

43:21-27 et al.
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2018 **CHAPTER:** 128

NJSA: 43:21-27 et al. (Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.)

BILL NO: A4118 (Substituted for S1838)

SPONSOR(S) Swain and others

DATE INTRODUCED: 6/7/2018

COMMITTEE: **ASSEMBLY:** Labor
Budget

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 9/27/2018

SENATE: 9/27/2018

DATE OF APPROVAL: 10/4/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted) Yes

A4118

SPONSOR'S STATEMENT: (Begins on page 13 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Labor
Budget

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)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 6/28/2018
9/28/2018

S1838

SPONSOR'S STATEMENT: (Begins on page 13 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Labor
Budget & Appropriations

(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)

(continued)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RH/CL

P.L. 2018, CHAPTER 128, *approved October 4, 2018*
Assembly, No. 4118 (*First Reprint*)

1 AN ACT concerning temporary disability and family temporary
2 disability leave, and amending P.L.1948, c.110 and P.L.2008,
3 c.17.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

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

10 3. As used in this act, unless the context clearly requires
11 otherwise:

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

28 "Covered employer" means, after June 30, 2009, with respect to
29 whether the employer is an employer whose employees are eligible
30 for benefits during periods of family temporary disability leave
31 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
32 31, 2008, whether employees of the employer are required to make
33 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual
34 or type of organization, including any partnership, association,
35 trust, estate, joint-stock company, insurance company or domestic
36 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
37 or successor thereof, or the legal representative of a deceased
38 person, who is an employer subject to the "unemployment
39 compensation law" (R.S.43:21-1 et seq.), including any
40 governmental entity or instrumentality which is an employer under

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's
recommendations August 27, 2018.

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

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

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

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

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

48 (c) "Division" or "commission" means the Division of
49 Unemployment and Temporary Disability Insurance of the

1 Department of Labor and Workforce Development, and any
2 transaction or exercise of authority by the director of the division
3 shall be deemed to be performed by the division.

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

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

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

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

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

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

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

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

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

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

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

48 (5) In the case of an individual who is laid off or furloughed by
49 an employer curtailing operations because of a state of emergency

1 declared after October 22, 2012, any week in which the individual
2 is separated from employment due to that layoff or furlough, up to a
3 maximum of 13 weeks, shall be regarded as a week which is a "base
4 week" for the purpose of determining whether the individual
5 becomes eligible for benefits pursuant to subsection (d) or (e) of
6 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
7 regarded as a base week when calculating the "average weekly
8 wage" pursuant to subsection (j) of this section.

9 (j) (1) "Average weekly wage" means the amount derived by
10 dividing a covered individual's total wages earned from the
11 individual's most recent covered employer during the base weeks in
12 the eight calendar weeks immediately preceding the calendar week
13 in which a period of disability commenced, or in which the
14 individual submits a claim for the benefits pursuant to subsection h.
15 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
16 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the
17 number of such base weeks.

18 (2) If the computation in paragraph (1) of this subsection (j)
19 yields a result which is less than the individual's average weekly
20 earnings in employment with all covered employers during the base
21 weeks in such eight calendar weeks, then the average weekly wage
22 shall be computed on the basis of earnings from all covered
23 employers during the base weeks in the eight calendar weeks
24 immediately preceding the week in which the period of disability
25 commenced, or in which the individual submits a claim for the
26 benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
27 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
28 P.L.1948, c.110 (C.43:21-49).

29 (3) For periods of disability commencing on or after July 1,
30 2009, if the computations in paragraphs (1) and (2) of this
31 subsection (j) both yield a result which is less than the individual's
32 average weekly earnings in employment with all covered employers
33 during the base weeks in the 26 calendar weeks immediately
34 preceding the week in which the period of disability commenced, or
35 in which the individual submits a claim for the benefits pursuant to
36 subsection h. of section 10 of P.L.2008, c.17 (C.43:21-39.1) or
37 paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110
38 (C.43:21-49), then the average weekly wage shall, upon a written
39 request to the department by the individual on a form provided by
40 the department, be computed by the department on the basis of
41 earnings from all covered employers of the individual during the
42 base weeks in those 26 calendar weeks, and, in the case of a claim
43 for benefits from a private plan, that computation of the average
44 weekly wage shall be provided by the department to the individual
45 and the individual's employer.

46 When determining the "average weekly wage" with respect to a
47 period of family temporary disability leave for an individual who
48 has a period of family temporary disability immediately after the
49 individual has a period of disability for the individual's own

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

4 (k) "Child" means a biological, adopted, or foster child,
5 stepchild or legal ward of a covered individual, child of a domestic
6 partner of the covered individual, or child of a civil union partner of
7 the covered individual, who is less than 19 years of age or is 19
8 years of age or older but incapable of self-care because of mental or
9 physical impairment.

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

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

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

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

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

34 (q) "Parent of a covered individual" means a biological parent,
35 foster parent, adoptive parent, or stepparent of the covered
36 individual or a person who was a legal guardian of the covered
37 individual when the covered individual was a child.

38 (r) "Placement for adoption" means the time when a covered
39 individual adopts a child or becomes responsible for a child pending
40 adoption by the covered individual.

41 (s) "Serious health condition" means an illness, injury,
42 impairment or physical or mental condition which requires:
43 inpatient care in a hospital, hospice, or residential medical care
44 facility; or continuing medical treatment or continuing supervision
45 by a health care provider.

46 (t) "12-month period" means, with respect to an individual who
47 establishes a valid claim for disability benefits during a period of
48 family temporary disability leave, the 365 consecutive days that

1 begin with the first day that the individual first establishes the
2 claim.

3 (u) "State of emergency" means a natural or man-made disaster
4 or emergency for which a state of emergency has been declared by
5 the President of the United States or the Governor, or for which a
6 state of emergency has been declared by a municipal emergency
7 management coordinator.

8 (cf: P.L.2013, c.221, s.3)

9

10 2. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
11 read as follows:

12 10. a. Family temporary disability leave shall be compensable
13 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
14 any period of family temporary disability leave taken by a covered
15 individual which commences after June 30, 2009.

16 b. An individual shall not simultaneously receive disability
17 benefits for family temporary disability leave and any other
18 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
19 any unemployment compensation.

20 c. The employer of an individual may, notwithstanding any
21 other provision of law, including the provisions of N.J.S.18A:30-1
22 et seq., permit or require the individual, during a period of family
23 temporary disability leave, to use any paid sick leave, vacation time
24 or other leave at full pay made available by the employer before the
25 individual is eligible for disability benefits for family temporary
26 disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.),
27 except that the employer may not require the individual to use more
28 than two weeks worth of leave at full pay. The employer may also
29 have the total number of days worth of disability benefits paid
30 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) to the individual
31 during a period of family temporary disability leave reduced by the
32 number of days of leave at full pay paid by the employer to the
33 individual during that period. If the employer requires the
34 individual to use leave at full pay, the employee shall be permitted
35 to take that fully-paid leave during the waiting period required
36 pursuant to subsection (a) of section 15 of P.L.1948, c.110
37 (C.43:21-39). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall
38 be construed as nullifying any provision of an existing collective
39 bargaining agreement or employer policy, or preventing any new
40 provision of a collective bargaining agreement or employer policy,
41 which provides employees more generous leave or gives employees
42 greater rights to select which kind of leave is used or select the
43 order in which the different kinds of leave are used. Nothing in
44 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing
45 an employer from providing more generous benefits than are
46 provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing
47 benefits which supplement the benefits provided under P.L.2008,
48 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
49 employees.

1 d. An individual who is entitled to leave under the provisions
2 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or
3 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
4 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
5 family temporary disability leave pursuant to P.L.2008, c.17
6 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
7 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
8 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
9 U.S.C. s.2601 et seq.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et
10 al.) shall be construed to grant an employee any entitlement to be
11 restored by the employer to employment held by the employee prior
12 to taking family temporary disability leave or any right to take
13 action against an employer who refuses to restore the employee to
14 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
15 39.1 et al.) shall be construed to increase, reduce or otherwise
16 modify any entitlement of an employee to return to employment or
17 right of the employee to take action under the provisions of the
18 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
19 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
20 U.S.C. s.2601 et seq.). If an employee receives benefits for family
21 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
22 et al.) with respect to employment with an employer who is not an
23 employer as defined in the "Family Leave Act," P.L.1989, c.261
24 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
25 employee to employment after the period of family temporary
26 disability leave, that failure or refusal shall not be a wrongful
27 discharge in violation of a clear mandate of public policy, and the
28 employee shall not have a cause of action against that employer, in
29 tort, or for breach of an implied provision of the employment
30 agreement, or under common law, for that failure or refusal.

31 e. An employee taking family temporary disability leave or an
32 employer from whom the employee is taking the leave shall have
33 the same right to appeal a determination of a benefit for the family
34 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
35 et al.) as an employee or employer has to appeal a determination of
36 a benefit for the disability of the employee under the "Temporary
37 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
38 any regulations adopted pursuant to the "Temporary Disability
39 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

40 f. In the event of a period of family temporary disability leave
41 of any individual covered under the State plan, the employer shall,
42 not later than the ninth day of the period of family temporary
43 disability leave, or not later than the ninth day after the employee
44 notifies the employer of an anticipated period of family temporary
45 disability leave pursuant to subsection h. of this section, whichever
46 comes first, including any waiting period or time in which the
47 employer provides sick leave, vacation or other fully paid leave,
48 issue to the individual and to the division printed notices on
49 division forms containing the name, address and Social Security

1 number of the individual, such wage information as the division
2 may require to determine the individual's eligibility for benefits,
3 including any sick pay, vacation or other fully paid time off
4 provided by the employer during the period of family temporary
5 disability leave, and the name, address, and division identity
6 number of the employer. Not later than 30 days after the
7 commencement of the period of family temporary disability leave
8 for which the notice is furnished by the employer, the individual
9 shall furnish to the division a notice and claim for family temporary
10 disability leave benefits. Upon the submission of the notices by the
11 employer and the individual, and the commencement of the
12 compensable portion of the family temporary disability leave
13 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may
14 issue benefit payments. In the case of family temporary disability
15 leave taken to care for a family member with a serious health
16 condition, the benefits may be paid for periods not exceeding three
17 weeks pending the receipt of the certification required pursuant to
18 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2).
19 Failure to furnish notice and certification in the manner above
20 provided shall not invalidate or reduce any claim if it shall be
21 shown to the satisfaction of the division not to have been
22 reasonably possible to furnish the notice and certification and that
23 the notice and certification was furnished as soon as reasonably
24 possible.

25 g. Each covered employer shall conspicuously post
26 notification, in a place or places accessible to all employees in each
27 of the employer's workplaces, in a form issued by regulation
28 promulgated by the commissioner, of each covered employee's
29 rights regarding benefits payable pursuant to this section. The
30 employer shall also provide each employee of the employer with a
31 written copy of the notification: (1) not later than 30 days after the
32 form of the notification is issued by regulation; (2) at the time of the
33 employee's hiring, if the employee is hired after the issuance; (3)
34 whenever the employee notifies the employer that the employee is
35 taking time off for circumstances under which the employee is
36 eligible for benefits pursuant to this section; and (4) at any time,
37 upon the first request of the employee.

