

2013 DRAFTING REQUEST

Bill

Received: **2/13/2014**
 Wanted: **Soon**
 For: **Sondy Pope (608) 266-3520**
 May Contact:
 Subject: **Employ Priv - family leave**

Received By: **gmalaise**
 Same as LRB:
 By/Representing: **Tom McCarthy**
 Drafter: **gmalaise**
 Addl. Drafters:
 Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Pope@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Paid family leave

Instructions:

See attach--set up a program of paid family leave similar to New Jersey's

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 2/14/2014	evinz 2/25/2014					
/1			jmurphy 2/25/2014		mbarman 2/25/2014	lparisi 3/4/2014	State

FE Sent For:

→ At Intro

<END>

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1?	gmalaise	1/1 eev 2/10/14 24/14	1/1 eev 2/24/14				
FE Sent For:							

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New Jersey Enacts Paid Family Leave Law

New Jersey Governor Jon Corzine has just signed a new law that provides New Jersey employees with up to six weeks of paid leave to care for seriously ill family members, newborns or newly adopted children. The new family leave benefits will be funded through an increase in employee payroll taxes.

Introduction

Federal and many state laws (including New Jersey) allow eligible employees to take unpaid leave to care for a seriously ill relative, a newborn or a newly adopted child. Because many employees are financially unable to take unpaid leave, the DOL issued regulations in 2000 permitting states to establish programs that would allow employees to receive payments from the state unemployment system when taking a family leave. In 2004, California was the first state to implement such a program (see our October 2, 2002 *For Your Information*). Washington State enacted a law last year, establishing a program that is slated to go into effect in October 2009. New Jersey has now become the third state to enact a paid family leave law.

New Jersey Paid Family Leave Law

The New Jersey law gives employees up to six weeks of paid leave in any 12-month period to care for a seriously ill family member or to care for or bond with a new child. The leave benefits will be paid through the state's existing Temporary Disability Insurance (TDI) program and will be funded by a new tax on employee wages, beginning January 1, 2009.

BUCK COMMENT. *The new law defines family members more broadly than under the state's unpaid leave law, and includes a child, spouse, parent, domestic partner or civil union partner, as well as a child of such partners.*

Unlike the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (NJFLA) which apply to employers with 50 or more employees, the new paid leave law covers all employers subject to the New Jersey unemployment compensation laws, regardless of size. Since the paid leave law contains no job protections, only employers subject to FMLA or NJFLA must reinstate employees upon their return from leave. Like NJFLA but unlike FMLA, the new law does not cover leave for an employee's own serious health condition.

The paid leave law does not alter an employee's rights under FMLA or NJFLA. If the employee is eligible for unpaid leave under federal or state law, paid leave under the new law would run concurrently with that leave. Thus, the first six weeks of the employee's leave would be paid under the new law, and leave thereafter would be unpaid.

Employees seeking paid family leave must apply in the same manner as those seeking disability pay under New Jersey law. As with the state's TDI program, employers may opt to provide their own paid family leave plan provided the costs and benefits are at least as favorable to employees as the state's plan.

Benefits and Eligibility

To be eligible for benefits under the new law, New Jersey employees need only be employed as defined under the state's unemployment compensation law (i.e., worked at least 20 weeks in covered New Jersey employment or earned at least 1,000 times the applicable minimum wage during the prior year). The minimum employment thresholds under the FMLA and NJFLA are more stringent (i.e., 12 months of employment with an employer and worked at least 1,250 hours for federal law purposes or 1,000 hours for state law purposes during the 12 months immediately preceding leave). Thus, an employee may be eligible to take up to six weeks of paid family leave but remain ineligible for unpaid leave.

Beginning July 1, 2009, employees are eligible for benefits after a one-week waiting period. If the leave period extends beyond three weeks, benefits for the waiting period may be paid retroactively. Eligible employees will receive up to two-thirds of their salary capped at \$524 per week during the leave period. No more than six weeks of benefits will be paid within any 12-month period. Employers may permit or require an employee to use up to two weeks of available sick pay, vacation, or other employer paid leave before the new benefits are payable, which will reduce the paid leave under the new law. An individual may use any available paid leave during the one-week waiting period preceding the start of the paid family leave benefits.

Serious Health Conditions and Certifications

Consistent with the NJFLA, the paid family leave law defines a serious health condition as an illness, injury, impairment, or physical or mental condition which requires inpatient care, continuing medical treatment or supervision. When leave is taken to care for an employee's seriously ill family member, the employee must provide certification by a health care provider describing the nature and duration of the family member's medical condition, the need for the employee's participation in providing care and how much time the employee will need for such care.

Taking Leave

Under the new law, leave to care for a family member with a serious health condition can be taken in a single, continuous period or intermittently, when medically necessary. If taken intermittently, leave is limited to a total of 42 days per year. For the birth or adoption of a child, leave must occur within 12 months after the birth or adoption and must be taken in a single continuous period unless the employer agrees otherwise.

Employer Notice Requirements

The law requires the New Jersey Commissioner of Labor to develop a notice to apprise employees of their benefit rights, which employers must post and distribute within 30 days after its issuance. A written notice must also be

provided upon the hire of a new employee, whenever an employee notifies the employer of an intended leave covered by the new law, and upon an employee's request.

Within nine days after an employee's paid family leave begins, the employer must send a notice containing specified personal and compensation information to the New Jersey Division of Temporary Disability Insurance and to the employee.

Employee Notice Requirements

An employee wishing to take leave for the birth or adoption of a child must notify the employer 30 days before taking leave or else forgo two weeks of paid benefits. This penalty would not apply if the leave was due to unforeseeable circumstances. An employee seeking leave to care for a sick family member should provide 15 days' notice for intermittent leave unless the need is unforeseeable. The employee must also submit a claim for benefits to the Division of Temporary Disability Insurance within 30 days after the leave begins.

Funding

As noted above, benefits will be funded entirely by employee payroll taxes. In 2009, employees will be taxed at a rate of 0.09% on wages up to the limit for temporary disability insurance (currently \$27,700), rising to 0.12% in 2010. Thus, the maximum annual tax would be about \$25 per employee in 2009 and \$33 in 2010.

