

54 N.J.R. 1766(a)

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RULE PROPOSALS

Reporter

54 N.J.R. 1766(a)

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Interested Persons Statement

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

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF TEMPORARY DISABILITY INSURANCE

Administrative Code Citation

Proposed Readoption with Amendments: N.J.A.C. 12:18

Proposed Repeal and New Rule: N.J.A.C. 12:18-2.11

Proposed New Rules: N.J.A.C. 12:18-2.38 and 3.12

Text

Temporary Disability Benefits

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

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

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

Proposal Number: PRN 2022-118.

Submit written comments by November 18, 2022, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 12:18, Temporary Disability Benefits, was scheduled to expire on August 8, 2022. As the Department of Labor and Workforce Development (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date the expiration date was extended 180 days to February 4, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2). The chapter addresses the administration of the temporary disability benefits program, including both State plan disability benefits and private plan disability benefits. The Department has reviewed the rules at N.J.A.C. 12:18 and, with the [page=1767] exception of one technical amendment to eliminate a reference to service of papers by telegram found at N.J.A.C. 12:18-1.3, and a series of proposed amendments and new rules throughout the chapter to implement revisions to the 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; P.L. 2019, c. 464; P.L. 2020, c. 17; 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. 12:18 be readopted with the amendments and new rules described below.

A summary of the subchapters at N.J.A.C. 12:18 follows:

N.J.A.C. 12:18-1 contains general provisions relating to the administration of the temporary disability benefits program, including provisions that address definitions of terms to be used throughout the chapter, application for exemptions, service of papers, reimbursement of funds, offset by a workers' compensation award when temporary disability benefits are payable based on a claimant's employment with another employer, completion of medical certifications by a licensed medical practitioner, non-duplication of benefits, and payment of benefits.

N.J.A.C. 12:18-2 addresses the administration by the Department of the Private Plan Temporary Disability Benefits Program.

N.J.A.C. 12:18-3 addresses the administration by the Department of the State Plan Temporary Disability Benefits Program.

The Department is proposing an amendment at N.J.A.C. 12:18-1.1, that would replace the definition of the term, "base year," to ensure consistency with the TDBL, as amended at P.L. 2019, c. 37 (see N.J.S.A. 43:21-27(v)). Specifically, prior to P.L. 2019, c. 37, the TDBL contained no definition of the term "base year," and the term was defined at N.J.A.C. 12:18-1.1, with respect to a period of disability, as "the 52 consecutive calendar weeks

immediately preceding the calendar week in which the period of disability commenced." As amended at P.L. 2019, c. 37, the TDBL now defines the term, "base year" to mean "the first four of the last five completed calendar quarters immediately preceding the period of disability, except that, if the individual does not have sufficient qualifying weeks or wages in the individual's base year to qualify for benefits, the individual shall have the option of designating that the individual's base year shall be the 'alternate base year.' Alternate base year means the last four completed calendar quarters immediately preceding the period of disability, except that if the individual also does not have sufficient qualifying weeks or wages in the last four completed calendar quarters immediately preceding the period of disability, 'alternate base year' means the last three completed calendar quarters immediately preceding the individual's benefit year and, of the calendar quarter in which the period of disability commences, the portion of the quarter which occurs before the commencing of the period of disability." As amended, the definition of the term "base year," at N.J.A.C. 12:18-1.1, would mirror the definition for the term "base year" that now appears in the TDBL.

The Department is proposing an additional amendment at N.J.A.C. 12:18-1.1, which would replace the definition of the term, "disability" or "disabled," to ensure consistency with the TDBL, as amended at P.L. 2020, c. 23. Specifically, the term "disability" or "disabled," that had been defined within the rule to mean "both mental or physical illness and mental or physical injury," would be replaced with the verbatim definition of the term, "disability" that now appears at N.J.S.A. 43:21-27.e. That statutory definition, which states that "disability" shall mean such disability as is compensable pursuant to N.J.S.A. 43:21-29, was amended at P.L. 2020, c. 23, to also include 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 illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, which requires in-home care or treatment of the employee due to: (1) the issuance by a healthcare provider, the Commissioner of Health, or other public health authority of a determination that the presence in the community of the employee may jeopardize the health of others; and (2) the recommendation, direction, or order of the provider or authority that the employee be isolated or quarantined as a result of suspected exposure to a communicable disease.

