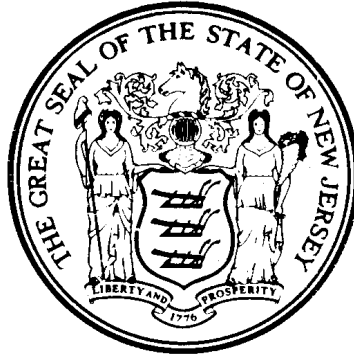


**STATE OF NEW JERSEY  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF TEMPORARY DISABILITY INSURANCE**



**NEW JERSEY  
TEMPORARY DISABILITY BENEFITS LAW**

July 2014

**TABLE OF CONTENTS**

**TEMPORARY DISABILITY BENEFITS LAW**

**ARTICLE I**

43:21-25. Short title ..... 1  
43:21-26. Purpose ..... 1  
43:21-27. Definitions..... 2  
43:21-28. Coverage ..... 6  
43:21-29. Compensable disability, individual, family ..... 6  
43:21-29.1. Repealed  
43:21-30. Nonduplication of benefits, exceptions, certain ..... 6  
43:21-30.1. Notice of unemployment compensation, conditions ..... 7  
43:21-31. Certain individuals excepted..... 7

**ARTICLE II – PRIVATE PLANS**

43:21-32. Establishment of private plans..... 7  
43:21-33. Election by employees; deduction of contributions ..... 8  
43:21-34. Existing plans ..... 9  
43:21-35. Termination of private plans..... 9  
43:21-36. Additional benefits ..... 10

**ARTICLE III – STATE PLANT**

43:21-37. Persons entitled to benefits ..... 10  
43:21-38. Duration of benefits..... 10  
43:21-39. Limitation of benefits..... 11  
43:21-39.1 Compensation for family temporary disability leave; conditions ..... 12  
43:21-39.2 Duration of family temporary disability leave; continuous or  
intermittent; certification ..... 14  
43:21-39.3 Payment of benefits for period of family temporary disability leave,  
birth, or adoption of child..... 15  
43:21-39.4 Availability of annual reports, contents ..... 15  
43:21-40. Weekly and daily benefit amounts..... 16  
43:21-41. Entitlement for disability benefits ..... 16  
43:21-42. Payment of disability benefits; fund; deceased claimant; minors;  
representative appointed ..... 16

**ARTICLE IV – DISABILITY DURING UNEMPLOYMENT**

43:21-43. Benefits (Amended R.S.43:21-3.) ..... 17  
43:21-44. Benefit Eligibility Conditions (Amended R.S.43:21-4.) ..... 17

**ARTICLE V – ADMINISTRATIN AND FINANCE**

43:21-45. Administration ..... 17  
43:21-45.1. Reciprocal agreements for certain temporary disability benefits ..... 18  
43:21-46. State disability benefits fund ..... 18  
43:21-47. Withdrawals from federal treasury; withdrawals and transfers..... 19  
43:21-48. Assessment of costs administration..... 22  
43:21-49. Postings, notice and claim for disability benefits..... 22  
43:21-50. Review ..... 23  
43:21-51. Fees of attorney and medical witnesses ..... 24  
43:21-52. Records and reports ..... 24  
43:21-53. Rights in payments ..... 24  
43:21-54. Financial responsibility under private plans ..... 25  
43:21-55. Penalties..... 25

43:21-55.1.	Liability for repayment of disability benefits overpayments.....	26
43:21-56.	Severability.....	26

**APPENDIX I**

34:15-57.1	Reimbursement of benefits paid under Temporary Disability Benefits Law.....	27
34:15-57.2	Inquiry as to other payments received before paying compensation; proof of amounts paid .....	27
34:15-57.3	Effective date .....	27

**APPENDIX II**

54A:6-31	Family leave benefits not included in gross income .....	28
----------	--	----

## TEMPORARY DISABILITY BENEFITS LAW

### ARTICLE I

#### **43:21-25. Short title**

This act shall be known and may be cited as the "Temporary Disability Benefits Law."

**HISTORY:** L. 1948, c. 110, p. 586, § 1.

#### **43:21-26. Purpose**

This act shall be liberally construed as remedial legislation enacted upon the following declarations of public policy and legislative findings of fact:

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

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

It was found, prior to the enactment of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then existing voluntary plans for the payment of cash sickness benefits covered less than one-half of the number of working people of this State who were covered by the "unemployment compensation law," and that even that degree of voluntary protection afforded uneven, unequal and sometimes uncertain protection among the various voluntary benefit programs.

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

The foregoing facts and considerations require that there be a uniform minimum program providing in a systematic manner for the payment of reasonable benefits to replace partially such earnings loss and to meet the continuing need for benefits where an individual becomes disabled during unemployment or needs to care for family members incapable of self-care. In order to maintain

consumer purchasing power, relieve the serious menace to health, morals and welfare of the people caused by insecurity and the loss of earnings, to reduce the necessity for public relief of needy persons, to increase workplace productivity and alleviate the enormous and growing stress on working families of balancing the demands of work and family needs, and in the interest of the health, welfare and security of the people of this State, such a system, enacted under the police power, is hereby established, requiring the payment of reasonable cash benefits to eligible individuals who are subject to accident or illness which is not compensable under the worker's compensation law or who need to care for family members incapable of self-care.

While the Legislature recognizes the pressing need for benefits for workers taking leave to care for family members incapable of self-care, it also finds that the need of workers for leave during their own disability continues to be especially acute, as a disabled worker has less discretion about taking time off from work than a worker caring for a family member. Notwithstanding any interpretation of law which may be construed as providing a worker with rights to take action against an employer who fails or refuses to restore the worker to employment after the worker's own disability, the Legislature does not intend that the policy established by P.L.2008, c.17 (*C.43:21-39.1* et al.) of providing benefits for workers during periods of family temporary disability leave to care for family members incapable of self-care be construed as granting any worker an entitlement to be restored by the employer to employment held by the worker prior to taking family temporary disability leave or any right to take action, in tort, or for breach of an implied provision of the employment agreement, or under common law, against an employer who fails or refuses to restore the worker to employment after the family temporary disability leave, and the Legislature does not intend that the policy of providing benefits during family temporary disability leave be construed as increasing, reducing or otherwise modifying any entitlement of a worker to return to employment or right of the worker to take action under the provisions of the "Family Leave Act," P.L.1989, c.261 (*C.34:11B-1* et seq.), or the federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (*29 U.S.C. § 2601* et seq.).

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

**HISTORY:** L. 1948, c. 110, p. 586, § 2; amended 2008, c. 17, § 1, eff. May 2, 2008.

#### **43:21-27. Definitions**

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 this amendatory act, 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."

"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 Temporary Disability Insurance of the Department of Labor and Workforce Development, and any transaction or exercise of authority by the director of the division shall be deemed to be performed by the division.

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

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

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

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

(1) The entire period of time during which the covered individual is continuously and totally unable to perform the duties of the covered individual's employment because of the covered individual's own disability, except that two periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one continuous

period of disability; provided the individual has earned wages during such 14-day period with the employer who was the individual's last employer immediately preceding the first period of disability; and

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

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

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

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

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

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

(2) 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.

(3) For periods of disability commencing on or after July 1, 2009, 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, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

(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 child, spouse, domestic partner, civil union partner or parent of a covered individual.

(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; or (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 the first 12 months after the placement of the child for adoption with the individual. "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.

(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.

(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.

**HISTORY:** L. 1948, c. 110, § 3; amended 1950, c. 173, § 1; 1952, c. 188, § 1; 1953, c. 221, § 1; 1971, c. 346, § 13; 1980, c. 18, § 2; 1981, c. 349, § 1; 1984, c. 104, § 1; 2001, c. 17, § 3, eff. Jan. 29, 2001; 2008, c. 17, § 2, eff. May 2, 2008; 2012, c. 45, § 125, eff. July 1, 2013; 2013, c. 221, § 3, eff. Jan. 17, 2014.