BUCK COMMENT. *Although employers do not currently have any payroll tax obligations, there is concern that they may ultimately be required to contribute if employees' payroll deductions are not sufficient to fund the benefits.*

Effective Date

Employees will be subject to the new payroll deductions beginning on January 1, 2009, but benefits first become payable for family leave that commences on or after July 1, 2009.

Conclusion

The New Jersey paid family leave benefit is to be funded through a new payroll tax on employees, but it will have significant implications for New Jersey employers. Employers should review their current absence management practices, consider how they will administer the new law along with other leave laws, and prepare to put processes in place to do so. Buck's consultants are available to help you comply with the new law.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.



New Jersey School Boards Association

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PAID FAMILY LEAVE

In April of 2008, Gov. Corzine signed, A-873, the Paid Family Leave bill. The law extends the State's temporary disability insurance program (TDI) to provide paid family leave benefits. It allows for up to six weeks of paid leave to care for a new child or a family member with a serious medical condition. The law affects all employers, including schools that are subject to the State's unemployment compensation law. It will be financed by deductions from employee's paychecks, which will start on January 1, 2009. Employees will be eligible to take the leave starting July 1, 2009.

This document has been prepared by NJSBA staff to assist board of education members, business administrators, chief school administrators and others in the implementation of Family Temporary Disability Leave (FTD). This FAQ includes anticipated questions about the Act's requirements and the most recent information available from responsible agencies.

Please be advised that in an attempt to provide the most up-to-date information possible, NJSBA has created this FAQ for informational purposes only. Regulations for Family Temporary Disability Leave, when published, may change the information contained in this document. Please consult with your board attorney for the most recent information.

1. How is FTD funded?

It is funded through mandatory employee contributions to the "Family Temporary Disability Leave Account," which is part of the state-run Temporary Disability Insurance Fund.

2. How much are employees required to contribute?

Starting in January of 2009, employees will be required to contribute 0.09% of their pay (rising to .12% in 2010). The Department of Labor has estimated that it will cost the average employee \$30 per year. There is no direct employer cost. See also Q&A #7.

3. Are school district employees covered by the Act?

Yes, every employer, including school districts, whose employees are covered under the Unemployment Insurance Law, is a covered employer for purposes of FTD. Unlike state FLA and Federal FMLA, employers with less than 50 employees are not exempted.

4. Which employees are eligible?

An employee is eligible to take the leave if in the past 52 weeks the employee has worked at least 20 weeks at minimum wage (20 x \$143/ week) or 2) earned 1000 times the minimum wage (\$7,200). Individuals are eligible if they are employed or have left their jobs within the preceding 2 weeks.

5. How much are employees paid when out on FTD?

The weekly benefit is the same as it is under the State's TDI program (2/3 of weekly compensation up to a maximum of \$524 per week).

6. Who pays the employee?

Unless the employee is using his or her own paid leave (see also Q&A # 17), the employee is paid from the "Family Temporary Disability Leave Account" of the Temporary Disability Insurance Fund. This fund is administered by the New Jersey Department of Labor and Workforce Development.

7. What are the costs to employers?

While there is no direct cost to employers, there are undoubtedly indirect costs. First and foremost, the additional incentive to take leave could have a detrimental effect on the continuity of the delivery of educational services to students. Any additional teacher absences will result in substitute costs. Additional indirect costs include mandated record keeping and compliance costs.

8. Under FTD, how much leave may an eligible employee take?

An employee may take up to 6 weeks in a 12 month period.

9. For what purposes can employees take FTD?

An employee may take leave to "provide care" for "family members" with "serious medical conditions." An employee may also take leave to care for a new child.

10. May the FTD leave be used on an intermittent basis?

Yes, eligible employees may take up to 42 days of intermittent leave. Evidently, the 42 day entitlement is based on a 7 day calendar week. In contrast, under the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA), the intermittent entitlement is based on a 5 day work week rather than the 7 day calendar week. Intermittent leave may be taken to care for a family member with a serious medical condition. It may only be taken for a new child if the employer agrees. Under FTD, intermittent leave may not be taken in units of less than one day.

11. What is a serious medical condition, under the law?

"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." This definition is the same as the definition under the state's unpaid family leave (FLA).

12. Is there any qualification on when an employee may take leave for a new child?

Yes, the leave *must be taken* within the first 12 months after the birth or adoption placement. Note this is different from the requirement in the state's FLA entitlement. Under FLA, the leave *must start* within one year of birth or adoption.

13. Who are family members under FTD?

"Family members" are defined as child, spouse, domestic / civil union partner or parent (biological, foster, adoptive or legal guardian when employee was a child) of the covered individual. This definition is substantially similar to the state unpaid (FLA) definition. Note, however, unlike FLA, FTD does not allow leave to care for parents-in-law.

14. How is child defined under the law?

"Child" means a biological, adopted or foster child, stepchild or legal ward of a covered individuals, child of a domestic/ civil union partner of a covered individual, who is less than 19 years old, or who is 19 years old or older and incapable of self care because of mental or physical impairment.

15. When may an employee take the leave?

There is a one week waiting period before an eligible employee will be paid under FTD. This means that if there is a qualifying event, the employee must be out of work for one week, before FTD starts to pay benefits. Note that there is no waiting period if the employee takes FTD immediately after being out on Temporary Disability Insurance (TDI). Once the employee completes the third week of leave (including the 1 week waiting period) then FTD benefits are payable for the one week waiting period and the one week waiting period is counted toward the 6 week entitlement.

16. Does the FTD entitlement run concurrently with the federal Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)?

Yes. If the employee is eligible for FLA or FMLA, the employee must take paid FTD concurrently with those leaves.

17. Can the employer require the employee to take accrued paid leave during the one week waiting period?

Yes, the employer may permit or require the employee to use available sick days (including the 10 days provided under N.J.S.A. 18A:30-2), vacation or other paid leave, prior to receiving FTD benefits. Employers, however, may not require employees to use more than 2 weeks of paid leave. If the employer requires the employee to use paid leave, the employer must allow the employee to use paid leave during the one week waiting period.

18. If the employee does use paid leave, is that time deducted from his or her 6 week FTD entitlement?

Yes, employers may count that time towards the 6 week FTD entitlement.

19. Is FTD affected by a district's collective bargaining agreement (CBA)?

The law specifically states that the law will not prevent "any new provision of a collective bargaining agreement or employer policy, which provides employees more generous leave or gives employees greater rights to select which kind of leave is used or the order in which the different kinds of leave are used." Thus, if there are more generous provisions in your CBA, the negotiated provisions will control.