38 h. With respect to any period of family temporary disability
39 leave commencing on or after January 1, 2018, if an individual
40 knows in advance when the period will commence, the individual
41 may notify the employer of the anticipated period of family
42 temporary disability leave and submit to the division a claim for
43 benefits for that period, which shall include a statement of when the
44 period will commence and any certification required pursuant to
45 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior
46 to, but not more than 60 days prior to, the date that the period will
47 commence. The division shall process that claim immediately and,
48 upon finding that the claim is valid, shall pay the benefit upon the
49 commencement of the period of family temporary disability leave

1 or after any applicable one week waiting period, except that if
2 division receives the claim less than 30 days before the
3 commencement of the period, the division shall make the payment
4 not more than 30 days after the receipt of the claim. The periods of
5 family temporary disability leave to which the provisions of this
6 subsection apply shall include, but not be limited to, any of the
7 following if the commencement date of the leave is known in
8 advance: periods of leave for care of a child of the individual after
9 adoption or childbirth; periods of leave for scheduled medical
10 procedures, treatments, or appointments for a family member of the
11 individual; and periods of leave for scheduled ongoing care of a
12 family member of the individual. If the individual did not establish
13 enough base weeks or have enough total earnings during the 52
14 weeks preceding the week the individual submits the claim, the
15 division shall notify the individual that the individual may file the
16 claim again upon or after the commencement of the period of
17 family temporary disability leave and the division shall then
18 reconsider the individual's eligibility for benefits based on the 52
19 weeks preceding the week in which the period of family temporary
20 disability leave commences.

21 (cf: P.L.2008, c.17, s.10)

22
23 3. Section 17 of P.L.1948, c.110 (C.43:21-41) is amended to
24 read as follows:

25 17. (a) (Deleted by amendment, P.L.1975, c.355.)

26 (b) (Deleted by amendment, P.L.2001, c.17).

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

28 (d) (1) (Deleted by amendment, P.L.2008, c.17).

29 (2) With respect to periods of disability commencing on or after
30 January 1, 2001, no individual shall be entitled to benefits under
31 this act unless the individual has, within the 52 calendar weeks
32 preceding the week in which the individual's period of disability
33 commenced, or within the 52 weeks preceding the week in which
34 the individual submits a claim for benefits pursuant to subsection h.
35 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
36 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49),
37 established at least 20 base weeks or earned not less than 1,000
38 times the minimum wage in effect pursuant to section 5 of
39 P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar year
40 preceding the calendar year in which the disability commences,
41 which amount shall be adjusted to the next higher multiple of
42 \$100.00, if not already a multiple thereof. If an individual who
43 submits a claim for benefits pursuant to subsection h. of section 10
44 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a)
45 of section 25 of P.L.1948, c.110 (C.43:21-49) did not establish
46 enough base weeks or have enough total earnings during the 52
47 weeks preceding the week the individual submits the claim, the
48 division shall notify the individual that the individual may file the

1 claim again upon or after the commencement of the period of
2 disability or family temporary disability leave and the division shall
3 then reconsider the individual's eligibility for benefits based on the
4 52 weeks preceding the week in which the period of disability or
5 family temporary disability leave commences.

6 (e) With respect to a period of family temporary disability leave
7 for an individual who has a period of family temporary disability
8 immediately after the individual has a period of disability for the
9 individual's own disability, the period of disability is deemed, for
10 the purposes of specifying the time of the 52-week period in which
11 base weeks or earnings are required to be established for benefit
12 eligibility pursuant to this subsection (e), to have commenced at the
13 beginning of the period of disability for the individual's own
14 disability, not the period of family temporary disability.

15 (cf: P.L.2008, c.17, s.7)

16
17 4. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to read
18 as follows:

19 25. (a) (1) Every employer shall post, in prominent locations,
20 notices to employees in the form provided by the division of
21 whether the employer is permitted or required to participate in a
22 temporary disability benefits program pursuant to the "Temporary
23 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and
24 whether the employer does or does not participate. For employers
25 who participate in a temporary disability benefits program, the
26 notice shall also describe the temporary disability benefits available
27 to the employees and prominently disclose that pregnancy is
28 regarded by law as a disability and that pregnant employees are
29 regarded as disabled and entitled to temporary disability benefits to
30 the same extent as other disabled employees. Upon the request of
31 an employer, the division shall, without charge, provide the
32 employer with a copy of each applicable notice, suitable for
33 reproduction by the employer. Each employer participating in the
34 State plan or a private plan shall give a printed copy of benefit
35 instructions to any disabled employee as soon as the employer
36 becomes aware of the disability.

37 (2) In addition, in the event of the disability of any individual
38 covered under the State plan, the employer shall, **[on]** not later than
39 the ninth day of disability, or not later than the ninth day after the
40 individual notifies the employer of an anticipated period of
41 disability pursuant to paragraph (3) of this section, whichever
42 comes first, issue to the individual and to the division printed
43 notices on division forms containing the name, address and Social
44 Security number of the individual, such wage information as the
45 division may require to determine the individual's eligibility for
46 benefits, and the name, address, and division identity number of the
47 employer. Not later than 30 days after the commencement of the
48 period of disability for which such notice is furnished, the

1 individual shall furnish to the division a notice and claim for
2 disability benefits under the State plan or for disability during
3 unemployment. Upon the submission of such notices by the
4 employer and the individual, and the commencement of the
5 compensable portion of the disability leave pursuant to the
6 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
7 et seq.), the division may issue benefit payments for periods not
8 exceeding three weeks pending the receipt of medical proof. When
9 requested by the division, such notice and proof shall include
10 certification of total disability by the attending physician, or a
11 record of hospital confinement. Failure to furnish notice and proof
12 within the time or in the manner above provided shall not invalidate
13 or reduce any claim if it shall be shown to the satisfaction of the
14 division not to have been reasonably possible to furnish such notice
15 and proof and that such notice and proof was furnished as soon as
16 reasonably possible.

17 (3) With respect to any period of disability commencing on or
18 after January 1, 2018, if an individual knows in advance when the
19 period will commence, the individual may notify the employer of
20 the anticipated period of disability and submit to the division a
21 claim for benefits for that period, which shall include a statement of
22 when the period will commence and any certification requested by
23 the division pursuant to this section, prior to, but not more than 60
24 days prior to, the date on which the period will commence. The
25 division shall process that claim immediately and, upon a finding
26 that the claim is valid, shall pay the benefit upon the
27 commencement of the period or after any applicable one week
28 waiting period, except that if the division receives the claim less
29 than 30 days before the commencement of the period, the division
30 shall make the payment not more than 30 days after the receipt of
31 the claim. The periods of disability leave to which the provisions of
32 this paragraph apply shall include, but not be limited to, any of the
33 following if the commencement date of the leave is known in
34 advance: disability related to pregnancy or childbirth; disability
35 related to scheduled medical procedures, treatments, or
36 appointments for the individual; and disability related to scheduled
37 ongoing care of the individual. If an individual did not establish
38 enough base weeks or have enough total earnings during the 52
39 weeks preceding the week the individual submits the claim for
40 benefits, the division shall notify the individual that the individual
41 may file the claim again upon or after the commencement of the
42 period of disability and the division shall then reconsider the
43 individual's eligibility for benefits based on the 52 weeks preceding
44 the week in which the period of disability commences.

45 (b) A person claiming benefits under the State plan or for
46 disability during unemployment shall, when requested by the
47 division, submit at intervals, but not more often than once a week,
48 to an examination by a legally licensed physician, dentist,

1 podiatrist, chiropractor, certified nurse midwife, advanced practice
2 nurse or public health nurse designated by the division. In all cases
3 of physical examination of a claimant, the examination shall be
4 made by a designee of the division, who shall be the same sex as the
5 claimant if so requested by the claimant. All such examinations by
6 physicians, dentists, podiatrists, chiropractors, certified nurse
7 midwives or nurses designated by the division shall be without cost
8 to the claimant and shall be held at a reasonable time and place.
9 Refusal to submit to such a requested examination shall disqualify
10 the claimant from all benefits for the period of disability in
11 question, except as to benefits already paid.

12 (c) All medical records of the division, except to the extent
13 necessary for the proper administration of this act, shall be
14 confidential and shall not be published or be open to public
15 inspection (other than to public employees in the performance of
16 their public duties) in any manner revealing the identity of the
17 claimant, or the nature or cause of disability nor admissible in
18 evidence in any action or special proceeding other than one arising
19 under this act.

20 (cf: P.L.2009, c.114, s.2)

21

22 5. This act shall take effect ¹**[immediately]** one year after the
23 date of enactment¹, but its provisions shall apply only to claims for
24 benefits for periods of disability and family temporary disability
25 commencing on or after January 1, ¹**[2018]** 2019¹.

26

27

28

29

30 _____
31 Permits individuals to submit TDI and family temporary
32 disability leave claims to DOLWD prior to commencement of leave
33 under certain circumstances and requires timely payment of benefits
for such claims.

ASSEMBLY, No. 4118

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 7, 2018

Sponsored by:

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Assemblyman P. CHRISTOPHER TULLY

District 38 (Bergen and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Senator M. TERESA RUIZ

District 29 (Essex)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Co-Sponsored by:

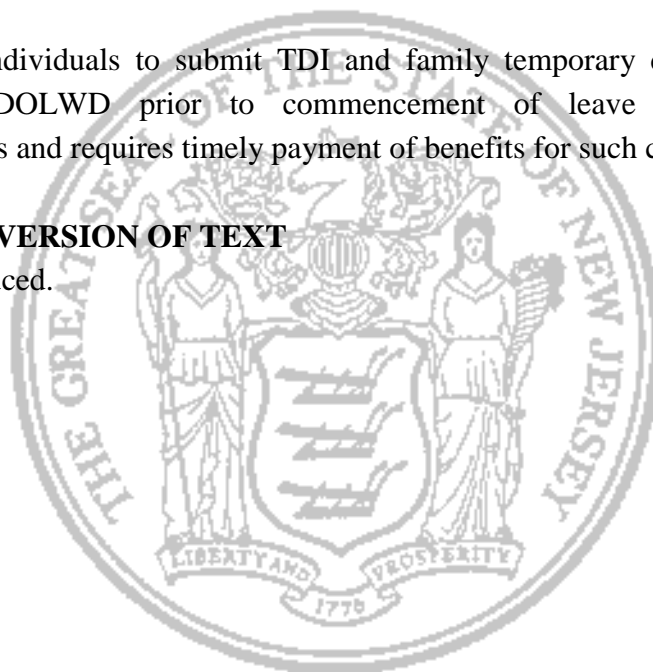
Assemblyman Mukherji, Assemblywoman Downey, Assemblyman Conaway, Senators Oroho and Singleton

SYNOPSIS

Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2018)

1 AN ACT concerning temporary disability and family temporary
2 disability leave, and amending P.L.1948, c.110 and P.L.2008,
3 c.17.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read
9 as follows:

10 3. As used in this act, unless the context clearly requires
11 otherwise:

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

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

44 (2) Any governmental entity or instrumentality which is an
45 employer under R.S.43:21-19(h)(5) may, with respect to the

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

11 (b) (1) "Covered individual" means, with respect to whether an
12 individual is eligible for benefits during an individual's own
13 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
14 person who is in employment, as defined in the "unemployment
15 compensation law" (R.S.43:21-1 et seq.), for which the individual is
16 entitled to remuneration from a covered employer, or who has been
17 out of such employment for less than two weeks, except that a
18 "covered individual" who is employed by the State of New Jersey,
19 including Rutgers, The State University or the New Jersey Institute
20 of Technology, or by any governmental entity or instrumentality
21 which elects to become a "covered employer" pursuant to this
22 amendatory act, shall not be eligible to receive any benefits under
23 the "Temporary Disability Benefits Law" until such individual has
24 exhausted all sick leave accumulated as an employee in the
25 classified service of the State or accumulated under terms and
26 conditions similar to classified employees or accumulated under the
27 terms and conditions pursuant to the laws of this State or as the
28 result of a negotiated contract with any governmental entity or
29 instrumentality which elects to become a "covered employer."

