# SENATE, No. 2304

# STATE OF NEW JERSEY

## 219th LEGISLATURE

INTRODUCED MARCH 19, 2020

**Sponsored by:**
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**Co-Sponsored by:**
**Senators Ruiz, Brown, Assemblywoman Jasey, Assemblymen Verrelli, Zwicker, Assemblywoman Downey, Assemblyman Benson and Assemblywoman McKnight**

**SYNOPSIS**

Concerns family leave and disability benefits during epidemic-related emergencies.

**CURRENT VERSION OF TEXT**

As introduced.

**AN ACT** concerning family leave and disability benefits and amending various parts of the statutory law.

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

1. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read as follows:

3. a. An employer shall permit an employee to use the earned sick leave accrued pursuant to this act for any of the following:

(1) time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;

(2) time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;

(3) absence necessary due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee to obtain for the employee or the family member: medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; services from a designated domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence;

(4) time during which the employee is not able to work because of:

(a) a closure of the employee's workplace, or the school or place of care of a child of the employee by order of a public official or because of a state of emergency declared by the Governor, due to an epidemic or other public health emergency **[**, or because of**]**;

(b) the declaration of a state of emergency by the Governor, or the issuance by a health care provider or the Commissioner of Health or other public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would

official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others; or

(5) time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

b. If an employee's need to use earned sick leave is foreseeable, an employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin, of the intention to use the leave and its expected duration, and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. If the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable, if the employer has notified the employee of this requirement. Employers may prohibit employees from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates. For earned sick leave of three or more consecutive days, an employer may require reasonable documentation that the leave is being taken for the purpose permitted under subsection a. of this section. If the leave is permitted under paragraph (1) or (2) of subsection a. of this section, documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation. If the leave is permitted under paragraph (3) of subsection a. of this section because of domestic or sexual violence, any of the following shall be considered reasonable documentation of the domestic or sexual violence: medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic

official or the determination by the health authority shall be considered reasonable documentation.

c. Nothing in this act shall be deemed to require an employer to provide earned sick leave for an employee's leave for purposes other than those identified in this section, or prohibit the employer from taking disciplinary action against an employee who uses earned sick leave for purposes other than those identified in this section. An employer may provide an offer to an employee for a payment of unused earned sick leave in the final month of the employer's benefit year. The employee shall choose, no later than 10 calendar days from the date of the employer's offer, whether to accept a payment or decline a payment. If the employee agrees to receive a payment, the employee shall choose a payment for the full amount of unused earned sick leave or for 50 percent of the amount of unused earned sick leave. The payment amount shall be based on the same rate of pay that the employee earns at the time of the payment. If the employee declines a payment for unused earned sick leave, or agrees to a payment for 50 percent of the amount of unused sick leave, the employee shall be entitled to carry forward any unused or unpaid earned sick leave to the proceeding benefit year as provided pursuant to subsection a. of section 2 of this act. If the employee agrees to a payment for the full amount of unused earned sick leave, the employee shall not be entitled to carry forward any earned sick leave to the proceeding benefit year pursuant to subsection a. of section 2 of this act.

d. If an employer foregoes the accrual process for earned sick leave hours pursuant to subsection a. of section 2 of this act and provides an employee with the full complement of earned sick leave for a benefit year on the first day of each benefit year, then the employer shall either provide to the employee a payment for the full amount of unused earned sick leave in the final month of the employer's benefit year or carry forward any unused sick leave to the next benefit year. The employer may pay the employee the full amount of unused earned sick leave in the final month of a benefit year pursuant to this subsection only if the employer forgoes, with respect to that employee, the accrual process for earned sick leave during the next benefit year. Unless an employer policy or collective bargaining agreement provides for the payment of accrued earned sick leave upon termination, resignation, retirement or other separation from employment, an employee shall not be entitled under this section to payment of unused earned sick leave

the affected employee or with the written permission of the affected employee.
(cf: P.L.2018, c.10, s.3)

2. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to read as follows:

3. As used in this act:

a. "Child" means a biological, adopted, foster child, or resource family child, stepchild, legal ward, or child of a parent, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>During a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, “serious health condition" shall also include</u>

the community of a family member may jeopardize the health of others; and

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

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

(cf: P.L.2019, c.37, s.1)

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

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

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

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

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

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

e. An employer may require that any period of family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the director to be capable of providing adequate certification.

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

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

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

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

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

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

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

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

<u>The provisions of this subsection shall not apply when the family leave is due to a health care provider, the Commissioner of Health or other authorized public official having ordered, directed, or recommended that a family member of the employee in need of care by the employee be isolated or quarantined, or is due to a place of</u>

this section, the employee shall return to work within 10 working days of the date of notification.
(cf: P.L.2019, c.37, s.2)

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

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

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

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

(2) Any governmental entity or instrumentality which is an

shall remain in effect for at least two full calendar years and may be terminated as of January 1 of any year thereafter by filing with the division a written notice of termination at least 30 days prior to the termination date.

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

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

(2) "Covered individual" means, with respect to whether an individual is eligible for benefits during the individual's period of

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

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

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

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

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

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

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

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

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

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

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

(4) "Base week" with respect to periods of disability commencing on or after January 1, 2001, means any calendar week of a covered individual's base year during which the covered individual earned in employment from a covered employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which

individual earns remuneration equal to not less than the amount defined in this paragraph during that week.