20. What notice must an employee give to take the leave?

The employee must provide 30 days' notice for leave for a new child. For leave requested for the care of a seriously ill family member the employee must give prior notice in a reasonable and practical manner, *unless emergency or unforeseen* circumstances preclude it. For intermittent leave, barring emergency or unforeseen circumstances, the employee must provide 15 days notice.

21. Are there any prohibitions on when an employee may schedule leave?

In addition to providing the requisite notice, employees must make a reasonable effort to schedule leave so that it does not unduly disrupt operations.

22. Are employees required to provide a medical certification?

Yes, they are required to provide the same medical certification that is required under FLA. That certification will include the date the condition began, probable duration, and medical facts known by health care provider regarding the condition.

23. Does the employer need to provide any information to Department of Labor?

Yes, by the ninth day of the leave the employer must provide the Division of Temporary Disability Insurance (and the employee) the employee's name, address, social security number, and such wage information as the Division may require to determine the individual's eligibility for benefits, including any sick pay, vacation or other fully paid time off provided by the employer during the period of

FTD leave with information regarding employees' personal and wage information, on forms provided by the Division.

24. If the employee takes the FTD, is he/she entitled to return to his/her job at the expiration of that leave?

While the law provides no independent entitlement to job restoration, be aware that the employee may be protected by a myriad of other provisions, including, but not limited to, FMLA, FLA, tenure, or by provisions of the collective bargaining agreement.

25. What type of notice must employers provide to their employees?

Employers must "conspicuously" post notification where it is accessible to all employees. Forms to be posted will be issued pursuant to regulations. Employers must provide a copy of the notice to each employee in the following situations:

1. within 30 days after the regulation is issued;
2. when the employee is hired;
3. when the employee notifies the employer that the employee is taking time off for circumstances that would qualify for FTD; and,
4. any time the employee requests such information.

Copies of employer posters can be found on the New Jersey Department of Labor's web site.

(<http://lwd.state.nj.us/labor/fli/fliindex.html>)

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 873

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED FEBRUARY 28, 2008

Sponsored by:

Assemblyman **NELSON T. ALBANO**
District 1 (Cape May, Atlantic and Cumberland)
Assemblywoman **SHEILA Y. OLIVER**
District 34 (Essex and Passaic)
Assemblywoman **LINDA R. GREENSTEIN**
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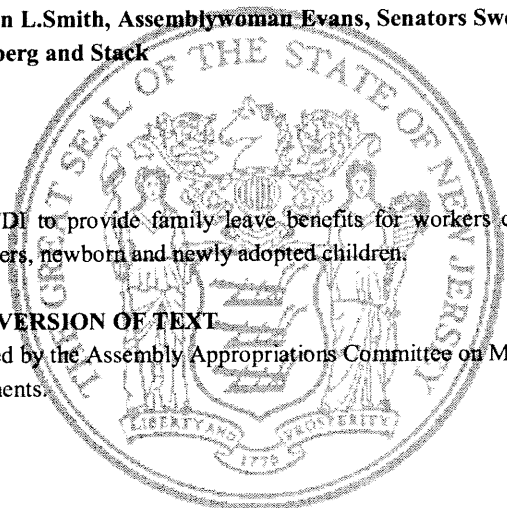
Assemblymen Giblin, Burzichelli, Assemblywoman Stender, Assemblymen Johnson, Scalera, Egan, Diegnan, Assemblywomen Vainieri Huttie, Jasey, Assemblyman L. Smith, Assemblywoman Evans, Senators Sweeney, Buono, Redd, Weinberg and Stack

SYNOPSIS

Extends TDI to provide family leave benefits for workers caring for sick family members, newborn and newly adopted children.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on March 10, 2008, with amendments.



(Sponsorship Updated As Of: 3/18/2008)

1 AN ACT providing benefits for family temporary disability leave,
2 amending R.S.43:21-4 and R.S.43:21-7, amending and
3 supplementing P.L.1948, c.110, and supplementing Title 54A of
4 the New Jersey Statutes.

5

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

8

9 1. Section 2 of P.L.1948, c.110 (C.43:21-26) is amended to
10 read as follows:

11 2. Purpose. This act shall be liberally construed as remedial
12 legislation enacted upon the following declarations of public policy
13 and legislative findings of fact:

14 The public policy of this State, already established, is to protect
15 employees against the suffering and hardship generally caused by
16 involuntary unemployment. But the [unemployment compensation
17 law] "unemployment compensation law" provides benefit payments
18 to replace wage loss caused by involuntary unemployment only so
19 long as an individual is "able to work, and is available for work,"
20 and fails to provide any protection against wage loss suffered
21 because of inability to perform the duties of a job interrupted by
22 nonoccupational illness, injury, or other disability of the individual
23 or of members of the individual's family. Nor is there any other
24 comprehensive and systematic provision for the protection of
25 working people against loss of earnings due to a nonoccupational
26 sickness [or], accident, or other disability.

27 The prevalence and incidence of nonoccupational sickness
28 [and], accident, and other disability among employed people is
29 greatest among the lower income groups, who either cannot or will
30 not voluntarily provide out of their own resources against the
31 hazard of an earnings loss caused by nonoccupational sickness [or],
32 accident, or other disability. Disabling sickness or accident occurs
33 throughout the working population at one time or another, and
34 approximately fifteen per centum (15%) of the number of people at
35 work may be expected to suffer disabling illness of more than one
36 week each year.

37 It [has been] was found, prior to the enactment of the
38 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
39 et seq.), that then existing voluntary plans for the payment of cash
40 sickness benefits [cover] covered less than one-half of the number
41 of working people of this State who [are now] were covered by the
42 [unemployment compensation law,] "unemployment compensation
43 law," and that even [this] that degree of voluntary protection

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:

¹ Assembly AAP committee amendments adopted March 10, 2008.

1 [affords] afforded uneven, unequal and sometimes uncertain
2 protection among the various voluntary benefit programs.