#### **43:21-28. Coverage**

All covered individuals shall be entitled on and after January first, one thousand nine hundred and forty-nine, to the benefits provided under either a private plan or the State plan of disability benefits, as hereinafter provided.

**HISTORY:** L. 1948, c. 110, p. 588, 4.

#### **43:21-29. Compensable disability, individual, family**

(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.*, and resulting in the individual's total inability to perform the duties of employment.

(b) In the case of an individual taking family temporary disability leave, the leave shall be compensable subject to the limitations of P.L.2008, c.17 (*C.43:21-39.1 et al.*).

**HISTORY:** L. 1948, c. 110, p. 588, § 5. Amended by L. 1961, c. 43, p. 473, § 10; L. 1980, c. 90, 13; 2008, c. 17, § 3, eff. May 2, 2008.

**43:21-29.1. Repealed by L. 1967, c. 30 § 11, eff. April 24, 1967; L. 1967, c. 286 § 14, eff. Jan. 23, 1968.**

#### **43:21-30. Nonduplication of benefits, exceptions, certain**

(a) No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the federal government, except that:

(1) If a claimant is otherwise eligible for benefits under P.L.1948, c.110 (*C.43:21-25 et seq.*) and benefits are also paid or payable to the claimant under a disability benefit law of another state, the claimant shall be paid the benefits provided by P.L.1948, c.110 (*C.43:21-25 et seq.*), reduced by the amount paid concurrently under the provisions of the other state's law; and

(2) If a claimant is otherwise eligible for benefits under P.L.1948, c.110 (*C.43:21-25 et seq.*) and benefits are also paid or payable to the claimant under a disability or cash sickness program known as maintenance and cure as provided under the federal maritime law commonly referred to as the Jones Act, the claimant shall be paid the benefits provided by P.L.1948, c.110 (*C.43:21-25 et seq.*), reduced by the amount paid concurrently under the provisions of the maintenance and cure program.

(b) No benefits shall be required or paid under this act for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or payable on account of the disability of the covered individual under any workers' compensation law, occupational disease law, or similar legislation, of this State or of any other state or the federal government, except that:

(1) Where a claimant's claim for compensation for temporary disability, under the provisions of subsection a. of *R.S.34:15-12*, is contested, and thereby delayed, and such claimant is otherwise eligible for benefits under this chapter, said claimant shall be paid the benefits provided by this chapter until and unless said claimant receives compensation under the provisions of subsection a. of *R.S.34:15-12*;

(2) In the event that workers' compensation benefits, other than benefits for permanent partial or permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimant has received disability benefits pursuant to this act, the State fund, or

the private plan, as the case may be, shall be entitled to be subrogated to such claimant's rights in such award to the extent of the amount of disability payments made hereunder; and

(3) If there has been a settlement of a workers' compensation claim pursuant to *R.S.34:15-20* in an amount less than that to which the claimant would otherwise be entitled as disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25 et seq.*), for the same illness or injury, the claimant shall be entitled to disability benefits for the period of disability, reduced by the amount from the settlement received by the claimant under *R.S.34:15-20*. The State fund or a private plan seeking to recover any amount of disability benefit payments from a workers' compensation award shall be required to demonstrate that the recovery is in compliance with the provisions of this section.

(c) Disability benefits otherwise required under the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25 et seq.*) shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his most recent employer contributed on his behalf.

**HISTORY:** L. 1948, c. 110, § 6; amended 1952, c. 190; 1967, c. 306; 2000, c. 105, § 1, eff. Sept. 8, 2000; 2001, c. 329, § 1, eff. Jan. 5, 2002; 2005, c. 337, § 1, eff. Jan. 12, 2006.

#### **43:21-30.1. Notice of unemployment compensation, conditions**

The Division of Unemployment and Temporary Disability Insurance shall provide notice to each individual receiving compensation under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c. 110 (*C. 43:21-25 et seq.*) explaining the conditions under which the individual may receive unemployment compensation pursuant to this 1991 amendatory and supplementary act.

**HISTORY:** L. 1991, c. 486, § 2

#### **43:21-31. Certain individuals excepted**

Any person who adheres to the faith or teachings of any church, sect, or denomination, and who in accordance with its creed, tenets, or principles depends for healing upon prayer or spiritual means, in the practice of religion, shall be exempt from this act upon filing with the commission and with his employer a statement, in such form as the commission shall by regulation prescribe, waiving any and all benefits under this act. Such person shall thereupon be exempt from the provisions of this act, including any obligation to make contributions hereunder and any right to receive benefits hereunder.

**HISTORY:** L. 1948, c. 110, p. 589, 7.

### **ARTICLE II – PRIVATE PLANS**

#### **43:21-32. Establishment of private plans**

Any covered employer may establish a private plan for the payment of disability benefits in lieu of the benefits of the State plan hereinafter established. Benefits under such a private plan may be provided by a contract of insurance issued by an insurer duly authorized and admitted to do business in this State, or by an agreement between the employer and a union or association representing his employees, or by a specific undertaking by the employer as a self-insurer. Subject to the insurance laws of this State, such a contract of insurance may be between the insurer and the employer; or may be between the insurer and two or more employers, acting for the purpose through a nominee, designee or trustee; or may be between the insurer and the union or association with which the employer has an agreement with respect thereto. Each such private plan shall be submitted in detail to the Division of Employment Security and shall be approved by the division, to take effect as of the first day of the calendar quarter next following, or as of an earlier date if requested by the employer and approved by the Division of Employment Security, if it finds that:

(a) all of the employees of the employer are to be covered under the provisions of such plan with respect to any disability commencing after the effective date of such plan, except as otherwise provided in this section; and

(b) eligibility requirements for benefits are no more restrictive than as provided in this act for benefits payable by the State plan; and

(c) the weekly benefits payable under such plan for any week of disability are at least equal to the weekly benefit amount payable by the State plan, taking into consideration any coverage with respect to concurrent employment by another employer, and the total number of weeks of disability for which benefits are payable under such plan is at least equal to the total number of weeks for which benefits would have been payable by the State plan; and

(d) no greater amount is required to be paid by employees toward the cost of benefits than that prescribed by law as the amount of worker contribution to the State disability benefits fund for covered individuals under the State plan; and

(e) coverage is continued under the plan while an employee remains a covered individual as defined in section three of this act, but not after the employee may become employed by another employer following termination of employment to which the plan relates; and

(f) a majority of the employees to be covered by the plan have or shall have agreed to the plan prior to the effective date thereof, if employees are required to contribute to the cost of the private plan, as provided in section nine.

Subject to the approval of the Division of Employment Security, any such private plan may exclude a class or classes of employees, except a class or classes determined by the age, sex or race of the employees, or by the wages paid such employees, the exclusion of which, in the opinion of the division, will result in a substantial selection of risk adverse to the State plan. Covered individuals so excluded shall be covered by the State plan and subject to the employee contribution required by law to be paid into the State disability benefits fund.

**HISTORY:** L. 1948, c. 110, p. 590, 8. Amended by L. 1950, c. 173, p. 394, 2; L. 1953, c. 426, p. 2147, 1.

### **43:21-33. Election by employees; deduction of contributions**

If employees are to be required to contribute toward the cost of benefits under a private plan, such plan shall not become effective unless prior to the effective date a majority of the employees in the class or classes to be covered thereby have agreed thereto by written election. In such event, the employer may during the continuance of the approved private plan collect the required contributions thereto by deduction from the wages paid to covered individuals under such plan, which deduction may be combined with that deduction required by Revised Statutes, section 43:21-7(d)(1) if reasonable notice is given covered individuals concerning such combined deduction by the employer; provided, that if any employer fails to deduct the contributions of any of his employees at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he may not thereafter collect a contribution with respect to such wages previously paid.

A covered individual shall not be entitled to any benefits from the State disability benefits fund with respect to any period of disability commencing while he is covered under an approved private plan.

