

# 54 N.J.R. 2366(a)

VOLUME 54, ISSUE 24, DECEMBER 19, 2022

## RULE PROPOSALS

### Reporter

54 N.J.R. 2366(a)

***NJ - New Jersey Register > 2022 > DECEMBER > DECEMBER 19, 2022 > RULE PROPOSALS  
> LABOR AND WORKFORCE DEVELOPMENT -- DIVISION OF UNEMPLOYMENT INSURANCE***

## Interested Persons Statement

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### INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## Agency

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LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF UNEMPLOYMENT INSURANCE

## Administrative Code Citation

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**Proposed Readoption with Amendments: N.J.A.C. 12:17**

## Text

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### Unemployment Benefit Payments

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 43:21-1 et seq., specifically, 43:21-7.g.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-158.

Submit written comments by February 17, 2023, to:

David Fish, Executive Director  
Office of Legal and Regulatory Services  
PO Box 110, 13th Floor  
Trenton, New Jersey 08625-0110  
Fax: (609) 292-8246

Email: [david.fish@dol.nj.gov](mailto:david.fish@dol.nj.gov).

The agency proposal follows:

### **Summary**

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 12:17, Unemployment Benefit Payments, was scheduled to expire on November 2, 2022. As the Department of Labor and Workforce Development (Department) filed this notice prior to that date, the expiration date was extended 180 days to May 1, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2). The chapter addresses the administration of the unemployment insurance program pursuant to the New Jersey Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq. The Department has reviewed the rules at N.J.A.C. 12:17 and, with the exception of proposed amendments at N.J.A.C. 12:17-12.2, Labor disputes, and 12.4, School employees, to implement changes to the UCL resulting from P.L. 2018, c. 83, and P.L. 2020, c. 122, respectively, and proposed amendments throughout N.J.A.C. 12:17-22, Claims for Family Leave Insurance Benefits During Unemployment, to implement changes to the UCL and Temporary Disability Benefits Law (TDBL), N.J.S.A. 43:21-25 et seq., resulting from P.L. 2018, c. 128, P.L. 2019, c. 37, and P.L. 2020, c. 23, the Department has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that N.J.A.C. 12:17 be readopted, with the amendments described below.

A summary of the subchapters of N.J.A.C. 12:17 follows:

N.J.A.C. 12:17-1 addresses the purpose and scope of the chapter.

N.J.A.C. 12:17-2 defines words and terms used throughout the chapter.

N.J.A.C. 12:17-3 concerns the reporting of a claimant's wage and separation information to the Division of Unemployment Insurance (the Division). The subchapter instructs as to the required methods for filing a notice of failure to apply for, or to accept work, a notice of unemployment due to mass separation, a notice of unemployment due to labor dispute, and a notice of temporary separation from work.

N.J.A.C. 12:17-4 addresses reporting requirements for the claiming of unemployment insurance benefits and for registering for work-search activities.

N.J.A.C. 12:17-5 contains the monetary requirements for unemployment insurance benefit eligibility.

N.J.A.C. 12:17-6 addresses claims for partial unemployment benefits and contains recordkeeping, reporting, and filing requirements for both employers and claimants regarding these sorts of claims.

N.J.A.C. 12:17-7 concerns dependency benefits. The subchapter sets forth the method for calculating dependency payments, defines the term "dependent," and addresses the claiming of dependents and verification and proof of dependency status.

N.J.A.C. 12:17-8 addresses the reduction of benefits by retirement pension income and other earned income.

N.J.A.C. 12:17-9 is the first of several subchapters that concern claims adjudication. Each of these subchapters addresses a different central issue, which may arise within the context of the adjudication, of a claim for unemployment insurance benefits and sets forth the standards to be applied by the Division. This subchapter addresses the issue of voluntarily leaving work.

N.J.A.C. 12:17-10 addresses the issues of misconduct connected with the work.

N.J.A.C. 12:17-11 addresses refusal to apply for or accept suitable work.

N.J.A.C. 12:17-12 addresses other benefit eligibility issues, such as corporate officers, owners, and creditors; labor disputes; employees on leave of absence; school employees; claimants engaged in a temporary business; student disqualification for benefits; and limiting availability to less than full-time work.