3 While the enactment of that law has provided stable protection
4 for New Jersey's disabled workers, very few workers are protected
5 from income losses caused by the need to take time off from work
6 to care for family members who are incapable of self-care,
7 including newborn and newly-adopted children. The growing
8 portion of middle-income families in which all adult family
9 members work, largely due to economic necessity, points to the
10 desperate need for replacement income when a working family
11 member must take time to care for family members who are unable
12 to take care of themselves. Moreover, the United States is the only
13 industrialized nation in the world which does not have a mandatory
14 workplace-based program for such income support. It is therefore
15 desirable and necessary to fill the gap in existing provisions for
16 protection against the loss of earnings caused by involuntary
17 unemployment, by extending such protection to meet the hazard of
18 earnings loss due to inability to work caused by nonoccupational
19 sickness [or accident], accidents, or other disabilities of workers
20 and members of their families. Developing systems that help
21 families adapt to the competing interests of work and home not only
22 benefits workers, but also benefits employers by reducing employee
23 turnover and increasing worker productivity.

24 The foregoing facts and considerations require that there be a
25 uniform minimum program providing in a systematic manner for
26 the payment of reasonable benefits to replace partially such
27 earnings loss and to meet the continuing need for benefits where an
28 individual becomes disabled during unemployment or needs to care
29 for family members incapable of self-care. In order to maintain
30 consumer purchasing power, relieve the serious menace to health,
31 morals and welfare of the people caused by insecurity and the loss
32 of earnings, to reduce the necessity for public relief of needy
33 persons, to increase workplace productivity and alleviate the
34 enormous and growing stress on working families of balancing the
35 demands of work and family needs, and in the interest of the health,
36 welfare and security of the people of this State, such a system,
37 enacted under the police power, is hereby established, requiring the
38 payment of reasonable cash benefits to eligible individuals
39 [suffering] who are subject to accident or illness which is not
40 compensable under the [workmen's] worker's compensation law or
41 who need to care for family members incapable of self-care.

42 ¹While the Legislature recognizes the pressing need for benefits
43 for workers taking leave to care for family members incapable of
44 self-care, it also finds that the need of workers for leave during their
45 own disability continues to be especially acute, as a disabled worker
46 has less discretion about taking time off from work than a worker
47 caring for a family member. Notwithstanding any interpretation of
48 law which may be construed as providing a worker with rights to

1 take action against an employer who fails or refuses to restore the
2 worker to employment after the worker's own disability, the
3 Legislature does not intend that the policy established by
4 P.L. , c. (C.) (pending before the Legislature as this bill) of
5 providing benefits for workers during periods of family temporary
6 disability leave to care for family members incapable of self-care be
7 construed as granting any worker an entitlement to be restored by
8 the employer to employment held by the worker prior to taking
9 family temporary disability leave or any right to take action, in tort,
10 or for breach of an implied provision of the employment agreement,
11 or under common law, against an employer who fails or refuses to
12 restore the worker to employment after the family temporary
13 disability leave, and the Legislature does not intend that the policy
14 of providing benefits during family temporary disability leave be
15 construed as increasing, reducing or otherwise modifying any
16 entitlement of a worker to return to employment or right of the
17 worker to take action under the provisions of the "Family Leave
18 Act," P.L.1989, c.261 (C.34:11B-1 et seq.), or the federal "Family
19 and Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et
20 seq.).¹

21 Since the enactment of the "Temporary Disability Benefits Law,"
22 P.L.1948, c.110 (C.43:21-25 et seq.), the State government-operated
23 State temporary disability benefits plan, or "State plan," has proven
24 to be highly efficient and cost effective in providing temporary
25 disability benefits to New Jersey workers. The State plan
26 guarantees the availability of coverage for all employers, regardless
27 of experience, with low overhead costs and a rapid processing of
28 claims and appeals by knowledgeable, impartial public employees.
29 Consequently, the percentage of all employers using the State plan
30 increased from 64% in 1952 to 98% in 2006, while the percentage
31 of employees covered by the State plan increased from 28% to 83%.
32 A publicly-operated, nonprofit State plan is therefore indispensable
33 to achieving the goals of the "Temporary Disability Benefits Law,"
34 P.L.1948, c.110 (C.43:21-25 et seq.).
35 (cf: P.L.1948, c.110, s.2)

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

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

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

1 the [chapter to which this act is a supplement, designated as the]
2 "unemployment compensation law" (R.S.43:21-1 et seq.), except
3 the State, its political subdivisions, and any instrumentality of the
4 State unless such governmental entity elects to become a covered
5 employer [under the "Temporary Disability Benefits Law"]
6 pursuant to paragraph (2) of this subsection (a); provided, however,
7 that commencing with the effective date of this act, the State of
8 New Jersey, including Rutgers, The State University, the University
9 of Medicine and Dentistry of New Jersey and the New Jersey
10 Institute of Technology, shall be deemed a covered employer, as
11 defined herein.

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

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

40 (b) (1) "Covered individual" means, with respect to whether an
41 individual is eligible for benefits during an individual's own
42 disability pursuant to P.L.1948, c.110 (C.43:21-25 et seq.), any
43 person who is in employment, as defined in the [chapter to which
44 this act is a supplement], "unemployment compensation law"
45 (R.S.43:21-1 et seq.) for which the individual is entitled to
46 remuneration from a covered employer, or who has been out of such
47 employment for less than two weeks[. However,], except that a
48 "covered individual" who is employed by the State of New Jersey,

1 including Rutgers, The State University, the University of Medicine
2 and Dentistry of New Jersey and the New Jersey Institute of
3 Technology, or by any governmental entity or instrumentality
4 which elects to become a "covered employer" pursuant to this
5 amendatory act, shall not be eligible to receive any benefits under
6 the "Temporary Disability Benefits Law" until such individual has
7 exhausted all sick leave accumulated as an employee in the
8 classified service of the State or accumulated under terms and
9 conditions similar to classified employees or accumulated under the
10 terms and conditions pursuant to the laws of this State or as the
11 result of a negotiated contract with any governmental entity or
12 instrumentality which elects to become a "covered employer."

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

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

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

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

33 (e) "Disability" shall mean such disability as is compensable
34 under section 5 of this act.

35 (f) "Disability benefits" shall mean any cash payments which
36 are payable to a covered individual for all or part of a period of
37 disability pursuant to this act.

