

**34:11B-3 & 34:11B-4 et al**  
**LEGISLATIVE HISTORY CHECKLIST**

Compiled by the NJ State Law Library

**LAWS OF:** 2020                      **CHAPTER:** 23

**NJSA:** 34:11B-3 & 34:11B-4 et al (Concerns family leave benefits during epidemic-related emergencies.)

**BILL NO:** S2374                      (Substituted for A3913)

**SPONSOR(S)** Stephen M. Sweeney and others

**DATE INTRODUCED:** 4/9/2020

**COMMITTEE:**                      **ASSEMBLY:** ---

**SENATE:** ---

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                      **ASSEMBLY:** 4/13/2020

**SENATE:** 4/13/2020

**DATE OF APPROVAL:** 4/14/2020

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Introduced bill enacted) Yes

**S2374**

**SPONSOR'S STATEMENT:** (Begins on page 19 of introduced bill) Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:** No

**SENATE:** No

(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](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A3913**

**SPONSOR'S STATEMENT:** (Begins on page 19 of introduced bill) Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:** No

**SENATE:** No

(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](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Expanded paid family leave for COVID-19 now law," NJBIZ (New Brunswick, NJ), April 15, 2020

Rwh/cl

P.L. 2020, CHAPTER 23, *approved April 14, 2020*  
Senate, No. 2374

1 AN ACT concerning family leave and amending P.L.1989, c.261 and  
2 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 read  
8 as follows:

9 3. As used in this act:

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 Rights.

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

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

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

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

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

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

40 (3) With respect to the period of time from the 1,095th day  
41 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)

**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 through June 30, 2019, employs 50 or more employees for each  
2 working day during each of 20 or more calendar workweeks in the  
3 then current or immediately preceding calendar year; and

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) inpatient care in a hospital, hospice, or residential medical  
17 care facility; or

18 (2) continuing medical treatment or continuing supervision by a  
19 health care provider.

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

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

31 (2) the recommendation, direction, or order of the provider or  
32 authority that the family member be isolated or quarantined because  
33 of suspected exposure to the communicable disease. **】**

34 m. "State of emergency" means a natural or man-made disaster  
35 or emergency for which a state of emergency has been declared by  
36 the President of the United States or the Governor, or for which a  
37 state of emergency has been declared by a municipal emergency  
38 management coordinator.

39 n. "Health care provider" means a duly licensed health care  
40 provider or other health care provider deemed appropriate by the  
41 director.

42 (cf: P.L.2020, c.17, s.2)

43

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

46 4. An employee of an employer in this State subject to the  
47 provisions of this act shall be entitled to a family leave of 12 weeks  
48 in any 24-month period upon advance notice to the employer in the

1 manner specified by the provisions of sections 11 and 12 of P.L.2008,  
2 c.17 (C.43:21-39.2 and 43:21-39.3), unless the employer denies  
3 family leave to the employee pursuant to subsection h. of this section.

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

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

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

15 d. Family leave required by this act may be paid, unpaid, or a  
16 combination of paid and unpaid leave. If an employer provides paid  
17 family leave for fewer than 12 workweeks, the additional weeks of  
18 leave added to attain the 12-workweek total required by this act may  
19 be unpaid.

20 e. An employer may require that any period of family leave be  
21 supported by certification issued by a duly licensed health care  
22 provider or any other health care provider determined by the director  
23 to be capable of providing adequate certification as described in  
24 paragraphs (1) and (2) of this subsection, or where the leave is for an  
25 epidemic of a communicable disease, a known or suspected exposure  
26 to a communicable disease, or efforts to prevent spread of a  
27 communicable disease, certification issued by a school, place of care  
28 for children, public health authority, public official, or health care  
29 provider, as described in paragraph (3) of this subsection.

30 (1) Where the certification is for the serious health condition of a  
31 family member of the employee, the certification shall be sufficient  
32 if it states: (a) the date on which the serious health condition  
33 commenced; (b) the probable duration of the condition; and (c) the  
34 medical facts within the provider's knowledge regarding the  
35 condition;

36 (2) Where the certification is for the birth or placement of the  
37 child, the certification need only state the date of birth or date of  
38 placement, whichever is appropriate;

39 (3) Where the certification is for an epidemic of a communicable  
40 disease, a known or suspected exposure to the communicable disease,  
41 or efforts to prevent spread of the communicable disease, the  
42 certification shall be sufficient if it includes:

43 (a) for leave taken to provide in-home care or treatment of a child  
44 due to the closure of the school or place of care of the child of the  
45 employee, by order of a public official due to the epidemic or other  
46 public health emergency, the date on which the closure of the school  
47 or place of care of the child of the employee commenced and the  
48 reason for such closure;

1       **(b) for leave taken due to a public health authority's issuance of**  
2 **a determination requiring or imposing responsive or prophylactic**  
3 **measures as a result of illness caused by an epidemic of a**  
4 **communicable disease or known or suspected exposure to the**  
5 **communicable disease because the presence in the community of a**  
6 **family member in need of care by the employee would jeopardize the**  
7 **health of others, the date of issuance of the determination and the**  
8 **probable duration of the determination; or**

9       **(c) for leave taken because a health care provider or public health**  
10 **authority recommends that a family member in need of care by the**  
11 **employee voluntarily undergo self-quarantine as a result of suspected**  
12 **exposure to a communicable disease because the presence in the**  
13 **community of that family member in need of care by the employee**  
14 **would jeopardize the health of others, the date of the**  
15 **recommendation, the probable duration of the condition, and the**  
16 **medical or other facts within the health care provider or public health**  
17 **authority's knowledge regarding the condition.**

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

31       f. In any case in which the necessity for leave under this act is  
32 foreseeable, based upon placement of a child into foster care an  
33 expected birth or placement of the child for adoption, the employee  
34 shall provide the employer with prior notice of the expected birth or  
35 placement of the child for adoption or foster care in the manner  
36 specified by the provisions of section 11 of P.L.2008, c.17 (C.43:21-  
37 39.2).

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

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

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

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

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

3 The provisions of this subsection shall not apply when , in the  
4 event of a state of emergency declared by the Governor or when  
5 indicated to be needed by the Commissioner of Health or other public  
6 health authority, the family leave is **【**due to a health care provider,  
7 the Commissioner of Health or other authorized public official  
8 having ordered, directed, or recommended that a family member of  
9 the employee in need of care by the employee be isolated or  
10 quarantined, or is due to a place of care of a member of the  
11 employee's family being closed because of a state of emergency  
12 declared by the Governor or order of the Commissioner of Health or  
13 other authorized public official, during**】** for an epidemic of a  
14 communicable disease, **【or】** a known or suspected exposure to a  
15 communicable disease, or efforts to prevent spread of a  
16 communicable disease.

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

21 j. In the case of leave taken due to an epidemic of a  
22 communicable disease, a known or suspected exposure to the  
23 communicable disease, or efforts to prevent spread of the  
24 communicable disease, the leave may be taken intermittently if: (1)  
25 the covered individual provides the employer with prior notice of the  
26 leave as soon as practicable; and (2) the covered individual makes a  
27 reasonable effort to schedule the leave so as not to unduly disrupt the  
28 operations of the employer and, if possible, provide the employer,  
29 prior to the commencement of the intermittent leave, with a regular  
30 schedule of the day or days of the week on which the intermittent  
31 leave will be taken.

32 (cf: P.L.2020, c.17, s.3)

33

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

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

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



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

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

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

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

1 terms and conditions similar to classified employees or accumulated  
2 under the terms and conditions pursuant to the laws of this State or  
3 as the result of a negotiated contract with any governmental entity or  
4 instrumentality which elects to become a "covered employer"; and,  
5 after June 30, 2019 may be required, prior to receiving any benefits  
6 under the "Temporary Disability Benefits Law," to use up to two  
7 weeks of sick leave accumulated as an employee in the classified  
8 service of the State or accumulated under terms and conditions  
9 similar to classified employees or accumulated under the terms and  
10 conditions pursuant to the laws of this State or as the result of a  
11 negotiated contract with any governmental entity or instrumentality  
12 which elects to become a "covered employer," except that the  
13 individual shall not be required to use the individual's last week's  
14 worth of accumulated sick time before receiving the benefits.

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

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

28 (c) "Division" or "commission" means the Division of  
29 Unemployment and Temporary Disability Insurance of the  
30 Department of Labor and Workforce Development, and any  
31 transaction or exercise of authority by the director of the division  
32 shall be deemed to be performed by the division.

