

CHAPTER 21

FAMILY LEAVE INSURANCE BENEFITS

Authority

N.J.S.A. 43:21-1 et seq., specifically 43:21-7g, and 43:21-25 et seq., as amended by P.L. 2008, c. 17, specifically, 43:21-65.

Source and Effective Date

R.2009 d.82, effective March 2, 2009.
See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 21, Family Leave Insurance Benefits, expires on March 2, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 21, Intergovernmental Arrangements, expired on July 1, 2006.

Chapter 21, Family Leave Insurance Benefits, was adopted as new rules by R.2009 d.82, effective March 2, 2009. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:21-1.1 Purpose and scope

(a) The purpose of this chapter is to implement P.L. 2008, c. 17, which amends N.J.S.A. 43:21-25 et seq., the Temporary Disability Benefits Law.

(b) P.L. 2008, c. 17 extends the temporary disability benefits program, so as to provide to covered individuals family leave insurance benefits, a monetary benefit (not a leave entitlement), which protects the covered individual against wage loss suffered because of the need of the covered individual to participate in providing care for a family member who has a serious health condition or to bond with a newborn or newly adopted child.

(c) Neither P.L. 2008, c. 17, nor this chapter, establishes the right of a covered individual to take leave from work to participate in providing care for a family member who has a serious health condition or to bond with a newborn or newly adopted child; that is, neither P.L. 2008, c. 17, nor this chapter, establishes the right of a covered individual to be restored to employment following a period of leave from work to participate in providing care for a family member who has a serious health condition or to bond with a newborn or newly adopted child.

(d) Any reference within P.L. 2008, c. 17, or within this chapter, to “family leave” or “family temporary disability leave” does not create a new type of leave, but rather, pertains solely to the manner, pursuant to P.L. 2008, c. 17, in which an otherwise established type of leave must be taken by an individual in order for the individual to avoid consequences under P.L. 2008, c. 17, which may include ineligibility for or

a reduction of the individual's family leave insurance benefits.

(e) Any reference within P.L. 2008, c. 17, or within this chapter, to pre-conditions related to leave (for example, the requirement under P.L. 2008, c. 17, §12, with regard to family leave to bond with a newborn or newly adopted child that a covered individual must provide the employer with prior notice of the leave not less than 30 days before the leave commences) are solely referring to pre-conditions to the payment of full family leave insurance benefits (a monetary benefit). The potential consequence to a covered individual for failure to satisfy these pre-conditions related to leave would be limited solely to those sanctions that are expressly set forth within P.L. 2008, c. 17 and this chapter, which sanctions affect entitlement to family leave insurance benefits. Those sanctions should in no way affect entitlement to leave under the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq., the Federal Family and Medical Leave Act, 29 U.S.C. §§2601 et seq., any other statutory leave program, a collective bargaining agreement or an individual employer policy.

12:21-1.2 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., as amended by P.L. 2008, c. 17, which extends the temporary disability benefits program, so as to provide to covered individuals family leave benefits, a monetary benefit (not a leave entitlement), which protects the covered individual against wage loss suffered because of the need of the covered individual to participate in providing care for a family member who has a serious health condition or to be with a newborn or adopted child.

“Base year” with respect to a period of family leave means the 52-consecutive-calendar weeks immediately preceding the calendar week in which the period of family leave commenced, except that with respect to a period of family leave for an individual who has a period of family leave immediately after the individual has a period of disability for the individual's own disability, the period of family leave is deemed, for the purpose of specifying the time of the 52-week period in which base weeks or earnings are required to be established for family leave benefit eligibility to have commenced at the beginning of the period of disability for the individual's own disability, not the period of family leave. “Disability” for the purpose of determining the base year with respect to a period of family leave for an individual who has a period of family leave immediately after the individual has a period of disability for the individual's own disability, means where an individual suffers any accident or sickness resulting in the individual's total inability to perform the duties of employment. For the purpose of defining the term “base year,” the date on which a period of family leave commences

is synonymous with the first day on which the individual establishes a claim for family leave insurance benefits.

“Benefits” or “family temporary disability benefits” or “family leave insurance benefits” means the benefits payable to a covered individual under P.L. 2008, c. 17 in order to compensate for wage loss suffered because of the need of the covered individual to participate in providing care for a family member who has a serious health condition or to bond with a newborn or newly adopted child.

“Bond” or “bonding” with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). The development of this attachment or bond between child and care giver(s) requires being in one another's presence.

“Care” means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

“Care giver” or “claimant” means the family member who is providing the required care.

“Care recipient” means the family member who is receiving care for a serious health condition or the newborn child or newly adopted child with whom the “care giver” is bonding.

“Child” means a biological, adopted, or foster child, step-child 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.

As used in this definition, “incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

As used in this definition, “mental or physical impairment” means: 1. any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.