38 (g) "Period of disability" with respect to any covered individual
39 shall mean **[the]**;

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

1 was the individual's last employer immediately preceding the first
2 period of disability: and

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

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

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

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

12 (3) "Base week" with respect to periods of disability
13 commencing on or after October 1, 1985 and before January 1,
14 2001, means any calendar week during which **[an]** a covered
15 individual earned in employment from a covered employer
16 remuneration equal to not less than 20% of the Statewide average
17 weekly **[remuneration]** wage determined under subsection (c) of
18 R.S.43:21-3, which shall be adjusted to the next higher multiple of
19 \$1.00 if not already a multiple thereof.

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

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

41 (2) If **[this]** the computation in paragraph (1) of this subsection
42 (j) yields a result which is less than the individual's average weekly
43 earnings in employment**[, as defined in the chapter to which this act**
44 **is a supplement,]** with all covered employers during the base weeks
45 in such eight calendar weeks, then the average weekly wage shall be
46 computed on the basis of earnings from all covered employers
47 during the **[eight]** base weeks in the eight calendar weeks

1 immediately preceding the week in which the period of disability
2 commenced.

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

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

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

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

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

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

36 (o) "Family temporary disability leave" means leave taken by a
37 covered individual from work with an employer to (1) participate in
38 the providing of care¹, as defined in the "Family Leave Act,"
39 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
40 pursuant to that act,¹ for a family member of the individual made
41 necessary by a serious health condition of the family member¹ [,
42 including providing psychological comfort and arranging third party
43 care for the family member¹]; or (2) be with a child during the first
44 12 months after the child's birth, if the individual, or the domestic
45 partner or civil union partner of the individual, is a biological parent
46 of the child, or the first 12 months after the placement of the child
47 for adoption with the individual. "Family temporary disability
48 leave" does not include any period of time in which a covered

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

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

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

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

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

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

24 (cf: P.L.2001, c.17, s.3)

25
26 3. Section 5 of P.L.1948, c.110 (C.43:21-29) is amended to
27 read as follows:

28 5. Compensable disability. **[Disability]** (a) In the case of the
29 disability of a covered individual, disability shall be compensable
30 subject to the limitations of this act[, where a] if the disability is
31 the result of the covered individual [suffers any] suffering an
32 accident or sickness not arising out of and in the course of the
33 individual's employment or if so arising not compensable under the
34 workers' compensation law [(Title 34 of the Revised Statutes)]
35 R.S.34:15-1 et seq., and resulting in the individual's total inability
36 to perform the duties of employment.

37 (b) In the case of an individual taking family temporary
38 disability leave, the leave shall be compensable subject to the
39 limitations of P.L. , c. (C.)(pending before the
40 Legislature as this bill).

41 (cf: P.L.1980, c.90, s.13)

42
43 4. Section 11 of P.L.1948, c.110 (C.43:21-35) is amended to
44 read as follows:

45 11. (a) If the division is furnished satisfactory evidence that a
46 majority of the employees covered by an approved private plan
47 have made election in writing to discontinue such plan, the division
48 shall withdraw its approval of such plan effective at the end of the

1 calendar quarter next succeeding that in which such evidence is
2 furnished. Upon receipt of a petition therefor signed by not less
3 than 10% of the employees covered by an approved private plan,
4 the division shall require the employer upon 30 days' written notice
5 to conduct an election by ballot in writing to determine whether or
6 not a majority of the employees covered by such private plan favor
7 discontinuance thereof; provided, that such election shall not be
8 required more often than once in any 12-month period.

9 (b) Unless sooner permitted, for cause, by the division, no
10 approved private plan shall be terminated by an employer, in whole
11 or in part, until at least 30 days after written notice of intention so
12 to do has been given by the employer to the division and after
13 notices are conspicuously posted so as reasonably to assure their
14 being seen, or after individual notices are given to the employees
15 concerned.

16 (c) The division may, after notice and hearing, withdraw its
17 approval of any approved private plan if it finds that there is danger
18 that the benefits accrued or to accrue will not be paid, that the
19 security for such payment is insufficient, or for other good cause
20 shown. No employer, and no union or association representing
21 employees, shall so administer or apply the provisions of an
22 approved private plan as to derive any profit therefrom. The
23 division may withdraw its approval from any private plan which is
24 administered or applied in violation of this provision.

25 (d) No termination of an approved private plan shall affect the
26 payment of benefits, in accordance with the provisions of the plan,
27 to [disabled] employees whose period of disability commenced
28 prior to the date of termination. Employees who have ceased to be
29 covered by an approved private plan because of its termination
30 shall, subject to the limitations and restrictions of this act, become
31 eligible forthwith for benefits from the State Disability Benefits
32 Fund for a period of disability commencing after such cessation,
33 and contributions with respect to their wages shall immediately
34 become payable as otherwise provided by law. Any withdrawal of
35 approval of a private plan pursuant to this section shall be
36 reviewable by writ of certiorari or by such other procedure as may
37 be provided by law. With respect to a period of family temporary
38 disability leave immediately after the individual has a period of
39 disability during the individual's own disability, the period of
40 disability is deemed, for the purposes of determining whether the
41 period of disability commenced prior to the date of the termination,
42 to have commenced at the beginning of the period of disability
43 during the individual's own disability, not the period of family
44 temporary disability leave.

45 (e) Anything in this act to the contrary notwithstanding, a
46 covered employer who, under an approved private plan, is
47 providing benefits at least equal to those required by the State plan,
48 may modify the benefits under the private plan so as to provide

1 benefits not less than the benefits required by the State plan[;
2 provided, that individuals]. Individuals covered under [such] a
3 private plan shall not be required to contribute to [such] the plan at
4 a rate exceeding 3/4 of 1% of the amount of "wages" established for
5 any calendar year under the provisions of R.S.43:21-7(b) prior to
6 January 1, 1975, and 1/2 of 1% for calendar years beginning on or
7 after January 1, 1975. For a calendar year beginning on or after
8 January 1, 2009; an employer providing a private plan only for
9 benefits for employees during their own disabilities may require the
10 employees to contribute to the plan at a rate not exceeding 0.5% of
11 the amount of "wages" established for the calendar year under the
12 provisions of R.S.43:21-7(b); an employer providing a private plan
13 only for benefits for employees during periods of family temporary
14 disability may require the individuals covered by the private plan to
15 contribute an amount not exceeding the amount the individuals
16 would pay pursuant to R.S.43:21-7(d)(1)(G)(ii); an employer
17 providing a private plan both for benefits for employees during their
18 own disabilities and for benefits during periods of family temporary
19 disability may require the employees to contribute to the plan at a
20 rate not exceeding 0.5% of the amount of "wages" established for
21 the calendar year under the provisions of R.S.43:21-7(b) plus an
22 additional amount not exceeding the amount the individuals would
23 pay pursuant to R.S.43:21-7(d)(1)(G)(ii). Notification of [such]
24 the proposed modification shall be given by the employer to the
25 division and to the individuals covered under [such] the plan[, on
26 or before May 1, 1975].
27 (cf: P.L.1974, c.86, s.8)
28

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

31 14. Duration of benefits.