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

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

43 (c) "Division" or "commission" means the Division of
44 Unemployment and Temporary Disability Insurance of the
45 Department of Labor and Workforce Development, and any
46 transaction or exercise of authority by the director of the division
47 shall be deemed to be performed by the division.

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

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

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

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

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

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

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

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

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

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

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

43 (5) In the case of an individual who is laid off or furloughed by
44 an employer curtailing operations because of a state of emergency
45 declared after October 22, 2012, any week in which the individual
46 is separated from employment due to that layoff or furlough, up to a
47 maximum of 13 weeks, shall be regarded as a week which is a "base
48 week" for the purpose of determining whether the individual

1 becomes eligible for benefits pursuant to subsection (d) or (e) of
2 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
3 regarded as a base week when calculating the "average weekly
4 wage" pursuant to subsection (j) of this section.

5 (j) (1) "Average weekly wage" means the amount derived by
6 dividing a covered individual's total wages earned from the
7 individual's most recent covered employer during the base weeks in
8 the eight calendar weeks immediately preceding the calendar week
9 in which a period of disability commenced, or in which the
10 individual submits a claim for the benefits pursuant to subsection h.
11 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
12 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the
13 number of such base weeks.

14 (2) If the computation in paragraph (1) of this subsection (j)
15 yields a result which is less than the individual's average weekly
16 earnings in employment with all covered employers during the base
17 weeks in such eight calendar weeks, then the average weekly wage
18 shall be computed on the basis of earnings from all covered
19 employers during the base weeks in the eight calendar weeks
20 immediately preceding the week in which the period of disability
21 commenced, or in which the individual submits a claim for the
22 benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
23 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
24 P.L.1948, c.110 (C.43:21-49).

25 (3) For periods of disability commencing on or after July 1,
26 2009, if the computations in paragraphs (1) and (2) of this
27 subsection (j) both yield a result which is less than the individual's
28 average weekly earnings in employment with all covered employers
29 during the base weeks in the 26 calendar weeks immediately
30 preceding the week in which the period of disability commenced, or
31 in which the individual submits a claim for the benefits pursuant to
32 subsection h. of section 10 of P.L.2008, c.17 (C.43:21-39.1) or
33 paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110
34 (C.43:21-49), then the average weekly wage shall, upon a written
35 request to the department by the individual on a form provided by
36 the department, be computed by the department on the basis of
37 earnings from all covered employers of the individual during the
38 base weeks in those 26 calendar weeks, and, in the case of a claim
39 for benefits from a private plan, that computation of the average
40 weekly wage shall be provided by the department to the individual
41 and the individual's employer.

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

1 (k) "Child" means a biological, adopted, or foster child,
2 stepchild or legal ward of a covered individual, child of a domestic
3 partner of the covered individual, or child of a civil union partner of
4 the covered individual, who is less than 19 years of age or is 19
5 years of age or older but incapable of self-care because of mental or
6 physical impairment.

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

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

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

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

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

31 (q) "Parent of a covered individual" means a biological parent,
32 foster parent, adoptive parent, or stepparent of the covered
33 individual or a person who was a legal guardian of the covered
34 individual when the covered individual was a child.

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

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

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

48 (u) "State of emergency" means a natural or man-made disaster

1 or emergency for which a state of emergency has been declared by
2 the President of the United States or the Governor, or for which a
3 state of emergency has been declared by a municipal emergency
4 management coordinator.
5 (cf: P.L.2013, c.221, s.3)

6
7 2. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
8 read as follows:

9 10. a. Family temporary disability leave shall be compensable
10 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
11 any period of family temporary disability leave taken by a covered
12 individual which commences after June 30, 2009.

13 b. An individual shall not simultaneously receive disability
14 benefits for family temporary disability leave and any other
15 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
16 any unemployment compensation.

17 c. The employer of an individual may, notwithstanding any
18 other provision of law, including the provisions of N.J.S.18A:30-1
19 et seq., permit or require the individual, during a period of family
20 temporary disability leave, to use any paid sick leave, vacation time
21 or other leave at full pay made available by the employer before the
22 individual is eligible for disability benefits for family temporary
23 disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.),
24 except that the employer may not require the individual to use more
25 than two weeks worth of leave at full pay. The employer may also
26 have the total number of days worth of disability benefits paid
27 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) to the individual
28 during a period of family temporary disability leave reduced by the
29 number of days of leave at full pay paid by the employer to the
30 individual during that period. If the employer requires the
31 individual to use leave at full pay, the employee shall be permitted
32 to take that fully-paid leave during the waiting period required
33 pursuant to subsection (a) of section 15 of P.L.1948, c.110
34 (C.43:21-39). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall
35 be construed as nullifying any provision of an existing collective
36 bargaining agreement or employer policy, or preventing any new
37 provision of a collective bargaining agreement or employer policy,
38 which provides employees more generous leave or gives employees
39 greater rights to select which kind of leave is used or select the
40 order in which the different kinds of leave are used. Nothing in
41 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing
42 an employer from providing more generous benefits than are
43 provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing
44 benefits which supplement the benefits provided under P.L.2008,
45 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
46 employees.

47 d. An individual who is entitled to leave under the provisions
48 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or

1 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
2 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
3 family temporary disability leave pursuant to P.L.2008, c.17
4 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
5 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
6 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
7 U.S.C. s.2601 et seq.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et
8 al.) shall be construed to grant an employee any entitlement to be
9 restored by the employer to employment held by the employee prior
10 to taking family temporary disability leave or any right to take
11 action against an employer who refuses to restore the employee to
12 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
13 39.1 et al.) shall be construed to increase, reduce or otherwise
14 modify any entitlement of an employee to return to employment or
15 right of the employee to take action under the provisions of the
16 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
17 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
18 U.S.C. s.2601 et seq.). If an employee receives benefits for family
19 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
20 et al.) with respect to employment with an employer who is not an
21 employer as defined in the "Family Leave Act," P.L.1989, c.261
22 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
23 employee to employment after the period of family temporary
24 disability leave, that failure or refusal shall not be a wrongful
25 discharge in violation of a clear mandate of public policy, and the
26 employee shall not have a cause of action against that employer, in
27 tort, or for breach of an implied provision of the employment
28 agreement, or under common law, for that failure or refusal.

29 e. An employee taking family temporary disability leave or an
30 employer from whom the employee is taking the leave shall have
31 the same right to appeal a determination of a benefit for the family
32 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
33 et al.) as an employee or employer has to appeal a determination of
34 a benefit for the disability of the employee under the "Temporary
35 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
36 any regulations adopted pursuant to the "Temporary Disability
37 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

38 f. In the event of a period of family temporary disability leave
39 of any individual covered under the State plan, the employer shall,
40 not later than the ninth day of the period of family temporary
41 disability leave, or not later than the ninth day after the employee
42 notifies the employer of an anticipated period of family temporary
43 disability leave pursuant to subsection h. of this section, whichever
44 comes first, including any waiting period or time in which the
45 employer provides sick leave, vacation or other fully paid leave,
46 issue to the individual and to the division printed notices on
47 division forms containing the name, address and Social Security
48 number of the individual, such wage information as the division

1 may require to determine the individual's eligibility for benefits,
2 including any sick pay, vacation or other fully paid time off
3 provided by the employer during the period of family temporary
4 disability leave, and the name, address, and division identity
5 number of the employer. Not later than 30 days after the
6 commencement of the period of family temporary disability leave
7 for which the notice is furnished by the employer, the individual
8 shall furnish to the division a notice and claim for family temporary
9 disability leave benefits. Upon the submission of the notices by the
10 employer and the individual, and the commencement of the
11 compensable portion of the family temporary disability leave
12 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may
13 issue benefit payments. In the case of family temporary disability
14 leave taken to care for a family member with a serious health
15 condition, the benefits may be paid for periods not exceeding three
16 weeks pending the receipt of the certification required pursuant to
17 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2).
18 Failure to furnish notice and certification in the manner above
19 provided shall not invalidate or reduce any claim if it shall be
20 shown to the satisfaction of the division not to have been
21 reasonably possible to furnish the notice and certification and that
22 the notice and certification was furnished as soon as reasonably
23 possible.

24 g. Each covered employer shall conspicuously post
25 notification, in a place or places accessible to all employees in each
26 of the employer's workplaces, in a form issued by regulation
27 promulgated by the commissioner, of each covered employee's
28 rights regarding benefits payable pursuant to this section. The
29 employer shall also provide each employee of the employer with a
30 written copy of the notification: (1) not later than 30 days after the
31 form of the notification is issued by regulation; (2) at the time of the
32 employee's hiring, if the employee is hired after the issuance; (3)
33 whenever the employee notifies the employer that the employee is
34 taking time off for circumstances under which the employee is
35 eligible for benefits pursuant to this section; and (4) at any time,
36 upon the first request of the employee.

37 h. With respect to any period of family temporary disability
38 leave commencing on or after January 1, 2018, if an individual
39 knows in advance when the period will commence, the individual
40 may notify the employer of the anticipated period of family
41 temporary disability leave and submit to the division a claim for
42 benefits for that period, which shall include a statement of when the
43 period will commence and any certification required pursuant to
44 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior
45 to, but not more than 60 days prior to, the date that the period will
46 commence. The division shall process that claim immediately and,
47 upon finding that the claim is valid, shall pay the benefit upon the
48 commencement of the period of family temporary disability leave

1 or after any applicable one week waiting period, except that if
2 division receives the claim less than 30 days before the
3 commencement of the period, the division shall make the payment
4 not more than 30 days after the receipt of the claim. The periods of
5 family temporary disability leave to which the provisions of this
6 subsection apply shall include, but not be limited to, any of the
7 following if the commencement date of the leave is known in
8 advance: periods of leave for care of a child of the individual after
9 adoption or childbirth; periods of leave for scheduled medical
10 procedures, treatments, or appointments for a family member of the
11 individual; and periods of leave for scheduled ongoing care of a
12 family member of the individual. If the individual did not establish
13 enough base weeks or have enough total earnings during the 52
14 weeks preceding the week the individual submits the claim, the
15 division shall notify the individual that the individual may file the
16 claim again upon or after the commencement of the period of
17 family temporary disability leave and the division shall then
18 reconsider the individual's eligibility for benefits based on the 52
19 weeks preceding the week in which the period of family temporary
20 disability leave commences.

