leave Act," P.L.1989,
42 c.261 (C.34:11B-1 et seq.) ("FLA") and under the "New Jersey
43 Security and Financial Empowerment Act," P.L.2013, c.82
44 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for
45 temporary disability insurance ("TDI") benefits under the
46 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
47 et al.), and family leave insurance ("FLI") benefits under P.L.2008,
48 c.17 (C.43:21-39.1 et al.).

1 Currently, a worker is not eligible for leave under the FLA or
2 SAFE Act unless employed at least 1,000 hours during the
3 preceding year, and is not eligible for TDI or FLI benefits unless
4 establishing at least 20 “base weeks” (with pay each week at least
5 20 times the minimum wage), or earning a total of 1,000 times the
6 minimum wage, during the preceding year. The bill provides that, in
7 the case of an individual who is laid off or furloughed by an
8 employer curtailing operations because of a state of emergency
9 declared after October 22, 2012, any time in which the individual is
10 separated from employment (up to a maximum of 90 calendar days
11 for the FLA or the SAFE Act, and up to 13 weeks under the TDI or
12 FLI laws) is regarded as time in which the individual is employed
13 for the purpose of determining whether the individual is eligible for
14 leave under the FLA or the SAFE Act, or benefits under the TDI or
15 FLI laws.

16
17
18
19
20

Concerns eligibility for certain leave and benefit programs.

SENATE, No. 2996

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2013

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns eligibility for certain leave and benefit programs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/7/2014)

1 AN ACT concerning eligibility for certain leave and benefits and
2 amending P.L.1989, c.261, P.L.2013, c.82, 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:

10 a. "Child" means a biological, adopted, or resource family
11 child, stepchild, legal ward, or child of a parent who is

12 (1) under 18 years of age; or

13 (2) 18 years of age or older but incapable of self-care because of
14 a mental or physical impairment.

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

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

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

24 e. "Employee" means a person who is employed for at least 12
25 months by an employer, with respect to whom benefits are sought
26 under this act, for not less than 1,000 base hours during the
27 immediately preceding 12-month period. Any time, up to a
28 maximum of 90 calendar days, during which a person is laid off or
29 furloughed by an employer due to that employer curtailing
30 operations because of a state of emergency declared after October
31 22, 2012, shall be regarded as time in which the person is employed
32 for the purpose of determining eligibility for leave time under this
33 act. In making the determination, the base hours per week during
34 the 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) With respect to the period of time from the effective date of
42 this act until the 365th day following the effective date of this act,
43 employs 100 or more employees for each working day during each
44 of 20 or more calendar workweeks in the then current or
45 immediately preceding calendar year;

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 (2) With respect to the period of time from the 366th day
2 following the effective date of this act until the 1,095th day
3 following the effective date of this act, employs 75 or more
4 employees for each working day during each of 20 or more calendar
5 workweeks in the then current or immediately preceding calendar
6 year; and

7 (3) With respect to any time after the 1,095th day following the
8 effective date of this act, employs 50 or more employees for each
9 working day during each of 20 or more calendar workweeks in the
10 then current or immediately preceding calendar year. "Employer"
11 includes the State, any political subdivision thereof, and all public
12 offices, agencies, boards or bodies.

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

17 h. "Parent" means a person who is the biological parent,
18 adoptive parent, resource family parent, step-parent, parent-in-law
19 or legal guardian, having a "parent-child relationship" with a child
20 as defined by law, or having sole or joint legal or physical custody,
21 care, guardianship, or visitation with a child.

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

- 24 (1) the birth of a child of the employee;
25 (2) the placement of a child with the employee in connection
26 with adoption of such child by the employee; or
27 (3) the serious health condition of a family member of the
28 employee.

29 j. "Family member" means a child, parent, spouse, or one
30 partner in a civil union couple.

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

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

- 37 (1) inpatient care in a hospital, hospice, or residential medical
38 care facility; or
39 (2) continuing medical treatment or continuing supervision by a
40 health care provider.