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

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

37 (1) "Disability" shall, in the event of a state of emergency  
38 declared by the Governor, or when indicated to be needed by the  
39 Commissioner of Health or other public health authority, also include  
40 an illness caused by an epidemic of a communicable disease, a known  
41 or suspected exposure to the communicable disease, or efforts to  
42 prevent spread of the communicable disease, which requires in-home  
43 care or treatment of the employee due to:

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

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

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

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

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

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

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

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

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

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

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

41       (5) In the case of an individual who is laid off or furloughed by  
42 an employer curtailing operations because of a state of emergency  
43 declared after October 22, 2012, any week in which the individual is  
44 separated from employment due to that layoff or furlough, up to a  
45 maximum of 13 weeks, shall be regarded as a week which is a "base  
46 week" for the purpose of determining whether the individual becomes  
47 eligible for benefits pursuant to subsection (d) or (e) of section 17 of  
48 P.L.1948, c.110 (C.43:21-41), but shall not be regarded as a base

1 week when calculating the "average weekly wage" pursuant to  
2 subsection (j) of this section.

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

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

41 (3) For periods of disability commencing on or after July 1, 2009  
42 and before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),  
43 if the computations in paragraphs (1) and (2) of this subsection (j)  
44 both yield a result which is less than the individual's average weekly  
45 earnings in employment with all covered employers during the base  
46 weeks in the 26 calendar weeks immediately preceding the week in  
47 which the period of disability commenced, then the average weekly  
48 wage shall, upon a written request to the department by the individual

1 on a form provided by the department, be computed by the  
2 department on the basis of earnings from all covered employers of  
3 the individual during the base weeks in those 26 calendar weeks, and,  
4 in the case of a claim for benefits from a private plan, that  
5 computation of the average weekly wage shall be provided by the  
6 department to the individual and the individual's employer.

7 When determining the "average weekly wage" with respect to a  
8 period of family temporary disability leave for an individual who has  
9 a period of family temporary disability immediately after the  
10 individual has a period of disability for the individual's own  
11 disability, the period of disability is deemed to have commenced at  
12 the beginning of the period of disability for the individual's own  
13 disability, not the period of family temporary disability.

14 (k) "Child" means a biological, adopted, or foster child, stepchild  
15 or legal ward of a covered individual, child of a domestic partner of  
16 the covered individual, or child of a civil union partner of the covered  
17 individual, including a child who becomes the child of a parent  
18 pursuant to a valid written agreement between the parent and a  
19 gestational carrier.

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

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

24 (n) "Family member" means a sibling, grandparent, grandchild,  
25 child, spouse, domestic partner, civil union partner, parent-in-law, or  
26 parent of a covered individual, or any other individual related by  
27 blood to the employee, and any other individual that the employee  
28 shows to have a close association with the employee which is the  
29 equivalent of a family relationship.

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

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

36 (2) be with a child during the first 12 months after the child's  
37 birth, if the individual, or the domestic partner or civil union partner  
38 of the individual, is a biological parent of the child, or is a parent of  
39 the child pursuant to a valid gestational carrier agreement, or the first  
40 12 months after the placement of the child for adoption or as a foster  
41 child with the individual; **【or】**

42 (3) engage in activities for which unpaid leave may be taken  
43 pursuant to section 3 of the "New Jersey Security and Financial  
44 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's  
45 own behalf, if the individual is a victim of an incident of domestic  
46 violence, a sexually violent offense, or to assist a family member of  
47 the individual who has been a victim of an incident of domestic  
48 violence, or a sexually violent offense, provided that any time taken

1 by an individual who has been a victim of an incident of domestic  
2 violence, or a sexually violent offense for which the individual  
3 receives benefits for a disability caused by the violence or offense  
4 shall be regarded as a period of disability of the individual and not as  
5 a period of family temporary disability leave; or

6 (4) in the event of a state of emergency declared by the Governor,  
7 or when indicated to be needed by the Commissioner of Health or  
8 other public health authority, an epidemic of a communicable  
9 disease, a known or suspected exposure to the communicable disease,  
10 or efforts to prevent spread of the communicable disease, provide in-  
11 home care or treatment of the family member of the employee  
12 required due to:

13 (i) the issuance by a healthcare provider or the commissioner or  
14 other public health authority of a determination that the presence in  
15 the community of the family member may jeopardize the health of  
16 others; and

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

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

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

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

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

37 (s) "Serious health condition" means an illness, injury,  
38 impairment or physical or mental condition which requires: inpatient  
39 care in a hospital, hospice, or residential medical care facility; or  
40 continuing medical treatment or continuing supervision by a health  
41 care provider. **【**During a state of emergency declared by the  
42 Governor, or when indicated to be needed by the Commissioner of  
43 Health or other public health authority, "serious health condition"  
44 shall also include an illness caused by an epidemic of a  
45 communicable disease, a known or suspected exposure to a  
46 communicable disease, or efforts to prevent spread of a  
47 communicable disease, which requires in-home care or treatment of  
48 the employee or family member of the employee due to:

1 (1) 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 employee or family member may jeopardize  
4 the health of others; and

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

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

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

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

47 (cf: P.L.2020, c.17, s.4)

1 4. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read  
2 as follows:

3 5. Compensable disability.

4 (a) In the case of the disability of a covered individual, disability  
5 shall be compensable subject to the limitations of P.L.1948, c.110  
6 (C.43:21-25 et al.) if: the disability is the result of the covered  
7 individual suffering an accident or sickness not arising out of and in  
8 the course of the individual's employment or if so arising not  
9 compensable under the workers' compensation law, R.S.34:15-1 et  
10 seq., including if the disability is the result of the donation of any  
11 organ or bone marrow by the covered individual, and the disability  
12 results in the individual's total inability to perform the duties of  
13 employment, except that an individual who is otherwise eligible for  
14 benefits but only able to return to work on a reduced basis while  
15 recovering from the disability may receive benefits pursuant to the  
16 provisions of subsection (b) of section 16 of P.L.1948, c.110  
17 (C.43:21-40).

18 (b) In the case of an individual taking family temporary disability  
19 leave, the leave **【**, including leave to care for family members  
20 suffering from accident or sickness,**】** shall be compensable subject to  
21 the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

22 (c) During a state of emergency declared by the Governor, or  
23 when indicated to be needed by the Commissioner of Health or other  
24 public health authority, **【“sickness”】** family temporary disability  
25 leave also includes leave taken for an illness caused by an epidemic  
26 of a communicable disease, a known or suspected exposure to a  
27 communicable disease, or efforts to prevent spread of a  
28 communicable disease, which requires in-home care or treatment of  
29 the **【employee or】** family member of the employee due to:

30 (1) the issuance by a healthcare provider or the commissioner or  
31 other public health authority of a determination that the presence in  
32 the community of the family member **【or employee】** may jeopardize  
33 the health of others; and

34 (2) the recommendation, direction, or order of the provider or  
35 authority that the **【employee or】** family member be isolated or  
36 quarantined as a result of suspected exposure to a communicable  
37 disease.

38 (d) During a state of emergency declared by the Governor, or  
39 when indicated to be needed by the Commissioner of Health or other  
40 public health authority, disability also includes illness caused by an  
41 epidemic of a communicable disease, a known or suspected exposure  
42 to a communicable disease, or efforts to prevent spread of a  
43 communicable disease, which requires in-home care or treatment of  
44 the employee due to:

45 (1) the issuance by a healthcare provider or the commissioner or  
46 other public health authority of a determination that the presence in



1 the community of the employee may jeopardize the health of others;  
2 and

3 (2) the recommendation, direction, or order of the provider or  
4 authority that the employee be isolated or quarantined as a result of  
5 suspected exposure to a communicable disease.

6 (cf: P.L.2020, c.17, s.5)

7

8 5. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to  
9 read as follows:

10 14. a. With respect to any period of disability for an individual's  
11 own disability commencing on or after January 1, 1953, disability  
12 benefits, not in excess of an individual's maximum benefits, shall be  
13 payable with respect to disability which commences while a person  
14 is a covered individual under the Temporary Disability Benefits Law,  
15 and shall be payable with respect to the eighth consecutive day of  
16 such disability and each day thereafter that such period of disability  
17 continues; and if benefits shall be payable for three consecutive  
18 weeks with respect to any period of disability commencing on or after  
19 January 1, 1968, then benefits shall also be payable with respect to  
20 the first seven days thereof. With respect to any period of disability  
21 for an individual's own disability commencing on or after the  
22 effective date of P.L.2020, c.17 the disability benefits shall be  
23 payable with respect to the first day of the disability, if the disability  
24 **【is for a sickness】** is as described in subsection (d) of section 5 of  
25 P.L.1948, c.110 (C.43:21-29), or is for leave as described in  
26 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