21 (cf: P.L.2008, c.17, s.10)

22
23 3. Section 17 of P.L.1948, c.110 (C.43:21-41) is amended to
24 read as follows:

25 17. (a) (Deleted by amendment, P.L.1975, c.355.)

26 (b) (Deleted by amendment, P.L.2001, c.17).

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

28 (d) (1) (Deleted by amendment, P.L.2008, c.17).

29 (2) With respect to periods of disability commencing on or after
30 January 1, 2001, no individual shall be entitled to benefits under
31 this act unless the individual has, within the 52 calendar weeks
32 preceding the week in which the individual's period of disability
33 commenced, or within the 52 weeks preceding the week in which
34 the individual submits a claim for benefits pursuant to subsection h.
35 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
36 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49),
37 established at least 20 base weeks or earned not less than 1,000
38 times the minimum wage in effect pursuant to section 5 of
39 P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar year
40 preceding the calendar year in which the disability commences,
41 which amount shall be adjusted to the next higher multiple of
42 \$100.00, if not already a multiple thereof. If an individual who
43 submits a claim for benefits pursuant to subsection h. of section 10
44 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a)
45 of section 25 of P.L.1948, c.110 (C.43:21-49) did not establish
46 enough base weeks or have enough total earnings during the 52
47 weeks preceding the week the individual submits the claim, the
48 division shall notify the individual that the individual may file the

1 claim again upon or after the commencement of the period of
2 disability or family temporary disability leave and the division shall
3 then reconsider the individual's eligibility for benefits based on the
4 52 weeks preceding the week in which the period of disability or
5 family temporary disability leave commences.

6 (e) With respect to a period of family temporary disability leave
7 for an individual who has a period of family temporary disability
8 immediately after the individual has a period of disability for the
9 individual's own disability, the period of disability is deemed, for
10 the purposes of specifying the time of the 52-week period in which
11 base weeks or earnings are required to be established for benefit
12 eligibility pursuant to this subsection (e), to have commenced at the
13 beginning of the period of disability for the individual's own
14 disability, not the period of family temporary disability.

15 (cf: P.L.2008, c.17, s.7)

16

17 4. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to read
18 as follows:

19 25. (a) (1) Every employer shall post, in prominent locations,
20 notices to employees in the form provided by the division of
21 whether the employer is permitted or required to participate in a
22 temporary disability benefits program pursuant to the "Temporary
23 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and
24 whether the employer does or does not participate. For employers
25 who participate in a temporary disability benefits program, the
26 notice shall also describe the temporary disability benefits available
27 to the employees and prominently disclose that pregnancy is
28 regarded by law as a disability and that pregnant employees are
29 regarded as disabled and entitled to temporary disability benefits to
30 the same extent as other disabled employees. Upon the request of
31 an employer, the division shall, without charge, provide the
32 employer with a copy of each applicable notice, suitable for
33 reproduction by the employer. Each employer participating in the
34 State plan or a private plan shall give a printed copy of benefit
35 instructions to any disabled employee as soon as the employer
36 becomes aware of the disability.

37 (2) In addition, in the event of the disability of any individual
38 covered under the State plan, the employer shall, **[on]** not later than
39 the ninth day of disability, or not later than the ninth day after the
40 individual notifies the employer of an anticipated period of
41 disability pursuant to paragraph (3) of this section, whichever
42 comes first, issue to the individual and to the division printed
43 notices on division forms containing the name, address and Social
44 Security number of the individual, such wage information as the
45 division may require to determine the individual's eligibility for
46 benefits, and the name, address, and division identity number of the
47 employer. Not later than 30 days after the commencement of the
48 period of disability for which such notice is furnished, the

1 individual shall furnish to the division a notice and claim for
2 disability benefits under the State plan or for disability during
3 unemployment. Upon the submission of such notices by the
4 employer and the individual, and the commencement of the
5 compensable portion of the disability leave pursuant to the
6 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
7 et seq.), the division may issue benefit payments for periods not
8 exceeding three weeks pending the receipt of medical proof. When
9 requested by the division, such notice and proof shall include
10 certification of total disability by the attending physician, or a
11 record of hospital confinement. Failure to furnish notice and proof
12 within the time or in the manner above provided shall not invalidate
13 or reduce any claim if it shall be shown to the satisfaction of the
14 division not to have been reasonably possible to furnish such notice
15 and proof and that such notice and proof was furnished as soon as
16 reasonably possible.

17 (3) With respect to any period of disability commencing on or
18 after January 1, 2018, if an individual knows in advance when the
19 period will commence, the individual may notify the employer of
20 the anticipated period of disability and submit to the division a
21 claim for benefits for that period, which shall include a statement of
22 when the period will commence and any certification requested by
23 the division pursuant to this section, prior to, but not more than 60
24 days prior to, the date on which the period will commence. The
25 division shall process that claim immediately and, upon a finding
26 that the claim is valid, shall pay the benefit upon the
27 commencement of the period or after any applicable one week
28 waiting period, except that if the division receives the claim less
29 than 30 days before the commencement of the period, the division
30 shall make the payment not more than 30 days after the receipt of
31 the claim. The periods of disability leave to which the provisions of
32 this paragraph apply shall include, but not be limited to, any of the
33 following if the commencement date of the leave is known in
34 advance: disability related to pregnancy or childbirth; disability
35 related to scheduled medical procedures, treatments, or
36 appointments for the individual; and disability related to scheduled
37 ongoing care of the individual. If an individual did not establish
38 enough base weeks or have enough total earnings during the 52
39 weeks preceding the week the individual submits the claim for
40 benefits, the division shall notify the individual that the individual
41 may file the claim again upon or after the commencement of the
42 period of disability and the division shall then reconsider the
43 individual's eligibility for benefits based on the 52 weeks preceding
44 the week in which the period of disability commences.

45 (b) A person claiming benefits under the State plan or for
46 disability during unemployment shall, when requested by the
47 division, submit at intervals, but not more often than once a week,
48 to an examination by a legally licensed physician, dentist,

1 podiatrist, chiropractor, certified nurse midwife, advanced practice
2 nurse or public health nurse designated by the division. In all cases
3 of physical examination of a claimant, the examination shall be
4 made by a designee of the division, who shall be the same sex as the
5 claimant if so requested by the claimant. All such examinations by
6 physicians, dentists, podiatrists, chiropractors, certified nurse
7 midwives or nurses designated by the division shall be without cost
8 to the claimant and shall be held at a reasonable time and place.
9 Refusal to submit to such a requested examination shall disqualify
10 the claimant from all benefits for the period of disability in
11 question, except as to benefits already paid.

12 (c) All medical records of the division, except to the extent
13 necessary for the proper administration of this act, shall be
14 confidential and shall not be published or be open to public
15 inspection (other than to public employees in the performance of
16 their public duties) in any manner revealing the identity of the
17 claimant, or the nature or cause of disability nor admissible in
18 evidence in any action or special proceeding other than one arising
19 under this act.

20 (cf: P.L.2009, c.114, s.2)

21

22 5. This act shall take effect immediately, but its provisions
23 shall apply only to claims for benefits for periods of disability and
24 family temporary disability commencing on or after January 1,
25 2018.

26

27

28

STATEMENT

29

30 This bill permits individuals to submit temporary disability and
31 family temporary disability leave claims up to 60 days prior to the
32 commencement of leave if an individual knows in advance when
33 the leave will commence. Furthermore, this bill requires the
34 Division of Unemployment and Temporary Disability Insurance in
35 the Department of Labor and Workforce Development to pay the
36 benefit for such a claim upon the commencement of the leave. This
37 bill may apply to leaves that include, but are not limited to, the
38 following: a) periods of family temporary disability leave for care
39 of a child of the individual after adoption or childbirth, scheduled
40 medical procedures, treatments, or appointments for a family
41 member of the individual, and scheduled ongoing care of a family
42 member of the individual; and b) periods of temporary disability
43 leave related to pregnancy or childbirth, scheduled medical
44 procedures, treatments, or appointments for the individual, and
45 scheduled ongoing care of the individual.

46 Currently, the law does not explicitly prohibit a covered
47 individual from submitting a TDI or FLI claim prior to the
48 commencement of a leave. However, employers are not required to

1 provide the necessary information to determine the individual's
2 eligibility for TDI or FLI benefits until the ninth day following the
3 commencement of leave, and, therefore, the division cannot begin
4 to process a claim until such documentation is received.

5 This bill permits individuals covered under the State temporary
6 disability insurance (TDI) and family leave insurance (FLI)
7 programs, under circumstances in which the individual knows in
8 advance when the period of a FLI or TDI leave will commence, to
9 notify the employer of the anticipated period of leave and to apply
10 to the division for benefits for that leave prior to, but not more than
11 60 days prior to, the date that the leave will commence.
12 Furthermore, no later than nine days following the notification by
13 an individual of an anticipated period of leave, an employer is
14 required to submit to the individual and the division notices
15 containing such information as necessary to determine the
16 individual's eligibility for TDI and FLI benefits.

17 For such claims, the division must process the claim immediately
18 and, upon finding that the claim is valid, pay the benefit upon the
19 commencement of the leave or after any applicable one week
20 waiting period. However, if the division receives the claim less
21 than 30 days before the commencement of the leave, the division
22 shall make the benefit payment not more than 30 days after the
23 receipt of the claim. Under the bill, the TDI and FLI weekly benefit
24 for claims submitted prior to the commencement of the leave is
25 computed utilizing the individual's average weekly wage in relation
26 to when the individual submits the claim for benefits.

27 If an individual did not establish enough base weeks or have
28 enough total earnings during the 52 weeks preceding the week the
29 individual submits the claim to qualify for TDI or FLI benefits, the
30 division must notify the individual that the individual may file the
31 claim again upon or after the commencement of the leave, at which
32 point the division will reconsider the individual's eligibility for
33 benefits based on the 52 weeks preceding the commencement date
34 of the leave.

35 As claims processing times for both TDI and FLI claims have
36 slowed over recent years, covered individuals often receive their
37 initial benefit payments weeks after their leave has begun or even
38 after their leave has ended, causing financial hardship on claimants
39 and their families. The goal of this legislation is to prevent such
40 delays in payment by providing the division with advanced
41 notification in the case of claims in which the commencement date
42 is known prior to the period of leave; thereby allowing the division
43 sufficient time to process such claims and to issue benefit payments
44 upon the commencement of the leave.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4118

STATE OF NEW JERSEY

DATED: JUNE 14, 2018

The Assembly Labor Committee reports favorably Assembly Bill No. 4118.

