

New Jersey Private Plan

# Claims Manual

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January 2020 A

Effective for claims dated January 1, 2020 through June 30, 2020



DP-95 (R 11-19)

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## NOTES

## INTRODUCTION

This manual has been prepared by the New Jersey Department of Labor and Workforce Development, Private Plan Compliance Section, as a guide to the processing of New Jersey short-term non-work-related temporary disability claims. It is intended for use by insurance companies, employers, union welfare funds, and claims consultants who process and pay New Jersey temporary disability claims under approved Private Plans.

**This manual describes the benefits and eligibility conditions for approved Private Plans that are equal to the State Plan in every way. If a Private Plan is more liberal than the State Plan, the more liberal provisions in the Private Plan must be used to process actual claims.** The material in the manual is based on the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-27 through 43:21-56), the New Jersey Administrative Code (N.J.A.C. 12:18-1.1 through 12:18-3.9 and 1:12A-1.1 through 1:12A-15.2), and portions of the New Jersey Unemployment Compensation Law, Workers' Compensation Law, State Income Tax Law, and No-Fault Automobile Insurance Law. Decisions issued by the New Jersey Supreme Court and Superior Court, policies established by this Department, and our own experience in the area of short-term disability claims processing also served as a basis for this material.

This manual is published for informational purposes only, and does not have the effect of law, regulation or ruling.

For more information on the material in the manual, or for additional copies, please contact:

New Jersey Department of Labor and Workforce Development  
Division of Temporary Disability Insurance  
Private Plan Compliance Section  
Claims Review Unit  
PO Box 957  
Trenton, NJ 08625-0957

Telephone: (609) 633-9202  
Fax: (609) 292-2537  
E-mail: [william.perry@dol.nj.gov](mailto:william.perry@dol.nj.gov)

To view this manual online, and for additional temporary disability information please see the Division of Temporary Disability Insurance website at:

<https://myleavebenefits.nj.gov>

For information on all New Jersey Department of Labor and Workforce Development programs, see the Department of Labor and Workforce Development website at <https://www.nj.gov/labor/index.html>

Also, the following Department of Labor and Workforce Development publications may be viewed online:

New Jersey Temporary Disability Benefits Law –  
<https://myleavebenefits.nj.gov/labor/myleavebenefits/about/laws>

New Jersey Administrative Code - Temporary Disability Benefits –  
<https://myleavebenefits.nj.gov/labor/myleavebenefits/about/laws>

Employer Handbook – New Jersey’s Unemployment and Disability Insurance  
Programs –  
<https://www.nj.gov/labor/handbook/content/contents.html>

## CHAPTER 1 - NEW JERSEY TEMPORARY DISABILITY PROGRAM

The State of New Jersey is one of only five states to have a statutory temporary disability program. The other states with a temporary disability statute are New York, Rhode Island, California and Hawaii. Puerto Rico also has a statutory disability program.

In New Jersey, benefits are provided under the New Jersey Temporary Disability Benefits Law. The purpose of the program is to provide some protection against wage loss caused by short-term non-work-related disabilities. Coverage is provided under either the State Plan, or an approved Private Plan, or under Disability During Unemployment. *A claimant must work within the State of New Jersey, or determined to be a New Jersey employee, in order to be covered by one of the above programs, since the coverage available to an individual claimant is determined by where the claimant works not by where the claimant resides and not by the location of the employer's corporate headquarters.*

Although State Plan disability coverage is provided automatically to all covered employers, the employer may, as an option, establish an approved Private Plan to replace the State Plan. The Plan may be insured by the employer, by an insurance company, or by a union welfare fund. It must be at least as liberal in benefit amounts, eligibility requirements, and duration of payments as the State Plan. Employers wishing to apply for an approved Private Plan may contact the Division of Temporary Disability Insurance, Plan Approval Unit, PO Box 957, Trenton, NJ 08625-0957, or telephone (609) 292-0982.

A third temporary disability program, Disability During Unemployment, is administered by the State of New Jersey under the provisions of the Unemployment Compensation Law as well as the Temporary Disability Benefits Law. This program covers claimants whose disabilities begin more than 14 calendar days after the last day in covered employment. Individuals who claim benefits under this program must meet all the eligibility requirements of the Unemployment Compensation Law, except for their ability to work.

Additional information on these temporary disability programs may be found on the New Jersey Division of Temporary Disability Insurance website, located at:

<https://myleavebenefits.nj.gov>

Please remember that under the Law, your Private Plan has been approved to replace the New Jersey State Plan. Therefore, to ensure that the employees you cover receive proper benefits, your interpretation of the Law and your claims procedures should be no more restrictive than those of the State Plan.



## CHAPTER 2 - COVERAGE AND LIABILITY

### Private Plan Coverage May Vary

When processing a temporary disability benefits claim, a Private Plan insurer, employer or welfare fund must be aware of the employees covered by the Private Plan, since coverage may vary from employee to employee. If the claimant is in the group covered by the Private Plan, the Private Plan insurer, employer or union welfare fund is responsible for handling the claim instead of the State Plan.

The files of the Private Plan Compliance Section show the exact coverage for each approved Private Plan. For example, a Private Plan that covers “all employees” means all employees working in New Jersey for that employer are covered by that Private Plan whether they are full-time, part-time, temporary, salaried, hourly, at various locations, etc. A Private Plan that only covers a certain group, such as “all salaried employees”, means that only New Jersey salaried employees are covered by that Private Plan and all other employees are covered under either the State Plan or under another approved Private Plan.

### Last Employer Is Liable

Under Section 12:18-3.1(h) of the New Jersey Administrative Code, the last New Jersey covered employer for whom the claimant worked, in terms of calendar dates, is liable for the claim for temporary disability benefits. Therefore, the last employer for whom the claimant worked (or was paid continued pay) prior to the disability must always be determined when processing a temporary disability claim. The liable employer may be either a full-time or part-time employer, since liability is not based on the claimant's work schedules.

### Concurrent Employment

The last employer is responsible for the payment of temporary disability benefits, as explained in the preceding paragraph. However additional provisions of the New Jersey Administrative Code are applied when the claimant is in *concurrent employment*. The claimant is determined to be in concurrent employment when:

- The claimant worked for two employers on the *same last calendar day* (the time of day the claimant worked with each employer makes no difference),
- OR
- One of the employers has paid continued pay to the claimant prior to the start of the disability, up to and including the same last day worked at the other employer.

The following provisions, based on the New Jersey Administrative Code, are used to determine the employer who will be liable for the claim when the claimant is in concurrent employment:

One Private Plan Employer and One State Plan Employer - When the claimant was in concurrent employment with one approved Private Plan employer and one State Plan

employer on the same last calendar day, the claim is the sole responsibility of the carrier for the Private Plan employer. Nothing can be paid by the State Plan.

Two Private Plan Employers - When the claimant was in concurrent employment with two approved Private Plan employers on the same last calendar day, each Private Plan carrier is responsible for paying a portion of the claimant's weekly benefit rate (see "Calculating Benefits When Claimant is in Concurrent Employment with Two Private Plan Employers", page 16).

### **Fourteen Days of Extended Coverage**

The New Jersey Temporary Disability Benefits Law provides an extension of coverage following cessation of employment. Individuals in covered employment (employment subject to the New Jersey Temporary Disability Benefits Law) who stop work and subsequently become disabled within 14 calendar days of the last day of work or last day in paid covered employment are covered under the Private Plan (or State Plan) of their last employer. The Private Plan carrier (or the State Plan) is liable for the claim, as long as the claimant has not begun work with another employer.

A claim for a disability that begins more than 14 calendar days after the last day in covered employment may be denied by the Private Plan carrier. Upon receipt of the copies of the denial and claim from the carrier, the Private Plan Compliance Section, Claims Review Unit, will refer the claim to the Disability During Unemployment Section, who will determine if the claim is payable by the State of New Jersey under the Unemployment Compensation Law and the Temporary Disability Benefits Law.

