

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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 18, Temporary Disability Benefits, expires on October 25, 2008. See: 40 N.J.R. 2655(a).

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.

4. The plan is limited to the separate unit, plant, department or establishment operated by the predecessor and the provisions of paragraphs 1, 2 or 3 of this Section are met with respect to such separate unit, plant, department or establishment.

SUBCHAPTER 3. STATE PLAN

12:18-3.1 Extent of coverage

(a) A claimant 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) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 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) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to the disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21-4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21-4) would have been timely noticed to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant 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 for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-4). If a claimant 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 for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-4).

(f) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the claimant

may only be denied benefits during that period so certified where:

1. The Division has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the Commissioner of Labor or his or her designee has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the Commissioner of Labor or his or her designee, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The Division has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed medical practitioner. Upon submission of a written report of the examination to the Department of Labor, a basic, normative fee customarily charged by a physician in a given specialty for each such examination, shall be paid to the examining medical practitioner, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in the customary or "fair market" fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the customary fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting the diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

(h) 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.

As amended, R.1974 d.284, effective October 17, 1974.

See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).

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 (d) and (e), deleted references to N.J.S.A. 43:21-3 throughout; and in (f) and (g), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, public health nurses, and optometrists throughout.

Amended by R.2000 d.327, effective August 7, 2000.

See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).

Rewrote (f).

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

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

Rewrote (g); added (h).

12:18-3.2 Notice and proof of disability

(a) Within 30 days after the commencement of a period of disability, a written notice of disability, on which a claim for State plan benefits is based, shall be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state the claimant's full name, address and valid social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) shall constitute notice of disability.