This bill permits individuals to submit temporary disability and family temporary disability leave claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following: a) periods of family temporary disability leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and b) periods of temporary disability leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual's eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the State temporary disability insurance (TDI) and family leave insurance (FLI) programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual's eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the commencement of the leave or after any applicable one week waiting

period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

As claims processing times for both TDI and FLI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended, causing financial hardship on claimants and their families. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave; thereby allowing the division sufficient time to process such claims and to issue benefit payments upon the commencement of the leave.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4118

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 4118.

This bill permits individuals to submit temporary disability and family temporary disability leave claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following: a) periods of family temporary disability leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and b) periods of temporary disability leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual's eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the State temporary disability insurance (TDI) and family leave insurance (FLI) programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual's eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

As claims processing times for both TDI and FLI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended, causing financial hardship on claimants and their families. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave; thereby allowing the division sufficient time to process such claims and to issue benefit payments upon the commencement of the leave.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD's administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.

The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4118
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JUNE 28, 2018

SUMMARY

- Synopsis:** Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.
- Type of Impact:** Potential, One-time, State Expenditure Increase.
- Agencies Affected:** Department of Labor and Workforce Development (DOLWD)

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in Department of Labor and Workforce Development (DOLWD)'s administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.
- The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

BILL DESCRIPTION

This bill permits individuals to submit temporary disability insurance (TDI) and family temporary disability leave insurance (also referred to as family leave insurance (FLI) claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the DOLWD to pay the benefit for such a claim

upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following:

1. periods of FLI leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and
2. periods of TDI leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual's eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the TDI and FLI programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual's eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD's administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.

The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an

individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

The OLS notes that as claims processing times for TDI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave. This should give the division more time to process claims and allow the division to issue benefit payments sooner.

The OLS further notes that there has been a significant decline in the rate of use of TDI benefits. For instance, there were 144,618 eligible TDI claims in 1987, which was the peak year for the number of TDI claims, which represented 5.9 percent of the 2,449,200 workers covered by TDI that year. In the following years, the number of eligible claims declined even as the number of covered workers increased. By the calendar year 2016, 88,086 eligible claims were filed out of a covered worker population that had risen to 2,685,800, reducing the percentage of covered workers with eligible claims to 3.3 percent, which is 44 percent less than in 1987.

While the OLS cannot determine the reasons for this decline with any certainty, contributing factors to the growing delay of benefit payments, and possibly to the decline in the rate of use of TDI benefits should be noted. With that overarching caveat, these contributing factors may include, but may not need to be limited to, the rising portion of claims filed with insufficient data and that the TDI law does not require employers to provide needed wage data until after disability commences. While the OLS does not have sufficient information to forecast a potential impact on behavior as described above, it is possible that if the department is successful at increasing the rate by which covered individuals receive their benefit payments for TDI claims, the DOLWD may experience a long term shift in trend in the rate of usage of TDI benefits.

Section: *Commerce, Labor and Industry*

Analyst: *Juan C. Rodriguez*
Associate Fiscal Analyst

Approved: *Frank W. Haines III*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4118

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: SEPTEMBER 28, 2018

SUMMARY

- Synopsis:** Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.
- Type of Impact:** Potential, One-time, State Expenditure Increase.
- Agencies Affected:** Department of Labor and Workforce Development (DOLWD)

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in Department of Labor and Workforce Development (DOLWD)'s administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.
- The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

BILL DESCRIPTION

This bill permits individuals to submit temporary disability insurance (TDI) and family temporary disability leave insurance (also referred to as family leave insurance (FLI) claims up

to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the DOLWD to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following:

1. periods of FLI leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and
2. periods of TDI leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual's eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the TDI and FLI programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual's eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD's administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.

The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

The OLS notes that as claims processing times for TDI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave. This should give the division more time to process claims and allow the division to issue benefit payments sooner.

The OLS further notes that there has been a significant decline in the rate of use of TDI benefits. For instance, there were 144,618 eligible TDI claims in 1987, which was the peak year for the number of TDI claims, which represented 5.9 percent of the 2,449,200 workers covered by TDI that year. In the following years, the number of eligible claims declined even as the number of covered workers increased. By the calendar year 2016, 88,086 eligible claims were filed out of a covered worker population that had risen to 2,685,800, reducing the percentage of covered workers with eligible claims to 3.3 percent, which is 44 percent less than in 1987.

While the OLS cannot determine the reasons for this decline with any certainty, contributing factors to the growing delay of benefit payments, and possibly to the decline in the rate of use of TDI benefits should be noted. With that overarching caveat, these contributing factors may include, but may not need to be limited to, the rising portion of claims filed with insufficient data and that the TDI law does not require employers to provide needed wage data until after disability commences. While the OLS does not have sufficient information to forecast a potential impact on behavior as described above, it is possible that if the department is successful at increasing the rate by which covered individuals receive their benefit payments for TDI claims, the DOLWD may experience a long term shift in trend in the rate of usage of TDI benefits.

Section: Commerce, Labor and Industry

*Analyst: Juan C. Rodriguez
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1838

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 8, 2018

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Co-Sponsored by:

Senators Oroho and Singleton

SYNOPSIS

Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/26/2018)

1 AN ACT concerning temporary disability and family temporary
2 disability leave, and amending P.L.1948, c.110 and P.L.2008,
3 c.17.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to read
9 as follows:

10 3. As used in this act, unless the context clearly requires
11 otherwise:

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

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

44 (2) Any governmental entity or instrumentality which is an
45 employer under R.S.43:21-19(h)(5) may, with respect to the

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

11 (b) (1) "Covered individual" means, with respect to whether an
12 individual is eligible for benefits during an individual's own
13 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
14 person who is in employment, as defined in the "unemployment
15 compensation law" (R.S.43:21-1 et seq.), for which the individual is
16 entitled to remuneration from a covered employer, or who has been
17 out of such employment for less than two weeks, except that a
18 "covered individual" who is employed by the State of New Jersey,
19 including Rutgers, The State University or the New Jersey Institute
20 of Technology, or by any governmental entity or instrumentality
21 which elects to become a "covered employer" pursuant to this
22 amendatory act, shall not be eligible to receive any benefits under
23 the "Temporary Disability Benefits Law" until such individual has
24 exhausted all sick leave accumulated as an employee in the
25 classified service of the State or accumulated under terms and
26 conditions similar to classified employees or accumulated under the
27 terms and conditions pursuant to the laws of this State or as the
28 result of a negotiated contract with any governmental entity or
29 instrumentality which elects to become a "covered employer."

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

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

43 (c) "Division" or "commission" means the Division of
44 Unemployment and Temporary Disability Insurance of the
45 Department of Labor and Workforce Development, and any
46 transaction or exercise of authority by the director of the division
47 shall be deemed to be performed by the division.

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

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

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

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

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

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

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

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

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

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

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

43 (5) In the case of an individual who is laid off or furloughed by
44 an employer curtailing operations because of a state of emergency
45 declared after October 22, 2012, any week in which the individual
46 is separated from employment due to that layoff or furlough, up to a
47 maximum of 13 weeks, shall be regarded as a week which is a "base
48 week" for the purpose of determining whether the individual
49 becomes eligible for benefits pursuant to subsection (d) or (e) of

1 section 17 of P.L.1948, c.110 (C.43:21-41), but shall not be
2 regarded as a base week when calculating the "average weekly
3 wage" pursuant to subsection (j) of this section.

4 (j) (1) "Average weekly wage" means the amount derived by
5 dividing a covered individual's total wages earned from the
6 individual's most recent covered employer during the base weeks in
7 the eight calendar weeks immediately preceding the calendar week
8 in which a period of disability commenced, or in which the
9 individual submits a claim for the benefits pursuant to subsection h.
10 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
11 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49), by the
12 number of such base weeks.

13 (2) If the computation in paragraph (1) of this subsection (j)
14 yields a result which is less than the individual's average weekly
15 earnings in employment with all covered employers during the base
16 weeks in such eight calendar weeks, then the average weekly wage
17 shall be computed on the basis of earnings from all covered
18 employers during the base weeks in the eight calendar weeks
19 immediately preceding the week in which the period of disability
20 commenced, or in which the individual submits a claim for the
21 benefits pursuant to subsection h. of section 10 of P.L.2008, c.17
22 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of
23 P.L.1948, c.110 (C.43:21-49).

24 (3) For periods of disability commencing on or after July 1,
25 2009, if the computations in paragraphs (1) and (2) of this
26 subsection (j) both yield a result which is less than the individual's
27 average weekly earnings in employment with all covered employers
28 during the base weeks in the 26 calendar weeks immediately
29 preceding the week in which the period of disability commenced, or
30 in which the individual submits a claim for the benefits pursuant to
31 subsection h. of section 10 of P.L.2008, c.17 (C.43:21-39.1) or
32 paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110
33 (C.43:21-49), then the average weekly wage shall, upon a written
34 request to the department by the individual on a form provided by
35 the department, be computed by the department on the basis of
36 earnings from all covered employers of the individual during the
37 base weeks in those 26 calendar weeks, and, in the case of a claim
38 for benefits from a private plan, that computation of the average
39 weekly wage shall be provided by the department to the individual
40 and the individual's employer.

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

48 (k) "Child" means a biological, adopted, or foster child,
49 stepchild or legal ward of a covered individual, child of a domestic

1 partner of the covered individual, or child of a civil union partner of
2 the covered individual, who is less than 19 years of age or is 19
3 years of age or older but incapable of self-care because of mental or
4 physical impairment.

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

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

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

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

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

29 (q) "Parent of a covered individual" means a biological parent,
30 foster parent, adoptive parent, or stepparent of the covered
31 individual or a person who was a legal guardian of the covered
32 individual when the covered individual was a child.

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

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

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

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

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

3 (cf: P.L.2013, c.221, s.3)

4

5 2. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
6 read as follows:

7 10. a. Family temporary disability leave shall be compensable
8 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
9 any period of family temporary disability leave taken by a covered
10 individual which commences after June 30, 2009.

11 b. An individual shall not simultaneously receive disability
12 benefits for family temporary disability leave and any other
13 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
14 any unemployment compensation.

15 c. The employer of an individual may, notwithstanding any
16 other provision of law, including the provisions of N.J.S.18A:30-1
17 et seq., permit or require the individual, during a period of family
18 temporary disability leave, to use any paid sick leave, vacation time
19 or other leave at full pay made available by the employer before the
20 individual is eligible for disability benefits for family temporary
21 disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.),
22 except that the employer may not require the individual to use more
23 than two weeks worth of leave at full pay. The employer may also
24 have the total number of days worth of disability benefits paid
25 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) to the individual
26 during a period of family temporary disability leave reduced by the
27 number of days of leave at full pay paid by the employer to the
28 individual during that period. If the employer requires the
29 individual to use leave at full pay, the employee shall be permitted
30 to take that fully-paid leave during the waiting period required
31 pursuant to subsection (a) of section 15 of P.L.1948, c.110
32 (C.43:21-39). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall
33 be construed as nullifying any provision of an existing collective
34 bargaining agreement or employer policy, or preventing any new
35 provision of a collective bargaining agreement or employer policy,
36 which provides employees more generous leave or gives employees
37 greater rights to select which kind of leave is used or select the
38 order in which the different kinds of leave are used. Nothing in
39 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing
40 an employer from providing more generous benefits than are
41 provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing
42 benefits which supplement the benefits provided under P.L.2008,
43 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
44 employees.