27 b. With respect to any period of family temporary disability  
28 leave commencing on or after July 1, 2009 and while an individual is  
29 a covered individual, family temporary disability benefits, not in  
30 excess of the individual's maximum benefits, shall be payable with  
31 respect to the first day of leave taken after the first one-week period  
32 following the commencement of the period of family temporary  
33 disability leave and each subsequent day of leave during that period  
34 of family temporary disability leave; and if benefits become payable  
35 on any day after the first three weeks in which leave is taken, then  
36 benefits shall also be payable with respect to any leave taken during  
37 the first one-week period in which leave is taken. With respect to  
38 any period of family temporary disability leave commencing on or  
39 after July 1, 2019 and while an individual is a covered individual,  
40 family temporary disability benefits, not in excess of the individual's  
41 maximum benefits, shall be payable with respect to the first day of  
42 leave taken upon the commencement of the period of family  
43 temporary disability leave and each subsequent day of leave during  
44 that period of family temporary disability leave. The maximum total  
45 benefits payable to any eligible individual for any period of disability  
46 of the individual commencing on or after January 1, 1968, shall be  
47 either 26 times his weekly benefit amount or 1/3 of his total wages in  
48 his base year, whichever is the lesser; provided that such maximum

1 amount shall be computed in the next lower multiple of \$1.00 if not  
2 already a multiple thereof. The maximum total benefits payable to  
3 any eligible individual for any period of family temporary disability  
4 leave commencing on or after July 1, 2009 and before July 1, 2020,  
5 shall be six times the individual's weekly benefit amount or 1/3 of his  
6 total wages in his base year, whichever is the lesser; provided that  
7 the maximum amount shall be computed in the next lower multiple  
8 of \$1.00, if not already a multiple thereof. The maximum total  
9 benefits payable to any eligible individual for any period of family  
10 temporary disability leave commencing on or after July 1, 2020, shall  
11 be twelve times the individual's weekly benefit amount; provided that  
12 the maximum amount shall be computed in the next lower multiple  
13 of \$1.00, if not already a multiple thereof.

14 (cf: P.L.2020, c.17, s.6)

15

16 6. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to  
17 read as follows:

18 15. Limitation of benefits. Notwithstanding any other provision  
19 of the "Temporary Disability Benefits Law," P.L.1948, c.110  
20 (C.43:21-25 et al.), no benefits shall be payable under the State plan  
21 to any individual:

22 (a) for the first seven consecutive days of each period of  
23 disability; except that:

24 (1) if benefits shall be payable for three consecutive weeks with  
25 respect to any period of disability, then benefits shall also be payable  
26 with respect to the first seven days thereof;

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

28 (3) in the case of an individual taking family temporary disability  
29 leave, there shall be no waiting period;

30 (4) if the benefits shall be payable for a period of disability which  
31 is the result of the donation of any organ or bone marrow by the  
32 covered individual, then benefits shall be payable with respect to the  
33 first seven days thereof; and

34 (5) the seven-day waiting period shall not apply to benefits for a  
35 period of disability if the disability is **【for a sickness】** as described  
36 in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is  
37 for leave as described in subsection (c) of section 5 of P.L.1948,  
38 c.110 (C.43:21-29);

39 (b) (1) for more than 26 weeks with respect to any one period of  
40 disability of the individual;

41 (2) for more than six weeks with respect to any one period of  
42 family temporary disability leave commencing before July 1, 2020  
43 and more than 12 weeks if the period of leave commences on or after  
44 July 1, 2020, or for more than 42 days with respect to any one period  
45 of family temporary disability leave commencing before July 1, 2020  
46 and more than 56 days if the period of leave commences on or after  
47 July 1, 2020, and is taken on an intermittent basis; and

1 (3) for more than six weeks of family temporary disability leave  
2 during any 12-month period commencing before July 1, 2020 and  
3 more than 12 weeks for any 12-month period commencing on or after  
4 July 1, 2020, or for more than 42 days of family temporary disability  
5 leave taken during any 12-month period commencing before July 1,  
6 2020 and more than 56 days if the period of leave commences on or  
7 after July 1, 2020, on an intermittent basis, including family  
8 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while  
9 unemployed;

10 (c) for any period of disability which did not commence while the  
11 claimant was a covered individual;

12 (d) for any period of disability of a claimant during which the  
13 claimant is not under the care of a legally licensed physician, dentist,  
14 optometrist, podiatrist, practicing psychologist, advanced practice  
15 nurse, certified nurse midwife, or chiropractor, who, when requested  
16 by the division, shall certify within the scope of the practitioner's  
17 practice, the disability of the claimant, the probable duration thereof,  
18 and, where applicable, the medical facts within the practitioner's  
19 knowledge or for any period of family temporary disability leave for  
20 a serious health condition of a family member of the claimant, during  
21 which the family member is not receiving inpatient care in a hospital,  
22 hospice, or residential medical care facility or is not subject to  
23 continuing medical treatment or continuing supervision by a health  
24 care provider, who, when requested by the division, shall certify  
25 within the scope of the provider's practice, the serious health  
26 condition of the family member, the probable duration thereof, and,  
27 where applicable, the medical facts within the provider's knowledge;

28 (e) (Deleted by amendment, P.L.1980, c.90.)

29 (f) for any period of disability due to willfully and intentionally  
30 self-inflicted injury, or to injury sustained in the perpetration by the  
31 claimant of a crime of the first, second, third, or fourth degree, or for  
32 any period during which a covered individual would be disqualified  
33 for unemployment compensation benefits for gross misconduct under  
34 subsection (b) of R.S.43:21-5;

35 (g) for any period during which the claimant performs any work  
36 for remuneration or profit, except that, in a case of a claim for  
37 benefits for a period of family temporary disability on or after July  
38 1, 2020 in which the covered individual has more than one employer,  
39 the individual shall have the option of claiming benefits for leave  
40 taken from one employer, based on wages paid by that employer, on  
41 the condition that the individual does not, during the period for which  
42 the benefits are paid, increase the amount of employment time with  
43 any one employer;

44 (h) in a weekly amount which together with any remuneration the  
45 claimant continues to receive from the employer would exceed  
46 regular weekly wages immediately prior to disability;

47 (i) for any period during which a covered individual would be  
48 disqualified for unemployment compensation benefits under

1 subsection (d) of R.S.43:21-5, unless the disability commenced prior  
2 to such disqualification;  
3 (j) for any period during which the claimant receives any paid  
4 sick leave, vacation time or other leave at full pay from the employer  
5 of the individual;  
6 and there shall be no other cause of disqualification or ineligibility to  
7 receive disability benefits hereunder except as may be specifically  
8 provided in P.L.1948, c.110 (C.43:21-25 et al.).  
9 (cf: P.L.2019, c.464, s.2)

10  
11 7. This act shall take effect immediately and shall be retroactive  
12 to March 25, 2020.

13  
14  
15 STATEMENT

16  
17 This bill expands the "Family Leave Act" ("FLA") to include leave  
18 from employment so that an employee may provide care to a family  
19 member made necessary by an epidemic of a communicable disease,  
20 a known or suspected exposure to a communicable disease, or efforts  
21 to prevent spread of a communicable disease. The amendments to  
22 the FLA will allow employees forced to care for family members  
23 during the COVID-19 outbreak to take up to 12 weeks of family leave  
24 in a 24-month period without losing their jobs. In addition, the bill  
25 makes technical corrections to provisions of the "Temporary  
26 Disability Benefits Law" that were amended by P.L.2020, c.17. The  
27 amendment to P.L.2020, c.17 made in section 4 of the bill will take  
28 effect retroactively on the date of enactment of P.L.2020, c.17.

29  
30  
31 \_\_\_\_\_  
32  
33 Concerns family leave benefits during epidemic-related  
34 emergencies.

# SENATE, No. 2374

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**Assemblywoman LINDA S. CARTER**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

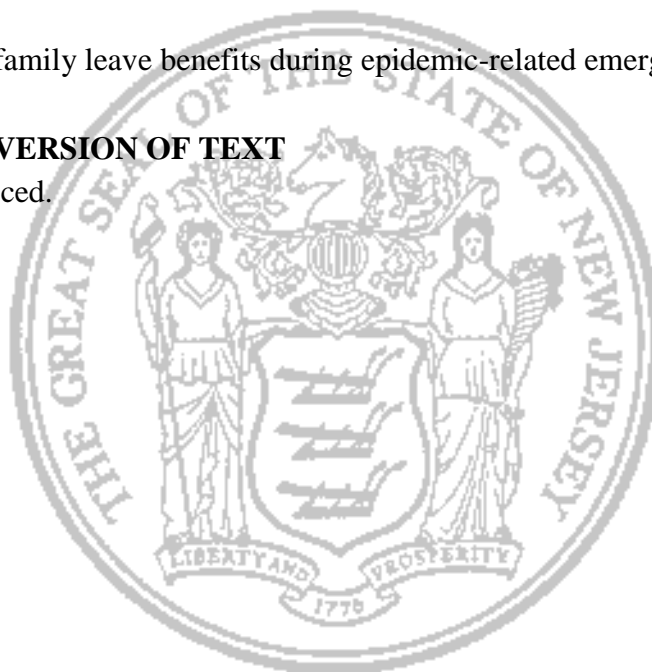
**Senators Cardinale, Pennacchio, Assemblymen DeAngelo, Benson,  
Assemblywomen Reynolds-Jackson, McKnight, Pinkin and Downey**

**SYNOPSIS**

Concerns family leave benefits during epidemic-related emergencies.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/13/2020)**

1 AN ACT concerning family leave and amending P.L.1989, c.261 and  
2 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 read  
8 as follows:

9 3. As used in this act:

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 Rights.