The Department is proposing an amendment at N.J.A.C. 12:18-1.3, which lists acceptable methods for the "service of papers." Specifically, the section currently states that written communications issued by the Division of Temporary Disability Insurance (Division) may be served personally or by registered or certified mail or by telegram. As delivery by telegram is no longer used as a method for the "service of papers," the Department is proposing that it be deleted.

The Department is proposing an amendment at N.J.A.C. 12:18-2.8, regarding the submission, by employers, of an application for approval by the Division of a private plan for the payment of temporary disability insurance benefits to employees. The proposed amendment would add new N.J.A.C. 12:18-2.8(e) that would state that the Division shall permit any application for approval by the Division of a private plan to be submitted to the Division by means of electronic communication and permit the use of an electronic signature for any signature required in the application, as the term electronic signature is defined at N.J.S.A. 12A:12-2. New N.J.A.C. 12:18-2.8(e) is taken verbatim from section 9 at P.L. 2019, c. 37.

The Department is proposing the repeal and replacement of N.J.A.C. 12:18-2.11, regarding employee consent for adoption by the employer of a contributory private plan for temporary disability insurance coverage, to ensure consistency with the TDBL, as amended at P.L. 2019, c. 37. Specifically, the TDBL, and consequently the existing rule, stated that if employees are required to contribute to the cost of a private plan, a majority of the employees covered by the private plan must agree by written election to the establishment of the plan. However, section 10 at P.L. 2019, c. 37, amended the TDBL so that now only if employees who are subject to the provisions of a collective bargaining agreement are to be required to contribute to the cost of benefits under a private plan, a majority of the employees in the class or classes to be covered by the private plan must agree to the plan by written election (unless the collective bargaining agreement expressly waives the employees' right to a majority election as a condition for the private plan). Under the TDBL, as amended, "[i]n the case of employees **not subject to a collective bargaining agreement**, no employee consent or written election is required for withdrawal from the

State plan or establishment of a private plan" (emphasis added). An additional proposed change makes clear that a written election may be made by electronic communications, evidenced by an electronic signature. The proposed new rule at N.J.A.C. 12:18-2.11 would replace existing language with new language taken verbatim from the TDBL, as amended.

The Department is proposing an amendment at N.J.A.C. 12:18-2.12, which would make clear that this section, which contains requirements relating to evidence of consent, only applies where employee consent is mandated pursuant to proposed new N.J.A.C. 12:18-2.11 (described in detail above).

The Department is proposing amendments at N.J.A.C. 12:18-2.27, which would reflect two revisions made to the TDBL; the first resulting from P.L. 2018, c. 128, and the second resulting from P.L. 2019, c. 37. Specifically, P.L. 2018, c. 128, added new N.J.S.A. 43:21-49(a)(3) to the TDBL, which allows an individual who knows in advance when a period of disability will commence (for example, disability related to pregnancy or childbirth, disability related to scheduled medical procedures, treatments, or appointments, and disability related to scheduled ongoing care), to notify the employer of the anticipated period of disability and submit, to the Division, a claim for benefits for that period of disability, prior to, but not more than 60 days prior to, the date on which the period of disability will commence. P.L. 2019, c. 37, changed the method for calculating the "average weekly wage" so that, whereas it had stated that the average weekly wage was the amount derived by dividing a covered individual's total wages earned from the individual's most recent covered employer during the base weeks in the eight calendar weeks immediately preceding the calendar week in which a period of disability commenced, by the number of such base weeks, the "average weekly wage" is proposed to be the amount derived by dividing a covered individual's total wages earned from the individual's most recent covered employer during the base weeks in the base year immediately preceding the calendar week in which a period of disability commenced, or in which the individual submits a claim for benefits pursuant to N.J.S.A. 43:21-49(a)(3), by the number of base weeks.