N.J.A.C. 12:17-13 contains procedures for addressing wage-benefit conflicts.

N.J.A.C. 12:17-14 concerns the determination and demand for the refund of unemployment benefit payments. The subchapter contains the unemployment insurance statutory period for demanding a refund, the standard for requesting a waiver of recovery of benefit overpayments, the requirements for repaying overpaid benefits, and addresses the overpayment of benefits involving two determinations of entitlement.

N.J.A.C. 12:17-15 addresses benefit eligibility for claimants employed by temporary help service firms.

N.J.A.C. 12:17-16 concerns payment of benefits to interstate claimants.

N.J.A.C. 12:17-17 contains standards and procedures relative to the submission of claims for disability during unemployment.

N.J.A.C. 12:17-18 addresses the self-employment assistance and entrepreneurial training program.

[page=2367] N.J.A.C. 12:17-19 concerns the voluntary withholding of Federal income tax from unemployment benefits. The subchapter addresses notice to claimants of voluntary withholding of Federal income tax from unemployment benefits, the transfer of withheld unemployment benefits, and other withholdings.

N.J.A.C. 12:17-20 addresses worker profiling and reemployment services. The subchapter contains provisions setting forth the purpose and scope of the subchapter, definitions of words and terms used in the subchapter, explaining the method for identifying claimants, the statistical modeling process, and the selection process, indicating the mandatory nature of participation, explaining which individuals are exempt and setting forth an appeal procedure.

N.J.A.C. 12:17-21 addresses how an employer may obtain relief from the charges for benefits paid to a former employee.

N.J.A.C. 12:17-22 contains standards and procedures relative to the submission of claims for family leave insurance benefits during unemployment.

P.L. 2018, c. 83, amended N.J.S.A. 43:21-5.d of the UCL, which addresses disqualification from benefits where a claimant's unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed. Specifically, the 2018 law added an exception from disqualification pursuant to N.J.S.A. 43:21-5.d where the labor dispute is caused by the failure or refusal of the employer to comply with (1) an agreement or contract between the employer and the claimant,

including a collective bargaining agreement with a union representing the claimant; or (2) a State or Federal law pertaining to hours, wages, or other conditions of work. The 2018 law also established a 30-day waiting period for receipt of benefits where the claimant would otherwise not be disqualified from receipt of benefits pursuant to N.J.S.A. 43:21-5.d, if the unemployment is caused by a labor dispute, including a strike or other concerted activities of employees at the claimant's workplace, whether or not authorized or sanctioned by a union representing the claimant, except that pursuant to the 2018 law, the 30-day waiting period shall not apply where (1) the individual has been prevented from working by the employer, even though the individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment, and the employees had not engaged in a strike immediately before being prevented from working; or (2) if the labor dispute is caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant, or is caused by the failure or refusal of the employer to comply with a State or Federal law pertaining to hours, wages, or other conditions of work. Regarding the 30-day waiting period, the 2018 law provides that it shall also not apply if the employer hires a permanent replacement worker for the claimant's position, adding that a replacement worker shall be presumed to be permanent, unless the employer certifies, in writing, that the claimant will be permitted to return to his or her prior position upon conclusion of the labor dispute. Finally, the 2018 law states that if the employer does not permit the claimant to return to his or her position at the conclusion of the labor dispute, the claimant shall be entitled to recover any benefits lost due to the 30-day waiting period. To implement P.L. 2018, c. 83, the Department is proposing amendments at N.J.A.C. 12:17-12.2 (labor disputes), which amendments reflect each of the foregoing statutory changes.

P.L. 2020, c. 122, amended N.J.S.A. 43:21-4.g of the UCL, which, in pertinent part, addresses unemployment insurance benefit eligibility for employees of educational institutions where the period of unemployment commences during the period between two academic years or terms, or during an established and customary vacation period or holiday recess, where the individual provides a service to the educational institution in the first of such academic years or terms (or before such vacation period or holiday recess) and there is a reasonable assurance that the individual will perform such service in the second such academic year or term (or in the period immediately following the established and customary vacation period or holiday recess). Specifically, the 2020 law defines the term "reasonable assurance," and imposes certain affirmative responsibilities on educational institutions prior to the end of each academic year or term that involve identifying employees that the educational institution believes do not have a reasonable assurance of employment in the following academic year or term, and submitting a statement for each employee that the educational institution maintains does have a reasonable assurance of employment in the following academic year or term, identifying each such employee and explaining the manner in which the employee was given a reasonable assurance of employment. To implement P.L. 2020, c. 122, the Department is proposing amendments at N.J.A.C. 12:17-12.4 (school employees), which reflect each of the foregoing statutory changes.