### **Liability Determined by the Date the Disability Began**

The Superior Court of New Jersey, Appellate Division, ruled in the 1977 precedent decision of Metropolitan Life Insurance Company vs. Early Montgomery, A-1791-74, that liability for a claim is based on when the disability commenced, not on when the claimant was first treated by a physician. Therefore, when the disability commenced within 14 days of the claimant's last day in employment, but the claimant did not see a physician until more than 14 days after the last day in employment, the Private Plan insurer (or the State Plan) is responsible for the claim.

### **Vacation Pay Extends Employment**

An employee who is *not disabled* and is on a paid vacation is in employment. That individual's employment is extended throughout the paid vacation. Therefore, a disability that occurs during a paid vacation, or within 14 calendar days of the end of a paid vacation, is the responsibility of the last employer. Please note that an unpaid vacation or other type of unpaid absence does not extend an individual's employment.

### **Governmental Employers**

Under the New Jersey Temporary Disability Benefits Law, employment with governmental

employers is treated in various ways. The term “New Jersey covered employment” mentioned below means employment located in New Jersey with an employer who is subject to the New Jersey Temporary Disability Benefits Law.

United States Government - Employment with the United States government is not New Jersey covered employment. As a result, a claimant whose only employer in the base year was the United States government is not eligible for temporary disability benefits under the New Jersey State Plan nor under a Private Plan.

If a claimant has filed a temporary disability claim based on employment with both a covered New Jersey employer and with the United States government, any wages earned as a result of the employment with the United States government cannot be used for determining the claimant’s eligibility for New Jersey temporary disability benefits.

New Jersey State Government - Employment with the State of New Jersey is covered employment, and wages earned in that employment must be used for determining a claimant’s eligibility. Employees of the State of New Jersey are covered by the New Jersey State Plan for temporary disability benefits (not a Private Plan).

New Jersey County and Municipal Government - Counties and municipalities are exempt from participating in the New Jersey Temporary Disability Benefits Law unless they voluntarily choose to participate. If the county or municipality has voluntarily chosen to participate under the Law, employment with them is New Jersey covered employment, and wages earned with them must be used for determining a claimant’s eligibility. A county or municipality may cover their employees under either the State Plan or an approved Private Plan.

If the county or municipality has not chosen to participate under the Law, employment with them is not New Jersey covered employment, and wages earned with that county or municipality cannot be used for determining a claimant’s eligibility for temporary disability benefits. Their employees are not covered under the State Plan nor under an approved Private Plan.

### **Determining Liability for Relapses**

The New Jersey Temporary Disability Benefits Law defines a relapse as *“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(/her) last employer immediately preceding the first period of disability.”*

Based on the above definition, claims for individuals who suffer a second period of disability, after recovering or returning to work from a prior disability, should be handled as follows. *(Please note: For purposes of clarity, the following examples express maximum benefits only as “26 weeks”. The actual maximum duration of benefits is 26 weeks or an amount equal to 1/3 the claimant’s base year wages, whichever is less. See page 17, “Maximum Duration of Benefits”.)*

**(1) Relapse within 14 days or less** - When a claimant who has been disabled recovers or returns to work with the same employer, and again becomes disabled with the same medical condition (suffers a medical relapse) within 14 days of their recovery or return to work, the relapse must be treated as the same period of disability. Benefits resume as of the first day of the relapse. Benefits paid both before and after the start of the relapse are counted when calculating the 26-week maximum.

**(2) Relapse on 15<sup>th</sup> day or later** - If the individual recovers or returns to work and becomes disabled again on the 15<sup>th</sup> calendar day or later after the recovery or return to work, a new period of disability is established. Whether or not the medical condition was the same does not matter. Benefits begin anew, with a potential of another 26-week maximum beginning at the start of the second disability.

**(3) New medical condition** - When a claimant recovers or returns to work for any part of at least one day and then becomes disabled again from a new medical condition (not a relapse of the prior medical condition), a new period of disability is established. Benefits begin anew, with a potential of another 26-week maximum beginning at the start of the second disability.

**(4) New employer** - A new period of disability is established when a claimant who has been disabled goes to work for a new employer, and becomes disabled again at any time after the return to work with that employer. Benefits begin anew, with a potential of another 26-week maximum. Benefits must be paid by the new employer's temporary disability carrier. The carrier for the old employer has no further liability.

**(5) Did not return to work** - When a claimant who has been disabled subsequently recovers, but does not go to work anywhere for 14 days or more, and then becomes disabled again due to any illness or condition, a new claim is created that will be forwarded to Disability During Unemployment for consideration. This is because the new disability began beyond the 14-day extended coverage period following the claimant's last day in employment with their last employer, and they have not returned to work. The insurer who was responsible for the first period of disability has no further liability and may deny the claim. Upon receipt of the denial, the Claims Review Unit will forward the claim to the Disability During Unemployment Section for processing.

## **Overlapping Disabilities**

Claims from individuals who have not returned to work or recovered from a non-work-related disability and then suffer a second non-work-related illness or injury that overlaps the first, must be handled as one period of disability. The insurer must continue payments. Total liability is 26 weeks beginning at the start of the first disability.

## **Late Filing of a Claim**

A claim must be filed or notice given to the employer or to the State Plan within 30 days of the beginning of the disability. Unless the claimant has a good reason for filing the claim late, the claimant may be penalized.

The penalty for late filing consists of starting benefit payments 30 calendar days prior to the date of receipt of the claim or notice. Please note that this is a penalty, not an outright

denial of the entire claim, except when the claimant has recovered from the disability more than 30 days prior to the receipt of the claim.

### **Return to Work on Part-Time Basis**

Occasionally a disabled claimant may return to work or continue to work on a part-time basis during a period of disability. Under Section 12:18-3.11 of the New Jersey Administrative Code, the only situation where the claimant may collect temporary disability benefits (*compensable at a fractional part of the week*) when returning or continuing to work part-time is *“where the claimant was in employment with a full-time employer and a part-time employer immediately preceding the period of disability [and] the claimant is unable to perform the duties of his or her regular full-time employment, but he or she is able to perform totally different duties with his or her part-time employer.”* Changing any element of the above situation (one employer prior to the disability, two part-time employers, returning to the full-time employer, etc.) results in a termination of temporary disability benefits when the claimant returns to work.

When benefits are payable in this situation, they are calculated in the following manner:

- If the claimant returns or continues to work at the part-time employer only, one-seventh of the weekly benefit rate must be subtracted from the claimant’s benefits for each day worked, and the remainder paid to the claimant.
- For days during the disability where the claimant has not worked at either the part-time or the full-time employer, the full amount of temporary disability benefits must be paid.
- If the claimant returns to work at the full-time employer at any time, benefits are terminated upon that return to work.

### **Labor Disputes**

Disability Beginning Before a Labor Dispute - If a claimant’s disability begins before the start of a labor dispute, temporary disability benefits must continue to be paid to the claimant throughout the labor dispute. There is no reduction or cessation of temporary disability benefits.

Disability Beginning During a Labor Dispute - If a claimant’s disability begins during a labor dispute, and the claimant is in the affected group, no temporary disability benefits are payable for the duration of the labor dispute. If the labor dispute ends and the claimant is still disabled, temporary disability benefits are payable from the end of the labor dispute forward. There is no retroactive payment to that claimant for the period that they were involved in the dispute.

## CHAPTER 3 - MEDICAL ISSUES

### Disability Date

The disability date (the date the disability started) is the first full calendar day of disability after the last date of work. The disability date should be verified by the claimant's physician. The disability date may be any day of the week including Saturday and Sunday. It does not have to be a day the claimant was scheduled to work. Also, the disability date is not movable as a result of vacation pay, sick pay, etc.

### First Date of Treatment

It is sometimes difficult for a claimant to obtain an immediate appointment with a physician. Therefore, under the New Jersey Administrative Code, if the claimant is first treated within ten days of the beginning of the disability and if the claimant has been disabled for 22 calendar days or more, benefits are paid from the date the disability started.

If the first treatment occurred more than ten days after the start of the disability, benefits begin as of the date of that first treatment.