The Department is proposing new N.J.A.C. 12:18-2.38, which would mirror the new requirement within section 9 at P.L. 2019, c. 37 (N.J.S.A. [page=1768] 43:21-32), that notice of the benefits provided by the private plan must be furnished to covered employees by the employer through a conspicuous and continuing posting at the place of employment, and by personal notice to each employee at the time of the establishment of the private plan, at any subsequent time of hire, and within three business days of when the employer knows, or should know, that the employee may have a need for temporary disability benefits. The new rule would specify, as does the TDBL, that the notice must contain current rates, eligibility requirements, benefit entitlements, contact information for the private plan, instructions on how to file for benefits with the private plan and appeal rights. The new rule also states, as do other similar notification requirements enforced by the Department, that both the conspicuous posting and individual notification requirements may be met by employers through certain electronic means.

As with N.J.A.C. 12:18-2.27, the Department is proposing an amendment at N.J.A.C. 12:18-3.2, which would ensure consistency with P.L. 2018, c. 128. As indicated above, that law added new N.J.S.A. 43:21-49(a)(3) to the TDBL, which allows an individual who knows in advance when a period of disability will commence to notify the employer of the anticipated period of disability and submit to the a claim for benefits for that period of disability, prior to, but not more than 60 days prior to, the date on which the period of disability will commence.

The Department is proposing an amendment at N.J.A.C. 12:18-3.11, regarding reduced work weeks, to ensure consistency with the TDBL, as amended by section 17 at P.L. 2019, c. 37. Whereas prior to P.L. 2019, c. 37, benefits were not compensable in situations where an individual returned to work for his or her full-time employer on a reduced work schedule, because the individual was no longer totally unable to perform the duties of his or her employment, the TDBL was amended by section 17 at P.L. 2019, c. 37 (N.J.S.A. 43:21-40), to require with respect to a period of disability of an individual who is otherwise eligible for benefits, but only able to return to work on a reduced basis while recovering from the disability, that the individual, if permitted by the employer to return to work on a reduced basis, shall be paid an amount of benefits with respect to that week such that the sum of the wages and those benefits paid to the individual will equal the weekly benefit amount the individual would have been paid if totally unable to perform the duties of employment due to the disability. The proposed amendment at N.J.A.C. 12:18-3.11 would replace subsection (b) with language from section 17 at P.L. 2019, c. 37 (N.J.S.A. 43:21-40(d)).

Finally, the Department is proposing new N.J.A.C. 12:18-3.12, that would list two exceptions to the seven-day waiting period for payment of temporary disability insurance benefits, which were created at P.L. 2019, c. 464 (N.J.S.A. 43:21-39(a)(4)), for periods of disability that are the result of the donation of any organ or bone marrow by the covered individual, and at P.L. 2020, c. 23 (N.J.S.A. 43:21-39(a)(5)), for periods of disability where, 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 illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, which requires in-home care or treatment of the employee due to: (1) the issuance by a healthcare provider, the Commissioner of Health, or other public health authority, of a determination that the presence in the community of the employee may jeopardize the health of others; and (2) the recommendation, direction, or order of the provider or authority that the employee be isolated or quarantined as a result of suspected exposure to a communicable disease.

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, a repeal, and new rules describe the Temporary Disability Benefits Program, which provides for financial assistance to individuals who are unable to work due to non-work-related illnesses or injuries. This program has a significant and positive social impact, as it provides financial security for New Jersey workers who are unemployed during periods of injury or illness. The rules proposed for readoption with amendments, a repeal, and new rules will serve to strengthen the standards and procedures required to efficiently pay temporary disability benefits. They will also enable the Department to protect the interests of workers and employers who contribute to the State disability benefits fund, and the stability of the fund, by ensuring that only eligible individuals receive benefits.