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **【**During a state of emergency declared by the Governor, or when  
18 indicated to be needed by the Commissioner of Health or other public  
19 health authority, "serious health condition" shall also include an  
20 illness caused by an epidemic of a communicable disease, a known  
21 or suspected exposure to a communicable disease, or efforts to  
22 prevent spread of a communicable disease, which requires in-home  
23 care or treatment of a family member of the employee due to:

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

28 (2) the recommendation, direction, or order of the provider or  
29 authority that the family member be isolated or quarantined because  
30 of suspected exposure to the communicable disease. **】**

31 m. "State of emergency" means a natural or man-made disaster  
32 or emergency for which a state of emergency has been declared by  
33 the President of the United States or the Governor, or for which a  
34 state of emergency has been declared by a municipal emergency  
35 management coordinator.

36 n. "Health care provider" means a duly licensed health care  
37 provider or other health care provider deemed appropriate by the  
38 director.

39 (cf: P.L.2020, c.17, s.2)

40

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

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



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

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

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

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

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

27 (1) Where the certification is for the serious health condition of a  
28 family member of the employee, the certification shall be sufficient  
29 if it states: (a) the date on which the serious health condition  
30 commenced; (b) the probable duration of the condition; and (c) the  
31 medical facts within the provider's knowledge regarding the  
32 condition;

33 (2) Where the certification is for the birth or placement of the  
34 child, the certification need only state the date of birth or date of  
35 placement, whichever is appropriate;

36 (3) Where the certification is for an epidemic of a communicable  
37 disease, a known or suspected exposure to the communicable disease,  
38 or efforts to prevent spread of the communicable disease, the  
39 certification shall be sufficient if it includes:

40 (a) for leave taken to provide in-home care or treatment of a child  
41 due to the closure of the school or place of care of the child of the  
42 employee, by order of a public official due to the epidemic or other  
43 public health emergency, the date on which the closure of the school  
44 or place of care of the child of the employee commenced and the  
45 reason for such closure;

46 (b) for leave taken due to a public health authority's issuance of  
47 a determination requiring or imposing responsive or prophylactic  
48 measures as a result of illness caused by an epidemic of a

1 communicable disease or known or suspected exposure to the  
2 communicable disease because the presence in the community of a  
3 family member in need of care by the employee would jeopardize the  
4 health of others, the date of issuance of the determination and the  
5 probable duration of the determination; or

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

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

28 f. In any case in which the necessity for leave under this act is  
29 foreseeable, based upon placement of a child into foster care an  
30 expected birth or placement of the child for adoption, the employee  
31 shall provide the employer with prior notice of the expected birth or  
32 placement of the child for adoption or foster care in the manner  
33 specified by the provisions of section 11 of P.L.2008, c.17 (C.43:21-  
34 39.2).

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

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

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

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

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

47 The provisions of this subsection shall not apply when , in the  
48 event of a state of emergency declared by the Governor or when

1 indicated to be needed by the Commissioner of Health or other public  
2 health authority, the family leave is [due to a health care provider,  
3 the Commissioner of Health or other authorized public official  
4 having ordered, directed, or recommended that a family member of  
5 the employee in need of care by the employee be isolated or  
6 quarantined, or is due to a place of care of a member of the  
7 employee's family being closed because of a state of emergency  
8 declared by the Governor or order of the Commissioner of Health or  
9 other authorized public official, during] for an epidemic of a  
10 communicable disease, [or] a known or suspected exposure to a  
11 communicable disease, or efforts to prevent spread of a  
12 communicable disease.

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

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

28 (cf: P.L.2020, c.17, s.3)

29  
30 3. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read  
31 as follows:

32 3. As used in this act, unless the context clearly requires  
33 otherwise:

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

1 Institute of Technology, shall be deemed a covered employer, as  
2 defined herein.

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

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

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

1 instrumentality which elects to become a "covered employer"; and,  
2 after June 30, 2019 may be required, prior to receiving any benefits  
3 under the "Temporary Disability Benefits Law," to use up to two  
4 weeks of sick leave accumulated as an employee in the classified  
5 service of the State or accumulated under terms and conditions  
6 similar to classified employees or accumulated under the terms and  
7 conditions pursuant to the laws of this State or as the result of a  
8 negotiated contract with any governmental entity or instrumentality  
9 which elects to become a "covered employer," except that the  
10 individual shall not be required to use the individual's last week's  
11 worth of accumulated sick time before receiving the benefits.

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

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

25 (c) "Division" or "commission" means the Division of  
26 Unemployment and Temporary Disability Insurance of the  
27 Department of Labor and Workforce Development, and any  
28 transaction or exercise of authority by the director of the division  
29 shall be deemed to be performed by the division.

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

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

34 (1) "Disability" shall, in the event of a state of emergency  
35 declared by the Governor, or when indicated to be needed by the  
36 Commissioner of Health or other public health authority, also include  
37 an illness caused by an epidemic of a communicable disease, a known  
38 or suspected exposure to the communicable disease, or efforts to  
39 prevent spread of the communicable disease, which requires in-home  
40 care or treatment of the employee due to:

41 (i) the issuance by a healthcare provider or the commissioner or  
42 other public health authority of a determination that the presence in  
43 the community of the employee may jeopardize the health of others;  
44 and

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) For periods of disability commencing on or after July 1, 2009  
40 and before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),  
41 if the computations in paragraphs (1) and (2) of this subsection (j)  
42 both yield 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 the 26 calendar weeks immediately preceding the week in  
45 which the period of disability commenced, then the average weekly  
46 wage shall, upon a written request to the department by the individual  
47 on a form provided by the department, be computed by the  
48 department on the basis of earnings from all covered employers of

1 the individual during the base weeks in those 26 calendar weeks, and,  
2 in the case of a claim for benefits from a private plan, that  
3 computation of the average weekly wage shall be provided by the  
4 department to the individual and the individual's employer.

5 When determining the "average weekly wage" with respect to a  
6 period of family temporary disability leave for an individual who has  
7 a period of family temporary disability immediately after the  
8 individual has a period of disability for the individual's own  
9 disability, the period of disability is deemed to have commenced at  
10 the beginning of the period of disability for the individual's own  
11 disability, not the period of family temporary disability.

12 (k) "Child" means a biological, adopted, or foster child, stepchild  
13 or legal ward of a covered individual, child of a domestic partner of  
14 the covered individual, or child of a civil union partner of the covered  
15 individual, including a child who becomes the child of a parent  
16 pursuant to a valid written agreement between the parent and a  
17 gestational carrier.

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

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

22 (n) "Family member" means a sibling, grandparent, grandchild,  
23 child, spouse, domestic partner, civil union partner, parent-in-law, or  
24 parent of a covered individual, or any other individual related by  
25 blood to the employee, and any other individual that the employee  
26 shows to have a close association with the employee which is the  
27 equivalent of a family relationship.

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

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

34 (2) be with a child during the first 12 months after the child's  
35 birth, if the individual, or the domestic partner or civil union partner  
36 of the individual, is a biological parent of the child, or is a parent of  
37 the child pursuant to a valid gestational carrier agreement, or the first  
38 12 months after the placement of the child for adoption or as a foster  
39 child with the individual; **[or]**

40 (3) engage in activities for which unpaid leave may be taken  
41 pursuant to section 3 of the "New Jersey Security and Financial  
42 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's  
43 own behalf, if the individual is a victim of an incident of domestic  
44 violence, a sexually violent offense, or to assist a family member of  
45 the individual who has been a victim of an incident of domestic  
46 violence, or a sexually violent offense, provided that any time taken  
47 by an individual who has been a victim of an incident of domestic  
48 violence, or a sexually violent offense for which the individual



1 receives benefits for a disability caused by the violence or offense  
2 shall be regarded as a period of disability of the individual and not as  
3 a period of family temporary disability leave; or

4 (4) in the event of a state of emergency declared by the Governor,  
5 or when indicated to be needed by the Commissioner of Health or  
6 other public health authority, an epidemic of a communicable  
7 disease, a known or suspected exposure to the communicable disease,  
8 or efforts to prevent spread of the communicable disease, provide in-  
9 home care or treatment of the family member of the employee  
10 required due to:

11 (i) the issuance by a healthcare provider or the commissioner or  
12 other public health authority of a determination that the presence in  
13 the community of the family member may jeopardize the health of  
14 others; and

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

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

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

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

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

35 (s) "Serious health condition" means an illness, injury,  
36 impairment or physical or mental condition which requires: inpatient  
37 care in a hospital, hospice, or residential medical care facility; or  
38 continuing medical treatment or continuing supervision by a health  
39 care provider. **【**During a state of emergency declared by the  
40 Governor, or when indicated to be needed by the Commissioner of  
41 Health or other public health authority, "serious health condition"  
42 shall also include an illness caused by an epidemic of a  
43 communicable disease, a known or suspected exposure to a  
44 communicable disease, or efforts to prevent spread of a  
45 communicable disease, which requires in-home care or treatment of  
46 the employee or family member of the employee due to:

47 (1) the issuance by a healthcare provider or the commissioner or  
48 other public health authority of a determination that the presence in

1 the community of the employee or family member may jeopardize  
2 the health of others; and

3 (2) the recommendation, direction, or order of the provider or  
4 authority that the employee or family member be isolated or  
5 quarantined as a result of suspected exposure to a communicable  
6 disease.】

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

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

45 (cf: P.L.2020, c.17, s.4)

46

47 4. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read  
48 as follows:

1 5. Compensable disability.