41 m. "State of emergency" means a natural or man-made disaster
42 or emergency for which a state of emergency has been declared by
43 the President of the United States or the Governor, or for which a
44 state of emergency has been declared by a municipal emergency
45 management coordinator.

46 (cf: P.L.2006, c.103, s.89)

1 2. Section 2 of P.L.2013, c.82 (C.34:11C-2) is amended to read
2 as follows:

3 2. As used in this act:

4 "Employee" means a person who is employed for at least 12
5 months by an employer, with respect to whom benefits are sought
6 under this act, for not less than 1,000 base hours during the
7 immediately preceding 12-month period. Any time, up to a
8 maximum of 90 calendar days, during which a person is laid off or
9 furloughed by an employer due to that employer curtailing
10 operations because of a state of emergency declared after October
11 22, 2012, shall be regarded as time in which the person is employed
12 for the purpose of determining eligibility for leave time under this
13 act. In making the determination, the base hours per week during
14 the layoff or furlough shall be deemed to be the same as the average
15 number of hours worked per week during the rest of the 12-month
16 period.]; and]

17 "Employer" means a person or corporation, partnership,
18 individual proprietorship, joint venture, firm or company, or other
19 similar legal entity which engages the services of an employee and
20 employs 25 or more employees for each working day during each of
21 20 or more calendar workweeks in the then current or immediately
22 preceding calendar year. "Employer" includes the State, any
23 political subdivision thereof, and all public offices, agencies,
24 boards, or bodies.

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

30 (cf: P.L.2013, c.82, s.2)

31

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

34 3. As used in this act, unless the context clearly requires
35 otherwise:

36 (a) (1) "Covered employer" means, with respect to whether an
37 employer is required to provide benefits during an employee's own
38 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
39 individual or type of organization, including any partnership,
40 association, trust, estate, joint-stock company, insurance company
41 or corporation, whether domestic or foreign, or the receiver, trustee
42 in bankruptcy, trustee or successor thereof, or the legal
43 representative of a deceased person, who is an employer subject to
44 the "unemployment compensation law" (R.S.43:21-1 et seq.),
45 except the State, its political subdivisions, and any instrumentality
46 of the State unless such governmental entity elects to become a
47 covered employer pursuant to paragraph (2) of this subsection (a);
48 provided, however, that commencing with the effective date of this

1 act, the State of New Jersey, including Rutgers, The State
2 University and the New Jersey Institute of Technology, shall be
3 deemed a covered employer, as defined herein.

4 "Covered employer" means, after June 30, 2009, with respect to
5 whether the employer is an employer whose employees are eligible
6 for benefits during periods of family temporary disability leave
7 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
8 31, 2008, whether employees of the employer are required to make
9 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
10 or type of organization, including any partnership, association,
11 trust, estate, joint-stock company, insurance company or domestic
12 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
13 or successor thereof, or the legal representative of a deceased
14 person, who is an employer subject to the "unemployment
15 compensation law" (R.S.43:21-1 et seq.), including any
16 governmental entity or instrumentality which is an employer under
17 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
18 instrumentality has not elected to be a covered employer pursuant to
19 paragraph (2) of this subsection (a).

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

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

1 result of a negotiated contract with any governmental entity or
2 instrumentality which elects to become a "covered employer."

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) ["Base week" with respect to periods of disability
2 commencing on or after October 1, 1985 and before January 1,
3 2001, means any calendar week during which a covered individual
4 earned in employment from a covered employer remuneration equal
5 to not less than 20% of the Statewide average weekly wage
6 determined under subsection (c) of R.S.43:21-3, which shall be
7 adjusted to the next higher multiple of \$1.00 if not already a
8 multiple thereof] (Deleted by amendment, P.L. _____, c.) (pending
9 before the Legislature as this bill).

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

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

35 (j) (1) "Average weekly wage" means the amount derived by
36 dividing a covered individual's total wages earned from the
37 individual's most recent covered employer during the base weeks in
38 the eight calendar weeks immediately preceding the calendar week
39 in which a period of disability commenced, by the number of such
40 base weeks.