Specifically, regarding the amendments, repeal, and new rules, the vast majority of what is contained within the proposed amendments and new rules is expressly mandated by P.L. 2018, c. 128; P.L. 2019, c. 37; P.L. 2019, c. 464; P.L. 2020, c. 17; and P.L. 2020, c. 23. Therefore, whatever social impact might be felt, positive or negative, by citizens of the State, including business owners throughout the State, would derive in the first instance from P.L. 2018, c. 128; P.L. 2019, c. 37; P.L. 2019, c. 464; P.L. 2020, c. 17; and P.L. 2020, c. 23, not from the proposed amendments, repeal, or new rules. That said, there are certain of the proposed amendments, repeal, and new rules, prompted by revisions in the TDBL, that would clearly benefit claimants, and society as a whole, by, for example, including with the definition of a covered "disability" the circumstance where during a state of emergency declared by the Governor, an employee is directed by a healthcare provider, the Commissioner of Health, or other public health authority to quarantine as a result of a suspected exposure to a communicable disease. Absent that change in the law, and the corresponding change to the Department rules, such an individual would presumably not be able to collect temporary disability insurance benefits due to the claimant not being demonstrably ill, but rather only suspected of being ill. This statutory policy ensures the payment of a temporary wage replacement benefit under this circumstance and allows those ordered to quarantine for the benefit of themselves and their community to pay their essential bills while unable to work and earn. For the same reason, it serves an important social objective (encouraging those who are directed to quarantine to abide by that direction and stay home from work) to create an exception to the seven-day waiting period for payment of temporary disability insurance benefits for those same claimants. Similarly, the proposed amendment to the TDBL, and corresponding proposed new rule waiving the seven-day waiting period for those who have a disability as a result of the donation of an organ or bone marrow is appropriate and socially beneficial in that it encourages individuals to donate organs and bone marrow for the betterment of others, by ensuring that temporary disability benefits are paid to such claimants from the first day of their disability.

Another change in the TDBL, and corresponding proposed rule amendment that would benefit employees and employers alike, is the change that would permit a claimant to return to work on a reduced basis, while receiving a partial benefit, calculated in such a way that the sum of the wages and that partial benefit will equal the weekly benefit amount the individual would have been paid if totally unable to work.

Finally, there are certain revisions to the TDBL, and corresponding proposed amendments, which appear intended to reduce the administrative burden on employers; namely, that the Division permit applications for approval of private plans to be submitted by means of electronic communication and that the Division accept electronic signatures; that the conspicuous posting and individual notification requirement may be met through electronic means, rather than the traditional break-room posting and individual personal service; and that in the case of employees not subject to a collective bargaining agreement, no employee consent or written election is required any longer for withdrawal by the employer from the State plan or for the establishment of a private plan.

Economic Impact

The rules proposed for readoption with amendments, a repeal, and new rules will have a positive economic impact, as they continue to protect workers' health and safety, while at the same time protecting the solvency of the State disability benefits fund. Costs to employers are limited to the payment of temporary disability contributions and those costs incurred in keeping employee records and providing certain employee information to the Department and claimants concerning temporary disability benefits. As previously stated, the significant majority of proposed amendments in this rulemaking are directed by statute and are not determinations made by the Department.

[page=1769]