2 (a) In the case of the disability of a covered individual, disability  
3 shall be compensable subject to the limitations of P.L.1948, c.110  
4 (C.43:21-25 et al.) if: the disability is the result of the covered  
5 individual suffering an accident or sickness not arising out of and in  
6 the course of the individual's employment or if so arising not  
7 compensable under the workers' compensation law, R.S.34:15-1 et  
8 seq., including if the disability is the result of the donation of any  
9 organ or bone marrow by the covered individual, and the disability  
10 results in the individual's total inability to perform the duties of  
11 employment, except that an individual who is otherwise eligible for  
12 benefits but only able to return to work on a reduced basis while  
13 recovering from the disability may receive benefits pursuant to the  
14 provisions of subsection (b) of section 16 of P.L.1948, c.110  
15 (C.43:21-40).

16 (b) In the case of an individual taking family temporary disability  
17 leave, the leave **【**, including leave to care for family members  
18 suffering from accident or sickness,**】** shall be compensable subject to  
19 the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

20 (c) During a state of emergency declared by the Governor, or  
21 when indicated to be needed by the Commissioner of Health or other  
22 public health authority, **【**“sickness”**】** family temporary disability  
23 leave also includes leave taken for an illness caused by an epidemic  
24 of a communicable disease, a known or suspected exposure to a  
25 communicable disease, or efforts to prevent spread of a  
26 communicable disease, which requires in-home care or treatment of  
27 the **【**employee or**】** family member of the employee due to:

28 (1) the issuance by a healthcare provider or the commissioner or  
29 other public health authority of a determination that the presence in  
30 the community of the family member **【**or employee**】** may jeopardize  
31 the health of others; and

32 (2) the recommendation, direction, or order of the provider or  
33 authority that the **【**employee or**】** family member be isolated or  
34 quarantined as a result of suspected exposure to a communicable  
35 disease.

36 (d) During a state of emergency declared by the Governor, or  
37 when indicated to be needed by the Commissioner of Health or other  
38 public health authority, disability also includes illness caused by an  
39 epidemic of a communicable disease, a known or suspected exposure  
40 to a communicable disease, or efforts to prevent spread of a  
41 communicable disease, which requires in-home care or treatment of  
42 the employee due to:

43 (1) the issuance by a healthcare provider or the commissioner or  
44 other public health authority of a determination that the presence in  
45 the community of the employee may jeopardize the health of others;  
46 and

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

4 (cf: P.L.2020, c.17, s.5)

5

6       5. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to  
7 read as follows:

8       14. a. With respect to any period of disability for an individual's  
9 own disability commencing on or after January 1, 1953, disability  
10 benefits, not in excess of an individual's maximum benefits, shall be  
11 payable with respect to disability which commences while a person  
12 is a covered individual under the Temporary Disability Benefits Law,  
13 and shall be payable with respect to the eighth consecutive day of  
14 such disability and each day thereafter that such period of disability  
15 continues; and if benefits shall be payable for three consecutive  
16 weeks with respect to any period of disability commencing on or after  
17 January 1, 1968, then benefits shall also be payable with respect to  
18 the first seven days thereof. With respect to any period of disability  
19 for an individual's own disability commencing on or after the  
20 effective date of P.L.2020, c.17 the disability benefits shall be  
21 payable with respect to the first day of the disability, if the disability  
22 **【is for a sickness】** is as described in subsection (d) of section 5 of  
23 P.L.1948, c.110 (C.43:21-29), or is for leave as described in  
24 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

25       b. With respect to any period of family temporary disability  
26 leave commencing on or after July 1, 2009 and while an individual is  
27 a covered individual, family temporary disability benefits, not in  
28 excess of the individual's maximum benefits, shall be payable with  
29 respect to the first day of leave taken after the first one-week period  
30 following the commencement of the period of family temporary  
31 disability leave and each subsequent day of leave during that period  
32 of family temporary disability leave; and if benefits become payable  
33 on any day after the first three weeks in which leave is taken, then  
34 benefits shall also be payable with respect to any leave taken during  
35 the first one-week period in which leave is taken. With respect to  
36 any period of family temporary disability leave commencing on or  
37 after July 1, 2019 and while an individual is a covered individual,  
38 family temporary disability benefits, not in excess of the individual's  
39 maximum benefits, shall be payable with respect to the first day of  
40 leave taken upon the commencement of the period of family  
41 temporary disability leave and each subsequent day of leave during  
42 that period of family temporary disability leave. The maximum total  
43 benefits payable to any eligible individual for any period of disability  
44 of the individual commencing on or after January 1, 1968, shall be  
45 either 26 times his weekly benefit amount or 1/3 of his total wages in  
46 his base year, whichever is the lesser; provided that such maximum  
47 amount shall be computed in the next lower multiple of \$1.00 if not  
48 already a multiple thereof. The maximum total benefits payable to

1 any eligible individual for any period of family temporary disability  
2 leave commencing on or after July 1, 2009 and before July 1, 2020,  
3 shall be six times the individual's weekly benefit amount or 1/3 of his  
4 total wages in his base year, whichever is the lesser; provided that  
5 the maximum amount shall be computed in the next lower multiple  
6 of \$1.00, if not already a multiple thereof. The maximum total  
7 benefits payable to any eligible individual for any period of family  
8 temporary disability leave commencing on or after July 1, 2020, shall  
9 be twelve times the individual's weekly benefit amount; provided that  
10 the maximum amount shall be computed in the next lower multiple  
11 of \$1.00, if not already a multiple thereof.

12 (cf: P.L.2020, c.17, s.6)

13

14 6. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to  
15 read as follows:

16 15. Limitation of benefits. Notwithstanding any other provision  
17 of the "Temporary Disability Benefits Law," P.L.1948, c.110  
18 (C.43:21-25 et al.), no benefits shall be payable under the State plan  
19 to any individual:

20 (a) for the first seven consecutive days of each period of  
21 disability; except that:

22 (1) if benefits shall be payable for three consecutive weeks with  
23 respect to any period of disability, then benefits shall also be payable  
24 with respect to the first seven days thereof;

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

26 (3) in the case of an individual taking family temporary disability  
27 leave, there shall be no waiting period;

28 (4) if the benefits shall be payable for a period of disability which  
29 is the result of the donation of any organ or bone marrow by the  
30 covered individual, then benefits shall be payable with respect to the  
31 first seven days thereof; and

32 (5) the seven-day waiting period shall not apply to benefits for a  
33 period of disability if the disability is **【for a sickness】** as described  
34 in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is  
35 for leave as described in subsection (c) of section 5 of P.L.1948,  
36 c.110 (C.43:21-29);

37 (b) (1) for more than 26 weeks with respect to any one period of  
38 disability of the individual;

39 (2) for more than six weeks with respect to any one period of  
40 family temporary disability leave commencing before July 1, 2020  
41 and more than 12 weeks if the period of leave commences on or after  
42 July 1, 2020, or for more than 42 days with respect to any one period  
43 of family temporary disability leave commencing before July 1, 2020  
44 and more than 56 days if the period of leave commences on or after  
45 July 1, 2020, and is taken on an intermittent basis; and

46 (3) for more than six weeks of family temporary disability leave  
47 during any 12-month period commencing before July 1, 2020 and  
48 more than 12 weeks for any 12-month period commencing on or after

1 July 1, 2020, or for more than 42 days of family temporary disability  
2 leave taken during any 12-month period commencing before July 1,  
3 2020 and more than 56 days if the period of leave commences on or  
4 after July 1, 2020, on an intermittent basis, including family  
5 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while  
6 unemployed;

7 (c) for any period of disability which did not commence while the  
8 claimant was a covered individual;

9 (d) for any period of disability of a claimant during which the  
10 claimant is not under the care of a legally licensed physician, dentist,  
11 optometrist, podiatrist, practicing psychologist, advanced practice  
12 nurse, certified nurse midwife, or chiropractor, who, when requested  
13 by the division, shall certify within the scope of the practitioner's  
14 practice, the disability of the claimant, the probable duration thereof,  
15 and, where applicable, the medical facts within the practitioner's  
16 knowledge or for any period of family temporary disability leave for  
17 a serious health condition of a family member of the claimant, during  
18 which the family member is not receiving inpatient care in a hospital,  
19 hospice, or residential medical care facility or is not subject to  
20 continuing medical treatment or continuing supervision by a health  
21 care provider, who, when requested by the division, shall certify  
22 within the scope of the provider's practice, the serious health  
23 condition of the family member, the probable duration thereof, and,  
24 where applicable, the medical facts within the provider's knowledge;

25 (e) (Deleted by amendment, P.L.1980, c.90.)