**HISTORY:** L. 1948, c. 110, p. 591, 9. Amended by L. 1950, c. 173, p. 396, 3.

#### **43:21-34. Existing plans**

If upon the effective date of this act a covered employer has in effect a plan for the payment of cash disability benefits to his employees or to any class or classes thereof, or has in effect an agreement with a union or association whereby there is in effect a plan for the payment of cash disability benefits to his employees or to any class or classes thereof (and to the cost of which plan the employer is obligated to contribute,) such plan shall, regardless of the requirements of this article, be deemed to be an approved private plan until the earliest date upon which the employer shall have the right to modify the benefits of or discontinue such plan, or to discontinue contributions toward the cost thereof. In such case the employer shall notify the commission of the circumstances. During the continuance of such private plan the employees covered thereunder shall not be entitled to any benefits under the State plan with respect to any period of disability commencing while they are covered under such private plan. If any such private plan covers only a class or classes of covered individuals, the employer may effect another private plan for his remaining employees or for a class or classes of them, subject to the requirements and limitations of section eight.

**HISTORY:** L. 1948, c. 110, p. 592, 10.

#### **43:21-35. Termination of private plans**

(a) If the division is furnished satisfactory evidence that a majority of the employees covered by an approved private plan have made election in writing to discontinue such plan, the division shall withdraw its approval of such plan effective at the end of the calendar quarter next succeeding that in which such evidence is furnished. Upon receipt of a petition therefor signed by not less than 10% of the employees covered by an approved private plan, the division shall require the employer upon 30 days' written notice to conduct an election by ballot in writing to determine whether or not a majority of the employees covered by such private plan favor discontinuance thereof; provided, that such election shall not be required more often than once in any 12-month period.

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

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

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

(e) Anything in this act to the contrary notwithstanding, a covered employer who, under an approved private plan, is providing benefits at least equal to those required by the State plan, may modify the benefits under the private plan so as to provide benefits not less than the benefits required

by the State plan. Individuals covered under a private plan shall not be required to contribute to the plan at a rate exceeding 3/4 of 1% of the amount of "wages" established for any calendar year under the provisions of *R.S.43:21-7(b)* prior to January 1, 1975, and 1/2 of 1% for calendar years beginning on or after January 1, 1975 and before January 1, 2009. For a calendar year beginning on or after January 1, 2009 and before January 1, 2012: an employer providing a private plan only for benefits for employees during their own disabilities may require the employees to contribute to the plan at a rate not exceeding 0.5% of the amount of "wages" established for the calendar year under the provisions of *R.S.43:21-7(b)*; an employer providing a private plan only for benefits for employees during periods of family temporary disability may require the individuals covered by the private plan to contribute an amount not exceeding the amount the individuals would pay pursuant to *R.S.43:21-7(d)(1)(G)(ii)*; an employer providing a private plan both for benefits for employees during their own disabilities and for benefits during periods of family temporary disability may require the employees to contribute to the plan at a rate not exceeding 0.5% of the amount of "wages" established for the calendar year under the provisions of *R.S.43:21-7(b)* plus an additional amount not exceeding the amount the individuals would pay pursuant to *R.S.43:21-7(d)(1)(G)(ii)*. For a calendar year beginning on or after January 1, 2012: an employer providing a private plan only for benefits for employees during their own disabilities may require the employees to contribute to the plan at a rate not exceeding the amount the individuals would pay pursuant to *R.S.43:21-7(d)(1)(G)(i)*; an employer providing a private plan only for benefits for employees during periods of family temporary disability may require the individuals covered by the private plan to contribute an amount not exceeding the amount the individuals would pay pursuant to *R.S.43:21-7(d)(1)(G)(ii)*; an employer providing a private plan both for benefits for employees during their own disabilities and for benefits during periods of family temporary disability may require the employees to contribute to the plan an amount not exceeding the amount the individuals would pay pursuant to *R.S.43:21-7(d)(1)(G)(i)* and *R.S.43:21-7(d)(1)(G)(ii)*. Notification of the proposed modification shall be given by the employer to the division and to the individuals covered under the plan.

**HISTORY:** L. 1948, c. 110, p. 593, § 11. Amended by L. 1952, c. 188, p. 678, § 2; L. 1971, c. 346, § 14; L. 1974, c. 86, § 8; 2008, c. 17, § 4, eff. May 2, 2008; 2011, c. 88, § 2, eff. July 1, 2011.

#### **43:21-36. Additional benefits**

Nothing in this act shall be construed to prohibit the establishment by an employer, without approval, of a supplementary plan or plans providing for the payment to employees, or to any class or classes thereof, of benefits in addition to the benefits of an approved private plan, or to prohibit the collection or receipt of additional voluntary contributions from employees toward the cost of such additional benefits. The rights, duties and responsibilities of all interested parties under such supplementary plans shall be unaffected by any provision of this act.

**HISTORY:** L. 1948, c. 110, p. 594, 12.

### **ARTICLE III – STATE PLAN**

#### **43:21-37. Persons entitled to benefits**

Any covered individual who on the date of the commencement of a period of disability is not entitled to disability benefits under an approved private plan shall be entitled to disability benefits as provided in this article, referred to in this act as the State plan.

**HISTORY:** L. 1948, c. 110, p. 594, 13.

#### **43:21-38. Duration of benefits**

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 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. 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, 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.

**HISTORY:** L. 1948, c. 110, p. 594, § 14. Amended by L. 1951, c. 54, p. 406, § 1; L. 1952, c. 188, p. 680, § 3; L. 1967, c. 30, 8; L. 1984, c. 104, § 2, eff. Oct. 1, 1984; 2008, c. 17, § 5, eff. May 2, 2008.

#### **43:21-39. 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) in the case of intermittent leave in a single period of family temporary disability leave taken to provide care for a family member of the individual with a serious health condition, 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; and

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

(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, or more than 42 days with respect to any one period of family temporary disability leave taken on an intermittent basis to provide care for a family member of the individual with a serious health condition; and

(3) for more than six weeks of family temporary disability leave during any 12-month period, or more than 42 days of family temporary disability leave taken during any 12-month period, on an intermittent basis to provide care for a family member of the individual with a serious health condition, 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;

(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; and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in this act.

**HISTORY:** L. 1948, c. 110, § 15; amended 1961, c. 43, § 11; 1967, c. 30, § 9; 1980, c. 90, § 14; 1983, c. 47; 1989, c. 213, § 2; 2004, c. 168, § 2, eff. Dec. 7, 2004; 2007, c. 322, § 1, eff. Jan. 13, 2008; 2008, c. 17, § 6, eff. May 2, 2008; 2009, c. 114, § 1, eff. Aug. 12, 2009.

#### **43:21-39.1. Compensation for family temporary disability leave; conditions**

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

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

c. The employer of an individual may, notwithstanding any other provision of law, including the provisions of *N.J.S.18A:30-1* et seq., permit or require the individual, during a period of family temporary disability leave, to use any paid sick leave, vacation time or other leave at full pay made available by the employer before the individual is eligible for disability benefits for family temporary disability leave pursuant to P.L.2008, c.17 (*C.43:21-39.1* et al.), except that the employer may not require the individual to use more than two weeks worth of leave at full pay. The employer may also have the total number of days worth of disability benefits paid pursuant to P.L.2008, c.17 (*C.43:21-39.1* et al.) to the individual during a period of family temporary disability leave reduced by the number of days of leave at full pay paid by the employer to the individual during that period. If the employer requires the individual to use leave at full pay, the employee shall be permitted to take that fully-paid leave during the waiting period required pursuant to subsection (a) of section 15 of P.L.1948, c.110 (*C.43:21-39*). Nothing in P.L.2008, c.17 (*C.43:21-39.1* et al.) shall be construed as nullifying any provision of an existing collective bargaining agreement or employer policy, or preventing 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 select the order in which the different kinds of leave are used. Nothing in P.L.2008, c.17

(C.43:21-39.1 et al.) shall be construed as preventing an employer from providing more generous benefits than are provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which supplement the benefits provided under P.L.2008, c.17 (C.43:21-39.1 et al.) for some or all of the employer's employees.