Federal Standards Statement

The rules proposed for readoption with amendments, a repeal, and new rules are governed at N.J.S.A. 43:21-25 et seq., and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments, a repeal, and new rules will have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments, a repeal, and new rules should have no impact on the agriculture industry. That is, these rules, including the proposed amendments, repeal, and new rules, pertain exclusively to the payment of a monetary benefit to employees, not to any leave entitlement. Furthermore, regarding the amendments, a repeal, and new rules, specifically, the vast majority of what is contained within the proposed amendments, a repeal, and new rules is expressly mandated at P.L. 2018, c. 128; P.L. 2019, c. 37; P.L. 2019, c. 464; P.L. 2020, c. 17; and P.L. 2020, c. 23. Therefore, whatever impact might be felt, positive or negative, by the agriculture industry would derive in the first instance from P.L. 2018, c. 128; P.L. 2019, c. 37; P.L. 2019, c. 464; P.L. 2020, c. 17; and P.L. 2020, c. 23.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, a repeal, and new rules do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting requirements delineated throughout the chapter currently exist and are imposed on all employers, regardless of size. Specifically, the rules proposed for readoption with amendments, a repeal, and new rules require employers to keep employee records and to provide certain employee information to the Department and claimants concerning temporary disability benefits. Employers, including small businesses, may incur costs associated with keeping and providing the required reports and information. However, these requirements are necessary in order to ensure that employees have adequate temporary disability insurance in case of non-work-related illness or injury. Employers will not require outside professional services to comply with the rules proposed for readoption with amendments, a repeal, and new rules.

As indicated above, in the Social Impact statement, certain changes to the TDBL, and corresponding proposed rule amendments, a repeal, and new rules, appear intended to reduce the administrative burden on employers, including small employers; namely, that the Division permit applications for approval of private plans to be submitted by means of electronic communication and that the Division accept electronic signatures; that the conspicuous posting and individual notification requirement may be met through electronic means, rather than the traditional break-room posting and individual personal service; and that in the case of employees not subject to a collective bargaining agreement, no employee consent or written election is required any longer for withdrawal by the employer from the State plan or for the establishment of a private plan.

Housing Affordability Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments, a repeal, and new rules, would evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption with amendments, a repeal, and new rules, pertain to the payment of temporary disability insurance benefits and have nothing to do with housing.

Smart Growth Development Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments, a repeal, and new rules, would evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption with amendments, a repeal, and new rules, 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. 12:18.

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

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.

...

["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.]

"Base year" with respect to a period of disability means the first four of the last five completed calendar quarters immediately preceding the period of disability, except that, if the individual does not have sufficient qualifying weeks or wages in the individual's base year to qualify for benefits, the individual shall have the option of designating that the individual's base year shall be the "alternate base year," which means the last four completed calendar quarters immediately preceding the period of disability; and except that if the individual also does not have sufficient qualifying weeks or wages in the last four completed calendar quarters immediately preceding the period of disability, "alternate base year" means the last three completed calendar quarters immediately preceding the individual's benefit year and, of the calendar

quarter in which the period of disability commences, the portion of the quarter which occurs before the commencing of the period of disability.

...

["Disability" or "disabled" means both mental or physical illness and mental or physical injury.]

"Disability" or "disabled" means such disability as is compensable pursuant to N.J.S.A. 43:21-29.

1. Disability shall, 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, also includes an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent the spread of the communicable disease, which requires in-home care or treatment of the employee due to:

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

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

...

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) (No change.)

(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 the notice was served.

12:18-2.8 Application for approval

(a)-(d) (No change.)

[page=1770] **(e) The Division shall permit any application for approval by the Division of a private plan to be submitted to the Division by means of electronic communication and permit the use of an electronic signature for any signature required in the application, as the term electronic signature is defined at N.J.S.A. 12A:12-2.**

12:18-2.11 Employee consent

[If employees are required to contribute to the cost of a private plan, the employer shall submit, in writing, to the employees a brief summary of the provisions of the plan, including the weekly benefit rate, the maximum amount and duration of benefits and the contributions required from the employees with respect to the benefits to be provided thereby. A majority of the employees to be covered must agree by written election (by ballot or otherwise) to the establishment of the plan which shall include the worker's contribution required. Evidence of their consent shall be shown on the application for approval.]

(a) If employees who are subject to the provisions of a collective bargaining agreement are required to contribute toward the cost of benefits under a private plan, such plan shall not become effective, unless prior to the effective date, a majority of the employees in the class or classes to be covered by the private

plan have agreed to the private plan by written election, unless the collective bargaining agreement expressly waives the employees' right to a majority election as a condition for the private plan.

