

The seal of the New Jersey Department of Labor and Workforce Development is a large, circular emblem in the background. It features the text "NEW JERSEY DEPARTMENT OF LABOR" around the top and "THE GREAT SEAL OF THE STATE OF NEW JERSEY" around the bottom. In the center is the Great Seal of the State of New Jersey, which depicts a woman holding a scroll and a man holding a sword, with a shield between them. The shield contains a plow and a sheaf of wheat. The words "LIBERTY" and "JUSTICE" are written on the scroll and the sword respectively.

**NEW JERSEY
TEMPORARY DISABILITY
BENEFITS**

**INFORMATION FOR
NEW INSURERS**

**New Jersey Department of Labor and Workforce
Development**

★ January 2009 ★

NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF TEMPORARY DISABILITY INSURANCE
PRIVATE PLAN COMPLIANCE SECTION
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http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_approval.html

TO: Prospective Private Plan Insurance Companies

Thank you for your inquiry regarding authorization to provide temporary disability insurance coverage in New Jersey. This packet of information describes the process you must follow in order to begin insuring New Jersey employers for private plan short-term non-work-related group temporary disability benefits. After reviewing this packet, if you have any questions feel free to contact our office at the address, telephone and fax numbers or e-mail address shown above.

The information contained in this packet relates solely to the approval by the New Jersey Department of Labor and Workforce Development of your model insurance forms. Until your model forms are approved, we cannot grant approvals for any actual operating private plans insured by you.

I. GENERAL INSTRUCTIONS

Approval Process in the Department of Labor and Workforce Development

The approval process is dual; your forms must be approved by both the New Jersey Department of Labor and Workforce Development and by the New Jersey Department of Banking and Insurance. **It is recommended that you obtain an informal approval for all of your forms from the Department of Labor and Workforce Development first, since the majority of information contained in your model forms relate to the New Jersey Temporary Disability Benefits Law, which we administer.**

The forms you submit to the Department of Labor and Workforce Development will be reviewed to ensure that the contents are in compliance with the New Jersey Temporary Disability Benefits Law and New Jersey Administrative Code. You will be contacted by us for any required additions, corrections, etc., and will then be advised by us when the contents are approved.

Approval Process in the Department of Banking and Insurance

After the Department of Labor and Workforce Development has made an informal approval of your forms, you must submit them to the Department of Banking and Insurance for approval. Each form submitted must have its own identifying number which when filed, becomes registered.

The Department of Banking and Insurance will review the forms in regard to readability and other insurance laws, and will provide written documentation to you and to us that the forms are approved, and therefore usable. Please note that if you submit forms to the Department of Banking and Insurance prior to our review, you may have to submit them a second time, should our Department find that additional changes are necessary.

This packet does not provide details regarding the approval process required by the Department of Banking and Insurance. For guidelines on that approval process or for questions on insurance law please contact:

New Jersey Department of Banking and Insurance
Division of Insurance
Health Insurance Unit
PO Box 470
Trenton, NJ 08625-0470
Telephone (609)292-5427, Ext. 50336

Final Versions of Forms

After both Departments have approved your forms, final permanent versions of the forms must be supplied to both Departments. These will be kept on file. No changes can be made to the forms without the above approval process again being initiated.

Submitting Employers' Plans for Approval

After the above approval process for your forms has been completed, you can begin to conduct New Jersey temporary disability business. You can begin submitting private plan applications to the Department of Labor and Workforce Development, covering employers to whom you have sold temporary disability coverage. An examiner in our office will be assigned to work with you on the requirements for approving, modifying, and terminating these specific private plans, and for supplying you with application forms and other materials that you require.

It is important to note that when submitting a plan to us in which the employees are required to contribute toward the cost of the plan, *an election must be held by the employer prior to the effective date of the plan*. A majority of the employees to be covered by the plan must agree to its establishment in order for the plan to be approved. If the employees are not required to contribute, no election is required.

II. DRAFTING YOUR FORMS

Model Policy and Model Notice to Employees

Each form submitted for approval must have its own identifying form number. There are two kinds of forms that must be submitted for review:

- The model policy.
- The model notice to employees, also called details

Model Policy - An important distinction must be made between the above two forms. The policy, which is usually issued to the employer, should contain insurance provisions that are written formulaically. It should not contain the exact dollar figures for benefits and wage requirements that are set by the Department of Labor and Workforce Development for any given year. Once issued, the policy's terms and conditions will stand until the private plan is either modified or terminated.