26 (f) for any period of disability due to willfully and intentionally  
27 self-inflicted injury, or to injury sustained in the perpetration by the  
28 claimant of a crime of the first, second, third, or fourth degree, or for  
29 any period during which a covered individual would be disqualified  
30 for unemployment compensation benefits for gross misconduct under  
31 subsection (b) of R.S.43:21-5;

32 (g) for any period during which the claimant performs any work  
33 for remuneration or profit, except that, in a case of a claim for  
34 benefits for a period of family temporary disability on or after July  
35 1, 2020 in which the covered individual has more than one employer,  
36 the individual shall have the option of claiming benefits for leave  
37 taken from one employer, based on wages paid by that employer, on  
38 the condition that the individual does not, during the period for which  
39 the benefits are paid, increase the amount of employment time with  
40 any one employer;

41 (h) in a weekly amount which together with any remuneration the  
42 claimant continues to receive from the employer would exceed  
43 regular weekly wages immediately prior to disability;

44 (i) for any period during which a covered individual would be  
45 disqualified for unemployment compensation benefits under  
46 subsection (d) of R.S.43:21-5, unless the disability commenced prior  
47 to such disqualification;

1 (j) for any period during which the claimant receives any paid  
2 sick leave, vacation time or other leave at full pay from the employer  
3 of the individual;  
4 and there shall be no other cause of disqualification or ineligibility to  
5 receive disability benefits hereunder except as may be specifically  
6 provided in P.L.1948, c.110 (C.43:21-25 et al.).  
7 (cf: P.L.2019, c.464, s.2)

8  
9 7. This act shall take effect immediately and shall be retroactive  
10 to March 25, 2020.

11  
12  
13 STATEMENT

14  
15 This bill expands the "Family Leave Act" ("FLA") to include leave  
16 from employment so that an employee may provide care to a family  
17 member made necessary by an epidemic of a communicable disease,  
18 a known or suspected exposure to a communicable disease, or efforts  
19 to prevent spread of a communicable disease. The amendments to  
20 the FLA will allow employees forced to care for family members  
21 during the COVID-19 outbreak to take up to 12 weeks of family leave  
22 in a 24-month period without losing their jobs. In addition, the bill  
23 makes technical corrections to provisions of the "Temporary  
24 Disability Benefits Law" that were amended by P.L.2020, c.17. The  
25 amendment to P.L.2020, c.17 made in section 4 of the bill will take  
26 effect retroactively on the date of enactment of P.L.2020, c.17.

# ASSEMBLY, No. 3913

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**Assemblywoman LINDA S. CARTER**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Assemblymen DeAngelo, Benson, Assemblywomen Reynolds-Jackson,  
McKnight, Pinkin and Downey**

**SYNOPSIS**

Concerns family leave benefits during epidemic-related emergencies.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/13/2020)**



1 AN ACT concerning family leave and amending P.L.1989, c.261 and  
2 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 read  
8 as follows:

9 3. As used in this act:

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 Rights.

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **【**During a state of emergency declared by the Governor, or when  
18 indicated to be needed by the Commissioner of Health or other public  
19 health authority, "serious health condition" shall also include an  
20 illness caused by an epidemic of a communicable disease, a known  
21 or suspected exposure to a communicable disease, or efforts to  
22 prevent spread of a communicable disease, which requires in-home  
23 care or treatment of a family member of the employee due to:

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

28 (2) the recommendation, direction, or order of the provider or  
29 authority that the family member be isolated or quarantined because  
30 of suspected exposure to the communicable disease.**】**

31 m. "State of emergency" means a natural or man-made disaster  
32 or emergency for which a state of emergency has been declared by  
33 the President of the United States or the Governor, or for which a  
34 state of emergency has been declared by a municipal emergency  
35 management coordinator.

36 n. "Health care provider" means a duly licensed health care  
37 provider or other health care provider deemed appropriate by the  
38 director.

39 (cf: P.L.2020, c.17, s.2)

40

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

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

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

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

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

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

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

27 (1) Where the certification is for the serious health condition of a  
28 family member of the employee, the certification shall be sufficient  
29 if it states: (a) the date on which the serious health condition  
30 commenced; (b) the probable duration of the condition; and (c) the  
31 medical facts within the provider's knowledge regarding the  
32 condition;

33 (2) Where the certification is for the birth or placement of the  
34 child, the certification need only state the date of birth or date of  
35 placement, whichever is appropriate;

36 (3) Where the certification is for an epidemic of a communicable  
37 disease, a known or suspected exposure to the communicable disease,  
38 or efforts to prevent spread of the communicable disease, the  
39 certification shall be sufficient if it includes:

40 (a) for leave taken to provide in-home care or treatment of a child  
41 due to the closure of the school or place of care of the child of the  
42 employee, by order of a public official due to the epidemic or other  
43 public health emergency, the date on which the closure of the school  
44 or place of care of the child of the employee commenced and the  
45 reason for such closure;

46 (b) for leave taken due to a public health authority's issuance of a  
47 determination requiring or imposing responsive or prophylactic  
48 measures as a result of illness caused by an epidemic of a

1 communicable disease or known or suspected exposure to the  
2 communicable disease because the presence in the community of a  
3 family member in need of care by the employee would jeopardize the  
4 health of others, the date of issuance of the determination and the  
5 probable duration of the determination; or

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

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

28 f. In any case in which the necessity for leave under this act is  
29 foreseeable, based upon placement of a child into foster care an  
30 expected birth or placement of the child for adoption, the employee  
31 shall provide the employer with prior notice of the expected birth or  
32 placement of the child for adoption or foster care in the manner  
33 specified by the provisions of section 11 of P.L.2008, c.17 (C.43:21-  
34 39.2).

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

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

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

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

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

47 The provisions of this subsection shall not apply when , in the  
48 event of a state of emergency declared by the Governor or when

1 indicated to be needed by the Commissioner of Health or other public  
2 health authority, the family leave is **【**due to a health care provider,  
3 the Commissioner of Health or other authorized public official  
4 having ordered, directed, or recommended that a family member of  
5 the employee in need of care by the employee be isolated or  
6 quarantined, or is due to a place of care of a member of the  
7 employee's family being closed because of a state of emergency  
8 declared by the Governor or order of the Commissioner of Health or  
9 other authorized public official, **】** for an epidemic of a  
10 communicable disease, **【**or**】** a known or suspected exposure to a  
11 communicable disease, or efforts to prevent spread of a  
12 communicable disease.

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

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

28 (cf: P.L.2020, c.17, s.3)

29

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

32 3. As used in this act, unless the context clearly requires  
33 otherwise:

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

1 Institute of Technology, shall be deemed a covered employer, as  
2 defined herein.

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

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

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

1 instrumentality which elects to become a "covered employer"; and,  
2 after June 30, 2019 may be required, prior to receiving any benefits  
3 under the "Temporary Disability Benefits Law," to use up to two  
4 weeks of sick leave accumulated as an employee in the classified  
5 service of the State or accumulated under terms and conditions  
6 similar to classified employees or accumulated under the terms and  
7 conditions pursuant to the laws of this State or as the result of a  
8 negotiated contract with any governmental entity or instrumentality  
9 which elects to become a "covered employer," except that the  
10 individual shall not be required to use the individual's last week's  
11 worth of accumulated sick time before receiving the benefits.

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

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

25 (c) "Division" or "commission" means the Division of  
26 Unemployment and Temporary Disability Insurance of the  
27 Department of Labor and Workforce Development, and any  
28 transaction or exercise of authority by the director of the division  
29 shall be deemed to be performed by the division.