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

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

f. In the event of a period of family temporary disability leave of any individual covered under the State plan, the employer shall, not later than the ninth day of the period of family temporary disability leave, including any waiting period or time in which the employer provides sick leave, vacation or other fully paid leave, issue to the individual and to the division printed notices on division forms containing the name, address and Social Security number of the individual, 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 family temporary disability leave, and the name, address, and division identity number of the employer. Not later than 30 days after the commencement of the period of family temporary disability leave for which the notice is furnished by the employer, the individual shall furnish to the division a notice and claim for family temporary disability leave benefits. Upon the submission of the notices by the employer and the individual, the division may issue benefit payments. In the case of family temporary disability leave taken to care for a family member with a serious health condition, the benefits may be paid for periods not exceeding three weeks pending the receipt of the certification required pursuant to subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2). Failure to furnish notice and certification in the manner above provided shall not invalidate or reduce any claim if it shall be shown to the satisfaction of the division not to have been reasonably possible to furnish the notice and certification and that the notice and certification was furnished as soon as reasonably possible.

g. Each covered employer shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by regulation promulgated by the commissioner, of each covered employee's rights regarding benefits payable pursuant to this section. The employer shall also provide each employee of the employer with a written copy of the notification: (1) not later than 30 days after the form of the notification is issued by regulation; (2) at the time of the employee's hiring, if the employee is hired after the issuance; (3) whenever the employee notifies the employer that the employee is taking time off for circumstances under which the



employee is eligible for benefits pursuant to this section; and (4) at any time, upon the first request of the employee.

**HISTORY:** L. 2008, c. 17, § 10, eff. May 2, 2008.

**43:21-39.2. Duration of family temporary disability leave; continuous or intermittent; certification**

a. In the case of a family member who has a serious health condition, the benefits for family temporary disability leave may be taken intermittently when medically necessary, if: the total time within which the leave is taken does not exceed 12 months; the covered individual provides the employer with a copy of the certification required pursuant to subsection b. of this section; the covered individual provides the employer with prior notice of the leave not less than 15 days before the first day on which benefits are paid for the intermittent leave, unless an emergency or other unforeseen circumstance precludes prior notice; and 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 intermittent leave, with a regular schedule of the days or days of the week on which the intermittent leave will be taken. In the case of family temporary disability leave benefits to care for a family member with a serious health condition which are taken on a continuous, non-intermittent basis, the covered individual shall: provide the employer with prior notice of the leave in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance precludes prior notice; provide a copy of the certification required pursuant to subsection b. of this section; make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer.

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

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

(2) The probable duration of the condition;

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

(4) A statement that the serious health condition warrants the participation of the covered individual in providing health care, as provided in the "Family Leave Act," P.L.1989, c.261 (*C.34:11B-1 et seq.*) and regulations adopted pursuant to that act;

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

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

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

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

**HISTORY:** L. 2008, c. 17, § 11, eff. May 2, 2008.

**43:21-39.3. Payment of benefits for period of family temporary disability leave, birth or adoption of child**

a. All of the disability benefits paid to a covered individual during a period of family temporary disability leave with respect to any one birth or adoption shall be for a single continuous period of time, except that the employer of the covered individual may permit the covered individual to receive the disability benefits during non-consecutive weeks in a manner mutually agreed to by the employer and the covered individual and disclosed to the division by the employer.

b. The covered individual shall provide the employer with notice of the period of family temporary disability leave with respect to birth or adoption not less than 30 days before the leave commences, unless it commences while the individual is receiving unemployment benefits, in which case the covered individual shall notify the division. The amount of benefits shall be reduced by two weeks worth of benefits if the individual does not provide notice to an employer as required by this subsection b., unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.

c. Family temporary disability leave taken because of the birth or placement for adoption of a child may be taken at any time within a year after the date of the birth or placement for adoption.

**HISTORY:** L. 2008, c. 17, § 12, eff. May 2, 2008.

**43:21-39.4. Availability of annual reports, contents**

a. The Commissioner of Labor and Workforce Development shall issue and make available to the public, not later than December 31, 2010, and each subsequent year, annual reports providing data on temporary disability benefits, including separate data for claims involving pregnancy and childbirth, and family temporary disability benefits, including separate data for each of the following categories of claims: care of newborn children; care of newly adopted children; care of sick children; care of sick spouses, and care of other sick family members. The reports shall include, for each category of claims, the number of workers receiving the benefits, the amount of benefits paid, the average duration of benefits, the average weekly benefit, and, in the case of family temporary disability benefits, any reported amount of sick leave, vacation or other fully paid time which resulted in reduced benefit duration. The report shall provide data by gender and by any other demographic factors determined to be relevant by the commissioner. The reports shall also provide, for all temporary disability benefits and for all family temporary disability benefits, the total costs of benefits and the total cost of administration, the portion of benefits for claims during unemployment, and the total revenues from: employer assessments, where applicable; employee assessments; and other sources.

b. The commissioner may, in his discretion, conduct surveys and other research regarding, and include in the annual reports descriptions and evaluations of, the impact and potential future impact of the provisions of P.L.2008, c.17 (*C.43:21-39.1 et al.*) on the State disability benefits fund, and other effects of those provisions, including the costs and benefits resulting from the provisions of P.L.2008, c.17 (*C.43:21-39.1 et al.*) for:

(1) Employees and their families, including surveys and evaluations of: what portion of the total number of employees taking leave would not have taken leave, or would have taken less leave, without the availability of benefits; what portion of employees return to work after receiving benefits and what portion are not permitted to return to work; and what portion of employees who are eligible for benefits do not claim or receive them and why they do not;

(2) Employers, including benefits such as reduced training and other costs related to reduced turnover of personnel, and increased affordability of family temporary disability leave insurance through the State plan, with special attention given to small businesses; and

(3) The public, including savings caused by any reduction in the number of people receiving public assistance.

c. The total amount of any expenses which the commissioner determines are necessary to carry out his duties pursuant to this section shall be charged to the Family Temporary Disability Leave Account of the State disability benefits fund, except that the amount shall in no case exceed \$150,000 during any fiscal year.

**HISTORY:** L. 2008, c. 17, § 13, eff. May 2, 2008.

#### **43:21-40. Weekly and daily benefit amounts**

With respect to periods of disability commencing on or after July 1, 1961, an individual's weekly benefit amount shall be determined and computed by the division on the same basis as the weekly benefit rate is determined and computed pursuant to subsection (c) of *R.S. 43:21-3*, except that for periods of disability commencing on or after October 1, 1984, an individual's weekly benefit rate shall be two-thirds of his average weekly wage, subject to a maximum of 53% of the Statewide average weekly remuneration paid to workers by employers, as determined under subsection (c) of *R.S. 43:21-3*; provided, however, that such individual's benefit rate shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof. The amount of benefits for each day of disability for which benefits are payable shall be one-seventh of the corresponding weekly benefit amount; provided that the total benefits for a fractional part of a week shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

**HISTORY:** L. 1948, c. 110, p. 596, 16. Amended by L. 1950, c. 173, p. 397, 4; L. 1952, c. 188, p. 681, 4; L. 1955, c. 202, p. 788, 1; L. 1961, c. 43, p. 474, 12; L. 1967, c. 30, 10; L. 1984, c. 24, 19, eff. Oct. 1, 1984; L. 1984, c. 104, 3, eff. Oct. 1, 1984.

#### **43:21-41. Entitlement for disability benefits**

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

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

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

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

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

(e) 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, for the purposes of specifying the time of the 52-week period in which base weeks or earnings are required to be established for benefit eligibility pursuant to this subsection (e), to have commenced at the beginning of the period of disability for the individual's own disability, not the period of family temporary disability.

**HISTORY:** L. 1948, c. 110, § 17; amended 1950, c. 173, § 5; 1952, c. 188, § 5; 1975, c. 355; 1984, c. 104, § 4; 2001, c. 17, § 4, eff. Jan. 29, 2001; 2008, c. 17, § 7, eff. May 2, 2008.