45 d. An individual who is entitled to leave under the provisions
46 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or
47 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
48 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
49 family temporary disability leave pursuant to P.L.2008, c.17

1 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
2 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
3 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
4 U.S.C. s.2601 et seq.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et
5 al.) shall be construed to grant an employee any entitlement to be
6 restored by the employer to employment held by the employee prior
7 to taking family temporary disability leave or any right to take
8 action against an employer who refuses to restore the employee to
9 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
10 39.1 et al.) shall be construed to increase, reduce or otherwise
11 modify any entitlement of an employee to return to employment or
12 right of the employee to take action under the provisions of the
13 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
14 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
15 U.S.C. s.2601 et seq.). If an employee receives benefits for family
16 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
17 et al.) with respect to employment with an employer who is not an
18 employer as defined in the "Family Leave Act," P.L.1989, c.261
19 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
20 employee to employment after the period of family temporary
21 disability leave, that failure or refusal shall not be a wrongful
22 discharge in violation of a clear mandate of public policy, and the
23 employee shall not have a cause of action against that employer, in
24 tort, or for breach of an implied provision of the employment
25 agreement, or under common law, for that failure or refusal.

26 e. An employee taking family temporary disability leave or an
27 employer from whom the employee is taking the leave shall have
28 the same right to appeal a determination of a benefit for the family
29 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
30 et al.) as an employee or employer has to appeal a determination of
31 a benefit for the disability of the employee under the "Temporary
32 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
33 any regulations adopted pursuant to the "Temporary Disability
34 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

35 f. In the event of a period of family temporary disability leave
36 of any individual covered under the State plan, the employer shall,
37 not later than the ninth day of the period of family temporary
38 disability leave, or not later than the ninth day after the employee
39 notifies the employer of an anticipated period of family temporary
40 disability leave pursuant to subsection h. of this section, whichever
41 comes first, including any waiting period or time in which the
42 employer provides sick leave, vacation or other fully paid leave,
43 issue to the individual and to the division printed notices on
44 division forms containing the name, address and Social Security
45 number of the individual, such wage information as the division
46 may require to determine the individual's eligibility for benefits,
47 including any sick pay, vacation or other fully paid time off
48 provided by the employer during the period of family temporary
49 disability leave, and the name, address, and division identity

1 number of the employer. Not later than 30 days after the
2 commencement of the period of family temporary disability leave
3 for which the notice is furnished by the employer, the individual
4 shall furnish to the division a notice and claim for family temporary
5 disability leave benefits. Upon the submission of the notices by the
6 employer and the individual, and the commencement of the
7 compensable portion of the family temporary disability leave
8 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may
9 issue benefit payments. In the case of family temporary disability
10 leave taken to care for a family member with a serious health
11 condition, the benefits may be paid for periods not exceeding three
12 weeks pending the receipt of the certification required pursuant to
13 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2).
14 Failure to furnish notice and certification in the manner above
15 provided shall not invalidate or reduce any claim if it shall be
16 shown to the satisfaction of the division not to have been
17 reasonably possible to furnish the notice and certification and that
18 the notice and certification was furnished as soon as reasonably
19 possible.

20 g. Each covered employer shall conspicuously post
21 notification, in a place or places accessible to all employees in each
22 of the employer's workplaces, in a form issued by regulation
23 promulgated by the commissioner, of each covered employee's
24 rights regarding benefits payable pursuant to this section. The
25 employer shall also provide each employee of the employer with a
26 written copy of the notification: (1) not later than 30 days after the
27 form of the notification is issued by regulation; (2) at the time of the
28 employee's hiring, if the employee is hired after the issuance; (3)
29 whenever the employee notifies the employer that the employee is
30 taking time off for circumstances under which the employee is
31 eligible for benefits pursuant to this section; and (4) at any time,
32 upon the first request of the employee.

33 h. With respect to any period of family temporary disability
34 leave commencing on or after January 1, 2018, if an individual
35 knows in advance when the period will commence, the individual
36 may notify the employer of the anticipated period of family
37 temporary disability leave and submit to the division a claim for
38 benefits for that period, which shall include a statement of when the
39 period will commence and any certification required pursuant to
40 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior
41 to, but not more than 60 days prior to, the date that the period will
42 commence. The division shall process that claim immediately and,
43 upon finding that the claim is valid, shall pay the benefit upon the
44 commencement of the period of family temporary disability leave
45 or after any applicable one week waiting period, except that if
46 division receives the claim less than 30 days before the
47 commencement of the period, the division shall make the payment
48 not more than 30 days after the receipt of the claim. The periods of
49 family temporary disability leave to which the provisions of this

1 subsection apply shall include, but not be limited to, any of the
2 following if the commencement date of the leave is known in
3 advance: periods of leave for care of a child of the individual after
4 adoption or childbirth; periods of leave for scheduled medical
5 procedures, treatments, or appointments for a family member of the
6 individual; and periods of leave for scheduled ongoing care of a
7 family member of the individual. If the individual did not establish
8 enough base weeks or have enough total earnings during the 52
9 weeks preceding the week the individual submits the claim, the
10 division shall notify the individual that the individual may file the
11 claim again upon or after the commencement of the period of
12 family temporary disability leave and the division shall then
13 reconsider the individual's eligibility for benefits based on the 52
14 weeks preceding the week in which the period of family temporary
15 disability leave commences.

16 (cf: P.L.2008, c.17, s.10)

17

18 3. Section 17 of P.L.1948, c.110 (C.43:21-41) is amended to
19 read as follows:

20 17. (a) (Deleted by amendment, P.L.1975, c.355.)

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

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

23 (d) (1) (Deleted by amendment, P.L.2008, c.17).

24 (2) With respect to periods of disability commencing on or after
25 January 1, 2001, no individual shall be entitled to benefits under
26 this act unless the individual has, within the 52 calendar weeks
27 preceding the week in which the individual's period of disability
28 commenced, or within the 52 weeks preceding the week in which
29 the individual submits a claim for benefits pursuant to subsection h.
30 of section 10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of
31 subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49),
32 established at least 20 base weeks or earned not less than 1,000
33 times the minimum wage in effect pursuant to section 5 of
34 P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar year
35 preceding the calendar year in which the disability commences,
36 which amount shall be adjusted to the next higher multiple of
37 \$100.00, if not already a multiple thereof. If an individual who
38 submits a claim for benefits pursuant to subsection h. of section 10
39 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a)
40 of section 25 of P.L.1948, c.110 (C.43:21-49) did not establish
41 enough base weeks or have enough total earnings during the 52
42 weeks preceding the week the individual submits the claim, the
43 division shall notify the individual that the individual may file the
44 claim again upon or after the commencement of the period of
45 disability or family temporary disability leave and the division shall
46 then reconsider the individual's eligibility for benefits based on the
47 52 weeks preceding the week in which the period of disability or
48 family temporary disability leave commences.

1 (e) With respect to a period of family temporary disability leave
2 for an individual who has a period of family temporary disability
3 immediately after the individual has a period of disability for the
4 individual's own disability, the period of disability is deemed, for
5 the purposes of specifying the time of the 52-week period in which
6 base weeks or earnings are required to be established for benefit
7 eligibility pursuant to this subsection (e), to have commenced at the
8 beginning of the period of disability for the individual's own
9 disability, not the period of family temporary disability.
10 (cf: P.L.2008, c.17, s.7)

11

12 4. Section 25 of P.L.1948, c.110 (C.43:21-49) is amended to read
13 as follows:

14 25. (a) (1) Every employer shall post, in prominent locations,
15 notices to employees in the form provided by the division of
16 whether the employer is permitted or required to participate in a
17 temporary disability benefits program pursuant to the "Temporary
18 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and
19 whether the employer does or does not participate. For employers
20 who participate in a temporary disability benefits program, the
21 notice shall also describe the temporary disability benefits available
22 to the employees and prominently disclose that pregnancy is
23 regarded by law as a disability and that pregnant employees are
24 regarded as disabled and entitled to temporary disability benefits to
25 the same extent as other disabled employees. Upon the request of
26 an employer, the division shall, without charge, provide the
27 employer with a copy of each applicable notice, suitable for
28 reproduction by the employer. Each employer participating in the
29 State plan or a private plan shall give a printed copy of benefit
30 instructions to any disabled employee as soon as the employer
31 becomes aware of the disability.

32 (2) In addition, in the event of the disability of any individual
33 covered under the State plan, the employer shall, **[on] not later than**
34 **the ninth day of disability, or not later than the ninth day after the**
35 **individual notifies the employer of an anticipated period of**
36 **disability pursuant to paragraph (3) of this section, whichever**
37 **comes first,** issue to the individual and to the division printed
38 notices on division forms containing the name, address and Social
39 Security number of the individual, such wage information as the
40 division may require to determine the individual's eligibility for
41 benefits, and the name, address, and division identity number of the
42 employer. Not later than 30 days after the commencement of the
43 period of disability for which such notice is furnished, the
44 individual shall furnish to the division a notice and claim for
45 disability benefits under the State plan or for disability during
46 unemployment. Upon the submission of such notices by the
47 employer and the individual, **and the commencement of the**
48 **compensable portion of the disability leave pursuant to the**
49 **"Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25**

1 et seq.), the division may issue benefit payments for periods not
2 exceeding three weeks pending the receipt of medical proof. When
3 requested by the division, such notice and proof shall include
4 certification of total disability by the attending physician, or a
5 record of hospital confinement. Failure to furnish notice and proof
6 within the time or in the manner above provided shall not invalidate
7 or reduce any claim if it shall be shown to the satisfaction of the
8 division not to have been reasonably possible to furnish such notice
9 and proof and that such notice and proof was furnished as soon as
10 reasonably possible.

11 (3) With respect to any period of disability commencing on or
12 after January 1, 2018, if an individual knows in advance when the
13 period will commence, the individual may notify the employer of
14 the anticipated period of disability and submit to the division a
15 claim for benefits for that period, which shall include a statement of
16 when the period will commence and any certification requested by
17 the division pursuant to this section, prior to, but not more than 60
18 days prior to, the date on which the period will commence. The
19 division shall process that claim immediately and, upon a finding
20 that the claim is valid, shall pay the benefit upon the
21 commencement of the period or after any applicable one week
22 waiting period, except that if the division receives the claim less
23 than 30 days before the commencement of the period, the division
24 shall make the payment not more than 30 days after the receipt of
25 the claim. The periods of disability leave to which the provisions of
26 this paragraph apply shall include, but not be limited to, any of the
27 following if the commencement date of the leave is known in
28 advance: disability related to pregnancy or childbirth; disability
29 related to scheduled medical procedures, treatments, or
30 appointments for the individual; and disability related to scheduled
31 ongoing care of the individual. If an individual did not establish
32 enough base weeks or have enough total earnings during the 52
33 weeks preceding the week the individual submits the claim for
34 benefits, the division shall notify the individual that the individual
35 may file the claim again upon or after the commencement of the
36 period of disability and the division shall then reconsider the
37 individual's eligibility for benefits based on the 52 weeks preceding
38 the week in which the period of disability commences.