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

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

34 (1) "Disability" shall, in the event of a state of emergency  
35 declared by the Governor, or when indicated to be needed by the  
36 Commissioner of Health or other public health authority, also include  
37 an illness caused by an epidemic of a communicable disease, a known  
38 or suspected exposure to the communicable disease, or efforts to  
39 prevent spread of the communicable disease, which requires in-home  
40 care or treatment of the employee due to:

41 (i) the issuance by a healthcare provider or the commissioner or  
42 other public health authority of a determination that the presence in  
43 the community of the employee may jeopardize the health of others;  
44 and

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



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

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

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

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

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

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

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

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

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

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

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

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

39 (3) For periods of disability commencing on or after July 1, 2009  
40 and before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.),  
41 if the computations in paragraphs (1) and (2) of this subsection (j)  
42 both yield 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 the 26 calendar weeks immediately preceding the week in  
45 which the period of disability commenced, then the average weekly  
46 wage shall, upon a written request to the department by the individual  
47 on a form provided by the department, be computed by the  
48 department on the basis of earnings from all covered employers of

1 the individual during the base weeks in those 26 calendar weeks, and,  
2 in the case of a claim for benefits from a private plan, that  
3 computation of the average weekly wage shall be provided by the  
4 department to the individual and the individual's employer.

5 When determining the "average weekly wage" with respect to a  
6 period of family temporary disability leave for an individual who has  
7 a period of family temporary disability immediately after the  
8 individual has a period of disability for the individual's own  
9 disability, the period of disability is deemed to have commenced at  
10 the beginning of the period of disability for the individual's own  
11 disability, not the period of family temporary disability.

12 (k) "Child" means a biological, adopted, or foster child, stepchild  
13 or legal ward of a covered individual, child of a domestic partner of  
14 the covered individual, or child of a civil union partner of the covered  
15 individual, including a child who becomes the child of a parent  
16 pursuant to a valid written agreement between the parent and a  
17 gestational carrier.

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

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

22 (n) "Family member" means a sibling, grandparent, grandchild,  
23 child, spouse, domestic partner, civil union partner, parent-in-law, or  
24 parent of a covered individual, or any other individual related by  
25 blood to the employee, and any other individual that the employee  
26 shows to have a close association with the employee which is the  
27 equivalent of a family relationship.

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

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

34 (2) be with a child during the first 12 months after the child's  
35 birth, if the individual, or the domestic partner or civil union partner  
36 of the individual, is a biological parent of the child, or is a parent of  
37 the child pursuant to a valid gestational carrier agreement, or the first  
38 12 months after the placement of the child for adoption or as a foster  
39 child with the individual; **[or]**

40 (3) engage in activities for which unpaid leave may be taken  
41 pursuant to section 3 of the "New Jersey Security and Financial  
42 Empowerment Act," P.L.2013, c.82 (C.34:11C-3), on the individual's  
43 own behalf, if the individual is a victim of an incident of domestic  
44 violence, a sexually violent offense, or to assist a family member of  
45 the individual who has been a victim of an incident of domestic  
46 violence, or a sexually violent offense, provided that any time taken  
47 by an individual who has been a victim of an incident of domestic  
48 violence, or a sexually violent offense for which the individual

1 receives benefits for a disability caused by the violence or offense  
2 shall be regarded as a period of disability of the individual and not as  
3 a period of family temporary disability leave; or

4 (4) in the event of a state of emergency declared by the Governor,  
5 or when indicated to be needed by the Commissioner of Health or  
6 other public health authority, an epidemic of a communicable  
7 disease, a known or suspected exposure to the communicable disease,  
8 or efforts to prevent spread of the communicable disease, provide in-  
9 home care or treatment of the family member of the employee  
10 required due to:

11 (i) the issuance by a healthcare provider or the commissioner or  
12 other public health authority of a determination that the presence in  
13 the community of the family member may jeopardize the health of  
14 others; and

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

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

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

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

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

35 (s) "Serious health condition" means an illness, injury,  
36 impairment or physical or mental condition which requires: inpatient  
37 care in a hospital, hospice, or residential medical care facility; or  
38 continuing medical treatment or continuing supervision by a health  
39 care provider. **【**During a state of emergency declared by the  
40 Governor, or when indicated to be needed by the Commissioner of  
41 Health or other public health authority, "serious health condition"  
42 shall also include an illness caused by an epidemic of a  
43 communicable disease, a known or suspected exposure to a  
44 communicable disease, or efforts to prevent spread of a  
45 communicable disease, which requires in-home care or treatment of  
46 the employee or family member of the employee due to:

47 (1) the issuance by a healthcare provider or the commissioner or  
48 other public health authority of a determination that the presence in

1 the community of the employee or family member may jeopardize  
2 the health of others; and

3 (2) the recommendation, direction, or order of the provider or  
4 authority that the employee or family member be isolated or  
5 quarantined as a result of suspected exposure to a communicable  
6 disease.】

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

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

45 (cf: P.L.2020, c.17, s.4)

46

47 4. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to read  
48 as follows:

1 5. Compensable disability.

2 (a) In the case of the disability of a covered individual, disability  
3 shall be compensable subject to the limitations of P.L.1948, c.110  
4 (C.43:21-25 et al.) if: the disability is the result of the covered  
5 individual suffering an accident or sickness not arising out of and in  
6 the course of the individual's employment or if so arising not  
7 compensable under the workers' compensation law, R.S.34:15-1 et  
8 seq., including if the disability is the result of the donation of any  
9 organ or bone marrow by the covered individual, and the disability  
10 results in the individual's total inability to perform the duties of  
11 employment, except that an individual who is otherwise eligible for  
12 benefits but only able to return to work on a reduced basis while  
13 recovering from the disability may receive benefits pursuant to the  
14 provisions of subsection (b) of section 16 of P.L.1948, c.110  
15 (C.43:21-40).

16 (b) In the case of an individual taking family temporary disability  
17 leave, the leave **【**, including leave to care for family members  
18 suffering from accident or sickness,**】** shall be compensable subject to  
19 the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

20 (c) During a state of emergency declared by the Governor, or  
21 when indicated to be needed by the Commissioner of Health or other  
22 public health authority, **【**“sickness”**】** family temporary disability  
23 leave also includes leave taken for an illness caused by an epidemic  
24 of a communicable disease, a known or suspected exposure to a  
25 communicable disease, or efforts to prevent spread of a  
26 communicable disease, which requires in-home care or treatment of  
27 the **【**employee or**】** family member of the employee due to:

28 (1) the issuance by a healthcare provider or the commissioner or  
29 other public health authority of a determination that the presence in  
30 the community of the family member **【**or employee**】** may jeopardize  
31 the health of others; and

32 (2) the recommendation, direction, or order of the provider or  
33 authority that the **【**employee or**】** family member be isolated or  
34 quarantined as a result of suspected exposure to a communicable  
35 disease.

36 (d) During a state of emergency declared by the Governor, or  
37 when indicated to be needed by the Commissioner of Health or other  
38 public health authority, disability also includes illness caused by an  
39 epidemic of a communicable disease, a known or suspected exposure  
40 to a communicable disease, or efforts to prevent spread of a  
41 communicable disease, which requires in-home care or treatment of  
42 the employee due to:

43 (1) the issuance by a healthcare provider or the commissioner or  
44 other public health authority of a determination that the presence in  
45 the community of the employee may jeopardize the health of others;  
46 and

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

4 (cf: P.L.2020, c.17, s.5)

5  
6       5. Section 14 of P.L.1948, c.110 (C.43:21-38) is amended to  
7 read as follows:

8       14. a. With respect to any period of disability for an individual's  
9 own disability commencing on or after January 1, 1953, disability  
10 benefits, not in excess of an individual's maximum benefits, shall be  
11 payable with respect to disability which commences while a person  
12 is a covered individual under the Temporary Disability Benefits Law,  
13 and shall be payable with respect to the eighth consecutive day of  
14 such disability and each day thereafter that such period of disability  
15 continues; and if benefits shall be payable for three consecutive  
16 weeks with respect to any period of disability commencing on or after  
17 January 1, 1968, then benefits shall also be payable with respect to  
18 the first seven days thereof. With respect to any period of disability  
19 for an individual's own disability commencing on or after the  
20 effective date of P.L.2020, c.17 the disability benefits shall be  
21 payable with respect to the first day of the disability, if the disability  
22 **【is for a sickness】** is as described in subsection (d) of section 5 of  
23 P.L.1948, c.110 (C.43:21-29), or is for leave as described in  
24 subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

25       b. With respect to any period of family temporary disability  
26 leave commencing on or after July 1, 2009 and while an individual is  
27 a covered individual, family temporary disability benefits, not in  
28 excess of the individual's maximum benefits, shall be payable with  
29 respect to the first day of leave taken after the first one-week period  
30 following the commencement of the period of family temporary  
31 disability leave and each subsequent day of leave during that period  
32 of family temporary disability leave; and if benefits become payable  
33 on any day after the first three weeks in which leave is taken, then  
34 benefits shall also be payable with respect to any leave taken during  
35 the first one-week period in which leave is taken. With respect to  
36 any period of family temporary disability leave commencing on or  
37 after July 1, 2019 and while an individual is a covered individual,  
38 family temporary disability benefits, not in excess of the individual's  
39 maximum benefits, shall be payable with respect to the first day of  
40 leave taken upon the commencement of the period of family  
41 temporary disability leave and each subsequent day of leave during  
42 that period of family temporary disability leave. The maximum total  
43 benefits payable to any eligible individual for any period of disability  
44 of the individual commencing on or after January 1, 1968, shall be  
45 either 26 times his weekly benefit amount or 1/3 of his total wages in  
46 his base year, whichever is the lesser; provided that such maximum  
47 amount shall be computed in the next lower multiple of \$1.00 if not  
48 already a multiple thereof. The maximum total benefits payable to

1 any eligible individual for any period of family temporary disability  
2 leave commencing on or after July 1, 2009 and before July 1, 2020,  
3 shall be six times the individual's weekly benefit amount or 1/3 of his  
4 total wages in his base year, whichever is the lesser; provided that  
5 the maximum amount shall be computed in the next lower multiple  
6 of \$1.00, if not already a multiple thereof. The maximum total  
7 benefits payable to any eligible individual for any period of family  
8 temporary disability leave commencing on or after July 1, 2020, shall  
9 be twelve times the individual's weekly benefit amount; provided that  
10 the maximum amount shall be computed in the next lower multiple  
11 of \$1.00, if not already a multiple thereof.