#### **43:21-42. Payment of disability benefits; fund; deceased claimant; minors; representative appointed**

(a) Disability benefits payable pursuant to this article shall be paid out of the State disability benefits fund established by law, and to the extent that such laws, regulations and practices are not

inconsistent herewith, shall be administered subject to the same laws, regulations and practices as are applicable under the chapter of the Revised Statutes to which this act is a supplement.

(b) Payment of disability benefits due deceased claimant. If a claim for disability benefits is not filed by an otherwise eligible individual prior to his death, the first claim for such benefits may be filed, by the surviving spouse, or such other person or persons who may be legally entitled thereto. Payment of benefits shall be made upon receipt of a completed first claim form accompanied by an affidavit executed by such person or persons. The payment by the division of such benefits upon receipt of such affidavit, or affidavits, shall discharge the obligations of the division to the extent of such payment. The division shall prescribe the form of affidavit to be executed.

(c) Payment of disability benefits due minors. In case an infant or minor under the age of twenty-one years shall be entitled to receive any sum in payment for disability benefits under this chapter, the father, mother or natural guardian of the infant or minor shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such infant or minor duly appointed by the surrogate or the court of the county in which such infant or minor resides, and the release or discharge of such father, mother or natural guardian shall be a full and complete discharge of all claims or demands of the infant or minor thereunder. The division shall prescribe the form of affidavit and release to be executed by the parties concerned.

(d) Representative appointed for disability benefit beneficiary. The director of the division is hereby authorized and empowered when in his judgment it shall be advisable, to appoint a representative with power to act for a person who may be entitled to disability benefits by legally receiving and disbursing said payments under the direction of the director when it shall appear that such person is mentally, legally or physically unable to properly receive or disburse said payments, or when said person, after due diligence cannot be located. Whenever the person entitled to payments is a minor child, and the director determines that there is no proper person available to receive and disburse said payments for such child, then the Child Welfare Board, as constituted by the provisions of chapter five, of Title Institutions and Agencies (§ 30:5-1 et seq.), may be appointed as the representative of such minor child. Application on behalf of any such person shall be made in such form as the director shall prescribe.

**HISTORY:** L. 1948, c. 110, p. 596, 18. Amended by L. 1950, c. 260, p. 902, 1.

#### **ARTICLE IV – DISABILITY DURING UNEMPLOYMENT**

**43:21-43. Benefits (Amended R.S.43:21-3.)**

**43:21-44. Benefit Eligibility Conditions (Amended R.S.43:21-4.)**

#### **ARTICLE V – ADMINISTRATION AND FINANCE**

**43:21-45. Administration**

(a) It shall be the duty of the executive director of the commission to administer this act under the supervision and control of the commission; to appoint and fix the compensation of members of the staff subject to the approval of the commission and subject to the provisions of subsection (d) of section 43:21-11 of the Revised Statutes; and to make such expenditures as are necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission.

(b) There is hereby established an Advisory Council on Disability Benefits to consist of the following: Four representatives of labor, two representatives of employers, two representatives of the insurance industry, and two representatives of the medical profession, to be appointed by the Governor with the advice and consent of the Senate; the executive director of the commission and the commissioners of Banking and Insurance, and of Labor, for the time being. Each appointive member

shall serve for a term of five years, and vacancies shall be filled for the unexpired term only. Members of the advisory council shall serve without compensation but may be reimbursed for their necessary expenses. The advisory council shall:

(1) study the administration and operation of this act;

(2) aid the commission in formulating policies, rules and regulations and consult and advise with the executive director;

(3) report to the Governor and the Legislature on or before March first, one thousand nine hundred and fifty-one, and at such other times as it may deem appropriate its recommendations for legislation or administration necessary or desirable to improve and perfect the operation of this act;

(4) report to the Governor and the Legislature on such other matters relating to this act, and at such other times, as it may deem in the public interest.

**HISTORY:** L. 1948, c. 110, p. 600, 21.

#### **43:21-45.1. Reciprocal agreements for certain temporary disability benefits**

a. The Commissioner of Labor is authorized to enter into a reciprocal agreement with the department of labor, or other corresponding agency, of any other state for the purpose of granting individuals residing in New Jersey eligibility for the award of benefits under the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C. 43:21-25 et seq.*), based wholly or in part upon employment in the other state, and granting individuals residing in the other state eligibility for the award of corresponding disability benefits under the statutory authority of that other state, based wholly or in part upon employment in this State.

b. Notwithstanding any other provision of law, if the Commissioner of Labor has entered into a reciprocal agreement with another state pursuant to subsection a. of this section, the commissioner is authorized to determine the amount of benefits to be paid to an individual, in accordance with the provisions of the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C. 43:21-25 et seq.*), based wholly or in part upon the individual's employment in the other state.

**HISTORY:** L. 2001, c. 451, § 1.

#### **43:21-46. State disability benefits fund**

(a) The State disability benefits fund, hereinafter referred to as the fund, is hereby established. The fund shall remain in the custody of the State Treasurer, and to the extent of its cash requirements shall be deposited in authorized public depositories in the State of New Jersey. There shall be deposited in and credited to the fund the amount of worker and employer contributions provided under subparagraph (G) of paragraph (1) of subsection (d) of *R.S.43:21-7* and subsection (e) of *R.S.43:21-7*, less refunds authorized by the chapter (*R.S.43:21-1 et seq.*) to which this act is a supplement, and the entire amount of interest and earnings from investments of the fund, and all assessments, fines and penalties collected under this act. The fund shall be held in trust for the payment of disability benefits pursuant to this act, for the payment of benefits pursuant to subsection (f) of *R.S.43:21-4*, and for the payment of any authorized refunds of contributions. All warrants for the payment of benefits shall be issued by and bear only the signature of the Director of the Division of Unemployment and Temporary Disability Insurance or his duly authorized agent for that purpose. All other moneys withdrawn from the fund shall be upon warrant signed by the State Treasurer and countersigned by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey. The Treasurer shall maintain books, records and accounts for the fund, appoint personnel and fix their compensation within the limits of available appropriations. The expenses of the Treasurer in administering the fund and its accounts shall be charged against the administration account, as hereinafter established. A separate account, to be known as the administration account, shall be maintained in the fund, and there shall be credited to such account an amount determined to be sufficient for proper administration, not to exceed, however, 1/10 of 1% of the wages with respect to which current contributions are payable into the

fund, and the entire amount of any assessments against covered employers, as hereinafter provided, for costs of administration prorated among approved private plans. The costs of administration of this act, including *R.S.43:21-4(f)*, shall be charged to the administration account.

(b) A further separate account, to be known as the unemployment disability account, shall be maintained in the fund. Such account shall be charged with all benefit payments under *R.S.43:21-4(f)*.

Prior to July 1 of each calendar year, the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey shall determine the average rate of interest and other earnings on all investments of the State disability benefits fund for the preceding calendar year. An amount equal to the sum of the amounts withdrawn from the unemployment trust fund pursuant to section 23 [*C.43:21-47*] hereof multiplied by such average rate shall be determined by the division and credited to the unemployment disability account as of the end of the preceding calendar year.

If the unemployment disability account shall show an accumulated deficit in excess of \$200,000.00 at the end of any calendar year after interest and other earnings have been credited as provided hereinabove, the division shall determine the ratio of such deficit to the total of all taxable wages paid during the preceding calendar year, and shall make an assessment against all employers in an amount equal to the taxable wages paid by them during such preceding calendar year to employees, multiplied by such ratio, but in no event shall any such assessment exceed 1/10 or 1% of such wages; provided, however, that the assessment made against the State (including Rutgers, The State University and the New Jersey Institute of Technology) shall not exceed the sum of all benefits paid under the provisions of *R.S.43:21-4(f)* as the result of employment with the State. Such amounts shall be collectible by the division in the same manner as provided for the collection of employee contributions under this chapter (*R.S.43:21-1 et seq.*). In making this assessment, the division shall furnish to each affected employer a brief summary of the determination thereof. The amount of such assessments collected by the division shall be credited to the unemployment disability account.