39 (b) A person claiming benefits under the State plan or for
40 disability during unemployment shall, when requested by the
41 division, submit at intervals, but not more often than once a week,
42 to an examination by a legally licensed physician, dentist,
43 podiatrist, chiropractor, certified nurse midwife, advanced practice
44 nurse or public health nurse designated by the division. In all cases
45 of physical examination of a claimant, the examination shall be
46 made by a designee of the division, who shall be the same sex as the
47 claimant if so requested by the claimant. All such examinations by
48 physicians, dentists, podiatrists, chiropractors, certified nurse
49 midwives or nurses designated by the division shall be without cost

1 to the claimant and shall be held at a reasonable time and place.
2 Refusal to submit to such a requested examination shall disqualify
3 the claimant from all benefits for the period of disability in
4 question, except as to benefits already paid.

5 (c) All medical records of the division, except to the extent
6 necessary for the proper administration of this act, shall be
7 confidential and shall not be published or be open to public
8 inspection (other than to public employees in the performance of
9 their public duties) in any manner revealing the identity of the
10 claimant, or the nature or cause of disability nor admissible in
11 evidence in any action or special proceeding other than one arising
12 under this act.

13 (cf: P.L.2009, c.114, s.2)

14

15 5. This act shall take effect immediately, but its provisions
16 shall apply only to claims for benefits for periods of disability and
17 family temporary disability commencing on or after January 1,
18 2018.

19

20

21

STATEMENT

22

23 This bill permits individuals to submit temporary disability and
24 family temporary disability leave claims up to 60 days prior to the
25 commencement of leave if an individual knows in advance when
26 the leave will commence. Furthermore, this bill requires the
27 Division of Unemployment and Temporary Disability Insurance in
28 the Department of Labor and Workforce Development to pay the
29 benefit for such a claim upon the commencement of the leave. This
30 bill may apply to leaves that include, but are not limited to, the
31 following: a) periods of family temporary disability leave for care
32 of a child of the individual after adoption or childbirth, scheduled
33 medical procedures, treatments, or appointments for a family
34 member of the individual, and scheduled ongoing care of a family
35 member of the individual; and b) periods of temporary disability
36 leave related to pregnancy or childbirth, scheduled medical
37 procedures, treatments, or appointments for the individual, and
38 scheduled ongoing care of the individual.

39 Currently, the law does not explicitly prohibit a covered
40 individual from submitting a TDI or FLI claim prior to the
41 commencement of a leave. However, employers are not required to
42 provide the necessary information to determine the individual's
43 eligibility for TDI or FLI benefits until the ninth day following the
44 commencement of leave, and, therefore, the division cannot begin
45 to process a claim until such documentation is received.

46 This bill permits individuals covered under the State temporary
47 disability insurance (TDI) and family leave insurance (FLI)
48 programs, under circumstances in which the individual knows in
49 advance when the period of a FLI or TDI leave will commence, to

1 notify the employer of the anticipated period of leave and to apply
2 to the division for benefits for that leave prior to, but not more than
3 60 days prior to, the date that the leave will commence.
4 Furthermore, no later than nine days following the notification by
5 an individual of an anticipated period of leave, an employer is
6 required to submit to the individual and the division notices
7 containing such information as necessary to determine the
8 individual's eligibility for TDI and FLI benefits.

9 For such claims, the division must process the claim immediately
10 and, upon finding that the claim is valid, pay the benefit upon the
11 commencement of the leave or after any applicable one week
12 waiting period. However, if the division receives the claim less
13 than 30 days before the commencement of the leave, the division
14 shall make the benefit payment not more than 30 days after the
15 receipt of the claim. Under the bill, the TDI and FLI weekly benefit
16 for claims submitted prior to the commencement of the leave is
17 computed utilizing the individual's average weekly wage in relation
18 to when the individual submits the claim for benefits.

19 If an individual did not establish enough base weeks or have
20 enough total earnings during the 52 weeks preceding the week the
21 individual submits the claim to qualify for TDI or FLI benefits, the
22 division must notify the individual that the individual may file the
23 claim again upon or after the commencement of the leave, at which
24 point the division will reconsider the individual's eligibility for
25 benefits based on the 52 weeks preceding the commencement date
26 of the leave.

27 As claims processing times for both TDI and FLI claims have
28 slowed over recent years, covered individuals often receive their
29 initial benefit payments weeks after their leave has begun or even
30 after their leave has ended, causing financial hardship on claimants
31 and their families. The goal of this legislation is to prevent such
32 delays in payment by providing the division with advanced
33 notification in the case of claims in which the commencement date
34 is known prior to the period of leave; thereby allowing the division
35 sufficient time to process such claims and to issue benefit payments
36 upon the commencement of the leave.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1838

STATE OF NEW JERSEY

DATED: MAY 10, 2018

The Senate Labor Committee reports favorably Senate Bill No. 1838.

This bill permits individuals to submit temporary disability insurance (“TDI”) and family temporary disability leave insurance (also referred to as family leave insurance or “FLI”) claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the Department of Labor and Workforce Development to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following:

1. periods of FLI leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and
2. periods of TDI leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual’s eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the TDI and FLI programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual’s eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the

commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

As claims processing times for both TDI and FLI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended, causing financial hardship on claimants and their families. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave; thereby allowing the division sufficient time to process such claims and to issue benefit payments upon the commencement of the leave.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1838

STATE OF NEW JERSEY

DATED: JUNE 11, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1838.

This bill permits individuals to submit temporary disability insurance (“TDI”) and family temporary disability leave insurance (also referred to as family leave insurance or “FLI”) claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the Department of Labor and Workforce Development (DOLWD) to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following:

1. periods of FLI leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and
2. periods of TDI leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual’s eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the TDI and FLI programs, under circumstances in which the individual knows in advance when the period of TDI or FLI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual’s eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the

commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD's administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.

The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1838
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JUNE 26, 2018

SUMMARY

- Synopsis:** Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.
- Type of Impact:** Potential, One-time, State Expenditure Increase.
- Agencies Affected:** Department of Labor and Workforce Development (DOLWD)

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD’s administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.
- The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

BILL DESCRIPTION

This bill permits individuals to submit temporary disability insurance (“TDI”) and family temporary disability leave insurance (also referred to as family leave insurance or “FLI”) claims up to 60 days prior to the commencement of leave if an individual knows in advance when the leave will commence. Furthermore, this bill requires the DOLWD to pay the benefit for such a claim upon the commencement of the leave. This bill may apply to leaves that include, but are not limited to, the following:

1. periods of FLI leave for care of a child of the individual after adoption or childbirth, scheduled medical procedures, treatments, or appointments for a family member of the individual, and scheduled ongoing care of a family member of the individual; and

2. periods of TDI leave related to pregnancy or childbirth, scheduled medical procedures, treatments, or appointments for the individual, and scheduled ongoing care of the individual.

Currently, the law does not explicitly prohibit a covered individual from submitting a TDI or FLI claim prior to the commencement of a leave. However, employers are not required to provide the necessary information to determine the individual's eligibility for TDI or FLI benefits until the ninth day following the commencement of leave, and, therefore, the division cannot begin to process a claim until such documentation is received.

This bill permits individuals covered under the TDI and FLI programs, under circumstances in which the individual knows in advance when the period of a FLI or TDI leave will commence, to notify the employer of the anticipated period of leave and to apply to the division for benefits for that leave prior to, but not more than 60 days prior to, the date that the leave will commence. Furthermore, no later than nine days following the notification by an individual of an anticipated period of leave, an employer is required to submit to the individual and the division notices containing such information as necessary to determine the individual's eligibility for TDI and FLI benefits.

For such claims, the division must process the claim immediately and, upon finding that the claim is valid, pay the benefit upon the commencement of the leave or after any applicable one week waiting period. However, if the division receives the claim less than 30 days before the commencement of the leave, the division shall make the benefit payment not more than 30 days after the receipt of the claim. Under the bill, the TDI and FLI weekly benefit for claims submitted prior to the commencement of the leave is computed utilizing the individual's average weekly wage in relation to when the individual submits the claim for benefits.

If an individual did not establish enough base weeks or have enough total earnings during the 52 weeks preceding the week the individual submits the claim to qualify for TDI or FLI benefits, the division must notify the individual that the individual may file the claim again upon or after the commencement of the leave, at which point the division will reconsider the individual's eligibility for benefits based on the 52 weeks preceding the commencement date of the leave.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in a potential, likely insignificant, one-time increase in State administrative costs tied to changes in DOLWD's administrative procedures, such as modification of forms and training of staff. The specific magnitude of any expenditure increase will depend on DOLWD operating decisions, which the OLS cannot anticipate.

The OLS notes that the bill will not change the total amount of temporary disability insurance and family leave insurance benefits paid or the amount of benefits disbursed to an individual claimant. In allowing claimants to apply for benefits in advance of a known period of leave, the bill merely changes the order in which the DOLWD processes benefit claims.

The OLS notes that as claims processing times for TDI claims have slowed over recent years, covered individuals often receive their initial benefit payments weeks after their leave has begun or even after their leave has ended. The goal of this legislation is to prevent such delays in payment by providing the division with advanced notification in the case of claims in which the commencement date is known prior to the period of leave. This should give the division more time to process claims and allow the division to issue benefit payments sooner.

The OLS further notes that there has been a significant decline in the rate of use of TDI benefits. For instance, there were 144,618 eligible TDI claims in 1987, which was the peak year for the number of TDI claims, which represented 5.9 percent of the 2,449,200 workers covered by TDI that year. In the following years, the number of eligible claims declined even as the number of covered workers increased. By the calendar year 2016, 88,086 eligible claims were filed out of a covered worker population that had risen to 2,685,800, reducing the percentage of covered workers with eligible claims to 3.3 percent, which is 44 percent less than in 1987.

While the OLS cannot determine the reasons for this decline with any certainty, contributing factors to the growing delay of benefit payments, and possibly to the decline in the rate of use of TDI benefits should be noted. With that overarching caveat, these contributing factors may include, but may not need to be limited to, the rising portion of claims filed with insufficient data and that the TDI law does not require employers to provide needed wage data until after disability commences. While the OLS does not have sufficient information to forecast a potential impact on behavior as described above, it is possible that if the department is successful at increasing the rate by which covered individuals receive their benefit payments for TDI claims, the DOLWD may experience a long term shift in trend in the rate of usage of TDI benefits.

Section: Commerce, Labor and Industry

Analyst: Juan C. Rodriguez
Associate Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY BILL NO. 4118

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 4118 with my recommendations for reconsideration.