### Licensed Medical Practitioners

In order for temporary disability benefits to be paid, a claimant must be under the continuous care of a *licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, chiropractor or certified nurse midwife*. Other types of specialties, and nurses and midwives, may not certify disabilities unless they are under the supervision of a licensed physician. Physical therapists and social workers may not certify a disability.

Under the New Jersey Administrative Code, a licensed medical practitioner may not charge a fee for completing medical forms required by the Division of Temporary Disability Insurance or by a Private Plan insurer.

### Independent Medical Examinations

When the claims processor feels that a physician's prognosis date is too long in relation to the nature of the disability or the disability becomes medically questionable for some other reason, the insurer may exercise the option under the Law of scheduling an independent medical examination of the claimant by a licensed physician. In accordance with the Law, an independent exam can be scheduled no more frequently than once per week. The cost of the independent medical exam is the responsibility of the insurer.

If the claimant is found able to work by the independent physician, benefits must be authorized up to the date of the exam, and may then be terminated. When the claimant fails to appear for an exam, all further benefits may be denied, except for benefits already paid.

## **Pregnancy Claims**

In accordance with the New Jersey Attorney General's Opinion No. 2-1979, pregnancy disability claims must be processed in accordance with the treating physician's certification, as in all other disability claims. Normal pregnancy is considered a disability when the treating physician certifies that the claimant is unable to work. The claimant does not need to have complications of pregnancy for the claim to be payable.

When certified by the claimant's treating physician, a normal pregnancy may be disabling and therefore payable up to four weeks before the expected date of birth, and up to six weeks after the date of birth. This is the usual disability period for a normal pregnancy, as shown by treating physicians on claims submitted to the New Jersey State Plan.

Various complications can result in longer periods of disability. A Caesarean section may extend the period of disability after the date of birth to a period of 8 weeks. Length of payment also could depend, like other disabilities, on the individual's occupation and age. As in other disabilities, a claimant must be unable to perform the duties of her regular job.

The physical factors involved with a pregnancy sometimes prevent a woman from doing a job which entails heavy lifting. This type of disability is compensable if a claimant exhibits symptoms preventing her from working. However, it is not compensable if the claimant stops work for precautionary reasons only.

Some women are exposed during pregnancy to toxic chemicals, radiation, or other environmental risks on the job. This type of claim is not payable when the claimant stops work due to a possible risk of chemical or X-ray exposure to the fetus, because the claimant herself is not disabled. Her absence is precautionary, and therefore not due to a medically disabling condition.

In the above situations where the claimant has stopped work due to precautionary reasons and the temporary disability claim is not yet compensable, the claimant should be advised to apply for unemployment benefits.

## **Acceptable Medical Basis for Denial**

As part of the claim process, a claimant is required to submit medical documentation to the insurer from their treating licensed physician certifying that the claimant is disabled, giving the diagnosis, and giving the beginning and ending dates of the claimant's disability.

**Under Section 12:18-2.4(b) of the New Jersey Administrative Code (quoted below), if the above medical certification is submitted, the claimant may only be denied temporary disability benefits on a medical basis when one or more of the following four factors are present:**

"1. The employer, insurer or organization paying benefits has contacted the covered

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

"2. A licensed medical practitioner designated by the employer, insurer or organization paying benefits has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of the examination;

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

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

**Please note that the above Administrative Code does not provide for the denial of benefits on the basis of other medical factors. Factors which *may not* be used as a medical basis for denial include, but are not limited to, the following:**

- The insurer's opinion that the medical documentation in the file does not support the claimant's disability;
- A review of the medical documentation in the claim file by the insurer's staff physician, nurse, or claims processor;
- A review of the claimant's job description;
- The lack of a list of job restrictions or limitations;
- The insurer's disagreement with the course of treatment;
- The content or lack of the treating physician's office notes;
- The results of laboratory tests;
- Information in references such as maternity guidelines, morbidity tables, etc.

Therefore, if valid medical certification has been submitted from the treating physician, and none of the above four conditions listed in the New Jersey Administrative Code are present, and the claimant is eligible in every other way, then the claimant has satisfied the requirements of the New Jersey Temporary Disability Benefits Law. When the requirements of the Law have been satisfied, the claimant must be paid temporary disability benefits covering the dates stated by the treating physician.

### **Morbidity Table**

A morbidity table showing the estimated lengths of disabilities may be helpful when authorizing initial benefits on a claim. It may also be used to establish a date on which to request additional medical information from the claimant. *However please note that benefits cannot be denied based solely on the contents of a morbidity table.* For a copy of the table used by the New Jersey State Plan, contact the Claims Review Unit at (609)



633-9202.

### **Requesting Updated Medical Information**

Medical information can be requested as frequently as weekly, but no more often, in accordance with the Law. This information should be requested from the claimant or their physician. Please note that under the Law, there is no time limit within which a claimant must submit an updated medical certification for continued benefits.

### **Light Duty**

The definition of a period of disability, found in Section 43:21-27(g) of the New Jersey Temporary Disability Benefits Law, is the entire time during which the claimant is unable to perform the duties of his or her employment as it existed prior to the start of the disability. Thus, the claimant who is unable to do his or her *regular job* is considered disabled. It should be noted that benefits cannot be denied based on the claimant's refusal to accept light duty work, since the claimant cannot perform the duties of their regular job (light duty work is not the claimant's regular job).

### **Substance Abuse and Alcohol**

A disability due to substance abuse is not payable if the use of the substance constitutes a crime of the first, second or third degree. However, as a result of the "Americans with Disabilities Act," individuals whose disabilities are caused by substance abuse may be eligible for temporary disability benefits if they are no longer using the substance, and if they are being treated for their disability (certified by the treating physician). They must also meet all other requirements of the Law in order to be eligible.

Alcoholism is a compensable disability provided the individual is under medical care, since it is a disease. It is not considered to be a willfully and intentionally self-inflicted injury.

### **Self-Inflicted Injury**

Although the New Jersey Temporary Disability Benefits Law prohibits payment to a claimant for any period of disability due to willfully and intentionally self-inflicted injury, a decision of the New Jersey Superior Court established a precedent for the handling of disabilities such as attempted suicide. The Court ruled that benefits must be paid if an attempted suicide was not willful nor intentional, based on the claimant's incapacity to govern his conduct in accordance with reason.

Therefore, claims for self-inflicted injury should be handled as follows:

- If the treating physician indicates an underlying medical cause for the claimant's actions, benefits should be paid.
- If the treating physician initially does not indicate an underlying medical cause, the treating physician should be contacted to obtain information on whether there was an underlying cause.

- If contact with the treating physician does not reveal any underlying medical cause, the claim may be denied on the basis that the disability is the result of a self-inflicted injury.

### **Cosmetic Surgery**

If surgery was performed for cosmetic reasons only, rather than as a remedy of a sickness or injury, temporary disability benefits may be denied. However temporary disability benefits are payable if cosmetic surgery is reconstructive in nature or necessary to correct a disabling condition.

### **Elective Surgery**

There is no exclusion in the New Jersey Temporary Disability Benefits Law for elective surgery. Therefore, temporary disability benefits must be paid in these cases if the claimant's physician certifies to the claimant's disability. Disabilities due to organ and bone marrow donations are payable to both donors and recipients.

### **Deceased Claimants**

The policy of the New Jersey Division of Temporary Disability Insurance is to pay temporary disability benefits up to and including the date of death. Since an approved Private Plan cannot be more restrictive than the State Plan, Private Plan insurers and employers must handle these benefits in the same manner.

## CHAPTER 4 - HOW TO CALCULATE STATUTORY BENEFITS

*The calculations in this Chapter apply to those approved Private Plans whose provisions are equal to the New Jersey State Plan. Approved Private Plans that are more liberal than the State Plan must pay more liberal benefits in accordance with the provisions of those Private Plans.*

### Base Week

A base week is one of the earnings factors used to determine a claimant's eligibility and to calculate a claimant's benefits. A base week is defined as earnings in a calendar week of 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 a dollar if not already a multiple thereof **OR** any week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year.

