

CHAPTER 18

TEMPORARY DISABILITY BENEFITS

Authority

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

Source and Effective Date

R.2003 d.214, effective April 28, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Chapter Expiration Date

Chapter 18, Temporary Disability Benefits, expires on April 28, 2008.

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, Temporary Disability Benefits, was readopted as R.1993 d.141. See: 25 N.J.R. 262(a), 25 N.J.R. 1515(c). Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1998 d.157. See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.2003 d.214. See: Source and Effective Date. See, also, section annotations.

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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 means the 52 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 by a licensed medical practitioner.

“Commissioner” means the Commissioner of Labor.

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

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

“Division” means the Division of Temporary Disability Insurance in the Department of Labor Program.

“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.

“Licensed medical practitioner” means a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, or chiropractor.

“Private plan” means a private plan approved by the Division as defined in N.J.S.A. 43:21-32.

“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).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In “Base year”, deleted “commencing on or after January 1, 1953” following “disability”, and decreased the base year from 53 consecutive calendar weeks to 52 consecutive calendar weeks; in “Claimant”, added “by a licensed medical practitioner” at the end; inserted “Division” and “Licensed medical practitioner”; and in “Private plan”, added a reference to N.J.S.A. 43:21-32.

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 written communications issued by the Division may be served personally or by registered or certified mail or by telegram. A copy of the notice may be left 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 verification by the individual who served the notice, or the return post office receipt of the registered or certified mail, or telegram receipt shall be proof that notice was served.

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote (a) and (c).

12:18-1.4 Reimbursement of funds

If benefits have been paid in error to a claimant by one program (either the State plan, Disability During Unemployment, or a private plan) for a period of disability and the claimant is correctly entitled to benefits under another program (either the State plan, Disability During Unemployment, or a private plan) for that same period of disability, the Division may arrange for a reimbursement of funds between the two programs. If it is determined that the benefits were received as a result of the claimant's making a false statement knowing it to be false or knowingly failing to disclose a material fact, the individual shall be subject to a fine and repayment of the overpaid amount under the provisions of N.J.S.A. 43:21-55(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote the section.

Case Notes

Earlier determinations of claimant's qualification for unemployment compensation benefits precluded reimbursement action when claimant was subsequently disqualified. In the Matter of P.V.C., 96 N.J.A.R.2d (UCC) 12.

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).

12:18-1.5 Offset by workers' compensation award when temporary disability benefits are payable based on claimant's employment with another employer

(a) If a covered individual with more than one employer receives temporary workers' compensation benefits for an injury or illness incurred at one place of employment and that individual files a claim for New Jersey temporary disability benefits as a result of the same injury or illness on the basis of his or her employment with the other employer(s), those benefits are payable under the New Jersey State plan or an approved private plan provided that:

1. The claimant otherwise meets the eligibility criteria for temporary disability benefits in accordance with N.J.S.A. 43:21-25 et seq.;
2. Wages from all covered employers are used to calculate the temporary disability insurance weekly benefit rate as defined in N.J.S.A. 43:21-40 and the maximum benefit amount as defined in N.J.S.A. 43:21-38;
3. The temporary disability insurance weekly benefit rate is reduced by the temporary workers' compensation weekly benefit rate;
4. The claimant receives the temporary disability insurance benefits at the adjusted rate; and
5. Any such reduction in the temporary disability insurance weekly benefit rate shall also reduce the maximum total benefits payable during the period of disability.

(b) In such cases, the most recent covered employer who is not a party in the workers' compensation claim, shall be considered as the last employer under the New Jersey temporary disability benefits law. If the last employer is covered under the New Jersey State plan, benefits shall be paid under the State plan and shall be charged to the account of that employer. If the last employer is covered under an approved private plan, that plan shall be responsible for the payment of benefits.

New Rule, R.2002 d.45, effective February 4, 2002.
See: 33 N.J.R. 3622(a), 34 N.J.R. 770(b).

