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

AN ACT concerning family leave and amending P.L.1989, c.261 and P.L.1948, c.110.

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

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

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

"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 ; or

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

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

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

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

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.

[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 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 a family member of the employee due to:

(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 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.

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

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

2. 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 <u>as described in paragraphs (1) and (2) of this subsection, or where the leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, certification issued by a school, place of care for children, public health authority, public official, or health care provider, as described in paragraph (3) of this subsection</u>.

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

(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;

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

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

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

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

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.

The provisions of this subsection shall not apply when , in the event of a state of emergency declared by the Governor or when indicated to be needed by the Commissioner of Health or other public health authority, 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 care of a member of the employee's family being closed because of a state of emergency declared by the Governor or order of the Commissioner of Health or other authorized public official, during**]** for an epidemic of a communicable disease, **[**or**]** a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

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

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

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

3. 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 employer under R.S.43:21-19(h)(5) may, with respect to the provision of benefits during an employee's own disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered employer" under this subsection beginning with the date on which its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of any year thereafter by filing written notice of such election with the division within at least 30 days of the effective date. Such election 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 family temporary disability leave pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any individual 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 that employment for less than two weeks.

(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).

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

(i) 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 employee may jeopardize the health of others; and

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

(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 the benefit year commences, which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph is in employment with more than one employer, the covered individual may in that calendar week establish a base week with respect to each of the employers from whom the covered 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 which is less than the individual's average weekly earnings in employment with all covered employers during the base weeks in the base year, then the average weekly wage shall be computed on the basis of earnings from all covered employers during the base weeks in the base year immediately preceding the week in which the period of disability commences, 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).

(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 covered individual from work with an employer to:

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

(2) be with a child during the first 12 months after the child's birth, if the individual, or the domestic partner or civil union partner 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; or

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

(i) 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 may jeopardize the health of others; and

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

"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. **[**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 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:

(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 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 quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of benefits based on an alternative base year shall be adjusted when the quarterly report of wage information from the employer is received if that information causes a change in the determination.

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

4. 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 **[**, including leave to care for family members suffering from accident or sickness,**]** shall be compensable subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.).

(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"**]** family temporary disability leave also includes leave taken for 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:

(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

(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.

(d) 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, disability also includes 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 due to:

(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 employee may jeopardize the health of others; and

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

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

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

14. a. With respect to any period of disability for an individual's own disability commencing on or after January 1, 1953, disability benefits, not in excess of an individual's maximum benefits, shall be payable with respect to disability which commences while a person is a covered individual under the Temporary Disability Benefits Law, and shall be payable with respect to the eighth consecutive day of such disability and each day thereafter that such period of 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.2020, c.17 the disability benefits shall be payable with respect to the first day of the disability, if the disability **[**is for a sickness**]** is as described in subsection (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is for leave 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 any eligible individual for any period of family temporary disability leave commencing on or after July 1, 2020, shall be twelve times the individual's weekly benefit amount; provided that the maximum amount shall be computed in the next lower multiple of $1.00, if not already a multiple thereof.

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

6. 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;

(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; and

(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 (d) of section 5 of P.L.1948, c.110 (C.43:21-29), or is for leave as described in subsection (c) of section 5 of P.L.1948, c.110 (C.43:21-29);

(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;

(d) for any period of disability of a claimant during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, certified nurse midwife, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the 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)

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

STATEMENT

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

Concerns family leave benefits during epidemic-related emergencies.