The New Jersey minimum wage, as of October 1, 2019, was \$10.00 per hour. **Therefore, the base week amount is \$200.**

### Base Year

The base year is the period of time within which the required wages must be earned by the claimant in order to establish a valid claim. The regular base year, established by the first day of disability, is the period consisting of the first four of the last five completed quarters preceding the first day of disability.

EXAMPLE: A disability began Wednesday, January 23, 2020. The base year is October 01, 2018 through September 30, 2019

### Earnings Requirements

A claimant may satisfy the earnings requirements in one of two ways. *Only one* of the following earnings tests need to be met in order to establish a valid claim. The earnings do not need to be entirely with the last employer, but may be with all New Jersey covered employers in the base year.

The claimant must have earned:

**EITHER**.....20 base weeks of earnings in the base year (they do not have to be consecutive weeks), each base week having earnings of at least \$200 **OR** being a week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year.

**OR**.....in the alternative, earnings in the base year of at least 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. The New Jersey minimum wage, as of October 1, 2019, was \$10.00 per hour. Therefore, the alternative earnings requirement is \$10,000.

### **TO SUMMARIZE THE EARNINGS REQUIREMENTS:**

Either 20 base weeks, being either \$200.00 per week or any week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year, or total earnings of \$10,000.00, in the base year.

### **Wage Information from Prior Employers**

Wages from all New Jersey covered employers in the base year must be used to calculate eligibility for temporary disability benefits. Wage information should be obtained by the insurer directly from prior employers. If you are unsuccessful in retrieving wage records directly from the prior employer(s), contact the claimant to secure those records.

### **Alternative Base Year I**

If the individual does not have sufficient base weeks or base wages in the base year to qualify for benefits, the examiner will use Alternative Base Year I. Alternative Base Year I, established by the first day of disability, means the last four completed quarters immediately preceding the first day of disability.

### **Alternative Base Year II**

If the individual does not have sufficient base weeks or base wages in the Alternative Base Year I, the examiner will use Alternative Base Year II. Alternative Base Year II, established by the first day of disability, means the last three completed quarters plus the balance of the unfinished quarter immediately preceding the first day of disability.

### **Calculating the Weekly Benefit Rate**

The formula for the New Jersey statutory temporary disability weekly benefit rate is two-thirds of the claimant's average weekly wage, to a maximum of 53% of the statewide average weekly remuneration paid to workers two years prior to the current year. Thus the maximum weekly benefit rate changes on January 1 of each year.

**This statutory formula yields a maximum weekly benefit rate for disabilities beginning January 1, 2020 or later of \$667 per week.**

THE WEEKLY BENEFIT RATE IS CALCULATED AS FOLLOWS:

Calculate the claimant's average weekly wage by dividing the total base year earnings (in dollars) by the actual number of base weeks in the base year. Then multiply the result by two-thirds (66 2/3%) to obtain the weekly benefit rate to be paid to the claimant.

## **Calculating Benefits When Claimant is in Concurrent Employment with Two Private Plan Employers**

Under the New Jersey Administrative Code, when the claimant is in concurrent employment with two Private Plan employers (see “Concurrent Employment”, page 4) the two Private Plan carriers must share the payment of the weekly temporary disability benefit.

**First**, the claimant’s average weekly wage and weekly benefit amount are calculated using wages from all employers in the base year (see “Calculating the Weekly Benefit Rate,” page 15).

**Then**, the portion of the weekly benefit to be paid by each Private Plan carrier is calculated as follows:

**Step One:** The claimant's income from each Private Plan employer for any period (to include the last day of work) in the year prior to the disability (where the claimant worked for both employers) is added together to obtain the total income for that period.

**Step Two:** The percentage of income earned with each Private Plan employer in the base year is calculated.

**Step Three:** Each carrier then pays their percentage of the weekly benefit rate, but the total weekly benefit cannot be less than that provided by the most favorable Private Plan.

## **Calculating Benefits When Claimant is in Concurrent Employment with One Private Plan Employer and One State Plan Employer**

Under the New Jersey Administrative Code, when the claimant was in concurrent employment with one approved Private Plan employer and one State Plan employer on the same last calendar day (see “Concurrent Employment”, page 4), the claim is the sole responsibility of the carrier for the Private Plan employer. Nothing can be paid by the State Plan.

The weekly benefit to be paid by the Private Plan carrier is calculated as follows:

**Step One:** The claimant's income from all employers in the base year prior to the disability is added together to obtain the total income for that period.

**Step Two:** Divide the total earnings in the base year by the number of base weeks (based on the total earnings for each week). This yields the average weekly wage.

**Step Three:** Multiply the average weekly wage by two-thirds (66 2/3%) and round it down to the next lower dollar. This yields the weekly benefit rate payable by the Private Plan carrier.

## **Maximum Duration of Benefits**

The maximum duration of benefits that must be paid by the Private Plan insurer for each period of disability is either 26 times the weekly benefit rate or an amount equal to one-third the claimant's total base year earnings, *whichever is the lesser*, unless the approved Private Plan provides for a longer duration.

EXAMPLE A: A claimant is receiving benefits of \$450 per week, and had total base year earnings of \$45,000.

26 weeks x \$450 per week = \$11,700

OR

1/3 x \$45,000 base year earnings = \$15,000

In the above example, the claimant's benefits are exhausted after they have received \$11,700 (26 weeks), the lesser of the above two dollar amounts.

EXAMPLE B: A claimant is receiving benefits of \$450 per week, and had total base year earnings of \$21,000:

26 weeks x \$450 per week = \$11,700

OR

1/3 x \$21,000 base year earnings = \$7,000

In the above example, the claimant's benefits are exhausted after they have received \$7,000 (approximately 15 weeks), the lesser of the above two dollar amounts.

Some Private Plans are more liberal than the State Plan in that they provide a maximum of 26 weeks for all claims. Therefore, the one-third provision cannot be used under those plans.

### **Waiting Week**

The waiting period for a claim (the waiting week) is the first seven calendar days of a disability, beginning with the date the disability began, unless the Private Plan provides for a shorter waiting period. In order to serve a waiting week, the claimant must be disabled for seven consecutive calendar days. Periods of disability of six calendar days or less do not satisfy the waiting week requirement, unless the Private Plan provides for a shorter waiting week.

Retroactive payment of the waiting week must be made when the claimant has been disabled for 22 calendar days or more, as defined in the 1976 New Jersey Superior Court decision of *Continental Casualty Company vs. Samuel Knuckles*, and the claimant is otherwise eligible. This decision stated that benefits for the waiting week cannot be paid unless benefits are payable for *any part of* each of the three weeks subsequent to the waiting week. Thus the point at which the waiting week must be paid occurs three weeks and one day (22 calendar days) after the start of a disability. A claimant does not need to be disabled for 28 days in order to be paid for the waiting week.

The waiting week is not movable. The dates of the waiting week cannot be changed due to sick pay, vacation pay, workers' compensation benefits, etc.

## CHAPTER 5 - BENEFIT CHECKS AND WITHHOLDINGS FROM BENEFITS

### Checks Must Be Payable to the Claimant

Under the Law temporary disability checks must be made payable to the claimant. They cannot be made payable to the employer.

Some employers wish to advance monies to the claimant in an amount that either equals or exceeds the benefit amount payable under the Private Plan. In this arrangement, if the Private Plan contains Limitation (h) (see "Limitation (h)", page 27), the employer may arrange to advance such monies to the claimant and have the claimant sign the temporary disability check over to the employer when the check is issued by the Private Plan carrier. The Private Plan carrier may only mail the benefit check to the employer provided that the claimant has knowingly and voluntarily signed a written agreement authorizing the delivery of his or her temporary disability benefit check to the employer.

Please note that the above procedure cannot be used (a) when the claimant is receiving less than the amount he or she is entitled to under the Private Plan since the claimant is entitled to keep some or all of the Private Plan benefits, and (b) when the Private Plan does not contain Limitation (h) since the claimant is entitled to keep all temporary disability benefits issued by the Private Plan carrier regardless of the amount of money paid by the employer.