41 (2) If the computation in paragraph (1) of this subsection (j)
42 yields a result which is less than the individual's average weekly
43 earnings in employment with all covered employers during the base
44 weeks in such eight calendar weeks, then the average weekly wage
45 shall be computed on the basis of earnings from all covered
46 employers during the base weeks in the eight calendar weeks
47 immediately preceding the week in which the period of disability
48 commenced.

1 (3) For periods of disability commencing on or after July 1,
2 2009, if the computations in paragraphs (1) and (2) of this
3 subsection (j) both yield a result which is less than the individual's
4 average weekly earnings in employment with all covered employers
5 during the base weeks in the 26 calendar weeks immediately
6 preceding the week in which the period of disability commenced,
7 then the average weekly wage shall, upon a written request to the
8 department by the individual on a form provided by the department,
9 be computed by the department on the basis of earnings from all
10 covered employers of the individual during the base weeks in those
11 26 calendar weeks, and, in the case of a claim for benefits from a
12 private plan, that computation of the average weekly wage shall be
13 provided by the department to the individual and the individual's
14 employer.

15 When determining the "average weekly wage" with respect to a
16 period of family temporary disability leave for an individual who
17 has a period of family temporary disability immediately after the
18 individual has a period of disability for the individual's own
19 disability, the period of disability is deemed to have commenced at
20 the beginning of the period of disability for the individual's own
21 disability, not the period of family temporary disability.

22 (k) "Child" means a biological, adopted, or foster child,
23 stepchild or legal ward of a covered individual, child of a domestic
24 partner of the covered individual, or child of a civil union partner of
25 the covered individual, who is less than 19 years of age or is 19
26 years of age or older but incapable of self-care because of mental or
27 physical impairment.

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

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

32 (n) "Family member" means a child, spouse, domestic partner,
33 civil union partner or parent of a covered individual.

34 (o) "Family temporary disability leave" means leave taken by a
35 covered individual from work with an employer to (1) participate in
36 the providing of care, as defined in the "Family Leave Act,"
37 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
38 pursuant to that act, for a family member of the individual made
39 necessary by a serious health condition of the family member; or (2)
40 be with a child during the first 12 months after the child's birth, if
41 the individual, or the domestic partner or civil union partner of the
42 individual, is a biological parent of the child, or the first 12 months
43 after the placement of the child for adoption with the individual.
44 "Family temporary disability leave" does not include any period of
45 time in which a covered individual is paid benefits pursuant to
46 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
47 to perform the duties of the individual's employment due to the
48 individual's own disability.

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

4 (q) "Parent of a covered individual" means a biological parent,
5 foster parent, adoptive parent, or stepparent of the covered
6 individual or a person who was a legal guardian of the covered
7 individual when the covered individual was a child.

8 (r) "Placement for adoption" means the time when a covered
9 individual adopts a child or becomes responsible for a child pending
10 adoption by the covered individual.

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

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

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

26 (cf: P.L.2012, c.45, s.125)

27

28 4. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill helps to maintain eligibility for workers who may
34 otherwise lose eligibility for certain leave and benefits due to loss
35 of employment during a disaster or emergency for which a state of
36 emergency is declared. The bill's provisions apply to eligibility
37 determinations for leave under the "Family Leave Act," P.L.1989,
38 c.261 (C.34:11B-1 et seq.) ("FLA") and under the "New Jersey
39 Security and Financial Empowerment Act," P.L.2013, c.82
40 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for
41 temporary disability insurance ("TDI") benefits under the
42 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
43 et al.), and family leave insurance ("FLI") benefits under P.L.2008,
44 c.17 (C.43:21-39.1 et al.).