Model Notice to Employees - Conversely, the employees' notice must clearly define the exact dollar figures that pertain to benefits and wage requirements for the given year. The intent of the employee notice is to inform the employees, in laymen's terms, of the exact benefits and rights for any potential claim filed for any given year. The notice can be in the traditional poster format, or it can be issued as an employee handout, booklet or certificate.

The law requires that every approved private plan be at least equal in every way to the State Plan. A decision you will need to make is whether to provide private plans that are equivalent to the State Plan (called statutory plans), or to provide plans that are more liberal. Part of this decision may depend upon the preference of the employers you insure.

Variables

Model policies and model notices may contain variables for various plan provisions. Brackets “[]” around any portion of the policy or notice means that the element described within the brackets can be changed for a specific employer's private plan. However the provision within the variable cannot be more restrictive than the State Plan.

It is recommended that brackets be used in every area that could vary from employer to employer (ie., benefit rates, coverage, employee contributions, duration of benefits, limitations under the law, etc). This will allow you more freedom in tailoring specific insurance coverage to your clients when submitting pending plans for approval or modification. Without the use of brackets on these areas, plan provisions are fixed, and therefore cannot be changed.

Required Contents

Our office does not require exact conformity of style or language, even for statutory plans. However it is recommended that you adhere as closely as possible to the language of the New Jersey Temporary Disability Benefits Law when writing your forms. If you choose to use your own language, you may create unintended errors or omissions in the text.

The important provisions of the New Jersey Temporary Disability Benefits Law and the New Jersey Administrative Code must be included in your model policy and model notice. *These provisions are shown in the section entitled "Private Plan Details", beginning on page 7 of this booklet.*

Reprints of the full Law and Administrative Code, as well as informational pamphlets are enclosed for your reference.

Items That Should Not Be Included

The following insurance provisions must not be shown in your policy or notice for New Jersey Temporary Disability Benefits since (a) they are not a part of the New Jersey Temporary Disability Benefits Law, and (b) we do not have regulatory authority upon them:

- Limiting liability due to "acts of war" or "causes of nature"
- Providing different benefit levels based upon the nature of a disability
- Treating pregnancy as a separate disability
- Structuring benefits based on loss of limbs, body parts, or functions (ie., eyesight, hearing, etc.)
- Limiting liability for mental illnesses
- Allowing potential claimants to buy more benefits by increasing their contributions
- Citing integration of some other insurance program
- Citing integration of long term disability
- Citing integration of sick pay, continued pay, etc. from the employer as part of the private plan benefits

Past experience has shown that some insurers will submit for review their basic short term disability policy that is currently in use throughout the United States. This product rarely comes into compliance with the New Jersey Temporary Disability Benefits Law. Therefore the information in this packet should be used to produce your New Jersey model forms, rather than a nationwide product.

Please note also that Private Plan Operations does not approve other insurance forms. Therefore forms such as the following should not be submitted to us for approval:

- Customer forms
- Renewal agreements
- Premium bills

- Claim application forms
- Promotional booklets
- Policies providing some other form of health insurance

Modifying Your Forms

Occasionally, an insurance company who has had its forms already approved will wish to alter them. In many cases, it is the desire of the insurer to simplify the language of the policy and/or notice. If at any time after your forms have been approved, a change in overall style or specific text is desired, *the review process begins again.*

However, in such cases, since you are already approved to establish private plans for employers, this review process will not impede your ability to conduct such business while the forms are being revised. Applications for approval of an employer's private plan can be submitted with your previously approved forms until your new forms are accepted. If the revision results in an overall impact to benefits, no change in benefits can be implemented until the new forms are approved by both Departments.

III. PRIVATE PLAN DETAILS

As an additional guide, Private Plan Operations offers the following sample private plan details. The text is based upon the New Jersey Temporary Disability Benefits Law and the New Jersey Administrative Code, and describes provisions that are equal to the New Jersey State Plan in every respect. The section numbers of the New Jersey Temporary Disability Benefits Law (for example, N.J.S.A. 43:21-40) and the New Jersey Administrative Code (for example, N.J.A.C. 12:18-1.1) should not be shown in the details submitted to us.