The Department is also proposing amendments to its rules at N.J.A.C. 12:17-22.1, 22.2, and 22.6, which are codified within the subchapter of N.J.A.C. 12:17 that deals with the payment of family leave insurance benefits during unemployment, to implement P.L. 2018, c. 128, which permits advance filing of benefit claims for anticipated periods of family leave; P.L. 2019, c. 37, which includes both foster child placement and becoming a parent pursuant to an agreement with a gestational carrier, as bases for a family leave insurance benefits bonding claim, and which modifies statutory definitions for the terms, "child," "family leave or family temporary disability leave," "family member," and "health care provider"; and P.L. 2020, c. 23, which amends the definition of "family leave or family temporary disability leave," to include "COVID/communicable disease related quarantine and isolation".

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption with amendments continue the unemployment benefit payment program, which provides for financial assistance to those persons who, through no fault of their own, find themselves without work. The program and the rules that govern it have a significant, positive social impact on workers, as it provides an economic security net for those who experience the vicissitudes of unemployment. The chapter, thereby, promotes

a degree of security for workers during difficult economic periods. The proposed amendments pertaining to the payment of unemployment insurance benefits to those unemployed due to a labor dispute and to employees of educational institutions; and the proposed amendments pertaining to the payment of benefits to individuals pursuant to the family leave insurance during the unemployment program, are all intended to implement recent changes in the law, each of which serves a positive social end.

#### **Economic Impact**

The rules proposed for re-adoption with amendments would have a positive overall economic impact on employees, since they would strengthen the program through which employees receive financial assistance during periods of unemployment. The continued receipt of monies by workers during such periods assists them in meeting their financial obligations; which, in turn, benefits local businesses that might otherwise suffer from a corresponding reduction in revenue. The rules proposed for re-adoption with amendments are mandated by New Jersey statute, from which the Department has no discretion to deviate.

#### **Federal Standards Statement**

The rules proposed for re-adoption with amendments do not exceed standards or requirements imposed by Federal law. Specifically, the rules proposed for re-adoption with amendments are not inconsistent with the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq. Consequently, no Federal standards analysis is required.

#### **Jobs Impact**

The rules proposed for re-adoption with amendments would have no impact on either the generation or loss of jobs.

#### **Agriculture Industry Impact**

The rules proposed for re-adoption with amendments would have no impact on the agriculture industry.

#### **Regulatory Flexibility Analysis**

The rules proposed for re-adoption with amendments would impose recordkeeping, reporting, and compliance requirements on business, some of which are small businesses, as that term is defined within the [page=2368] Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, employers are required to keep employee records and to provide certain information to the Department and to claimants concerning unemployment benefit claims. There are administrative costs that are attendant to these requirements. It is necessary to apply these requirements to employers, regardless of size, in order to ensure the overall effectiveness and success of the unemployment benefit payment program. As the rules proposed for re-adoption with amendments are mandated by State law, the Department does not have the ability to deviate from these requirements.

#### **Housing Affordability Impact Analysis**

It is not anticipated that the rules proposed for re-adoption with amendments would evoke a change in the average costs associated with housing or affect housing affordability. The basis for this finding is that the rules proposed for re-adoption with amendments pertain to the payment of unemployment insurance benefits and have nothing to do with housing.

#### **Smart Growth Development Impact Analysis**

It is not anticipated that the rules proposed for re-adoption with amendments would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for re-adoption with amendments do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Commissioner has evaluated this rulemaking and determined that it would not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:17.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 12. CLAIMS ADJUDICATION -OTHER BENEFIT ELIGIBILITY ISSUES

### 12:17-12.2 Labor disputes

(a) (No change.)