### Tax and Other Withholdings From Benefits

Federal Income Tax (Allowable) - Temporary disability insurance benefits are considered to be "third party sick pay" and as such, are subject to Federal Income Tax. If a claimant wishes to have Federal Income Tax withheld from the gross benefit amount at the time the benefit is paid, they may authorize the insurer to do so. Otherwise, the claimant pays Federal Income Tax on the benefits when filing their Federal Income Tax return at the end of the year. For more information, contact the Internal Revenue Service's recorded information at (800) 829-4477, or a representative at (800) 829-1040. See also the Internal Revenue Service website at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

Social Security and Medicare Tax (FICA) (Mandatory) - Benefits under the New Jersey Temporary Disability Benefits Law are, by Federal Law, subject to Social Security and Medicare taxes (FICA). This mandatory withholding is made at the time the check is issued to the claimant. The employer is also liable for the employer's share of FICA. Contact the Internal Revenue Service (see above) for further information.

New Jersey State Income Tax (Not Allowable) - Under the New Jersey State Income Tax Law, Private Plan or State Plan temporary disability benefits received by the claimant are not taxable. Therefore, New Jersey State Income Tax cannot be withheld from Private Plan benefits. For further information, call the New Jersey Division of Taxation at (609) 292-6400, or see their website at [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation).

Other Withholdings (Not Allowable) - Except for Federal Income Tax and Social Security and Medicare Tax (FICA), benefits under the New Jersey Temporary Disability Benefits Law are not subject to other health, medical, or any other employer withholding.

Garnishments (Mandatory by Court Order Only) - Garnishments, such as those for child support, are mandatory only when granted by a court order. Otherwise, the New Jersey Temporary Disability Benefits Law does not allow for the withholding of temporary disability benefits to satisfy other debts.



## CHAPTER 6 - DENIALS AND OVERPAYMENTS

### Reasons for Denial

The reasons used for denial of a claim are limited to those provided by the New Jersey Temporary Disability Benefits Law, the New Jersey Administrative Code, and the employer's approved Private Plan. (For a list of allowed medical reasons for denial, see "Acceptable Medical Basis for Denial", page 10). If an employer has chosen to establish a Private Plan that is more liberal than the State Plan, claims must be processed under the more liberal provisions. For example, if the Private Plan does not contain the 20 base week earnings requirement, benefits cannot be denied on the basis of lack of earnings.

### Termination from Job

Benefits may not be denied under any Private Plan based on the termination of the claimant's job since there is no such disqualification in the Law. The claimant voluntarily quitting the job, being laid off, fired, suspended, etc. has no impact on the amount or duration of disability benefits.

There is only one exception to this. If the claimant was terminated for gross misconduct and would be disqualified for unemployment compensation benefits under subsection (b) of R. S. 43:21-5, then disability benefits may be denied if the private plan invokes this limitation.

### Denial Procedure

**Whenever Private Plan temporary disability benefits are denied or terminated, a denial letter or form must be sent to the claimant by the insurer, self-insured employer, or union welfare fund.** The letter or form may be in any format. However, it must always: (a) advise the claimant of the reason for the denial, and (b) notify the claimant of their right of appeal to the following address:

New Jersey Department of Labor and Workforce Development  
Division of Temporary Disability Insurance  
Claims Review Unit  
PO Box 957  
Trenton, NJ 08625-0957

A copy of the denial letter or form, together with a copy of the disability claim file, must be sent to the Claims Review Unit at the above address. All reasons for denial should be listed. **Please be sure that the claimant's Social Security number is shown on the denial letter or form.**

The Claims Review Unit reviews all denials to ensure that the decisions have been made in accordance with the Law, the Code, and the provisions of the approved Private Plan. If necessary, we will contact the insurer, employer or union welfare fund, explain the error or omission, and advise them of the action needed to correct the claim. We also request

that we be advised of the final resolution of the matter.

## **Appeals**

The claimant has a right to appeal to the New Jersey Department of Labor and Workforce Development if they disagree with the decision of a Private Plan insurer, employer or union welfare fund regarding some aspect of the temporary disability claim. The claimant's appeal must be submitted within one year of the date of the beginning of the disability. The appeal should be sent to the Claims Review Unit at the above address, who will forward it to the Private Plan Hearing Officer. The Private Plan Hearing Officer will notify all parties of the date and time of the hearing. Hearings are held by telephone. A party to the hearing may be represented by an attorney, but it is not required.

Following the hearing, the Private Plan Hearing Officer will issue a written order addressing the issues heard. This order must be complied with unless one of the parties disagrees and wishes to appeal the order. Any legally interested party may then file an appeal with the Superior Court of New Jersey, Appellate Division, PO Box 006, Trenton, New Jersey 08625-0006 or call (609) 292-4822 to obtain the appropriate forms to initiate an appeal. The appeal to the Appellate Division must be filed within 45 days of the date of mailing of the Private Plan Hearing Officer's order.

## **Overpayments**

The New Jersey Temporary Disability Benefits Law provides that a claimant who has been overpaid temporary disability benefits is liable to repay those benefits regardless of the reason for the overpayment. The individual is liable to repay the overpaid amount in full, or have it withheld from future benefits.

However, if the individual received the overpayment because of Division, insurer, employer or physician error and the claimant did not misrepresent or withhold a material fact to obtain benefits, the following limits apply: (a) the amount withheld from future benefits cannot be greater than 50% of the amount of each future check; and (b) repayment shall be waived if the individual is permanently disabled or deceased.

Except in situations involving misrepresentation or the withholding of a material fact, the Law provides that the individual shall not be liable for repayment unless they are notified of the overpayment within four years from the time the benefits in question were paid. The demand for repayment must include an explanation of the provisions of the Law. All demands for refunds of overpaid benefits may be appealed by the claimant. Appeals should be directed to the Division of Temporary Disability Insurance, Claims Review Unit, PO Box 957, Trenton, NJ 08625-0957.

## CHAPTER 7 - WORK-RELATED DISABILITIES

The New Jersey Temporary Disability Benefits Law provides benefits for non-work-related disabilities, while accidents or illness caused by the work are covered under the New Jersey Workers' Compensation Law. Therefore, a Private Plan carrier may deny a claim when the disability was caused by the claimant's work *except as explained below*. A permanent partial or permanent total work-related disability previously incurred does not bar the payment of a current Private Plan or State Plan temporary disability claim.

### **Contested Workers' Compensation Claims**

Situations sometime arise where a claimant becomes disabled at work, applies for workers' compensation benefits, and is denied. Also, workers' compensation carriers sometimes pay benefits for a period of time and then stop, for various reasons. *If the claimant appeals the denial or stoppage of workers' compensation benefits in Workers' Compensation Court, the Private Plan carrier must pay temporary disability benefits under a subrogation agreement until the case is decided, provided the claimant has met all other eligibility requirements.* Once a judgement is made, the Private Plan carrier may then be reimbursed out of the workers' compensation award, should the workers' compensation judge decide to do so.

Contested Claims Procedure - In order to receive benefits from the Private Plan carrier when the workers' compensation claim is contested, the claimant and the carrier must proceed as follows:

1. The claimant should obtain an attorney to represent them in the Workers' Compensation Court. If the claimant does not have an attorney, a referral service is available from each County Bar Association in New Jersey. An attorney is prohibited from charging a fee for this service until the case has been concluded in court.
2. The claimant's attorney or the claimant must file a Claim Petition with the Division of Workers' Compensation indicating that they disagree with the denial or stoppage of workers' compensation benefits. This indicates that benefits are not being paid.
3. The claimant must then complete and sign a subrogation agreement to reimburse the Private Plan carrier should the case be decided in the claimant's favor. A form for this purpose may be supplied by the Private Plan carrier, or a Certification of Contested Workers' Compensation Claim (Form DP-221) can be obtained from the Division of Temporary Disability Insurance, Claims Review Unit, PO Box 957, Trenton, NJ 08625-0957, telephone (609) 633-9202.
4. The completed insurer's form or Form DP-221 should be sent to the Claims Review Unit who will verify that the case is contested by contacting the workers' compensation carrier and by consulting the Division of Workers' Compensation computer system.
5. Upon verification, the Claims Review Unit will notify the Private Plan carrier in writing that the case is contested. They will give the Claim Petition Number to the carrier and will

advise them that Private Plan benefits must now be paid.