1. Coverage

This private plan covers all employees of the employer. (N.J.S.A. 43:21-32)

2. Benefits Provided

(A) Weekly and Daily Benefit Amounts

For each period of disability, an employee covered by this private plan shall receive a weekly benefit amount of two-thirds (2/3) of the employee's average weekly wage, subject to a maximum of fifty-three percent (53%) of the statewide average weekly remuneration as determined and promulgated annually by the New Jersey Commissioner of Labor pursuant to law, provided, however, that the employee's weekly benefit rate shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof. The amount of benefits for each day of disability for which benefits are payable shall be one-seventh (1/7) of the corresponding weekly benefit amount, provided that the total benefits for a fractional part of a week shall be computed to the next lower multiple of \$1.00, if not already a multiple thereof. (N.J.S.A. 43:21-40)

(B) Commencement of Benefits

Benefits under this private plan shall be payable with respect to the eighth consecutive day of disability and each day thereafter that the period of disability continues; and if benefits shall be payable for three (3) consecutive weeks with respect to any period of disability, then benefits shall be payable with respect to the first seven (7) days thereof. (N.J.S.A. 43:21-39(a))

(C) Duration of Benefits

The maximum total benefits payable to any eligible individual for any period of disability shall be either 26 times his or her weekly benefit amount or one-third (1/3) of his or her total wages in his or her base year, whichever is the lesser; provided that such maximum amount shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof. (N.J.S.A. 43:21-38)

3. Employee Contributions

Each employee covered by this private plan may be required to contribute to the cost of benefits in the amount prescribed by law as the amount of worker contribution to the New Jersey State Disability Benefits Fund. The employer may collect the required contribution, if any, by deduction from current wages, or in the next succeeding pay period, but may not thereafter collect a contribution with respect to wages previously paid. *(N.J.S.A. 43:21-33)*

4. Requirements For Entitlement

To be entitled to benefits, the individual must have been in employment with the employer or other employers covered under the New Jersey Unemployment Compensation Law. The individual must have established at least 20 base weeks within the base year. In the alternative the individual must have been in such employment and have earned, within the base year, one-thousand (1,000) times the State minimum wage in effect on October 1 of the previous calendar year raised to the next higher multiple of \$100.00 if not already a multiple thereof. *(N.J.S.A. 43:21-41(d))*

5. Compensable Disability

Disability shall be compensable, subject to the limitations of the New Jersey Temporary Disability Benefits Law, where an individual covered by this private plan suffers any accident or sickness not arising out of and in the course of his or her employment or if so arising not compensable under the New Jersey Workers' Compensation Law, and resulting in his or her total inability to perform the duties of his or her employment. *(N.J.S.A. 43:21-29)*

6. Definitions

"Covered individual" means any person who is in employment as defined by the New Jersey Unemployment Compensation Law, for which he or she is entitled to remuneration from a covered employer, or who has been out of such employment for less than two weeks. *(N.J.S.A. 43:21-27(b))*

"Wages" shall mean all compensation payable by covered employers to covered individuals for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. *(N.J.S.A. 43:21-27(h))*

“Base week” means any calendar week during which an individual earned, in employment from a covered employer, remuneration equal to not less than 20 times the State minimum wage in effect on October 1 of the previous calendar year raised to the next higher multiple of \$1.00 if not already a multiple thereof. *(N.J.S.A. 43:21-27(i)(3))*

“Base year” means the 52 calendar weeks preceding the week in which the employee’s period of disability commenced. *(N.J.A.C. 12:18-1.1)*

“Period of disability” with respect to any individual shall mean the entire period of time during which he or she is continuously and totally unable to perform the duties of his or her employment, except that two periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one continuous period of disability; provided the individual has earned wages during such 14 day period with the employer who was his or her last employer immediately preceding the first period of disability. *(N.J.S.A. 43:21-27(g))*

(1) "Average weekly wage" means 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.

(2) If the computation in paragraph (1) 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, then the average weekly wage shall be computed on the basis of earnings from all covered employers during the base weeks in the eight calendar weeks immediately preceding the week in which the period of disability commenced.

(3) For periods of disability commencing on or after July 1, 2009, if the computations in paragraphs (1) and (2) both yield a result which is less than the individual's average weekly earnings in employment with all covered employers during the base weeks in the 26 calendar weeks immediately preceding the week in which the period of disability commenced, then the average weekly wage shall, upon a written request to the department by the individual on a form provided by the department, be computed by the department on the basis of earnings from all covered employers of the individual during the base weeks in those 26 calendar weeks, and, in the case of a claim for benefits from a private plan, that computation of the average weekly wage shall be provided by the department to the individual and the individual's employer. *(N.J.S.A. 43:21-27(j))*

“Statewide average weekly remuneration” means the average weekly remuneration paid to workers by employers subject to this chapter as computed and determined by the Commissioner of Labor on or before September 1 of each year on the basis

of 1/52 of the total remuneration reported for the preceding calendar year by employers subject to this chapter, divided by the average of workers reported by such employers. (N.J.S.A. 43:21-3(c)(3) in New Jersey Unemployment Compensation Law)