[(b) A claimant shall be disqualified for benefits if he or she is unemployed due to a work stoppage which occurs because of a labor dispute at the factor, establishment or other premises at which the individual is or was last employed. Separate branches of work which are commonly conducted as separate business in separate premises or are conducted in separate departments or the same premises, shall be deemed to be a separate factory, establishment, or other premises. The individual shall be disqualified if:

1. He or she is participating in, financing or directly interested in the labor dispute; and
2. Immediately before the work stoppage began, he or she belongs to a grade or class of workers employed at the premises which are participating in, financing or directly interested in the dispute.

(c) A claimant shall not be disqualified for benefits in accordance with N.J.S.A. 43:21-5(d):

1. If the claimant has been prevented from working by the employer, even though:
  - i. The individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment; and
  - ii. The employees had not engaged in a strike immediately before being prevented from working;
2. If the claimant was separated from employment for reasons which occurred prior to the labor dispute, or was laid off due to lack of work without a definitive recall date, even if the layoff was caused by the labor dispute at an industry upon which the employer is dependent;
3. From the date the claimant was discharged during the labor dispute, however, this shall not preclude a determination of disqualification under other provisions of the law; or
4. The employer has permanently closed and ceased operations, has commenced bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Code, has sold the business and its assets or has permanently relocated.]

**(b) A claimant shall be disqualified from unemployment insurance benefits if he or she is unemployed due to a work stoppage that occurs because of a labor dispute at the factory, establishment, or other premises at which the claimant is or was last employed.**

**(c) No disqualification pursuant to (b) above shall occur if it is shown by the claimant, or a representative of the claimant, that:**

- 1. The claimant is not participating in, or financing or directly interested in, the labor dispute that caused the stoppage of work; and**

2. The claimant does not belong to a grade or class of workers employed at the factory, establishment, or other premises where the work stoppage occurred, any of whose members are participating in or financing or directly interested in the labor dispute.

(d) No disqualification pursuant to (b) above shall occur if it is shown by the claimant, or a representative of the claimant, that:

1. The claimant has been prevented from working by the employer, even though the claimant's recognized or certified majority representative has directed the employees in the claimant's collective bargaining unit to work under the preexisting terms and conditions of employment; and

2. The employees had not engaged in a strike immediately before being prevented from working.

(e) No disqualification pursuant to (b) above shall occur if it is shown by the claimant, or a representative of the claimant, that the labor dispute is caused by the failure or refusal of the employer to comply with:

1. An agreement or contract between the employer and the claimant, including a collective bargaining agreement with a union representing the claimant; or

2. A State or Federal law pertaining to hours, wages, or other conditions of work.

(f) For the purpose of determining whether the exception from disqualification pursuant to (c) above applies, where separate branches of work, that are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department shall be deemed to be a separate factory, establishment, or other premises.

(g) With regard to any claim for unemployment insurance benefits where the unemployment is caused by a labor dispute, including a strike or other concerted activities at the claimant's workplace, whether or not the strike or other concerted activities are authorized or sanctioned by a union representing the claimant, the claimant shall not be provided unemployment insurance benefits for a period of the first 30 days following the commencement of the unemployment caused by the labor dispute (30-day waiting period).

(h) The 30-day waiting period for receipt of unemployment insurance benefits set forth at (g) above shall not apply to a claim for unemployment insurance benefits where the claimant has been determined not to be disqualified pursuant to either (d) or (e) above.

(i) The 30-day waiting period for receipt of unemployment insurance benefits set forth at (g) above shall not apply if the employer hires a permanent replacement worker for the claimant's position.

1. A replacement worker shall be presumed to be permanent, unless the employer certifies, in writing, to the claimant, the claimant's recognized or certified majority representative, and the Department, immediately upon hiring the replacement worker that the claimant will be permitted to return to his or her prior position, upon conclusion of the labor dispute.

i. The written certification to the Department shall be sent by the employer to the Director of the Division of Unemployment Insurance, PO Box 058, 1 John Fitch Plaza, Trenton, New Jersey 08625-0058.