45 Currently, a worker is not eligible for leave under the FLA or
46 SAFE Act unless employed at least 1,000 hours during the
47 preceding year, and is not eligible for TDI or FLI benefits unless
48 establishing at least 20 "base weeks" (with pay each week at least

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10

1 20 times the minimum wage), or earning a total of 1,000 times the
2 minimum wage, during the preceding year. The bill provides that, in
3 the case of an individual who is laid off or furloughed by an
4 employer curtailing operations because of a state of emergency
5 declared after October 22, 2012, any time in which the individual is
6 separated from employment (up to a maximum of 90 calendar days
7 for the FLA or the SAFE Act, and up to 13 weeks under the TDI or
8 FLI laws) is regarded as time in which the individual is employed
9 for the purpose of determining whether the individual is eligible for
10 leave under the FLA or the SAFE Act, or benefits under the TDI or
11 FLI laws.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2996

STATE OF NEW JERSEY

DATED: NOVEMBER 7, 2013

The Senate Labor Committee reports favorably Senate Bill No. 2996.

This bill helps to maintain eligibility for workers who may otherwise lose eligibility for certain leave and benefits due to loss of employment during a disaster or emergency for which a state of emergency is declared. The bill's provisions apply to eligibility determinations for leave under the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) ("FLA"), and under the "New Jersey Security and Financial Empowerment Act," P.L.2013, c.82 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for temporary disability insurance ("TDI") benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and family leave insurance ("FLI") benefits under P.L.2008, c.17 (C.43:21-39.1 et al.).

Currently, a worker is not eligible for leave under the FLA or SAFE Act unless employed at least 1,000 hours during the preceding year, and is not eligible for TDI or FLI benefits unless establishing at least 20 "base weeks" (with pay each week at least 20 times the minimum wage), or earning a total of 1,000 times the minimum wage, during the preceding year. The bill provides that, in the case of an individual who is laid off or furloughed by an employer curtailing operations because of a state of emergency declared after October 22, 2012, any time in which the individual is separated from employment (up to a maximum of 90 calendar days for the FLA or the SAFE Act, and up to 13 weeks under the TDI or FLI laws) is regarded as time in which the individual is employed for the purpose of determining whether the individual is eligible for leave under the FLA or the SAFE Act, or benefits under the TDI or FLI laws.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2996

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2013

The Assembly Labor Committee reports favorably Senate Bill No. 2996.

This bill helps to maintain eligibility for workers who may otherwise lose eligibility for certain leave and benefits due to loss of employment during a disaster or emergency for which a state of emergency is declared. The bill's provisions apply to eligibility determinations for leave under the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) ("FLA") and under the "New Jersey Security and Financial Empowerment Act," P.L.2013, c.82 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for temporary disability insurance ("TDI") benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and family leave insurance ("FLI") benefits under P.L.2008, c.17 (C.43:21-39.1 et al.).

Currently, a worker is not eligible for leave under the FLA or SAFE Act unless employed at least 1,000 hours during the preceding year, and is not eligible for TDI or FLI benefits unless establishing at least 20 "base weeks" (with pay each week at least 20 times the minimum wage), or earning a total of 1,000 times the minimum wage, during the preceding year. The bill provides that, in the case of an individual who is laid off or furloughed by an employer curtailing operations because of a state of emergency declared after October 22, 2012, any time in which the individual is separated from employment (up to a maximum of 90 calendar days for the FLA or the SAFE Act, and up to 13 weeks under the TDI or FLI laws) is regarded as time in which the individual is employed for the purpose of determining whether the individual is eligible for leave under the FLA or the SAFE Act, or benefits under the TDI or FLI laws.

ASSEMBLY, No. 4527

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 12, 2013

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns eligibility for certain leave and benefit programs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2013)

1 AN ACT concerning eligibility for certain leave and benefits and
2 amending P.L.1989, c.261, P.L.2013, c.82, 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:

10 a. "Child" means a biological, adopted, or resource family
11 child, stepchild, legal ward, or child of a parent who is

12 (1) under 18 years of age; or

13 (2) 18 years of age or older but incapable of self-care because of
14 a mental or physical impairment.