As used in this section, "taxable wages" shall mean wages with respect to which employer contributions have been paid or are payable pursuant to subsections (a), (b) and (c) of *R.S.43:21-7*.

(c) A board of trustees, consisting of the State Treasurer, the Secretary of State, the Commissioner of Labor and Industry, the director of the division, and the State Comptroller, is hereby created. The board shall invest and reinvest all moneys in the fund in excess of its cash requirements, and such investments shall be made in obligations legal for savings banks; provided, however, that the provisions of this subsection shall in all respects be subject to the provisions of P.L.1950, c.270 (*C.52:18A-79 et seq.*).

(d) There is hereby appropriated, to be paid out of the fund, such amounts as may from time to time be required for the payment of disability benefits, and such amounts as may be required each year, as contained in the annual appropriation act, for the administration of this act, including *R.S.43:21-4(f)*.

**HISTORY:** L. 1948, c. 110, p. 602, § 22; amended 1951, First Sp. Sess., c. 355, p. 1469, § 1; 1968, c. 406, § 1, eff. Jan. 13, 1969; 1970, c. 324, § 2; 1980, c. 18, § 3, eff. March 26, 1980; 1984, c. 104, § 5, eff. Oct. 1, 1984; 1994, c. 112, § 3, eff. Sept. 29, 1994; 2012, c. 45, § 126, eff. July 1, 2013.

#### **43:21-47. Withdrawal from federal treasury**

(a) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1948, the sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and deposited in and credited to the account of this State in the unemployment trust fund of the United States of America, established and maintained pursuant to section 904 of the Social Security Act, as amended (*42 U.S.C. § 1104*), and to deposit such sums in the State disability benefits fund, established under the

"Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(b) The State Treasurer is hereby authorized and directed to requisition and withdraw within 90 days of this enactment, an additional sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and deposited in and credited to the account of this State in the unemployment trust fund of the United States of America, established and maintained pursuant to section 904 of the Social Security Act, as amended (*42 U.S.C. § 1104*), and to deposit such sums in the State disability benefits fund, established under the "Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. If the balance in the State disability benefits fund as of December 31 of any calendar year, increased by the contributions credited thereto on or before, or as of January 31 immediately thereafter is in excess of \$75,000,000.00, the excess shall be withdrawn from the State disability benefits fund and deposited to the account of this State in the unemployment trust fund until the entire \$50,000,000.00 requisitioned and withdrawn under this subsection (b) has been returned and deposited to the account of this State in the unemployment trust fund pursuant to the provisions of this subsection (b) and subsection (c) hereof. Such repayment to the unemployment trust fund shall be considered in determining contribution rates by employers to the State disability benefits fund under *R.S. 43:21-7(e)*. No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(c) The State Treasurer shall transfer from the State disability benefits fund to the clearing account of the unemployment compensation fund, as established under *R.S. 43:21-9*, the sum of \$25,000,000.00. Such transfer may be made at such times and in such installments as the State Treasurer may deem proper, except that the total sum shall have been transferred by no later than April 30, 1971. Amounts transferred to the clearing account of the unemployment compensation fund under this subsection shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America in accordance with the provisions of *R.S. 43:21-9(b)*.

(d) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1985 a minimum of \$50,000,000.00, at the discretion of the Commissioner of Labor and Workforce Development, from the State disability benefits fund established under section 22 of P.L. 1948, c. 110 (*C. 43:21-46*) and to deposit such sum in the clearing account of the State unemployment compensation fund established under *R.S. 43:21-9*. The amount transferred under this subsection (d) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America, in accordance with the provisions of *R.S. 43:21-9(b)*.

(e) The State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 1992 an amount not greater than \$25,000,000 from revenues received pursuant to paragraph (1) of subsection (e) of *R.S. 43:21-7*, at the discretion of the Commissioner of Labor and Workforce Development, from the State disability benefits fund established pursuant to section 22 of P.L. 1948, c. 110 (*C. 43:21-46*) and to deposit that amount in the New Jersey Workforce Development Partnership Fund created pursuant to section 9 of P.L. 1992, c. 43 (*C. 34:15D-9*).

(f) The State Treasurer, in consultation with the Commissioner of Labor and Workforce Development, is hereby authorized and directed to requisition and withdraw on or after July 1, 1994 from revenues received pursuant to paragraph (1) of subsection (e) of *R.S. 43:21-7*, an amount from the State disability benefits fund not greater than 25% of the balance in that fund as of June 30, 1994 and to deposit that amount in the clearing account of the unemployment compensation fund established under *R.S. 43:21-9*. The amount transferred under this subsection (f) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America, in accordance with the provisions of *R.S. 43:21-9(b)*.

(g) To the extent that funds from the General Fund are also deposited into the clearing account subsequent to July 1, 1994 but before October 2, 1994, such amount shall be reimbursed to the General Fund from amounts collected pursuant to *R.S. 43:21-7(d)(1)(G)* and *R.S. 43:21-7(e)* for quarterly periods ending on or after September 30, 1994.

(h) The amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section plus any amount reimbursed to the General Fund in accordance with subsection (g) shall be repaid to the State disability benefits fund from general State revenues with interest at the rate earned by the investments made with moneys remaining in the State disability benefits fund. The repayment period shall not exceed ten years. The amount repaid each year shall be not less than one tenth of the total amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section, plus not less than one tenth of the amount reimbursed to the General Fund in accordance with subsection (g), plus accrued interest. The State Treasurer shall, on or before the thirty-first day of January in 1995 and in each subsequent year determine what amount shall be repaid to the State disability benefits fund in the next commencing fiscal year, which amount shall be consistent with the provisions of this subsection (h). The Legislature shall appropriate that amount from the General Fund to the State disability benefits fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of *R.S. 43:21-7*, the amount transferred from the State disability benefits fund to the unemployment compensation fund pursuant to subsection (f) of this section and reimbursed to the General Fund pursuant to subsection (g) of this section less repayments or other reductions, plus accrued interest shall be included therein.

(i) The State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 1996 an amount not greater than \$250,000,000 from the State disability benefits fund and to deposit that amount in the General Fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of *R.S. 43:21-7*, the amount transferred from the State disability benefits fund to the General Fund pursuant to this subsection (i) shall be included therein.

(j) To ensure that the provisions of subsection (i) of this section do not reduce or delay benefits payable pursuant to the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C. 43:21-25 et seq.*), whenever the amount in the State disability benefits fund is less than the amount required to pay the benefits provided under that law and the necessary costs of administering those benefits, the additional amount required to pay the benefits and the administrative costs shall be paid from the General Fund. The amounts paid from the General Fund for benefits and administrative costs pursuant to this subsection shall be repaid to the General Fund from the State disability benefits fund at such time as the Treasurer determines that the repayment may be made without reducing or delaying benefits payable pursuant to the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C. 43:21-25 et seq.*). The repayment to the General Fund from the State disability benefits fund pursuant to this subsection (j) shall not effect an increase in employee or employer contributions under subsection (d) or (e) of *R.S. 43:21-7*.

(k) The State Treasurer is hereby authorized and directed to requisition and withdraw, in addition to the \$33,000,000 appropriated from the State disability benefits fund pursuant to section 61 of P.L.2001, c.130 for transfer to the General Fund, before July 1, 2002 an amount not greater than \$50,000,000 from the State disability benefits fund and to deposit that amount in the General Fund, and in addition, is hereby authorized and directed to requisition and withdraw on or after July 1, 2003 an amount not greater than \$30,000,000 from the State disability benefits fund and to deposit that amount in the General Fund. Also, on or after July 1, 2004, the State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 2004 an amount not greater than \$110,000,000 from the State disability benefits fund and to deposit that amount in the General Fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of *R.S. 43:21-7*, the amount transferred from the State disability benefits fund to the General Fund pursuant to this subsection (k) shall be regarded as being included in the State disability benefits fund.



(l) The State Treasurer is authorized to utilize funds from the State disability benefits fund to purchase insurance, excess insurance or reinsurance for the fund and to enter into whatever contracts are needed to ensure that the provisions of subsection (k) of this section do not reduce or delay benefits payable pursuant to the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (C. 43:21-25 et seq.).