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

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

(2) With respect to the payment of benefits commencing before the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the computation in paragraph (1) of this subsection (j) yields a result which is less than the individual's average weekly earnings in employment with all covered employers during the base weeks in such eight calendar weeks, then the average weekly wage shall be computed on the basis of earnings from all covered employers during the base weeks in the eight calendar weeks immediately preceding the week in which the period of disability commenced, and, with respect to the payment of benefits commencing on or after the effective date of P.L.2019, c.37 (C.43:21-45.2 et al.), if the computation in paragraph (1) of this subsection (j) yields a result

10 of P.L.2008, c.17 (C.43:21-39.1) or paragraph (3) of subsection (a) of section 25 of P.L.1948, c.110 (C.43:21-49).

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

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

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

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

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

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

(o) "Family temporary disability leave" means leave taken by a

of the individual, is a biological parent of the child, or is a parent of the child pursuant to a valid gestational carrier agreement, or the first 12 months after the placement of the child for adoption or as a foster child with the individual; or

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

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

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

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

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

(s) "Serious health condition" means an illness, injury, impairment or physical or mental condition which requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing medical treatment or continuing supervision by a health care provider. <u>During a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, “serious health condition" shall also include an illness caused by an epidemic of a</u>

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

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

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

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

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

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

5. Compensable disability.

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

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

<u>(c) During a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, "sickness" also includes an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of the employee or family member of the employee due to:</u>

<u>(1) the issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of the family member or employee may jeopardize the health of others; and</u>

<u>(2) the recommendation, direction, or order of the provider or authority that the employee or family member be isolated or quarantined as a result of suspected exposure to a communicable disease.</u>

(cf: P.L.2019, c.464, s.1)

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

disability continues; and if benefits shall be payable for three consecutive weeks with respect to any period of disability commencing on or after January 1, 1968, then benefits shall also be payable with respect to the first seven days thereof. With respect to any period of disability for an individual's own disability commencing on or after the effective date of P.L. , c. (pending before the Legislature as this bill) the disability benefits shall be payable with respect to the first day of the disability, if the disability is for a sickness as described in subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29).

b. With respect to any period of family temporary disability leave commencing on or after July 1, 2009 and while an individual is a covered individual, family temporary disability benefits, not in excess of the individual's maximum benefits, shall be payable with respect to the first day of leave taken after the first one-week period following the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave; and if benefits become payable on any day after the first three weeks in which leave is taken, then benefits shall also be payable with respect to any leave taken during the first one-week period in which leave is taken. With respect to any period of family temporary disability leave commencing on or after July 1, 2019 and while an individual is a covered individual, family temporary disability benefits, not in excess of the individual's maximum benefits, shall be payable with respect to the first day of leave taken upon the commencement of the period of family temporary disability leave and each subsequent day of leave during that period of family temporary disability leave. The maximum total benefits payable to any eligible individual for any period of disability of the individual commencing on or after January 1, 1968, shall be either 26 times his weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that such maximum amount shall be computed in the next lower multiple of $1.00 if not already a multiple thereof. The maximum total benefits payable to any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2009 and before July 1, 2020, shall be six times the individual's weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that the maximum amount shall be computed in the next lower multiple of $1.00, if not already a multiple thereof. The maximum total benefits payable to

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

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

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

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

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

(3) in the case of an individual taking family temporary disability leave, there shall be no waiting period; **[**and**]**

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

<u>(5) the seven-day waiting period shall not apply to benefits for a period of disability if the disability is for a sickness as described in subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29);</u>

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

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

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

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

practitioner's knowledge or for any period of family temporary disability leave for a serious health condition of a family member of the claimant, during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility or is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice, the serious health condition of the family member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge;

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

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

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

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

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

(j) for any period during which the claimant receives any paid sick leave, vacation time or other leave at full pay from the employer of the individual;

and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in P.L.1948, c.110 (C.43:21-25 et al.).

(cf: P.L.2019, c.464, s.2)

The bill expands the scope of the State's temporary disability insurance (TDI) law, P.L.1948, c.110 (C.43:21-25 et al), so that workers may obtain TDI or family leave insurance (FLI) benefits by expanding that law's definition of a "serious health condition" for which a worker may obtain the benefits, either for the worker's own condition in the case of TDI benefits, or for the condition of a family member of the worker cared for by the worker in the case of FLI benefits. The bill states that during a state of emergency declared by the Governor, or, as found to be needed by the Commissioner of Health or other public health authority, a "serious health condition" includes an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which:

1. in the case of FLI benefits, prompts the issuance by a public health authority of a determination that the presence in the community of the worker's family member in need of care by the worker, would jeopardize the health of others; or

2. in the case of FLI or TDI benefits, results in the recommendation of a healthcare provider or public health authority that a worker, or a family member of the worker in need of care by the worker, voluntarily undergo self-isolation or self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that worker or family member would jeopardize the health of others.

The bill also eliminates the current one-week waiting period for disability benefits in the indicated epidemic-related cases.

The bill modifies the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) so that the rights to reinstatement to employment provided to workers by that act are applied to the epidemic-related cases indicated in the bill, and modifies P.L.2018, c.10 (C.34:11D-1) so that the earned sick leave provided by that law is provided in all of the epidemic-related cases indicated in the bill.