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

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

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

24 e. "Employee" means a person who is employed for at least 12
25 months by an employer, with respect to whom benefits are sought
26 under this act, for not less than 1,000 base hours during the
27 immediately preceding 12-month period. Any time, up to a
28 maximum of 90 calendar days, during which a person is laid off or
29 furloughed by an employer due to that employer curtailing
30 operations because of a state of emergency declared after October
31 22, 2012, shall be regarded as time in which the person is employed
32 for the purpose of determining eligibility for leave time under this
33 act. In making the determination, the base hours per week during
34 the 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) With respect to the period of time from the effective date of
42 this act until the 365th day following the effective date of this act,
43 employs 100 or more employees for each working day during each
44 of 20 or more calendar workweeks in the then current or
45 immediately preceding calendar year;

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 (2) With respect to the period of time from the 366th day
2 following the effective date of this act until the 1,095th day
3 following the effective date of this act, employs 75 or more
4 employees for each working day during each of 20 or more calendar
5 workweeks in the then current or immediately preceding calendar
6 year; and

7 (3) With respect to any time after the 1,095th day following the
8 effective date of this act, employs 50 or more employees for each
9 working day during each of 20 or more calendar workweeks in the
10 then current or immediately preceding calendar year. "Employer"
11 includes the State, any political subdivision thereof, and all public
12 offices, agencies, boards or bodies.

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

17 h. "Parent" means a person who is the biological parent,
18 adoptive parent, resource family parent, step-parent, parent-in-law
19 or legal guardian, having a "parent-child relationship" with a child
20 as defined by law, or having sole or joint legal or physical custody,
21 care, guardianship, or visitation with a child.

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

24 (1) the birth of a child of the employee;

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

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

29 j. "Family member" means a child, parent, spouse, or one
30 partner in a civil union couple.

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

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

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

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

41 m. "State of emergency" means a natural or man-made disaster
42 or emergency for which a state of emergency has been declared by
43 the President of the United States or the Governor, or for which a
44 state of emergency has been declared by a municipal emergency
45 management coordinator.

46 (cf: P.L.2006, c.103, s.89)

1 2. Section 2 of P.L.2013, c.82 (C.34:11C-2) is amended to read
2 as follows:

3 2. As used in this act:

4 "Employee" means a person who is employed for at least 12
5 months by an employer, with respect to whom benefits are sought
6 under this act, for not less than 1,000 base hours during the
7 immediately preceding 12-month period. Any time, up to a
8 maximum of 90 calendar days, during which a person is laid off or
9 furloughed by an employer due to that employer curtailing
10 operations because of a state of emergency declared after October
11 22, 2012, shall be regarded as time in which the person is employed
12 for the purpose of determining eligibility for leave time under this
13 act. In making the determination, the base hours per week during
14 the layoff or furlough shall be deemed to be the same as the average
15 number of hours worked per week during the rest of the 12-month
16 period.]; and]

17 "Employer" means a person or corporation, partnership,
18 individual proprietorship, joint venture, firm or company, or other
19 similar legal entity which engages the services of an employee and
20 employs 25 or more employees for each working day during each of
21 20 or more calendar workweeks in the then current or immediately
22 preceding calendar year. "Employer" includes the State, any
23 political subdivision thereof, and all public offices, agencies,
24 boards, or bodies.

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

30 (cf: P.L.2013, c.82, s.2)

31

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

34 3. As used in this act, unless the context clearly requires
35 otherwise:

36 (a) (1) "Covered employer" means, with respect to whether an
37 employer is required to provide benefits during an employee's own
38 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
39 individual or type of organization, including any partnership,
40 association, trust, estate, joint-stock company, insurance company
41 or corporation, whether domestic or foreign, or the receiver, trustee
42 in bankruptcy, trustee or successor thereof, or the legal
43 representative of a deceased person, who is an employer subject to
44 the "unemployment compensation law" (R.S.43:21-1 et seq.),
45 except the State, its political subdivisions, and any instrumentality
46 of the State unless such governmental entity elects to become a
47 covered employer pursuant to paragraph (2) of this subsection (a);
48 provided, however, that commencing with the effective date of this

1 act, the State of New Jersey, including Rutgers, The State
2 University and the New Jersey Institute of Technology, shall be
3 deemed a covered employer, as defined herein.