12:18-1.6 Completion of medical certifications by licensed medical practitioner

No licensed medical practitioner as defined in N.J.A.C. 12:18-1.1 shall charge a patient a fee for services rendered in completing forms issued by the Division of Temporary Disability Insurance or any private insurance provider requesting medical information associated with the filing of any initial or continued claim for payment of any benefits under the provisions of the New Jersey Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

New Rule, R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

12:18-1.7 Non-duplication of benefits under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq.; temporary disability benefit liens in workers' compensation cases

(a) Administrative procedures for avoiding duplication of benefits in cases where claimants have pursued temporary disability benefits under both the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. (hereinafter referred to in this section as the "TDBL") and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq. (hereinafter referred to in this section as the "WCA") are as follows:

1. Where a claimant has filed a claim petition under the WCA and where his or her claim is disputed or contested by the employer or its workers' compensation carrier in regard to whether temporary disability benefits are due to the claimant in workers' compensation, then such claimant may apply for temporary disability benefits under the TDBL and, if eligible, may receive temporary disability benefits as allowable by law during the pendency of the workers' compensation claim.
2. Where a claimant has not filed a workers' compensation claim and seeks benefits through the TDBL due to an alleged work-related condition, the Division of Temporary Disability Insurance or private plan disability carrier shall deny said benefits and inform the claimant that should he or she file a workers' compensation claim, benefits may be payable pursuant to the TDBL under (a)1 above.
3. As a condition to receiving temporary disability benefits under (a)1 above, a claimant shall be required to sign a written subrogation agreement which documents that the claimant will prosecute the workers' compensation claim and reimburse the Division of Temporary Disability Insurance or private plan disability carrier, as applicable, from the proceeds of any workers' compensation benefits the claimant subsequently receives based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.

4. As a result of the subrogation agreement under (a)3 above, the Division of Temporary Disability Insurance or private plan disability carrier shall have the right to file a notice of lien with the Division of Workers' Compensation that shall apply against any workers' compensation award the claimant subsequently receives that is based upon the same injury or illness as that for which the temporary disability benefits were obtained under the TDBL.

5. Where the Division of Temporary Disability Insurance or private plan disability carrier has paid benefits to a claimant under the TDBL and later has reason to believe that the injury or illness upon which the TDBL benefits were based may also be compensable under the WCA, the Division of Temporary Disability Insurance or private plan disability carrier may file a lien against any workers' compensation claim.

6. Where a lien has been filed pursuant to (a)4 or 5 above, or where the parties and/or the Judge of Compensation become aware during workers' compensation proceedings that benefits had been paid under the TDBL, the Division of Temporary Disability Insurance or private plan disability carrier shall be reimbursed the amount of temporary disability benefits paid pursuant to the TDBL from any workers' compensation award, order, or settlement including lump sum or permanent disability benefits the claimant receives.

7. Where a claimant's workers' compensation award, order, or settlement after deductions for allowances totals less than the amount of the benefits paid under the TDBL, then the net amount due to the petitioner shall be reimbursed to the Division of Temporary Disability Insurance or private plan disability carrier in full satisfaction of the petitioner's obligation resulting from the written subrogation agreement.

8. While a judge of compensation would determine any contested issue with respect to temporary disability benefits payable by the respondent under the WCA, should a claimant wish to contest the amount of the lien or reimbursement required under (a)6 above or other issues related to the lien or reimbursement, including disabilities covered by the lien or reimbursement, the claimant shall either:

i. Reimburse the amount of the temporary disability insurance lien as part of the workers' compensation award, order or settlement and then appeal, pursuant to (a)9 and 10 below, such amount or other issues related to the lien within 24 days from the date of the workers' compensation award, order or settlement; or

ii. File an appeal, pursuant to (a)9 and 10 below, of the reimbursement amount or other issues related to the lien, which shall stay the workers' compensation proceedings until the reimbursement issue is determined.

9. The Division of Temporary Disability Insurance shall forward appeals under this section in accordance with

N.J.A.C. 12:20 (for liens arising from State plan and disability during unemployment benefits) or N.J.A.C. 1:12A (for liens arising from private plan benefits).

