

and which has been paid by the employer to the claimant during the period of family leave.

(i) When the employer permits the claimant to use paid sick leave, paid vacation time or other leave at full pay under (d) above, no family leave insurance benefits shall be payable during the period that the claimant is absent from work using paid sick leave, paid vacation time or other leave at full pay.

(j) An employee's maximum family leave insurance benefit entitlement under the State plan for a given 12-month period shall be reduced by the number of days of family leave insurance benefits that have been paid to the employee during that 12-month period under a private plan or under N.J.S.A. 43:21-3 and 4 as an unemployed claimant.

12:21-3.6 Concurrent coverage and multiple employers

(a) A covered individual is in "concurrent employment" if he or she is in employment with two or more employers during the last calendar day of employment immediately preceding the period of family leave. The term "concurrent employers" means the covered employers with whom an employee was employed on the last day of employment.

(b) If an employee is in concurrent employment and only one employer has a private plan, then the employee shall be entitled to receive benefits under that private plan, if otherwise eligible. Such benefits shall not be less than he or she would be eligible to receive under the State plan with respect to all employment, if he or she were covered under the State plan. No benefits shall be payable under the State plan for family leave commencing while he or she is covered under such private plan.

(c) If an employee is in concurrent employment and all employers are covered under the State plan, an individual shall have his or her weekly benefit amount under the State plan computed on the basis of his or her total wages with all such employers during the base weeks in the eight calendar weeks immediately preceding the calendar week in which the family leave commenced.

12:21-3.7 Notice from claimant to the employer

(a) With regard to a claim for family leave insurance benefits to bond with a newborn or newly adopted child, the covered individual shall provide the employer with notice of the period of family leave upon which the covered individual's claim for family leave benefits is based not less than 30 days prior to commencement of the family leave, unless the family leave commences while the individual is receiving unemployment benefits, in which case the covered individual shall notify the Division.

(b) Failure by the claimant to provide the employer with the 30 days notice set forth in (a) above, shall result in a reduction in the claimant's maximum family leave insurance benefits entitlement for the 12-month period by an amount of benefits attributable to two weeks of family leave, unless the

time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.

(c) With regard to a claim for family leave insurance benefits to care for a family member with a serious health condition, which family leave insurance benefits are taken on a continuous, non-intermittent basis, the claimant shall provide the employer with prior notice of the family leave in a reasonable and practicable manner, unless an emergency or other unforeseen circumstance precludes prior notice.

(d) Failure by the claimant to provide the employer with the notice set forth in (c) above, shall not result in a reduction in the claimant's maximum family leave insurance benefits entitlement, nor shall it result in the denial of a claim for family leave insurance benefits.

(e) With regard to a claim for family leave insurance benefits to care for a family member who has a serious health condition, which family leave insurance benefits are taken on an intermittent basis, the claimant shall provide the employer with prior notice of the family leave not less than 15 days prior to the first day on which family leave insurance benefits are paid for the intermittent leave, unless an emergency or other unforeseen circumstance precludes prior notice.

(f) Failure by the claimant to provide the employer with the notice set forth in (e) above, shall not result in a reduction in the claimant's maximum family leave insurance benefits entitlement, nor shall it result in the denial of a claim for family leave insurance benefits.

12:21-3.8 Notice from the Division to the claimant and employer

(a) A claimant shall be given written notice of any decision on his or her claim and of the reason for any denial of his or her claim.

(b) If the "Employer's Statement" on the application for benefits has not been completed by an employer or his or her representative, a request for information shall be mailed or delivered to the employer or employers by whom the claimant was employed at the commencement of the family leave or by whom he or she was last employed if out of employment less than two weeks.

(c) A copy of the decision of eligibility of the claimant stating his or her weekly benefit rate and the probable duration for which benefits will be paid, shall be mailed or delivered to the employer or employers by whom such claimant was employed at the commencement of the family leave or by whom he or she was last employed if out of employment less than two weeks.

12:21-3.9 Notice required from employers

(a) Within 10 days after the mailing of a request for information with respect to a period of family leave, an employer shall furnish the Division with any information requested or

known to him or her, which may bear upon the eligibility of the claimant.

(b) If any employer or employing unit fails to respond to the request for information within 10 days after the mailing of such request, the Division shall rely entirely on information from other sources, including an affidavit completed by the claimant to the best of his or her knowledge and belief with respect to his or her wages and time worked. If it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant except in the event of fraud.

(c) Any employer failing to respond to a request for information within the prescribed time period shall be subject to the penalties provided under N.J.S.A. 43:21-55(b).

(d) The employer, within two working days after receipt of the decision of eligibility, shall furnish the Division with any information known to him or her bearing upon the eligibility of the claimant or duration of payments to be made.

(e) If after receipt of a decision of eligibility an employer acquires information, which may render the claimant ineligible for benefits or reduce the rate or amount of benefits, such employer shall immediately forward the information to the Division.

12:21-3.10 Intermittent leave

(a) A covered individual shall not be eligible for family leave insurance benefits where the covered individual seeks to take intermittent family leave for the purpose of bonding with a newborn or newly adopted child, except that where both the covered individual and the employer agree that the covered individual will be permitted to take family leave for the purpose of bonding with a newborn or newly adopted child in non-consecutive periods of seven days or more, family leave insurance benefits shall be payable for those periods of family leave.

(b) A covered individual shall be eligible for family leave insurance benefits where the covered individual seeks to take intermittent family leave for the purpose of providing care for a family member who has a serious health condition, so long as the following conditions are met:

1. The covered individual can establish that it is medically necessary to take the family leave intermittently;
2. The total period within which the intermittent family leave is to be taken does not exceed 12 months;
3. The covered individual makes a reasonable effort to schedule the leave, so as not to unduly disrupt the operations of the employer; and
4. Where possible, prior to the commencement of the intermittent family leave, the covered individual provides the employer with a regular schedule of the day or days of

the week on which the intermittent family leave will be taken.

(c) In order to establish eligibility for family leave insurance benefits for a period of intermittent family leave to care for a family member with a serious health condition, a covered individual shall be required to support the claim for family leave benefits with a certification from a health care provider, which states the following:

1. The date, if known, on which the serious health condition of the family member commenced;
2. The probable duration of the serious health condition of the family member;
3. The medical facts regarding the serious health condition of the family member, of which the health care provider has personal knowledge;
4. A statement that the serious health condition of the family member requires the participation of the covered individual in providing care to the family member;
5. An estimate of the amount of time, total time and frequency (for example, for a total of three months, two days per week) that the services of the covered individual are required in order to participate in providing care to the family member;
6. A statement as to the medical necessity for the intermittent leave and the expected duration of the intermittent leave; and
7. The dates of treatment of the family member if the family leave is for planned medical treatment.

12:21-3.11 School employees

(a) Between academic years or terms or during a school-wide recess, for an individual who is an employee of an educational institution and who has a reasonable assurance of returning to work in the same or similar capacity during the succeeding academic year or term or following a period of school-wide recess, such individual shall be considered a covered individual and in-employment between academic years or terms or during a school-wide recess.

(b) Under the circumstances set forth in (a) above, the individual who does not work for the educational institution between academic years or terms or during a school-wide recess shall not be eligible for family leave insurance benefits between academic years or terms or during a school-wide recess.

(c) Under the circumstances set forth in (a) above, where the individual who is an employee of an educational institution has sufficient base year wages in other covered employment and where these wages are sufficient to establish a valid claim, family leave insurance benefits shall be paid based only upon the wages from such other covered employ