6. The Private Plan carrier must then pay benefits to the claimant. The claimant must be otherwise eligible in every respect under the Temporary Disability Benefits Law as well as under the employer's approved Private Plan.

7. When Private Plan benefits begin, the Private Plan carrier should file a temporary lien with the Division of Workers' Compensation. A final lien should be filed when the claim exhausts or the claimant has recovered. The insurer may use their own lien form, or they may obtain a form for this purpose (Form DP-74) from the Claims Review Unit. The completed liens may be sent to the Claims Review Unit, or directly to the Division of Workers' Compensation for inclusion in the judge's case file.

8. If workers' compensation benefits are subsequently awarded by the Workers' Compensation Court, the Private Plan carrier will likely be reimbursed out of the award, as specified by the Judge in their Order. Reimbursement to the Private Plan carrier should also be made in cases where the claimant agrees to a settlement with the workers' compensation carrier.

### **Occurrence of Second Disability**

A claimant may suffer a second, non-work-related disability while they are receiving workers' compensation benefits. If the work-related disability ends or is suspended, but the claimant continues to be disabled due to the second, non-work-related disability, the claim is handled as follows.

If the non-work-related disability began more than 14 calendar days after the claimant's last day in employment (employment means the last day worked prior to the occurrence of the workers' compensation injury), the claim may be denied by the Private Plan carrier. The Claims Review Unit will refer this claim to the Disability During Unemployment Section for consideration.

If the non-work-related disability began within 14 calendar days of the claimant's last day in employment, the Private Plan carrier is liable for the claim. Private Plan benefits would begin the day after the workers' compensation benefits ended, and beginning at that point, may be paid for up to 26 weeks.

### **Private Plan Liable for Up to 26 Weeks in Addition to Workers' Compensation**

The definition of a "contested" workers' compensation case includes those cases where the workers' compensation carrier paid some benefits and then stopped. The length of time paid by the workers' compensation carrier does not change the maximum duration of benefits payable by the temporary disability carrier.

Please note that neither the New Jersey Temporary Disability Benefits Law nor any approved Private Plan state that the maximum duration of 26 weeks of Private Plan benefits should encompass benefits from all sources. The only source of approved Private Plan benefits is the Private Plan carrier. Money from other sources such as workers' compensation benefits is not part of the 26 weeks of Private Plan benefits. **Therefore, in contested workers' compensation cases, the Private Plan carrier is potentially liable for payment of temporary disability benefits for up to 26 weeks in addition to the period of time paid by the workers' compensation carrier, even if the workers' compensation carrier paid 26 weeks or more.**

This policy was defined by the New Jersey Superior Court, Appellate Division, in the decisions issued in the cases of Armando DelRio vs. Board of Review, No. A-2107-81T1, and Elizabeth Brinkerhoff vs. CNA Insurance Co., No. A-1498-91T2. Copies of these decisions are available from the Claims Review Unit upon request.

### **Claim Not Compensable Under Workers' Compensation Law**

If the Workers' Compensation Court finds that a claim is not compensable under the Workers' Compensation Law, the claimant is entitled to keep the Private Plan benefits previously paid to them, and no reimbursement is due to the Private Plan carrier. This procedure is contained in Section 43:21-29 of the New Jersey Temporary Disability Benefits Law which states:

"Disability shall be compensable subject to the limitations of this act, where a covered individual suffers any accident or sickness not arising out of and in the course of the individual's employment *or if so arising not compensable under the workers' compensation law (Title 34 of the Revised Statutes)*, and resulting in the individual's total inability to perform the duties of employment." (Emphasis added.)

### **Private Plan Benefits Payable for Work-Related Disability When Employed by Two Employers**

A decision issued on March 1, 2000 by the New Jersey Supreme Court in the case of Charles D. Scott (A-6-99) changed the handling of cases for claimants who have two employers and who are receiving workers' compensation benefits from one of them. Formerly, no Private Plan nor State Plan temporary disability benefits were payable in such cases. In the above decision the Supreme Court ruled that *an individual who was injured at one job and collecting workers' compensation benefits for that injury, may also be eligible for temporary disability benefits through his/her other employer.* This ruling has been incorporated into the New Jersey Administrative Code, Section 12:18-1.5. It should be noted that these are not contested workers' compensation cases.

As a result of the above Supreme Court decision, claims of the above type that began March 1, 2000 or later must be handled as follows:

- The claimant must have had two employers, be receiving temporary workers' compensation benefits from one employer, and have submitted an application for temporary disability benefits based on the other employer.

- The most recent covered employer who is not a party to the workers' compensation claim is considered to be the last employer for purposes of the temporary disability claim.
- The claimant must otherwise meet all eligibility criteria for the payment of Private Plan temporary disability benefits.
- Wages from all covered employers, including the employer from whom the claimant is collecting workers' compensation benefits, must be used to calculate the claimant's weekly temporary disability benefit rate and maximum benefit amount.
- *The weekly Private Plan temporary disability benefit rate is reduced by the weekly temporary workers' compensation benefit rate, dollar for dollar, and the claimant is paid temporary disability benefits at the adjusted rate.*
- Any reduction in the weekly temporary disability benefit will also reduce the maximum total benefits payable during the period of disability.

Please note that in order to process a claim for the type of case described above, the Private Plan temporary disability carrier must obtain information concerning the amount of weekly workers' compensation benefits being paid, and the amount of wages earned by the claimant with the other employer in the base year prior to the disability.

Also, the Private Plan temporary disability carrier should ensure that the weekly amount of workers' compensation benefits is subtracted from the weekly amount of Private Plan temporary disability benefits, and that the claimant is paid at the adjusted rate. *If the weekly workers' compensation benefit rate is greater than the weekly temporary disability benefit rate, no benefits are payable by the temporary disability carrier.*

### **Further Information on Workers' Compensation Program**

For further questions on workers' compensation matters such as filing workers' compensation claims, workers' compensation benefit amounts, informal and formal workers' compensation hearings, etc. contact the New Jersey Division of Workers' Compensation, PO Box 381, Trenton, NJ 08625, or telephone (609) 292-2414. See also the New Jersey Division of Workers' Compensation website at [http://www.nj.gov/labor/wc/wc\\_index.html](http://www.nj.gov/labor/wc/wc_index.html)

## CHAPTER 8 - REDUCTION OF BENEFITS

A claimant may receive money during the period of a disability that may completely bar benefits, that may reduce them, or that may have no effect on benefits. The following is a discussion of several types of money that could be received by the claimant and their effect on temporary disability benefits.

### **Sick Pay or Regular Weekly Wage from the Employer**

Continued pay from the employer during the disability in the form of sick pay or regular weekly wage is regarded as payment for services rendered (or remuneration), and may have an impact on the weekly disability benefit amount paid by the Private Plan carrier. The impact depends upon the amount of money paid by the employer, and whether the employer's Private Plan contains Limitation (h) of the Law (see "Limitation (h)" below and "Calculating the Reduction of Benefits Due to Sick Pay and Vacation Pay", page 29).

Please note that, except for New Jersey state, county and municipal employers, the New Jersey Temporary Disability Benefits Law does not require that a claimant must use all their sick leave before temporary disability benefits can be paid (see page 31 for sick leave payable by governmental employers).

**Vacation Pay** Vacation pay designated for a specific period of time which falls within the period of disability is considered allocated continued pay. Any allocated continued pay may affect the disability benefit amount as explained below in "Calculating the Reduction of Benefits Due to Sick Pay and Vacation Pay", page 29.

If the vacation pay is not designated for any specific period of time, it is considered unallocated, and thus cannot be considered to have been received during the period of disability. This vacation pay will not affect the disability benefit amount.