4 "Covered employer" means, after June 30, 2009, with respect to
5 whether the employer is an employer whose employees are eligible
6 for benefits during periods of family temporary disability leave
7 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
8 31, 2008, whether employees of the employer are required to make
9 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
10 or type of organization, including any partnership, association,
11 trust, estate, joint-stock company, insurance company or domestic
12 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
13 or successor thereof, or the legal representative of a deceased
14 person, who is an employer subject to the "unemployment
15 compensation law" (R.S.43:21-1 et seq.), including any
16 governmental entity or instrumentality which is an employer under
17 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
18 instrumentality has not elected to be a covered employer pursuant to
19 paragraph (2) of this subsection (a).

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

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

1 result of a negotiated contract with any governmental entity or
2 instrumentality which elects to become a "covered employer."

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) ["Base week" with respect to periods of disability
2 commencing on or after October 1, 1985 and before January 1,
3 2001, means any calendar week during which a covered individual
4 earned in employment from a covered employer remuneration equal
5 to not less than 20% of the Statewide average weekly wage
6 determined under subsection (c) of R.S.43:21-3, which shall be
7 adjusted to the next higher multiple of \$1.00 if not already a
8 multiple thereof] (Deleted by amendment, P.L. _____, c.) (pending
9 before the Legislature as this bill).

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

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

35 (j) (1) "Average weekly wage" means the amount derived by
36 dividing a covered individual's total wages earned from the
37 individual's most recent covered employer during the base weeks in
38 the eight calendar weeks immediately preceding the calendar week
39 in which a period of disability commenced, by the number of such
40 base weeks.

41 (2) If the computation in paragraph (1) of this subsection (j)
42 yields a result which is less than the individual's average weekly
43 earnings in employment with all covered employers during the base
44 weeks in such eight calendar weeks, then the average weekly wage
45 shall be computed on the basis of earnings from all covered
46 employers during the base weeks in the eight calendar weeks
47 immediately preceding the week in which the period of disability
48 commenced.

1 (3) For periods of disability commencing on or after July 1,
2 2009, if the computations in paragraphs (1) and (2) of this
3 subsection (j) both yield a result which is less than the individual's
4 average weekly earnings in employment with all covered employers
5 during the base weeks in the 26 calendar weeks immediately
6 preceding the week in which the period of disability commenced,
7 then the average weekly wage shall, upon a written request to the
8 department by the individual on a form provided by the department,
9 be computed by the department on the basis of earnings from all
10 covered employers of the individual during the base weeks in those
11 26 calendar weeks, and, in the case of a claim for benefits from a
12 private plan, that computation of the average weekly wage shall be
13 provided by the department to the individual and the individual's
14 employer.

15 When determining the "average weekly wage" with respect to a
16 period of family temporary disability leave for an individual who
17 has a period of family temporary disability immediately after the
18 individual has a period of disability for the individual's own
19 disability, the period of disability is deemed to have commenced at
20 the beginning of the period of disability for the individual's own
21 disability, not the period of family temporary disability.

22 (k) "Child" means a biological, adopted, or foster child,
23 stepchild or legal ward of a covered individual, child of a domestic
24 partner of the covered individual, or child of a civil union partner of
25 the covered individual, who is less than 19 years of age or is 19
26 years of age or older but incapable of self-care because of mental or
27 physical impairment.

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

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

32 (n) "Family member" means a child, spouse, domestic partner,
33 civil union partner or parent of a covered individual.

