

CHAPTER 18

TEMPORARY DISABILITY BENEFITS

Authority

N.J.S.A. 43:21-25 et seq.

Source and Effective Date

R.1993 d.141, effective March 5, 1993.
See: 25 N.J.R. 262(a), 25 N.J.R. 1515(c).

Executive Order No. 66(1978) Expiration Date

Chapter 18, Temporary Disability Benefits, expires on March 5, 1998.

Chapter Historical Note

The provisions of Chapter 18, Temporary Disability Benefits, were filed and became effective prior to September 1, 1969. Pursuant to Executive No. 66(1978), Chapter 18 was readopted as R.1993 d.141. Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a). See: Source and Effective Date. See also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:18-1.1 Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.).

“Base year” with respect to a period of disability commencing on or after January 1, 1953 means the 53 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced.

“Benefits” means the disability benefits provided by the Temporary Disability Benefits Law.

“Claimant” means an individual who has filed a claim for disability benefits or who has notified the Division or the employer, nominee, designee, trustee, union, association of employees, insurer or organization paying benefits under a private plan that he or she expects to file such a claim.

“Claimant’s authorized representative” means an individual who represents or acts in behalf of a claimant who is incapable of fulfilling the requirements of filing claims for disability benefits, and who is so authorized by a power of attorney or other authorization satisfactory to the Division. Such authorized representative must file with the Division, on a form prescribed by the Director, a duly sworn affidavit that the claimant is incapable of making a claim for disability benefits and that he or she assumes the responsibility of acting in behalf of such claimant in accordance with the Act

and this Chapter. Such filing must be supported by medical documentation of incapacity.

“Commissioner” means the Commissioner of Labor.

“Director” means the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

“Disability” or “disabled” means both mental or physical illness and mental or physical injury.

“Employee” means a covered individual as defined in N.J.S.A. 43:21-27(b). With respect to any one employer the term shall mean such a covered individual who is in employment, as defined by the Unemployment Compensation Law and Regulations promulgated thereunder, for which he or she is entitled to remuneration from such employer or who has been out of such employment for less than two weeks and has not become employed by another employer, during such period.

“Employer” means a covered employer as defined in N.J.S.A. 43:21-27(a).

“Fund” means the State Disability Benefits Fund, as set forth in N.J.S.A. 43:21-46.

“Insurer” means any insurance company duly authorized to do business in the State of New Jersey, employer acting as a self-insurer, nominee, designee, trustee, union, association of employees or organization which has undertaken to pay benefits under a private plan.

“Private plan” means a private plan approved by the Division.

“Proof and claim for disability benefits” means the proof of disability and claim for benefits initially filed with respect to a period of disability on a form prescribed by the Director.

“Supplemental proof and claim for disability benefits” means the proof and claim certifying to the continuance of disability on a form prescribed by the Director.

“Week” means a period of seven consecutive days starting with the day of disability.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Case Notes

Musicians hired by band were employees rather than independent contractors, and thus band was required to pay unemployment and disability taxes on wages paid to musicians. *Kiely v. Department of Labor*, 96 N.J.A.R.2d (LBR) 5.

12:18-1.2 Application for exemptions

Any employee desiring to secure exemption from the provisions of the Act shall make application therefor on a form and in a manner prescribed by the Director.

12:18-1.3 Service of papers

(a) Any and all notices, orders, communications and other processes and papers of this Division, may be served personally or by registered or certified mail or by telegram or by leaving a copy thereof at the principal office or place of business in New Jersey of the person required to be served.

(b) Such service shall constitute due notice.

(c) The verified return by the individual so serving the same, setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegram receipt therefor when registered or certified and mailed or telegraphed as aforesaid shall be proof of service of the same.

12:18-1.4 Reimbursement of funds

If benefits have been paid to a claimant erroneously by the State plan, Disability During Unemployment, or a private plan, the Division may arrange a restitution of funds from the party that should have paid the benefits to the credit of the party that paid erroneously, if it can be shown that the erroneous payment was not due to a fraudulent intent.

Case Notes

Appeal Tribunal's reference to N.J.A.C. 12:17-10.2 in denying temporary disability benefits and demanding refund of payments made was misplaced, as that rule applies only to unemployment benefits refunds; no comparable provision deals with temporary disability benefits; claimant who was under care of psychologist was not entitled to temporary disability benefits, but was not required to repay benefits received absent an allegation of false statement or representation by claimant. *Ross v. Bd. of Review Dep't of Labor*, 212 N.J.Super. 467, 515 A.2d 794 (App.Div.1984).

SUBCHAPTER 2. PRIVATE PLANS

12:18-2.1 Extent of coverage

(a) All employees of the employer shall be covered by one or more private plans, without restrictions or exclusions, except that, subject to the approval of the Division, any private plan may exclude employees of a separate unit, craft, organization, plant, department or establishment, or other class or classes of employees. Application for such exclusion shall be submitted on a form and in a manner prescribed by the Director. The Division may not approve the exclusion of a class or classes of employees determined by the age, sex or race of the employees or by the wages paid such employees, if, in the opinion of the Division, such exclusion would result in a substantial selection of risk adverse to the State plan. For the purposes of this regulation, the employees of an employing unit (not a subject employer) performing services for an employer, as defined in N.J.S.A. 43:21-19(g) shall be considered a class of employees which may be excluded.