2. Regardless of whether a written certification is provided to the claimant and the Department pursuant to (i)1 above, if the employer [page=2369] does not permit the claimant to return to his or her prior position upon conclusion of the labor dispute, the claimant shall be entitled to recover any unemployment insurance benefits lost as a result of the 30-day waiting period.

12:17-12.4 School employees

(a) An employee of an educational institution shall be ineligible for benefits for any week that begins during the period between academic years or terms and during vacation periods and holiday recesses, if the employee has

reasonable assurance of returning to work in any such capacity, during the succeeding academic year or term or after the vacation period or holiday recesses.

[1. The term "reasonable assurance" of returning to work means a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year, term, or remainder of a term. "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

2. Reasonable assurance of recall does not exist when an individual performs full-time services under an annual contract and during the next academic year or term is offered day-to-day substitute work.

3. An employee who is employed for all or part of a term in a day-to-day substitute position has reasonable assurance of recall if he or she is placed on a substitute list for the next academic year or term.']

**1. In order for there to be a "reasonable assurance" all of the following requirements must be met:**

**i. The educational institution has made an offer of employment in the following academic year or term that is either written, oral, or implied;**

**ii. The offer of employment in the following academic year or term was made by an individual with actual authority to offer employment;**

**iii. The employment offered in the following academic year or term shall be in the same capacity;**

**iv. The economic conditions of the employment offered may not be considerably less in the following academic year or term than in the current academic year or term. For the purpose of this subparagraph, "considerably less" means that the claimant will earn less than 90 percent of the amount the claimant earned in the then-current academic year or term;**

**v. The offer of employment in the following academic year or term is not contingent upon a factor or factors that are within the educational institution's control, including, but not limited to, course programming, decisions on how to allocate available funding, final course offerings, program changes, and facility availability; and**

**vi. Based on a totality of the circumstances, it is highly probable that there is a job available for the claimant in the following academic year or term. Contingencies that are not necessarily within the educational institution's control, such as funding, enrollment, and seniority may be taken into consideration, but the existence of any one contingency should not determine whether it is highly probable that there is a job available for the claimant in the following academic year or term.**

**2. Determinations by the Department whether a claimant has a "reasonable assurance" shall be made on a case-by-case basis.**

(b)-(e) (No change.)

**(f) Each educational institution shall provide the following to the Department, in a form, including electronic form, prescribed by the Commissioner, no less than 10 business days prior to the end of the academic year or term:**

**1. A list of all employees who the educational institution has concluded do not have a reasonable assurance of employment in the following academic year or term, along with information prescribed by the Commissioner regarding each such employee, which information shall include, but not be limited to, name and Social Security number; and**



2. For each employee that the educational institution maintains does have a reasonable assurance of employment in the following academic year or term, a statement explaining the manner in which the employee was given a reasonable assurance of employment; that is, whether it was in writing, oral, or implied, and what information about the offer, including contingencies, was communicated to the individual.

(g) The statement required pursuant to (f)2 above may be used by the Department in its analysis at (a)1 and 2 above, but it does not conclusively demonstrate that the claimant has a reasonable assurance of employment in the following academic year or term.

(h) Failure of an educational institution to provide the statement required pursuant to (f)2 above, not less than 10 business days prior to the end of the academic year or term shall result in a rebuttable presumption that the claimant does not have a reasonable assurance of employment in the following academic year or term.

(i) The rebuttable presumption at (h) above shall give rise to an inference that the claimant does not have a reasonable assurance of employment in the following academic year or term, but shall not conclusively demonstrate that the claimant does not have a reasonable assurance of employment in the following academic year or term.

## SUBCHAPTER 22. CLAIMS FOR FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

### 12:17-22.1 Definitions

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

"Bond" or "bonding" with a newborn child or [newly adopted] child **who has been placed for adoption or as a foster child** means to develop a psychological and emotional attachment between the 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 recipient" means the family member who is receiving care for a serious health condition or the newborn child or [newly adopted] child **who has been placed for adoption or as a foster child** with whom the "care giver" is bonding.

"Child" means a biological, adopted, or foster child, stepchild 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] **including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier.**

[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 leaving" (ADLs) or "instrumental activities of daily leaving" (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.]

...