34 (o) "Family temporary disability leave" means leave taken by a
35 covered individual from work with an employer to (1) participate in
36 the providing of care, as defined in the "Family Leave Act,"
37 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
38 pursuant to that act, for a family member of the individual made
39 necessary by a serious health condition of the family member; or (2)
40 be with a child during the first 12 months after the child's birth, if
41 the individual, or the domestic partner or civil union partner of the
42 individual, is a biological parent of the child, or the first 12 months
43 after the placement of the child for adoption with the individual.
44 "Family temporary disability leave" does not include any period of
45 time in which a covered individual is paid benefits pursuant to
46 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
47 to perform the duties of the individual's employment due to the
48 individual's own disability.

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

4 (q) "Parent of a covered individual" means a biological parent,
5 foster parent, adoptive parent, or stepparent of the covered
6 individual or a person who was a legal guardian of the covered
7 individual when the covered individual was a child.

8 (r) "Placement for adoption" means the time when a covered
9 individual adopts a child or becomes responsible for a child pending
10 adoption by the covered individual.

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

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

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

26 (cf: P.L.2012, c.45, s.125)

27

28 4. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill helps to maintain eligibility for workers who may
34 otherwise lose eligibility for certain leave and benefits due to loss
35 of employment during a disaster or emergency for which a state of
36 emergency is declared. The bill's provisions apply to eligibility
37 determinations for leave under the "Family Leave Act," P.L.1989,
38 c.261 (C.34:11B-1 et seq.) ("FLA") and under the "New Jersey
39 Security and Financial Empowerment Act," P.L.2013, c.82
40 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for
41 temporary disability insurance ("TDI") benefits under the
42 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
43 et al.), and family leave insurance ("FLI") benefits under P.L.2008,
44 c.17 (C.43:21-39.1 et al.).

45 Currently, a worker is not eligible for leave under the FLA or
46 SAFE Act unless employed at least 1,000 hours during the
47 preceding year, and is not eligible for TDI or FLI benefits unless
48 establishing at least 20 "base weeks" (with pay each week at least

1 20 times the minimum wage), or earning a total of 1,000 times the
2 minimum wage, during the preceding year. The bill provides that, in
3 the case of an individual who is laid off or furloughed by an
4 employer curtailing operations because of a state of emergency
5 declared after October 22, 2012, any time in which the individual is
6 separated from employment (up to a maximum of 90 calendar days
7 for the FLA or the SAFE Act, and up to 13 weeks under the TDI or
8 FLI laws) is regarded as time in which the individual is employed
9 for the purpose of determining whether the individual is eligible for
10 leave under the FLA or the SAFE Act, or benefits under the TDI or
11 FLI laws.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4527

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2013

The Assembly Labor Committee reports favorably Assembly Bill No. 4527.

This bill helps to maintain eligibility for workers who may otherwise lose eligibility for certain leave and benefits due to loss of employment during a disaster or emergency for which a state of emergency is declared. The bill's provisions apply to eligibility determinations for leave under the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) ("FLA") and under the "New Jersey Security and Financial Empowerment Act," P.L.2013, c.82 (C.34:11C-1) ("SAFE Act"), and eligibility determinations for temporary disability insurance ("TDI") benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and family leave insurance ("FLI") benefits under P.L.2008, c.17 (C.43:21-39.1 et al.).

Currently, a worker is not eligible for leave under the FLA or SAFE Act unless employed at least 1,000 hours during the preceding year, and is not eligible for TDI or FLI benefits unless establishing at least 20 "base weeks" (with pay each week at least 20 times the minimum wage), or earning a total of 1,000 times the minimum wage, during the preceding year. The bill provides that, in the case of an individual who is laid off or furloughed by an employer curtailing operations because of a state of emergency declared after October 22, 2012, any time in which the individual is separated from employment (up to a maximum of 90 calendar days for the FLA or the SAFE Act, and up to 13 weeks under the TDI or FLI laws) is regarded as time in which the individual is employed for the purpose of determining whether the individual is eligible for leave under the FLA or the SAFE Act, or benefits under the TDI or FLI laws.