(b) In the case of employees not subject to a collective bargaining agreement, no employee consent or written election is required for the withdrawal from the State plan or the establishment of a private plan.

(c) Written elections held pursuant to this section may be conducted by electronic communications evidenced by the electronic signature of the employee, as the term electronic signature is defined at N.J.S.A. 12A:12-2, but shall not be conducted in a manner inconsistent with any applicable terms of a collective bargaining agreement.

12:18-2.12 Evidence of consent

(a) [There] **Where employee consent is required pursuant to N.J.A.C. 12:18-2.11, there** shall be submitted on the application for approval a statement showing the total number of eligible employees in employment by the employer and the number of employees who agreed to the plan, together with the individual ballots or documents bearing the employees' signatures of consent. The ballots or documents of consent, after review by the Division, shall be returned to the employer.

(b) (No change.)

12:18-2.27 Exchange of information

(a) (No change.)

(b) If such recomputed weekly benefit amount is less than the maximum weekly benefit amount payable under the State plan and the computation of the "average weekly wage" for such recomputation yields a result which is less than the individual's average weekly earnings in employment, with all covered employers, during the base weeks in such [eight calendar weeks] **base year**, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the weekly wages of the employee earned from all covered employers during the [eight] base weeks **in the base year** immediately preceding the calendar week in which the employee's disability commenced, **or immediately preceding the calendar week in which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**.

(c) When requesting such information, such payer shall furnish the Division with the following information:

1. (No change.)

2. Date on which the disability commenced, **or date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**;

3. The names and addresses of such other employers, from whom the employee alleges to have earned wages immediately preceding his or her disability, **or immediately preceding the date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**, as may be necessary to determine all wages earned in the required [eight] base weeks **in the base year**.

4. The weekly earnings of the employee from the employer during each of the calendar weeks in the [52 calendar weeks] **base year** immediately preceding the disability, **or immediately preceding the date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**, if any.

(d) If the private plan of an employer provides as a condition of eligibility for benefits with respect to a period of disability, that an otherwise eligible employee shall have established at least 20 or a lesser number of base weeks within the [52 calendar weeks] **base year** preceding the week in which his or her period of disability commenced, **or immediately preceding the date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**, and the employee has not established such base weeks from his or her employment with the employer, then the insurer which has undertaken to pay the benefits provided by the plan shall request the

Division to provide such payer with a statement of the number of base weeks in the employee's base year. When requesting such information, such payer shall furnish the Division with the following information:

1. (No change.)
2. Date on which the disability commenced, **or date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**;
3. The names and addresses of such other employers, from whom the employee alleges to have earned wages in the [52 calendar weeks] **base year** immediately preceding his or her disability, **or immediately preceding the date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**, as may be necessary to determine the required number of base weeks; and
4. The number of calendar weeks in the [52 calendar weeks] **base year** immediately preceding the calendar week in which the period of disability commenced, **or immediately preceding the date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**, during which the employee earned not less than the minimum base week requirement as defined [in] **at N.J.S.A. 43:21-27(i)(4)** from the employer.

(e) If the private plan of an employer provides, with respect to periods of disability commencing on or after January 1, 1968, that the maximum total benefits payable to any eligible employee may be computed as an amount equal to 26 times the weekly benefit rate or 1/3 of his or her total wages in his or her base year, whichever is lesser, and it appears that such provision will be applicable with respect to any period of disability because wages earned with prior employers in the base year are lacking, then the insurer shall be request the Division to provide a statement of the total wages in the employee's base year. When requesting such information, such insurer shall furnish the Division with the following information:

1. (No change.)
2. Date on which the disability commenced, **or date on which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**;
3. Names and addresses of other employers in the [52 weeks] **base year** prior to the week in which the disability [occurred] **commenced, or the week in which the employee submitted a claim for benefits consistent with N.J.S.A. 43:21-49(a)(3)**;
4. (No change.)