### **Limitation (h)**

*Section 43:21-39(h) of the New Jersey Temporary Disability Benefits Law (Limitation (h)) provides that the weekly dollar amount of money paid by the employer during the disability, plus the weekly dollar amount of temporary disability benefits, must not exceed the claimant's regular weekly wage prior to the disability. If the amount paid by the employer plus the amount payable by the Private Plan carrier exceeds the claimant's regular weekly wage prior to the disability, temporary disability benefits from the carrier must be reduced (see "C. Employer Paying More Than the Difference", page 29).*

In cases where the Private Plan does not invoke Limitation (h), the claimant must be paid the full, unreduced amount of temporary disability benefits, regardless of the amount of money paid by the employer.

## Calculating the Reduction of Benefits Due to Sick Pay and Vacation Pay

By determining the type of money received from an employer, and using the provisions of Limitation (h) shown above, it is possible to determine whether sick or vacation pay from an employer has an effect on temporary disability benefits.

**A. Employer Paying Full Salary** - When the continued pay from the employer is equal to the claimant's full salary, *and the Private Plan contains Limitation (h)*, no temporary disability benefits are payable during the period the employer is paying the full salary.

EXAMPLE: The employer, whose Private Plan contains Limitation (h), is continuing to pay the claimant's full salary of \$525 per week. The weekly disability rate is \$350.

**Step One:** \$350 weekly disability benefit + \$525 continued pay = \$875 total.  
(The total of \$875 exceeds the claimant's regular weekly wage by \$350.)

**Step Two:** \$350 weekly disability benefit - \$350 excess amount = 0.

In the above example, since a reduction of the entire \$350 is required, no temporary disability benefits are payable.

Please note that if at some point the employer ceases paying full salary and begins paying partial salary or nothing at all, and the claimant is still disabled, Private Plan benefits must begin to be paid at that point.

**B. Employer Paying the Difference** - Under the Law, the last employer can pay the difference between the claimant's regular weekly wage and the weekly temporary disability benefit amount, with no impact on the claim. In this situation it does not matter whether the Private Plan contains Limitation (h) because the total received by the claimant never exceeds their regular weekly wage.

EXAMPLE: A claimant's regular weekly wage is \$525 per week and the weekly disability benefit amount is \$350 per week. The employer is paying continued pay of \$175 per week.

\$350 weekly disability benefit + \$175 weekly continued pay = \$525 total

In the above example, the total received (\$525) does not exceed the claimant's regular weekly wage (\$525). Therefore, there is no reduction in the weekly disability benefits.

**C. Employer Paying More Than the Difference** - If the total of the weekly temporary disability benefit amount from the insurer and the weekly continued pay from the employer exceeds the claimant's regular weekly wage prior to the disability, *and if the Private Plan contains Limitation (h)*, the weekly benefit amount payable by the temporary disability insurer can be reduced.

EXAMPLE: A claimant's regular weekly wage is \$525 per week, and the weekly disability benefit rate is \$350. The employer is paying continued pay of \$300 per week, and the Private Plan contains Limitation (h).



**Step One:** \$350 weekly disability benefit + \$300 continued pay = \$650 total.  
(The total of \$650 exceeds the claimant's regular weekly wage by \$125.)

**Step Two:** \$350 weekly disability benefit - \$125 excess amount = \$225 reduced temporary disability benefit.

In the above example, a reduction of the weekly temporary disability benefit amount by \$125 is required, yielding a reduced benefit of \$225 per week.

**D. Two Employers** - When a claimant has two employers, and one of the employers issues continued pay to the claimant during the disability, the continued pay is handled as follows. (For an explanation of concurrent employment, see page 4.)

When the claimant was not in concurrent employment:

- If the continued pay was from the last employer, benefits may be reduced.

EXAMPLE: The claimant last worked for Employer A on January 25, 2019 and last worked for Employer B on January 26, 2019. Employer B issued continued pay during the disability. Benefits may be reduced as explained in "Calculating the Reduction of Benefits Due to Sick Pay and Vacation Pay", page 29, since the continued pay was from the last employer.

- If the continued pay was not from the last employer, benefits may not be reduced.

EXAMPLE: The claimant last worked for Employer A on January 25, 2019 and last worked for Employer B on January 26, 2019. Employer A issued continued pay during the disability. Benefits may not be reduced since the continued pay was not from the last employer.

When the claimant was in concurrent employment, continued pay from either employer may reduce the claimant's benefits since both employers are considered the "last employer". Also, if the employer who is liable for the payment of temporary disability benefits has a Private Plan, the Private Plan must contain Limitation (h) (see "Limitation (h)", page 28). The reduction of benefits in this situation is calculated in the following manner for each week of the claimant's disability:

**Step One:** Add together the claimant's regular weekly wage with both employers.

**Step Two:** Subtract the amount of continued pay from the total obtained in Step One.

**Step Three:** Pay the amount remaining after Step Two above, up to the current weekly maximum benefit amount, for each week covered by the continued pay.

EXAMPLE: A claimant is in concurrent employment with a Private Plan and a State Plan employer and becomes disabled in 2019. The claimant's combined regular weekly wage with both employers prior to the disability was \$1200, and the liable employer's Private Plan contains Limitation (h). The claimant is receiving continued pay during the disability in the amount of \$800 per week from his State Plan employer.

**Step One:** Total regular weekly wages with both employers prior to the disability = **\$1200**

**Step Two:** **\$1200** total wages - **\$800** continued pay = **\$400** difference

**Step Three:** Reduced weekly benefit = **\$400** (instead of the \$650 weekly maximum to which the claimant would have been entitled in 2019).

Note: If the difference reached in Step Two above is more than the current weekly maximum temporary disability benefit amount, only the current weekly maximum benefit amount is paid, unless the Private Plan pays higher benefits.

## **OTHER TYPES OF MONIES RECEIVED (in alphabetical order):**

### **Federal Disability Benefits**

Disability benefits received resulting from employment with the United States Government, such as employment with the United States Post Office, is a complete bar to New Jersey temporary disability benefits (not just a reduction) beginning on the date the Federal disability benefits began.

### **Maintenance and Cure Benefits**

New Jersey Temporary Disability Benefits must be reduced by the amount of Maintenance and Cure benefits required under Federal law and paid by a maritime employer to employees on sea-going vessels beginning on the date the Maintenance and Cure benefits began.

### **Military Veteran's Pension**

Military veteran's pension benefits paid to a claimant by the United States government for a prior military service-connected disability that is unrelated to the current disability are not a bar to the receipt of New Jersey temporary disability benefits. This is because (a) the current New Jersey employer did not contribute to the military pension, (b) the current disability is unrelated to the military disability, and (c) the military disability was previously incurred.

### **New Jersey State, County or Municipality Sick Leave**

A claimant employed by the State of New Jersey, or employed by a county or municipality that has elected to become a covered employer under the New Jersey Temporary Disability Benefits Law, may be eligible to receive State Plan or approved Private Plan temporary disability benefits. However, that claimant may be required by their appointing authority to use up to two weeks of accumulated sick leave prior to receiving temporary disability benefits. The appointing authority cannot require the claimant to use the individual's last weeks' worth of accumulated sick time before receiving benefits.

## **No-Fault Auto Insurance Benefits**

There is no provision in the New Jersey Temporary Disability Benefits Law for a reduction of temporary disability benefits when a claimant is receiving no-fault auto insurance benefits resulting from an auto accident. Therefore, a Private Plan carrier must pay the full amount of temporary disability benefits regardless of the amount paid by an automobile insurance carrier. Also, a Private Plan carrier cannot subrogate against benefits the claimant receives from an auto insurance carrier since this type of subrogation is not provided for in the New Jersey Temporary Disability Benefits Law.

It should be noted that an auto insurance carrier may reduce the amount of their benefits by the amount of Private Plan or State Plan temporary disability benefits the claimant has received.

## **Payment in Lieu of Notice**

A claimant whose employment has been terminated and who receives payment in lieu of notice continues to be in employment until the end of the period covered by that payment. No temporary disability benefits are payable for the period covered by the payment in lieu of notice. This is a complete bar to benefits for that period, not just a reduction.