**HISTORY:** L. 1948, c. 110, § 23; amended 1970, c. 323; 1971, c. 50; 1984, c. 24, § 18; 1992, c. 44, § 11; 1994, c. 112, § 4; 1996, c. 47, § 1; 2002, c. 7, § 1, eff. Mar. 18, 2002; 2003, c. 109, § 1, eff. July 1, 2003; 2004, c. 44, § 1, eff. June 29, 2004.

#### **43:21-48. Assessment of costs of administration**

(a) If officers or employees of the Division of Employment Security perform duties in part related to the administration of this act and of the unemployment compensation law, or if there be expenses otherwise incurred jointly in connection with administration of such acts, the division shall make an equitable apportionment to determine the portion of total expense to be charged to administration of this act including *R.S. 43:21-4(f)*. So far as possible such apportionment shall be based upon records to be maintained with the respect to activities undertaken in administering this act.

(b) The Division of Employment Security shall, at the end of each fiscal year, determine the total amount expended by it for administrative cost directly attributable to the supervision and operation of approved private plans, together with a proportionate part of the administrative cost of *R.S. 43:21-4(f)*, and such total amount shall be prorated among the approved private plans in effect during that year on the basis of the total amount of taxable wages that were paid to all employees covered under such private plans. The prorated amounts shall be assessed against the respective employers but shall not exceed 1/20 of 1% of such wages, and such amounts shall be collectible by the division in the same manner as provided for the collection of employer contributions under the chapter to which this act is a supplement. In making this assessment, the division shall furnish to each affected employer a brief summary of the apportionment of expense to be charged to administration of this act, and of the facts upon which the calculation of the assessment is based. The amounts of such assessments shall be credited to the administration account.

(c) The division shall, at the end of each fiscal year, determine the total amount expended by it for administrative cost directly attributable to maintaining separate disability benefits accounts for employers required to contribute to the State disability benefits fund and assigning modified rates of contribution to such employers in accordance with the provisions of *R.S. 43:21-7(e)(3)*. Such total amount of administrative costs shall be prorated among such employer accounts on the basis of the total amount of taxable wages paid to all employees during the preceding calendar year with respect to which contributions were payable to the State disability benefits fund. The prorated amounts shall be assessed against the respective employers, and such amounts shall be collectible by the division in the same manner as provided for the collection of employer contributions in *R.S. 43:21-14*. The amounts of such assessments shall be credited to the administration account.

**HISTORY:** L. 1948, c. 110, p. 605, 24. Amended by L. 1950, c. 173, p. 397, 6; L. 1951, c. 282, p. 976, 1; L. 1970, c. 324, 3.

#### **43:21-49. Postings, notice and claim for disability benefits**

(a) (1) Every employer shall post, in prominent locations, notices to employees in the form provided by the division of whether the employer is permitted or required to participate in a temporary disability benefits program pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), and whether the employer does or does not participate. For employers who participate in a temporary disability benefits program, the notice shall also describe the temporary disability benefits available to the employees and prominently disclose that pregnancy is regarded by law as a disability and that pregnant employees are regarded as disabled and entitled to temporary disability benefits to the same extent as other disabled employees. Upon the request of an employer, the division shall, without charge, provide the employer with a copy of each applicable notice, suitable for reproduction by the employer. Each employer participating in the State plan or a private plan shall

give a printed copy of benefit instructions to any disabled employee as soon as the employer becomes aware of the disability.

(2) In addition, in the event of the disability of any individual covered under the State plan, the employer shall, on the ninth day of disability, issue to the individual and to the division printed notices on division forms containing the name, address and Social Security number of the individual, such wage information as the division may require to determine the individual's eligibility for benefits, and the name, address, and division identity number of the employer. Not later than 30 days after the commencement of the period of disability for which such notice is furnished, the individual shall furnish to the division a notice and claim for disability benefits under the State plan or for disability during unemployment. Upon the submission of such notices by the employer and the individual, the division may issue benefit payments for periods not exceeding three weeks pending the receipt of medical proof. When requested by the division, such notice and proof shall include certification of total disability by the attending physician, or a record of hospital confinement. Failure to furnish notice and proof within the time or in the manner above provided shall not invalidate or reduce any claim if it shall be shown to the satisfaction of the division not to have been reasonably possible to furnish such notice and proof and that such notice and proof was furnished as soon as reasonably possible.

(b) A person claiming benefits under the State plan or for disability during unemployment shall, when requested by the division, submit at intervals, but not more often than once a week, to an examination by a legally licensed physician, dentist, podiatrist, chiropractor, certified nurse midwife, advanced practice nurse or public health nurse designated by the division. In all cases of physical examination of a claimant, the examination shall be made by a designee of the division, who shall be the same sex as the claimant if so requested by the claimant. All such examinations by physicians, dentists, podiatrists, chiropractors, certified nurse midwives or nurses designated by the division shall be without cost to the claimant and shall be held at a reasonable time and place. Refusal to submit to such a requested examination shall disqualify the claimant from all benefits for the period of disability in question, except as to benefits already paid.

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

**HISTORY:** L. 1948, c. 110, § 25; amended 1950, c. 173, § 7; 1951, c. 60; 1968, c. 406, § 2; 1980, c. 90, § 15; 2004, c. 168, § 3, eff. Dec. 7, 2004; 2005, c. 106, § 1, eff. June 29, 2005; 2009, c. 114, § 2, eff. Aug. 12, 2009.

#### **43:21-50. Review**

(a) If a person claiming benefits under an approved private plan shall be unable to agree with the employer or insurer as to benefits thereunder, such claimant may, within one year after the beginning of the period for which benefits are claimed, file a complaint with the division, which shall conduct such investigation, including informal hearings, as it deems proper. Such complaint shall be filed in writing in a form satisfactory to the division. The division shall have the authority to make procedural rules and regulations providing for a fair and impartial hearing, and shall designate one or more hearing officers. If the issues raised by the complaint are not settled, the hearing officer shall conduct a hearing upon due notice to the claimant, the employer and the insurer, if any, at which any party in interest shall have the right to appear. At such hearing evidence, exclusive of ex parte affidavits, may be produced by any party, but the hearing officer, in conducting the hearing, shall not be bound by the rules of evidence. All proceedings at such hearing shall be recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed. The hearing officer shall make a determination of facts, and an order disposing of the issues presented, which shall be final and binding on the claimant, the employer and the insurer. A copy of such order shall be served upon each of the interested parties by registered mail addressed to their respective last-known addresses. Any party in interest feeling aggrieved by action of the hearing officer may secure judicial review through a proceeding in lieu of prerogative writ. The cost of recording and transcribing the proceedings, and of

the preparation of the entire record required on the review, shall constitute a cost of administering this act.

(b) Individuals claiming benefits under the State plan shall be entitled to review hearing and determination as provided in unemployment compensation cases.

**HISTORY:** L. 1948, c. 110, p. 607, 26. Amended by L. 1953, c. 41, p. 772, 11.

#### **43:21-51. Fees of attorney and medical witnesses**

In any proceeding had as the result of a complaint filed with the commission as provided in this article, the hearing officer may (i) if an award of benefits is made to an employee, allow a reasonable fee, not exceeding twenty per centum (20%) of the amount of the award, to the attorney, if any, representing the employee, payable by the employer or insurer, and (ii) allow reasonable appearance fees to medical witnesses, the payment of which may be assessed wholly or in part against the employee, the employer or the insurer as the hearing officer shall determine. Except for amounts thus allowed, it shall be unlawful for an attorney or any other person to ask for, contract for, or receive, directly or indirectly, any charge for services in securing or attempting to secure any benefits hereunder, or for a medical witness to make any charge for an appearance at a hearing held pursuant to this act.