32 With respect to [periods] any period of disability for an
33 individual's own disability commencing on or after January 1,
34 1953, disability benefits, not in excess of an individual's maximum
35 benefits, shall be payable with respect to disability which
36 commences while a person is a covered individual under the
37 Temporary Disability Benefits Law, and shall be payable with
38 respect to the eighth consecutive day of such disability and each
39 day thereafter that such period of disability continues; and if
40 benefits shall be payable for three consecutive weeks with respect
41 to any period of disability commencing on or after January 1, 1968,
42 then benefits shall also be payable with respect to the first seven
43 days thereof. With respect to any period of family temporary
44 disability leave commencing on or after July 1, 2009 and while an
45 individual is a covered individual, family temporary disability
46 benefits, not in excess of the individual's maximum benefits, shall
47 be payable with respect to the first day of leave taken after the first
48 one-week period following the commencement of the period of

1 family temporary disability leave and each subsequent day of leave
2 during that period of family temporary disability leave; and if
3 benefits become payable on any day after the first three weeks in
4 which leave is taken, then benefits shall also be payable with
5 respect to any leave taken during the first one-week period in which
6 leave is taken. The maximum total benefits payable to any eligible
7 individual for any period of disability of the individual commencing
8 on or after January 1, 1968, shall be either 26 times his weekly
9 benefit amount or 1/3 of his total wages in his base year, whichever
10 is the lesser; provided that such maximum amount shall be
11 computed in the next lower multiple of \$1.00 if not already a
12 multiple thereof. The maximum total benefits payable to any
13 eligible individual for any period of family temporary disability
14 leave commencing on or after July 1, 2009, shall be six times the
15 individual's weekly benefit amount or 1/3 of his total wages in his
16 base year, whichever is the lesser; provided that the maximum
17 amount shall be computed in the next lower multiple of \$1.00, if not
18 already a multiple thereof.
19 (cf: P.L.1984, c.104, s.2)

20
21 6. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
22 read as follows:

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

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

29 (1) if benefits shall be payable for three consecutive weeks with
30 respect to any period of disability **[commencing on or after January**
31 **1, 1968]**, then benefits shall also be payable with respect to the first
32 seven days thereof;

33 (2) in the case of intermittent leave in a single period of family
34 temporary disability leave taken to provide care for a family
35 member of the individual with a serious health condition, benefits
36 shall be payable with respect to the first day of leave taken after the
37 first one-week period following the commencement of the period of
38 family temporary disability leave and each subsequent day of leave
39 during that period of family temporary disability leave; and if
40 benefits become payable on any day after the first three weeks in
41 which leave is taken, then benefits shall also be payable with
42 respect to any leave taken during the first one-week period in which
43 leave is taken, and

44 (3) in the case of an individual taking family temporary
45 disability leave immediately after the individual has a period of
46 disability for the individual's own disability, there shall be no
47 waiting period between the period of the individual's own disability
48 and the period of family temporary disability.

- 1 (b) (1) for more than 26 weeks with respect to any one period
2 of disability of the individual;
- 3 (2) for more than six weeks with respect to any one period of
4 family temporary disability leave, or more than 42 days with respect
5 to any one period of family temporary disability leave taken on an
6 intermittent basis to provide care for a family member of the
7 individual with a serious health condition; and
- 8 (3) for more than six weeks of family temporary disability leave
9 during any 12-month period, or more than 42 days of family
10 temporary disability leave taken during any 12-month period, on an
11 intermittent basis to provide care for a family member of the
12 individual with a serious health condition, including family
13 temporary disability leave taken pursuant to R.S.43:21-4(f)(2) while
14 unemployed.
- 15 (c) for any period of disability which did not commence while
16 the claimant was a covered individual;
- 17 (d) for any period of disability of a claimant during which the
18 claimant is not under the care of a legally licensed physician,
19 dentist, optometrist, podiatrist, practicing psychologist, advanced
20 practice nurse, or chiropractor, who, when requested by the
21 division, shall certify within the scope of the practitioner's practice,
22 the disability of the claimant, the probable duration thereof, and,
23 where applicable, the medical facts within the practitioner's
24 knowledge or for any period of family temporary disability leave
25 for a serious health condition of a family member of the claimant,
26 during which the family member is not receiving inpatient care in a
27 hospital, hospice, or residential medical care facility or is not
28 subject to continuing medical treatment or continuing supervision
29 by a health care provider, who, when requested by the division,
30 shall certify within the scope of the provider's practice, the serious
31 health condition of the family member, the probable duration
32 thereof, and, where applicable, the medical facts within the
33 provider's knowledge;
- 34 (e) (Deleted by amendment, P.L.1980, c.90.)
- 35 (f) for any period of disability due to willfully and intentionally
36 self-inflicted injury, or to injury sustained in the perpetration by the
37 claimant of a crime of the first, second, third, or fourth degree, or
38 for any period during which a covered individual would be
39 disqualified for unemployment compensation benefits for gross
40 misconduct under subsection (b) of R.S.43:21-5;
- 41 (g) for any period during which the claimant performs any work
42 for remuneration or profit;
- 43 (h) in a weekly amount which together with any remuneration
44 the claimant continues to receive from the employer would exceed
45 regular weekly wages immediately prior to disability;
- 46 (i) for any period during which a covered individual would be
47 disqualified for unemployment compensation benefits under
48 subsection (d) of R.S.43:21-5, unless the disability commenced

1 prior to such disqualification; and there shall be no other cause of
2 disqualification or ineligibility to receive disability benefits
3 hereunder except as may be specifically provided in this act.
4 (cf: P.L.2007, c.322, s.1)

5
6 7. Section 17 of P.L.1948, c.110 (C.43:21-41) is amended to
7 read as follows:

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

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

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

11 (d) (1) ~~With respect to periods of disability commencing on or~~
12 ~~after October 1, 1984 and before January 1, 2001, no individual~~
13 ~~shall be entitled to benefits under this act unless the individual has~~
14 ~~established at least 20 base weeks within the 52 calendar weeks~~
15 ~~preceding the week in which the individual's period of disability~~
16 ~~commenced, or, in the alternative, the individual has earned twelve~~
17 ~~times the Statewide average weekly remuneration paid to workers,~~
18 ~~as determined under subsection (c) of R.S. 43:21-3, raised to the~~
19 ~~next higher multiple of \$100.00, if not already a multiple thereof, or~~
20 ~~more within the 52 calendar weeks preceding the week in which the~~
21 ~~period of disability commenced, nor shall the individual be entitled~~
22 ~~to benefits unless he shall duly file notice and proof of claim, and~~
23 ~~submit to such reasonable examinations as are required by this act~~
24 ~~and the rules and regulations of the division.] (Deleted by~~
25 ~~amendment, P.L. , c.)(pending before the Legislature as this~~
26 ~~bill)~~

27 (2) With respect to periods of disability commencing on or after
28 January 1, 2001, no individual shall be entitled to benefits under
29 this act unless the individual has, within the 52 calendar weeks
30 preceding the week in which the individual's period of disability
31 commenced, established at least 20 base weeks or earned not less
32 than 1,000 times the minimum wage in effect pursuant to section 5
33 of P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar
34 year preceding the calendar year in which the disability commences,
35 which amount shall be adjusted to the next higher multiple of
36 \$100.00, if not already a multiple thereof.

37 (e) With respect to a period of family temporary disability leave
38 for an individual who has a period of family temporary disability
39 immediately after the individual has a period of disability for the
40 individual's own disability, the period of disability is deemed, for
41 the purposes of specifying the time of the 52-week period in which
42 base weeks or earnings are required to be established for benefit
43 eligibility pursuant to this subsection (e), to have commenced at the
44 beginning of the period of disability for the individual's own
45 disability, not the period of family temporary disability.

46 (cf: P.L.2001, c.17, s.4)

1 8. Section 31 of P.L.1948, c.110 (C.43:21-55) is amended to
2 read as follows:

3 31. Penalties. (a) Whoever makes a false statement or
4 representation knowing it to be false or knowingly fails to disclose
5 a material fact, and each such false statement or representation or
6 failure to disclose a material fact shall constitute a separate offense,
7 to obtain or increase any disability benefit under the State plan or
8 an approved private plan, or for a disability during unemployment,
9 including any benefit during a period of family temporary disability
10 leave, either for himself or for any other person, shall be liable for a
11 fine of '~~twenty dollars (\$20.00)~~ \$250' to be paid to the division.
12 Upon refusal to pay such fine, the same shall be recovered in a civil
13 action by the division in the name of the State of New Jersey. If in
14 any case liability for the payment of a fine as aforesaid shall be
15 determined, any person who shall have received any benefits
16 hereunder by reason of the making of such false statements or
17 representations or failure to disclose a material fact, shall not be
18 entitled to any benefits under this act for any disability occurring
19 prior to the time he shall have discharged his liability hereunder to
20 pay such fine.

21 (b) Any employer or any officer or agent of any employer or
22 any other person who makes a false statement or representation
23 knowing it to be false or knowingly fails to disclose a material fact,
24 to prevent or reduce the benefits to any person entitled thereto, or to
25 avoid becoming or remaining subject hereto or to avoid or reduce
26 any contribution or other payment required from an employer under
27 this act, or who willfully fails or refuses to make any such
28 contributions or other payment or to furnish any reports required
29 hereunder or to produce or permit the inspection or copying of
30 records as required hereunder, shall be liable for a fine of twenty
31 dollars '~~(\$20.00)~~ \$250' to be paid to the division. Upon refusal to
32 pay such fine, the same shall be recovered in a civil action by the
33 division in the name of the State of New Jersey.

34 (c) Any person who shall willfully violate any provision hereof
35 or any rule or regulation made hereunder, for which a fine is neither
36 prescribed herein nor provided by any other applicable statute, shall
37 be liable to a fine of '~~fifty dollars (\$50.00)~~ \$500' to be paid to
38 the division. Upon the refusal to pay such fine, the same shall be
39 recovered in a civil action by the division in the name of the State
40 of New Jersey.

41 (d) Any person, employing unit, employer or entity violating
42 any of the provisions of the above subsections with intent to
43 defraud the division shall in addition to the penalties hereinbefore
44 described, be liable for each offense upon conviction before the
45 Superior Court or any municipal court for a fine not to exceed
46 '~~two hundred fifty dollars (\$250.00)~~ \$1,000' or by imprisonment
47 for a term not to exceed ninety days, or both, at the discretion of the
48 court. The fine upon conviction shall be payable to the State

1 disability benefits fund of the division. Any penalties imposed by
2 this subsection shall be in addition to those otherwise prescribed in
3 this chapter (R.S.43:21-1 et seq.).
4 (cf: P.L.1997, c.318, s.1)

5
6 9. Section 2 of P.L.1997, c.318 (C.43:21-55.1) is amended to
7 read as follows:

8 2. (a) If it is determined by the division that an individual for
9 any reason has received, under the State plan, an approved private
10 plan or for a disability during unemployment, any sum of disability
11 benefits, including benefits during a period of family temporary
12 disability leave, to which the individual was not entitled, the
13 individual shall, except as provided in subsection (b) of this section,
14 be liable to repay the sum in full. Except as provided in subsection
15 (b) of this section, the sum that the individual is liable to repay shall
16 be deducted from future benefits payable to the individual under
17 this act (C.43:21-25 et seq.) or subsection (f) of R.S.43:21-4, or
18 shall be repaid by the individual to the division, the employer or the
19 insurer, and that sum shall be collectible in the manner provided for
20 by law, including, but not limited to, the filing of a certificate of
21 debt with the Clerk of the Superior Court of New Jersey; except that
22 no individual who does not knowingly misrepresent or withhold any
23 material fact to obtain benefits shall be liable for any repayments or
24 deductions against future benefits unless notified before four years
25 have elapsed from the time the benefits in question were paid. The
26 division shall promptly notify the individual by mail of the
27 determination and the reasons for the determination. Unless the
28 individual files an appeal of the determination within 20 calendar
29 days following the receipt of the notice, or, within 24 days after the
30 notice was mailed to the individual's last known address, the
31 determination shall be final.