12:18-2.38 Notice to covered employees

(a) **Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered employees by the employer by a conspicuous posting at the place of employment and by personal notice to each employee at the time of the establishment of the private plan, at any subsequent time of hire, and within three business days of when the employer knows, or should know, that the employee may have a need for disability benefits.**

(b) **The notice at (a) above shall reflect current rates, eligibility requirements, benefit entitlements, and rights of the employees under a private plan pursuant to the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., including appeal rights, and shall include [page=1771] contact information for the private plan and instructions as to how to file for benefits with the private plan.**

(c) **In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notice at (a) above on the employer's internet or intranet site shall satisfy the conspicuous posting requirement set forth at (a) above.**

(d) **Providing to an employee through email the notice at (a) above shall satisfy the requirement at (a) above, that the employer provide each employee personal notice at the time of the establishment of the**

private plan, at any subsequent time of hire, and within three business days of when the employer knows or should know that the employee may have a need for disability benefits.

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 **the** 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.

1. If an individual knows in advance when the period of disability will commence, the individual may notify the employer of the anticipated period of disability and submit to the Division a claim for benefits for that period, which shall include a statement of when the period of disability will commence and any certification requested by the Division, prior to, but not more than 60 days prior to, the date on which the period of disability will commence.

2. The Division shall process the claim at (a)1 above, immediately and, upon a finding that the claim is valid, shall pay the benefit upon the commencement of the period of disability or after any applicable one week waiting period, except that if the Division receives the claim less than 30 days before the commencement of the period of disability, the Division shall make the payment not more than 30 days after the receipt of the claim.

3. The periods of disability to which the provisions at (a)1 and 2 above apply shall include, but not be limited to, any of the following if the commencement date of the period of disability is known in advance: disability related to pregnancy or childbirth; disability related to scheduled medical procedures, treatments, or appointments for the individual; and disability related to scheduled ongoing care of the individual.

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

12:18-3.11 Reduced work week

(a) (No change.)

[(b) Benefits shall not be compensable in situations where the individual returns to work for the full-time employer on a reduced work schedule since the individual is no longer totally unable to perform the duties of his or her employment.]

(b) With respect to a period of disability of an individual who is otherwise eligible for benefits, but only able to return to work on a reduced basis while recovering from the disability, the individual, if permitted by the employer to return to work on a reduced basis, shall be paid an amount of benefits with respect to that week such that the sum of the wages and those benefits paid to the individual, rounded to the next lower multiple of \$ 1.00, will equal the weekly benefit amount the individual would have been paid if unable to perform the duties of employment due to disability, provided that:

1. The individual must have been unable to perform the duties of employment due to disability and receiving full benefits for at least seven consecutive days prior to claiming partial benefits pursuant to this subsection;

2. The maximum duration of partial benefits paid pursuant to this subsection is eight weeks, unless the Division, after a review of medical documentation from a qualified healthcare provider, approves, in writing, an extension beyond eight weeks, but in no case shall the duration be extended more than 12 weeks; and

3. If the individual is able to return to work on a reduced basis, but the employer is unable or otherwise chooses not to permit the individual to do so, the individual will continue to be eligible for benefits until the individual is fully recovered from the disability and able to perform the duties of employment, but nothing

in this subsection shall be construed to increase the total number of weeks of disability benefits for which the individual is eligible.

(c) For the purpose of this section, "qualified healthcare provider" means a legally licensed physician, dentist, podiatrist, chiropractor, certified nurse midwife, advanced practice nurse, or public health nurse designated by the Division.

12:18-3.12 Exceptions to the seven-day waiting period

(a) Under the following circumstances, the seven-day waiting period for payment of benefits shall not apply, and, therefore, benefits shall be payable with respect to the first seven days of the period of disability:

1. If the benefits are payable for a period of disability that is the result of the donation of any organ or bone marrow by the covered individual; or

2. If the benefits are payable for a period of disability, where 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, the disability is an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, which requires in-home care or treatment of the employee due to:

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

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