**HISTORY:** L. 1948, c. 110, p. 608, 27.

#### **43:21-52. Records and reports**

(a) Each employer shall keep true and accurate employment records, containing such information as may reasonably be prescribed by the commission. Such records shall be open to inspection by the commission or its authorized representative at any time during ordinary business hours for the purpose of ascertaining whether such employer is a covered employer and, if so, whether such employer is complying with the provisions of this act. Information thus obtained shall not be published or open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing an employee's or employer's identity, but any claimant at a hearing before the commission or a hearing officer shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(b) Covered employers whose employees are participating in an approved private plan and any insurer of an approved private plan shall furnish such reports and information and make available to the commission such records as the commission may by regulation require for the proper administration of this act.

(c) The commission is hereby authorized and directed to make available to any insurer or self-insurer, on request, any information from its records that is necessary for the determination of liability under an approved private plan.

**HISTORY:** L. 1948, c. 110, p. 608, 28.

#### **43:21-53. Rights in payments**

Benefits payable under an approved private plan by an employer as a self-insurer shall have the same preference against the assets of the employer as are now or may hereafter be allowed by law for a claim for unpaid wages for labor, and benefits under the State plan and for any disability during unemployment as provided by section 43:21-4(f) or under an approved private plan shall not be assignable or subject to levy, execution, attachment or other process for satisfaction of debts.

**HISTORY:** L. 1948, c. 110, p. 609, 29. Amended by L. 1950, c. 173, p. 399, 8.

#### **43:21-54. Financial responsibility under private plans**

If a private plan does not provide for the assumption by an insurer, duly authorized and admitted to do business in this State, of the liability to pay the benefits afforded by such plan, the commission shall not approve it unless the employer files with the commission the bond of an admitted surety insurer conditioned on the payment of obligations under the plan, or deposits with the commission securities approved by the commission to secure the payment of such obligations. The penal sum of the bond or the amount of the deposit shall be determined by the commission and shall be not less than one-half of the contributions which would have been paid by the employees to be covered by the plan during the previous year, or one-half of the estimated contributions of such employees for the ensuing year, whichever is greater; provided, however, that any employer who is a self-insurer and is exempt from insuring his workmen's compensation liability, as provided by law, shall so long as such exemption remains in effect be exempt from the surety bond and security deposit requirements of this section; and any other employer who shall satisfy the commission as to the permanence of his business and his financial ability to pay the benefits provided by a private plan submitted for approval may, upon application, be exempted from such requirements by written order of the commission, which order shall be revocable at any time.

**HISTORY:** L. 1948, c. 110, p. 609, 30.

#### **43:21-55. Penalties**

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense, to obtain or increase any disability benefit under the State plan or an approved private plan, or for a disability during unemployment, including any benefit during a period of family temporary disability leave, either for himself or for any other person, shall be liable for a fine of \$250 to be paid to the division. Upon refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey. If in any case liability for the payment of a fine as aforesaid shall be determined, any person who shall have received any benefits hereunder by reason of the making of such false statements or representations or failure to disclose a material fact, shall not be entitled to any benefits under this act for any disability occurring prior to the time he shall have discharged his liability hereunder to pay such fine.

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

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

(d) Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense upon conviction before the Superior Court or any municipal court for a fine not to exceed \$1,000 or by imprisonment for a term not to exceed ninety days, or both, at the discretion of the court. The fine upon conviction shall be payable to the State disability benefits fund of the division. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (*R.S.43:21-1 et seq.*).

**HISTORY:** L. 1948, c. 110, § 31; amended 1950, c. 173, § 9; 1991, c. 91, § 422; 1997, c. 318, § 1; 2008, c. 17, § 8, eff. May 2, 2008.

#### **43:21-55.1. Liability for repayment of disability benefits overpayments**

(a) If it is determined by the division that an individual for any reason has received, under the State plan, an approved private plan or for a disability during unemployment, any sum of disability benefits, including benefits during a period of family temporary disability leave, to which the individual was not entitled, the individual shall, except as provided in subsection (b) of this section, be liable to repay the sum in full. Except as provided in subsection (b) of this section, the sum that the individual is liable to repay shall be deducted from future benefits payable to the individual under P.L.1948, c.110 (*C.43:21-25* et al.) or subsection (f) of *R.S.43:21-4*, or shall be repaid by the individual to the division, the employer or the insurer, and that sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; except that no individual who does not knowingly misrepresent or withhold any material fact to obtain benefits shall be liable for any repayments or deductions against future benefits unless notified before four years have elapsed from the time the benefits in question were paid. The division shall promptly notify the individual by mail of the determination and the reasons for the determination. Unless the individual files an appeal of the determination within 20 calendar days following the receipt of the notice, or, within 24 days after the notice was mailed to the individual's last known address, the determination shall be final.

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

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

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

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

**HISTORY:** L. 1997, c. 318, § 2; amended 2008, c. 17, § 9, eff. May 2, 2008.

#### **43:21-56. Severability**

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be unconstitutional, invalid or inoperative, in whole or in part, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. To the extent that any provision of this act shall not have been adjudged unconstitutional, invalid or inoperative, such provision shall be enforced and effectuated.

**HISTORY:** L. 1948, c. 110, p. 612, 33.

## APPENDIX I

An Act concerning workmen's compensation, relating to reimbursement of disability benefits paid under the Temporary Disability Benefits Law (P.L.1948, c.110) for the same accident or sickness compensable under chapter fifteen of Title 34 of the Revised Statutes, and supplementing chapter fifteen of Title 34 of the Revised Status. (P.L.1950, c.174.)

### **34:15-57.1. Reimbursement of benefits paid under Temporary Disability Benefits Law**

Whenever an employee becomes entitled to or is awarded compensation for temporary disability pursuant to chapter fifteen of Title 34 of the Revised Statutes for the same weeks or period with respect to which he has received disability benefits pursuant to the Temporary Disability Benefits Law (P.L.1948, c. 110), the Deputy Directors or Referees of the Division of Workmen's Compensation are authorized to incorporate in such award, order, or approval of settlement, an order requiring the employer or his insurance carrier to reimburse the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer involved in the claim under chapter fifteen of Title 34 of the Revised Statutes, or his insurance carrier, as the case may be, the amount of any disability benefits it may have paid to such employee.

L.1950, c.174, p.402, s.1.

### **34:15-57.2. Inquiry as to other payments received before paying compensation; proof of amounts paid**

Whenever an employer or his insurance carrier involved in the claim under chapter fifteen of Title 34 of the Revised Statutes shall receive written notice from the Division of Employment Security of the New Jersey Department of Labor and Industry that disability benefits have been paid to an employee as a result of an accident or sickness for which the said employee may be entitled to benefits under chapter fifteen of Title 34 of the Revised Statutes, such employer or his insurance carrier, as the case may be, shall, before making any payment on account of any pending award, order, or settlement under said chapter fifteen of Title 34 of the Revised Statutes, inquire of the employee as to whether or not he has received disability benefits by reason of the same accident or sickness and advise the Division of Employment Security of the New Jersey Department of Labor and Industry or the employer who made payment of the disability benefits, or his insurance carrier, as the case may be, of the result of such inquiry.

In proceedings before the Division of Workmen's Compensation, it shall be the duty of the employer against whom claim is made under chapter fifteen of Title 34 of the Revised Statutes, and his insurance carrier, if any, to present, at any hearing involving a workmen's compensation claim affected by this act, sufficient proof as to the amounts paid under the Temporary Disability Benefits Law (P.L.1948, c. 110), for which reimbursement is allowable in pursuance of the provisions of the Temporary Disability Benefits Law (P.L.1948, c. 110), such proof to be furnished by the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer who made payment of the disability benefits or his insurance carrier, as the case may be.

L.1950, c.174, p.402, s.2.

### **34:15-57.3. Effective date**

This act shall take effect on the first day of July, one thousand nine hundred and fifty.

L.1950, c.174, p.403, s.3.

## **APPENDIX II**

### **54A:6-31. Family leave benefits not included in gross income**

Gross income shall not include benefits for family temporary disability leave paid pursuant to P.L.1948, c.110 (C.43:21-25 et al.) and P.L.2008, c.17 (C.43:21-39.1 et al.).

L.2008, c.17, s.16.