"Family leave" or "family temporary disability leave" means leave taken by a covered individual from work with an employee to [participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the individual or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. "Family leave" does not include [page=2370] any period of time during which a covered individual is paid temporary disability benefits pursuant to N.J.S.A. 43:21-25 et seq. (the New Jersey Temporary Benefits Law), because the individual is unable to perform the duties of the individual's employment due to the individual's own disability.]:

**1. Participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member;**

**2. Be with a child during the first 12 months after the child's birth, if the individual, or the domestic partner or civil union partner of the individual, is a biological parent of the child, or is a parent of the child pursuant to a valid gestational carrier agreement, or the first 12 months after the placement of the child for adoption or as a foster child with the individual;**

**3. Engage in activities for which unpaid leave may be taken, pursuant to N.J.S.A. 34:11C-3 of the New Jersey Security and Financial Empowerment Act, on the individual's own behalf, if the individual is a victim of an incident of domestic violence, a sexually violent offense, or to assist a family member of the individual who has been a victim of an incident of domestic violence, provided that any time taken by an individual who has been a victim of an incident of domestic violence, or a sexually violent offense for which the individual receives benefits for a disability caused by the violence or offense shall be regarded as a period of disability of the individual and not as a period of family leave; or**

**4. In the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, provided in-home care or treatment of the family member of the employee required due to:**

**i. The issuance by a healthcare provider or the Commissioner or other public health authority of a determination that the presence in the community of the family member may jeopardize the health of others; and**

**ii. The recommendation, direction, or order of the provider or authority that the family member be isolated or quarantined as a result of suspected exposure to a communicable disease.**

"Family leave" or "family temporary disability leave" does not include any period of time in which a covered individual is paid benefits pursuant to the Temporary Disability Benefits Law, N.J.S.A. 43:21-25, et seq., because the individual is unable to perform the duties of the individual's employment due to the individual's own disability.

"Family member" means a [child, spouse, domestic partner, civil union partner or parent of a covered individual] **sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, or parent of a covered individual, or any other individual related by blood to the employee, and any other individual that the employee shows to have a close association with the employee that is the equivalent of a family relationship.**

...

["Health care provider" means any person licensed under Federal, state or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.]

**"Health care provider" means a duly licensed health care provider or any other health care provider deemed appropriate by the Director of the Division on Civil Rights, including, but not limited to, any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services.**

...

"Parent of a covered individual" means a biological parent, foster parent, adoptive parent, or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child, **or who became the parent of the covered individual pursuant to a valid written agreement between the parent and a gestational carrier.**

...

#### 12:17-22.2 Notice and proof of family leave

(a) (No change.)

(b) Proof of family leave on which a claim for benefits under the family leave insurance benefits during unemployment program is based shall be furnished by any claimant who expects to be unable to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption **or as a foster child** with the individual. Such proof may also be furnished by the claimant's authorized representative. When requested by the Division, additional certification from a health care provider or licensed medical practitioner shall be filed as proof of continued need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member.

(c) (No change.)

**(d) If a claimant knows in advance when a period of family leave will commence, the claimant, or an authorized representative of the claimant, may furnish written notice of family leave on which a claim for family leave insurance benefits is based, which shall include a statement of when the period will commence and any certification required, pursuant to N.J.S.A. 43:21-39.2, prior, but not more than 60 days prior to, the date that the period will commence.**

**(e) The periods of family leave to which (d) above shall apply shall include, but shall not be limited to, any of the following if the commencement date of the leave is known in advance:**

**1. Periods of leave for care of a child of the claimant after adoption, the placement of a child into foster care, or childbirth, including childbirth under a valid agreement between the individual and a gestational carrier;**

**2. Periods of leave for scheduled medical procedures, treatments, or appointments for a family member of the claimant;**

**3. Periods of leave for scheduled ongoing care of a family member of the claimant.**

#### 12:17-22.6 Simultaneous unemployment and family leave insurance benefit periods

(a) (No change.)

(b) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption **or as a foster child** with the individual, during a portion of such week, a claim for family leave insurance benefits during unemployment may be filed and benefits paid to such an individual, provided that he or she is otherwise eligible and any of the following conditions apply:

1.-2. (No change.)

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