32 (b) If the individual received the overpayment of benefits
33 because of error made by the division, the employer or the
34 physician, and if the individual did not knowingly misrepresent or
35 withhold any material fact to obtain the benefits, the following
36 limits shall apply:

37 (1) The amount withheld from any subsequent benefit check
38 shall be an amount not greater than 50% of the amount of the check;
39 and

40 (2) All repayments of the overpayments by the individual or the
41 estate of the individual shall be waived if the individual is deceased
42 or permanently disabled.

43 Any demand for repayment from an individual pursuant to this
44 subsection shall include an explanation of the provisions of this
45 subsection.

46 (cf: P.L.1997, c.318, s.2)

1 10. (New section) a. Family temporary disability leave shall be
2 compensable subject to the limitations of P.L. , c. (C.)
3 (pending before the Legislature as this bill) for any period of family
4 temporary disability leave taken by a covered individual which
5 commences after June 30, 2009.

6 b. An individual shall not simultaneously receive disability
7 benefits for family temporary disability leave and any other
8 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et seq.)
9 or any unemployment compensation.

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

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

1 (C.34:11B-1 et seq.) or the federal "Family and Medical Leave Act
2 of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.). Nothing in
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 shall be construed to grant an employee any entitlement to be
5 restored by the employer to employment held by the employee prior
6 to taking family temporary disability leave or any right to take
7 action against an employer who refuses to restore the employee to
8 employment after the leave. Nothing in P.L. , c. (C.)
9 (pending before the Legislature as this bill) shall be construed to
10 increase, reduce or otherwise modify any entitlement of an
11 employee to return to employment or right of the employee to take
12 action under the provisions of the "Family Leave Act," P.L.1989,
13 c.261 (C.34:11B-1 et seq.) the federal "Family and Medical Leave
14 Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.). 'If an
15 employee receives benefits for family temporary disability leave
16 pursuant to P.L. , c. (C.) (pending before the Legislature as
17 this bill) with respect to employment with an employer who is not
18 an 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.¹

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. , c. (C.)
30 (pending before the Legislature as this bill) as an employee or
31 employer has to appeal a determination of a benefit for the
32 disability of the employee under the "Temporary Disability Benefits
33 Law," P.L.1948, c.110 (C.43:21-25 et seq.), and any regulations
34 adopted pursuant to the "Temporary Disability Benefits Law,"
35 P.L.1948, c.110 (C.43:21-25 et seq.).

36 f. In the event of a period of family temporary disability leave
37 of any individual covered under the State plan, the employer shall,
38 not later than the ninth day of the period of family temporary
39 disability leave, including any waiting period or time in which the
40 employer provides sick leave, vacation or other fully paid leave,
41 issue to the individual and to the division printed notices on
42 division forms containing the name, address and Social Security
43 number of the individual, such wage information as the division
44 may require to determine the individual's eligibility for benefits,
45 including any sick pay, vacation or other fully paid time off
46 provided by the employer during the period of family temporary
47 disability leave, and the name, address, and division identity
48 number of the employer. Not later than 30 days after the

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

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

30
31 11. (New section) a. In the case of a family member who has a
32 serious health condition, the benefits for family temporary disability
33 leave may be taken intermittently when medically necessary, if: the
34 total time within which the leave is taken does not exceed 12
35 months; the covered individual provides the employer with a copy
36 of the certification required pursuant to subsection b. of this section;
37 the covered individual provides the employer with prior notice of
38 the leave not less than 15 days before the first day on which
39 benefits are paid for the intermittent leave, unless an emergency or
40 other unforeseen circumstance precludes prior notice; and the
41 covered individual makes a reasonable effort to schedule the leave
42 so as not to unduly disrupt the operations of the employer and, if
43 possible, provide the employer, prior to the commencement of
44 intermittent leave, with a regular schedule of the days or days of the
45 week on which the intermittent leave will be taken. In the case of
46 family temporary disability leave benefits to care for a family
47 member with a serious health condition which are taken on a
48 continuous, non-intermittent basis, the covered individual shall:

1 provide the employer with prior notice of the leave in a reasonable
2 and practicable manner, unless an emergency or other unforeseen
3 circumstance precludes prior notice; provide a copy of the
4 certification required pursuant to subsection b. of this section; make
5 a reasonable effort to schedule the leave so as not to unduly disrupt
6 the operations of the employer.

7 b. Any period of family temporary disability leave for the
8 serious health condition of a family member of the covered
9 individual shall be supported by certification provided by a health
10 care provider. The certification shall be sufficient if it states:

11 (1) The date, if known, on which the serious health condition
12 commenced;

13 (2) The probable duration of the condition;

14 (3) The medical facts within the knowledge of the provider of
15 the certification regarding the condition;

16 (4) A statement that the serious health condition warrants the
17 participation of the covered individual in providing health care,
18 including providing psychological comfort and arranging third
19 party care for the family member] as provided in the "Family Leave
20 Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
21 pursuant to that act;

22 (5) An estimate of the amount of time that the covered
23 individual is needed for participation in the care of the family
24 member;

25 (6) If the leave is intermittent, a statement of the medical
26 necessity for the intermittent leave and the expected duration of the
27 intermittent leave; and

28 (7) If the leave is intermittent and for planned medical
29 treatment, the dates of the treatment.

30 c. A covered individual claiming benefits to provide care for a
31 family member with a serious health condition under the State plan
32 or during unemployment shall, if requested by the division, have the
33 family member submit to an examination by a health care provider
34 designated by the division. The examinations shall not be more
35 frequent than once a week, shall be made without cost to the
36 claimant and shall be held at a reasonable time and place. Refusal
37 of the family member to submit to an examination requested
38 pursuant to this subsection shall disqualify the claimant from all
39 benefits for the period in question, except from benefits already
40 paid.

41
42 12. (New section) a. All of the disability benefits paid to a
43 covered individual during a period of family temporary disability
44 leave with respect to any one birth or adoption shall be for a single
45 continuous period of time, except that the employer of the covered
46 individual may permit the covered individual to receive the
47 disability benefits during non-consecutive weeks in a manner