7. Non-duplication of Benefits

In accordance with the provisions of the New Jersey Temporary Disability Benefits Law, no benefits shall be paid under this private plan for any period with respect to which benefits are paid or are payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of New Jersey or of any other state or of the federal government. Nor shall benefits be paid for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or are payable on account of the disability of a covered individual under any workers' compensation law, occupational disease law, or similar legislation, of New Jersey or any other state or the federal government. (N.J.S.A. 43:21-30)

Where a claimant's claim for compensation for temporary disability, under the provisions of the New Jersey Workers' Compensation Law, is contested and thereby delayed and such claimant is otherwise eligible for benefits under this private plan, said claimant shall be paid the benefits provided by the private plan until and unless said claimant receives compensation under the provisions of the New Jersey Workers' Compensation Law. In the event that workers' compensation benefits, other than benefits for permanent partial or permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimant has received disability benefits pursuant to this private plan, the private plan shall be entitled to be subrogated to such claimant's rights in such award to the extent of the amount of disability payments made hereunder. Disability benefits otherwise required hereunder shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which the individual's most recent employer contributed on his or her behalf. (N.J.S.A. 43:21-30)

8. Limitation of Benefits

Notwithstanding any other provisions of this private plan, no benefits shall be payable hereunder:

- (a) For the first seven (7) consecutive days of each period of disability, except that if benefits are payable for three (3) consecutive weeks with respect to any period of disability, then benefits shall also be payable with respect to the first seven (7) days thereof;
- (b) for more than 26 weeks with respect to any one period of disability;

- (c) for any period of disability which did not commence while the claimant was a covered individual;
- (d) for any period during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, practicing psychologist, podiatrist, advanced practice nurse, certified nurse midwife, or chiropractor, who when requested by the insurer, shall certify within the scope of his or her practice, the disability of the claimant, the probable duration thereof, and, the medical facts within his or her knowledge;
- (e) (Deleted by amendment, 1980)
- (f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, third, or fourth degree, or for any period during which a covered individual would be disqualified for unemployment compensation benefits for gross misconduct under subsection (b) of R.S.43:21-5;
- (g) for any period during which the claimant performs any work for remuneration or profit;
- (h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed his or her regular weekly wages immediately prior to disability;
- (i) for any period during which the claimant would be disqualified for unemployment compensation benefits under the New Jersey Unemployment Compensation Law due to a labor dispute, unless the disability commenced prior to such disqualification.

(All above provisions (a) through (i) found in N.J.S.A. 43:21-39)

9. Claims Procedures

No later than 30 days after the commencement of the period of disability, the claimant shall furnish to the insurer a notice and claim for the disability benefits under this private plan. When requested, such notice and proof shall include certification of such disability by the attending physicians or a record of hospital confinement. Failure to furnish notice and proof within the time or in the manner above provided shall not invalidate or reduce any claim if it shall be shown to the satisfaction of the insurer not to have been reasonably possible. *(N.J.S.A. 43:21-49(a))*

An employee claiming benefits under this private plan shall, when requested by the

insurer, submit himself or herself at intervals, but not more often than once a week, for examination by a legally licensed physician, dentist, optometrist, practicing psychologist, podiatrist, advanced practice nurse, certified nurse midwife, chiropractor or public health nurse designated by the insurer, during the duration of the claim. *(N.J.S.A. 43:21-49(b))*

If a person claiming benefits hereunder is unable to agree with the insurer as to the benefits hereunder, he or she may, within one year of the date from which benefits are claimed, appeal to the:

New Jersey Department of Labor and Workforce Development
Division of Temporary Disability Insurance
Private Plan Compliance
PO Box 957
Trenton, NJ 08625-0957 *(N.J.S.A. 43:21-50(a))*

10. Governing Law

This private plan and its interpretation and administration shall be governed by the New Jersey Temporary Disability Benefits Law. In the event of ambiguity or conflict, the law will prevail.

11. Modification of Private Plan

No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the New Jersey Division of Temporary Disability Insurance. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the New Jersey Temporary Disability Benefits Law and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with the Law. The Division shall be given prompt notice of any modification of a private plan, which modification does not require such approval under this section. *(N.J.A.C. 12:18-2.2(h))*

12. Termination of Private Plan

This plan may be terminated by the insurer or employer upon proper notice to the Division. *(N.J.A.C. 12:18-2.2(b) and N.J.S.A. 43:21-35(b))*

13. Guarantee Clause

The benefits payable to each employee covered under this private plan shall be at least equal, in both weekly amount and duration, to those which would be payable to the employee under the state plan, but for his or her inclusion in this private plan. *(N.J.A.C. 12:18-2.9(a)(3))*