10. Appeals filed under (a)9 above shall be directed by appellants to the following addresses, as appropriate:

i. For appeals arising from State plan temporary disability benefits:

Division of Temporary Disability Insurance
Attention: Appeal Unit
PO Box 387
Trenton, New Jersey 08625-0387

ii. For appeals arising from State disability during unemployment (4F) benefits:

Division of Temporary Disability Insurance
Attention: Disability During Unemployment
Section
PO Box 956
Trenton, New Jersey 08625-0956

iii. For appeals arising from private plan temporary disability benefits:

Division of Temporary Disability Insurance
Attention: Private Plan Claims Review Unit
PO Box 957
Trenton, New Jersey 08625-0957

New Rule, R.2006 d.340, effective September 18, 2006.
See: 38 N.J.R. 1515(a), 38 N.J.R. 3905(a).

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.

(b) Employees excluded from a private plan shall be covered under the State plan and the employer shall be liable for the deduction and payment of workers' contributions and employer's contributions, as required by N.J.S.A. 43:21-7.

(c) All proposed private plans shall be submitted for review and approval by the Division. An employer failing to secure the approval of a private plan shall be deemed to be covered under the State plan and the employer shall be liable for the deduction of workers' contributions and payments of workers' and employer's contributions to the Fund as required by N.J.S.A. 43:21-7 until such date as a private plan is effective.

(d) An employee who ceases to be covered by a private plan, whether by termination of the plan, changing employers or for any other reason, shall, if otherwise eligible, become entitled to disability benefits from the Fund.

(e) The responsibility for coverage shall be established by the covered individual's last employer. The application for benefits shall be processed by the insurer, if the employer has an approved private plan and the individual is covered by that plan, or the State plan if the employer has State plan coverage. However, claims coming within the purview of N.J.A.C. 12:18-1.5, 2.10 or 3.5 shall be governed thereby.

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Added (e).

Case Notes

Employer must participate in either state plan or qualified private plan of disability benefits. *O'Boyle v. Prudential Ins. Co. of America*, 241 N.J.Super. 503, 575 A.2d 515 (A.D.1990).

Financial corporation liable for unemployment and temporary disability insurance assessments for computer expert hired to debug system since expert did not qualify as independent contractor. *Jonassen and Associates, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 9.

Pharmaceutical consulting firm liable for unemployment and temporary disability insurance assessments for consultants since these experts failed to qualify as independent contractors. *Kessler v. Department of Labor*, 97 N.J.A.R.2d (LBR) 7.

12:18-2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21-3, 4) for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) The benefits provided by a private plan shall be set forth in the plan both as to eligibility requirements and amounts payable.

(d) If application for benefits is made under the State plan or Disability During Unemployment and it is determined that the claim should have been made under a private plan, an employee shall not be deprived of benefits under the private plan for failure to give timely notice and proof of disability provided that:

1. The application to the State plan would have been timely notice to the private plan if it had been then made; and

2. Proof of disability is furnished under such private plan within the period required therein or within 30 days after the employee has notice that the claim should have been made thereunder.

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under the State plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under a private plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his or her authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his or her authorized representative, giving the reason therefor and stating the employee's appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A. Upon the issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

(g) The private plan shall provide for payment of benefits to employees weekly, biweekly, or at such intervals as the employee is customarily paid wages, unless otherwise approved by the Director.

(h) No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the Division. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the Act and this chapter and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with this chapter.

1. The Division shall be given prompt notice of any change to a private plan, which change does not affect nor alter the provisions of the plan, and, therefore, does not require approval under this section.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (f), substituted "appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A" for "rights to a hearing in accordance with the Act" at the end of the first sentence.

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Rewrote (h).

Case Notes

Under no fault insurance law, carrier was entitled to deduct amount equal to benefits collectible under private temporary disability benefit plan, in making income continuation payments. *Puzio v. New Jersey Manufacturers Insurance Co.*, 165 N.J.Super. 585, 398 A.2d 934 (Cty.Ct.1979).

12:18-2.3 Proof of coverage

Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered

employees either by individual certificates or other direct notification at the time of coverage, or by conspicuous and continuing posting at the place of employment. This notice shall reflect current rates, eligibility requirements, benefit entitlements, and appeal rights to the Division as specified in N.J.A.C. 12:18-2.6. This notice shall be available for inspection at the work site. A copy of the notice shall be submitted annually to the Division.

Amended by R.1998 d.157, effective April 6, 1998.