Assembly Bill No. 4118, Assembly Bill No. 2762 (First Reprint), Assembly Bill No. 2763 (First Reprint), and Senate Bill No. 844 all address various aspects of our temporary disability and family leave insurance systems. Assembly Bill No. 4118 permits individuals to submit temporary disability and family leave insurance claims related to pregnancy, childbirth and child care prior to the start of a known period of leave. This adjustment will help expedite the processing of benefit claims and ensure that workers receive more immediate financial backing.

I unequivocally support the expansion of these benefits for workers in the State, and will continue to work with the Legislature on future legislation addressing shortfalls in coverage, underutilization by vulnerable populations, and inequities in benefit administration. I have identified, however, significant issues with the infrastructure supporting these programs. As a result, I am concerned that these bills require changes that will render the Department of Labor and Workforce Development ("DOLWD") unable to administer the benefits contemplated by the bills, and will disrupt the timely delivery of all benefits managed by the system. I have recommended an extension of the effective dates of the bills to allow additional time for the Department to implement these measures.

In the interim, I have directed the DOLWD to work with the Office of Information Technology on coordinating a strategy for implementation and locating opportunities for much-needed modernization of the Department's computer systems.

Accordingly, I herewith return Assembly Bill No. 4118 and recommend that it be amended as follows:

Page 13, Section 5, Line 22: Delete "immediately" and insert "one year after the date of enactment"

Page 13, Section 5, Line 25: Delete "2018" and insert "2019"

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor

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Newark, N.J.

Governor Murphy Takes Action on Legislation

08/27/2018

TRENTON – Today, Governor Phil Murphy announced that he has conditionally vetoed the following bills:

A-764/S-365 (Caputo, Tucker, Quijano, Vainieri Huttle, Sumter, McKnight, Conaway, Houghtaling/Rice, Ruiz, Bucco) – "Alyssa's Law"; requires public school buildings to be equipped with panic alarm linked to local law enforcement.

[Copy of Statement on A764](#)

A-1053/S-1429 (Houghtaling, Taliaferro, Andrzejczak/Van Drew) – Revises and expands laws on trespass and vandalism on agricultural and horticultural lands.

[Copy of Statement on A1053](#)

A-2762/S-1317 (Greenwald, Mukherji, Conaway/Ruiz, Singleton) – Revises law concerning temporary disability leave.

[Copy of Statement on A2762](#)

A-2763/S-342 (Greenwald, Downey/Cruz-Perez) – Requires additional data in annual temporary disability and family leave insurance reports.

[Copy of Statement on A2763](#)

A-3676/S-2307 (Mazzeo, Armato, Giblin/Sweeney, Van Drew, C.A. Brown) – Creates Garden State Growth Zone at Atlantic City International Airport and surrounding area; adjusts full-time employee designation requirements.

[Copy of Statement on A3676](#)

A-3683/S-2416 (Murphy, McKnight, Jones/Madden, Vitale) – Authorizes parking privileges for certain healthcare workers who render care at patients' home residences.

[Copy of Statement on A3683](#)

A-3703/S-2549 (DeAngelo/Cryan, Sweeney) – Revises ownership standards and exemptions under HVACR license law.

[Copy of Statement on A3703](#)

A-3754/S-2510 (McKnight, Speight, Barclay/Madden, Pennacchio) – Exempts persons providing hair braiding services from licensure requirement, requires registration of hair braiding establishments.

[Copy of Statement on A3754](#)

A-3808/S-2418 (Greenwald, Bramnick, Murphy/Singleton, Oroho) – Provides for prompt payment of public contracts for purchase of goods and services.

[Copy of Statement on A3808](#)

A-4118/S-1838 (Swain, Tully, Murphy/Ruiz, Diegnan) – Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.

[Copy of Statement on A4118](#)

ACS for A-4181/S-2722 (Jones, Murphy/Cruz-Perez) – Requires establishment of common enrollment system in renaissance school district; expands definition of urban campus area; clarifies that employees of renaissance school projects are in State-administered retirement systems.

[Copy of Statement on A4181](#)

A-4230/S-2752 (Burzichelli, Mukherji, Houghtaling, Downey/Gopal, Sarlo) – Changes use of certain revenue derived from sports wagering at racetracks.

[Copy of Statement on A4230](#)

A-4261/S-2794 (Burzichelli, Moriarty, Conaway/Sweeney, Singleton) – Provides for collection of sales tax from certain remote sellers.

[Copy of Statement on A4261](#)

A-4262/S-2795 (Pintor Marin/Sweeney) – Decouples certain provisions of corporation business tax from Internal Revenue Code; alters dividends received deduction; revises tax base of surtax on corporation business income; repeals tax on certain dividends.

[Copy of Statement on A4262](#)

S-250/A-3190 (Van Drew, Gopal/Land, Andrzejczak, Armato) – Provides tax credit eligibility for qualified businesses at certain airports under Grow New Jersey Assistance Program.

[Copy of Statement on S250](#)

S-844/A-1980 (Turner, Cruz-Perez/Sumter, Mukherji, Pintor Marin, Wimberly) – Establishes a partial return to work TDI program.

[Copy of Statement on S844](#)

S-866/A-3294 (Sweeney, Vitale/Vainieri Huttel, Mukherji) – Extends eligibility for certain individuals for emergency assistance.

[Copy of Statement on S866](#)

S-2293/A-3902 (Sweeney, Oroho, Gordon, A.R. Bucco/Benson, Burzichelli, Lampitt) – "Securing Our Children's Future Bond Act"; authorizes issuance of \$1,000,000,000 in general obligation bonds to finance certain school, school district, and county college capital projects; appropriates \$5,000.

[Copy of Statement on S2293](#)

S-2758/A-4212 (Vitale, Ruiz/Coughlin) – Increases financial resources provided through Medicaid program for certain hospitals; Establishes County Option Hospital Fee Pilot Program.

[Copy of Statement on S2758](#)

Governor Murphy announced that he has absolute vetoed the following bills:

A-3267/S-2600 (Vainieri Huttle, Pinkin, McKeon/Ruiz, Smith, Weinberg) – Establishes fee on single-use carryout bags used in certain stores and dedicates fee revenue to "Healthy Schools and Community Lead Abatement Fund."

[Copy of Statement on A3267](#)

S-878/A-3084 (Madden, Sweeney, Singleton/Greenwald, Moriarty, Jones) – Restricts authority to terminate reciprocal personal income tax agreements with other states.

[Copy of Statement on S878](#)

S-2662/A-4113 (Sweeney, Bateman/Burzichelli) – Limits liability for persons who deliver heating oil to unregulated tanks for discharges from that tank under certain circumstances.

[Copy of Statement on S2662](#)

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Governor Phil Murphy

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[Snyder Murphy](#)

[Cabinet](#)

[Boards, Commissions](#)

[& Authorities](#)

[Internship](#)

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[Education](#)

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**GOVERNOR'S STATEMENT UPON SIGNING
ASSEMBLY BILL NO. 4118
(First Reprint)**

Assembly Bill No. 4118 (First Reprint), which I have signed today, will permit individuals to submit temporary disability and family leave insurance claims related to pregnancy, childbirth, and child care prior to the start of a known period of leave. This adjustment will help expedite the processing of benefits claims and ensure that workers receive timely financial backing.

I commend the Legislature for working to address the difficult challenges facing these workers in our State. I further appreciate the Legislature's willingness to afford the Department of Labor and Workforce Development additional time to execute this important initiative. In light of its significance, I am committed to ensuring that this measure is implemented as expeditiously as possible.

Date: October 4, 2018

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



Home Administration ▾ Key Initiatives ▾ News and Events ▾ Social ▾ Contact Us ▾

Newark, N.J.

Governor Murphy Takes Action on Legislation

10/4/2018

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A1053 w/GR (Houghtaling, Taliaferro, Andrzejczak/Van Drew) – Revises and expands laws on trespass and vandalism on agricultural and horticultural lands.

A2762 w/GR (Greenwald, Mukherji, Conaway/Ruiz, Singleton) – Revises law concerning temporary disability leave.

[Copy of Statement on A2762 w/GR](#)

A2763 w/GR (Greenwald, Downey, Pintor Marin/Cruz-Perez) – Requires additional data in annual temporary disability and family leave insurance reports.

[Copy of Statement on A2763 w/GR](#)

A3683 w/GR (Murphy, McKnight, Jones/Madden, Vitale) – Authorizes parking privileges for certain healthcare workers who render care at patients' home residences.

A3703 w/GR (DeAngelo/Cryan, Sweeney) – Revises ownership standards and exemptions under HVACR license law.

A3754 w/GR (McKnight, Speight, Barclay/Madden) – Exempts persons providing hair braiding services from licensure requirement, requires registration of hair braiding establishments.

A3808 w/GR (Greenwald, Bramnick, Murphy/Singleton, Oroho) – Provides for prompt payment of public contracts for purchase of goods and services.

A4118 w/GR (Swain, Tully, Murphy/Ruiz, Diegnan) – Permits individuals to submit TDI and family temporary disability leave claims to DOLWD prior to commencement of leave under certain circumstances and requires timely payment of benefits for such claims.

[Copy of Statement on A4118 w/GR](#)

A4181 w/GR (Jones, Murphy/Cruz-Perez) – Clarifies that employees of renaissance school projects are in State administered retirement systems.

[Copy of Statement on A4181 w/GR](#)

A4230 w/GR (Burzichelli, Mukherji, Houghtaling, Downey/Gopal, Sarlo) – Changes use of certain revenue derived from sports wagering at racetracks.

A4495 (Pintor Marin/Sarlo, Singleton) – Amends provisions regarding tax base and operative dates relative to CBT and combined reporting; provides CBT deduction in amount of certain foreign-related income; clarifies tax treatment of certain tax credits awarded by EDA.
[Copy of Statement on A4495](#)

A4496 (Burzichelli, Moriarty/Singleton) – Provides for collection of sales tax by marketplace facilitators and certain remote sellers, and clarifies collection of taxes related to hotel and transient accommodation occupancies.

[Back to Top](#)

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Governor Phil Murphy

Statewide

Home

Administration

- Governor Phil Murphy
- Lt. Governor Sheila Oliver
- First Lady Tammy Snyder Murphy
- Cabinet
- Boards, Commissions & Authorities
- Internship
- Opportunities
- Governor's Residence - Drumthwacket

Key Initiatives

- Economy & Jobs
- Education
- Environment
- Health
- Law & Justice
- Transportation

News & Events

- Press Releases
- Public Addresses
- Executive Orders
- Statements on Legislation
- Administration Reports
- Transition Reports
- Press Kits

Social

- Facebook
- Twitter
- Instagram
- Snapchat
- YouTube

Contact Us

- Scheduling Requests
- Contact Us

[NJ Home](#)

[Services A to Z](#)

[Departments/Agencies](#)

[FAQs](#)

[Contact Us](#)

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[Legal Statement &](#)

[Disclaimers](#)

[Accessibility](#)

[Statement](#)



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