12 (cf: P.L.2020, c.17, s.6)

13

14 6. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to  
15 read as follows:

16 15. Limitation of benefits. Notwithstanding any other provision  
17 of the "Temporary Disability Benefits Law," P.L.1948, c.110  
18 (C.43:21-25 et al.), no benefits shall be payable under the State plan  
19 to any individual:

20 (a) for the first seven consecutive days of each period of  
21 disability; except that:

22 (1) if benefits shall be payable for three consecutive weeks with  
23 respect to any period of disability, then benefits shall also be payable  
24 with respect to the first seven days thereof;

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

26 (3) in the case of an individual taking family temporary disability  
27 leave, there shall be no waiting period;

28 (4) if the benefits shall be payable for a period of disability which  
29 is the result of the donation of any organ or bone marrow by the  
30 covered individual, then benefits shall be payable with respect to the  
31 first seven days thereof; and

32 (5) the seven-day waiting period shall not apply to benefits for a  
33 period of disability if the disability is **【for a sickness】** as described  
34 in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is  
35 for leave as described in subsection (c) of section 5 of P.L.1948,  
36 c.110 (C.43:21-29);

37 (b) (1) for more than 26 weeks with respect to any one period of  
38 disability of the individual;

39 (2) for more than six weeks with respect to any one period of  
40 family temporary disability leave commencing before July 1, 2020  
41 and more than 12 weeks if the period of leave commences on or after  
42 July 1, 2020, or for more than 42 days with respect to any one period  
43 of family temporary disability leave commencing before July 1, 2020  
44 and more than 56 days if the period of leave commences on or after  
45 July 1, 2020, and is taken on an intermittent basis; and

46 (3) for more than six weeks of family temporary disability leave  
47 during any 12-month period commencing before July 1, 2020 and  
48 more than 12 weeks for any 12-month period commencing on or after



1 July 1, 2020, or for more than 42 days of family temporary disability  
2 leave taken during any 12-month period commencing before July 1,  
3 2020 and more than 56 days if the period of leave commences on or  
4 after July 1, 2020, on an intermittent basis, including family  
5 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while  
6 unemployed;

7 (c) for any period of disability which did not commence while the  
8 claimant was a covered individual;

9 (d) for any period of disability of a claimant during which the  
10 claimant is not under the care of a legally licensed physician, dentist,  
11 optometrist, podiatrist, practicing psychologist, advanced practice  
12 nurse, certified nurse midwife, or chiropractor, who, when requested  
13 by the division, shall certify within the scope of the practitioner's  
14 practice, the disability of the claimant, the probable duration thereof,  
15 and, where applicable, the medical facts within the practitioner's  
16 knowledge or for any period of family temporary disability leave for  
17 a serious health condition of a family member of the claimant, during  
18 which the family member is not receiving inpatient care in a hospital,  
19 hospice, or residential medical care facility or is not subject to  
20 continuing medical treatment or continuing supervision by a health  
21 care provider, who, when requested by the division, shall certify  
22 within the scope of the provider's practice, the serious health  
23 condition of the family member, the probable duration thereof, and,  
24 where applicable, the medical facts within the provider's knowledge;

25 (e) (Deleted by amendment, P.L.1980, c.90.)

26 (f) for any period of disability due to willfully and intentionally  
27 self-inflicted injury, or to injury sustained in the perpetration by the  
28 claimant of a crime of the first, second, third, or fourth degree, or for  
29 any period during which a covered individual would be disqualified  
30 for unemployment compensation benefits for gross misconduct under  
31 subsection (b) of R.S.43:21-5;

32 (g) for any period during which the claimant performs any work  
33 for remuneration or profit, except that, in a case of a claim for  
34 benefits for a period of family temporary disability on or after July  
35 1, 2020 in which the covered individual has more than one employer,  
36 the individual shall have the option of claiming benefits for leave  
37 taken from one employer, based on wages paid by that employer, on  
38 the condition that the individual does not, during the period for which  
39 the benefits are paid, increase the amount of employment time with  
40 any one employer;

41 (h) in a weekly amount which together with any remuneration the  
42 claimant continues to receive from the employer would exceed  
43 regular weekly wages immediately prior to disability;

44 (i) for any period during which a covered individual would be  
45 disqualified for unemployment compensation benefits under  
46 subsection (d) of R.S.43:21-5, unless the disability commenced prior  
47 to such disqualification;

1 (j) for any period during which the claimant receives any paid  
2 sick leave, vacation time or other leave at full pay from the employer  
3 of the individual;  
4 and there shall be no other cause of disqualification or ineligibility to  
5 receive disability benefits hereunder except as may be specifically  
6 provided in P.L.1948, c.110 (C.43:21-25 et al.).  
7 (cf: P.L.2019, c.464, s.2)

8  
9 7. This act shall take effect immediately and shall be retroactive  
10 to March 25, 2020.

11  
12  
13 STATEMENT

14  
15 This bill expands the "Family Leave Act" ("FLA") to include leave  
16 from employment so that an employee may provide care to a family  
17 member made necessary by an epidemic of a communicable disease,  
18 a known or suspected exposure to a communicable disease, or efforts  
19 to prevent spread of a communicable disease. The amendments to  
20 the FLA will allow employees forced to care for family members  
21 during the COVID-19 outbreak to take up to 12 weeks of family leave  
22 in a 24-month period without losing their jobs. In addition, the bill  
23 makes technical corrections to provisions of the "Temporary  
24 Disability Benefits Law" that were amended by P.L.2020, c.17. The  
25 amendment to P.L.2020, c.17 made in section 4 of the bill will take  
26 effect retroactively on the date of enactment of P.L.2020, c.17.

# Governor Murphy Signs Legislation to Expand Family Leave Protections During COVID-19 Outbreak

04/14/2020

**TRENTON** — Governor Phil Murphy today signed legislation (S2374), which expands protections of the Family Leave Act to allow employees forced to take time off to care for a family member during the COVID-19 outbreak with up to 12 weeks of unpaid family leave in a 24-month period without losing their jobs.

Under the bill, employees will be eligible for leave to care for a family member as a result of an epidemic of a communicable disease, or efforts to prevent spread of a communicable disease. These job protections will extend to employees requiring leave to provide care or treatment for their child if the child's school or place of care is closed in response to a public health emergency.

"New Jerseyans should not have to make a decision between caring for a loved one with COVID-19 and keeping their job," **said Governor Murphy**. "Our state is already home to the nation's most comprehensive Family Leave Act, and it's only right that we expand these protections to meet the unprecedented health crisis we are facing."

"This public health crisis is putting enormous strains on families, especially those that need to care for a loved one who is infected," **said Senate President Sweeney, who authored the original family leave law**. "They should not be forced to choose between an ill family member and their job. While we are experiencing emergency circumstances that could not have been anticipated, this is what the law should be covering."

"Workers throughout the state with ill family members at home in need of care, or who have children at home because of school closures, are struggling to balance the responsibilities of their personal and professional lives," **said Senator Linda Greenstein**. "Family always comes first, and the benefits of our family leave law should be afforded to those who have had no choice but to stay home to care for their families."

In a joint statement, **Assemblyman Andrew Zwicker, Assemblyman Joseph Egan and Assemblywoman Linda Carter said:**

"Countless New Jersey residents have needed to take time off from work to care for family members due to the health crisis created by the spread of COVID-19, and many more will need to do so in the future. There's never been a more important time to strengthen our family leave program.

"In a time of growing uncertainty, every worker deserves to know they won't lose their job if they use family leave. This law also expands family leave for parents of school aged children who need to take time off due to school closures during this crisis.

"New Jersey has one of the most robust family leave laws in the nation. Today we make our program stronger to address the challenging times we are in."