## **Pensions**

Section 12:18-3.4 of the New Jersey Administrative Code mandates that temporary disability benefits shall be reduced by the amount paid concurrently under any governmental or private retirement pension program to which a worker's most recent employer contributed on their behalf. A pension from other than the last employer does not affect the disability benefit amount. For example, if an employee had worked for 30 years for a prior employer (Employer A) before being hired by another employer (Employer B), any pension the claimant continues to receive from Employer A would have no effect on the disability benefit amount paid through Employer B's Private Plan.

However, a pension from the last employer (Employer B) will affect the disability benefit amount if Employer B contributed to the pension program. Temporary disability benefits should then be reduced or denied entirely depending upon the amount of the pension payments a claimant receives, as shown below. Under the New Jersey Administrative Code, Section 12:18-3.4(b), the reduction of benefits must start on the date the first pension check is issued.

The following steps are used to calculate the pension deduction when such a deduction must be made.

**Step One:** Divide the monthly pension rate by 30 to obtain the daily pension rate.

**Step Two:** Multiply the daily pension rate by 7 to obtain the weekly pension rate.

**Step Three:** Subtract the weekly pension rate from the weekly temporary disability rate to obtain the reduced weekly temporary disability rate paid to the claimant.

EXAMPLE: A claimant is receiving temporary disability benefits of \$350 per week,

and then begins receiving a pension of \$900 per month from his last employer.

**Step One:** \$900 monthly pension ÷ 30 = \$30 daily pension rate

**Step Two:** \$30 daily pension rate x 7 = \$210 weekly pension rate

**Step Three:** \$350 weekly disability rate - \$210 weekly pension rate = \$140

In this example, the claimant's reduced weekly temporary disability rate is \$140.

Lump Sum Pension Payment - The temporary disability benefit amount is not reduced by any pension that is not an on-going periodic payment to the employee. A lump sum pension payment is not an on-going periodic payment if it is not allocated to any specific week or weeks within the period of disability. Therefore, the disability benefit amount will be reduced for the week the lump sum pension is paid, but not for the remainder of the disability.

However, if the last employer states that a lump sum pension has been distributed in full, but indicates a specific beginning and ending date covered by the payment, the lump sum is regarded as allocated pension. The disability benefit amount will be reduced during the entire period covered by the pension.

### **Severance Pay**

Severance pay is not remuneration since it is not compensation for personal services. Therefore, severance pay has no impact on the amount of temporary disability benefits paid. The full amount of Private Plan benefits must be paid regardless of the amount of severance pay received by the claimant.

### **Social Security Disability Benefits**

Under the New Jersey Temporary Disability Benefits Law when a claimant begins receiving Social Security **disability** benefits, Private Plan benefits stop as of the date the Social Security disability benefits began. Thus Social Security disability benefits are a complete bar to temporary disability benefits (not just a reduction), beginning on the effective date of the Social Security award as shown in the award letter sent to the claimant by the Social Security Administration.

### **Social Security Retirement Benefits**

As a result of the 1955 New Jersey Supreme Court decision in the case of Charles L. Deaney vs. Linen Thread Company Inc., Social Security **retirement** benefits do not reduce the temporary disability benefit amount. Therefore, the full amount of temporary disability benefits must be paid regardless of the amount of Social Security retirement benefits being received by the claimant.

### **Supplemental Benefits or Gifts**

There is a distinction between continued pay as a gift and continued pay as remuneration. Any payment given to the employee outside the contract of hire is regarded as a gift.

Continued pay as a gift is considered a supplemental benefit and has no impact on the disability benefit amount.

### **Temporary Disability Benefits from Another State**

New Jersey Temporary Disability Benefits must be reduced by the amount of temporary disability benefits paid **under the law** of another state (see list of other states with temporary disability statutes, page 1) beginning on the date the benefits from the other state began. Since there is no coordination of benefits among the states that have temporary disability benefit programs, the claimant must submit documentation showing the dates and amounts paid under the program of the other state paying benefits.

1. If a claimant is in New Jersey covered employment and is also in covered employment in another state with a temporary disability benefits program, (New York, Rhode Island, California, and Hawaii) or Puerto Rico, the claimant is required to file for benefits with the other state before New Jersey benefits can be paid. *If the employment is in New York this procedure must be followed if the New York employment is within six (6) months of the first day of disability.*
2. If the disability is the result of a work-related sickness or injury occurring in another state, New Jersey benefits will not be paid.
3. If the claim is denied under that other state's law for a reason that would not make the claimant ineligible under New Jersey State law, the claim must be paid at the full weekly benefit rate.
4. If the claimant is paid on their other state claim, the claimant must submit documentation showing the period of eligibility and the amount paid.
5. The New Jersey temporary disability benefits will be reduced by the amount paid under the other state's law.

### **Unemployment Benefits**

A claimant's receipt of unemployment compensation benefits is a complete bar to temporary disability benefits (not just a reduction) beginning on the date the unemployment benefits began. The receipt of unemployment benefits indicates that the claimant is not disabled, since a claimant must be physically able to work in order to receive these benefits.

## **CHAPTER 9 - SEMI-ANNUAL AND ANNUAL REPORTS**

The New Jersey Administrative Code, Sections 12:18-2.29, 2.30, and 2.31 requires that insurance companies, self-insured employers, and union welfare funds file semi-annual and annual reports showing the temporary disability claims activity under their approved Private Plan(s). The semi-annual and annual report forms, together with instructions, are mailed to Private Plan carriers by the Claims Review Unit at the appropriate time. The reports must then be completed and returned to the Claims Review Unit.

The two semi-annual reports must be completed showing the number of new claims filed during the six-month periods ending June 30 and December 31, the number of claims accepted during those periods, and the gross amount of Private Plan benefits paid during those periods.

The annual report must be completed showing claims activity for the entire calendar year. The information requested includes gross premiums earned, total administrative costs of operating the Private Plans, and total amount of temporary disability benefits paid under the approved Private Plan(s).

Information obtained from these reports is used by our office for statistical and planning purposes only. No bills or tax payments are based on these reports.

## CHAPTER 10 – FAMILY LEAVE INSURANCE PROGRAM

Since July 1, 2009, New Jersey law provides up to six (6) weeks of Family Leave Insurance benefits. Benefits are payable to covered employees from either the New Jersey State Plan or an approved employer-provided private plan to:

- **Bond 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,
- **Care for a family member made necessary by a serious health condition** supported by a certification provided by a health care provider.
- **Engage in activities related to domestic violence** for which unpaid leave may be taken pursuant to section 3 of the "New Jersey Security and Financial Empowerment Act," P.L.2013, c.82 (C.34:11C-3), 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, or a sexually violent offense, 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 temporary disability leave.

"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, including a child who becomes the child of a parent pursuant to a valid written agreement between the parent and a gestational carrier.

"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.

"Family member" means a 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 which is the equivalent of a family relationship.

Claims may be filed for six consecutive weeks, for intermittent weeks or for 42 intermittent days during a 12-month period beginning with the first day of the claim.

There is no waiting week for New Jersey Family Leave claims.

## **New Jersey State Plan**

Employees covered under the New Jersey State Plan can obtain information pertaining to the program and an application for Family Leave Insurance benefits (Form FL-1) by visiting the Department of Labor and Workforce Development's web site at <https://myleavebenefits.nj.gov>, by telephoning the Division of Temporary Disability Insurance's Customer Service Section at (609) 292-7060, or by writing to the Division of Temporary Disability Insurance, PO Box 387, Trenton, NJ 08625-0387.

If an employee is receiving State Plan temporary disability benefits for pregnancy, after the child is born, the Division will mail the employee information on how to file a claim for Family Leave Insurance benefits to bond with the newborn child once the date and method of delivery have been certified by a physician. If a claim is filed to have Family Leave Insurance benefits begin immediately after the employee recovers from her pregnancy related disability, she will be paid at the same weekly benefit amount as she was paid for her pregnancy related disability claim.

## **Private Plan**

An employer can elect to provide workers with Family Leave Insurance benefits coverage under a private plan approved by the Division of Temporary Disability Insurance. The Division will not approve a private plan requiring employee contributions unless a majority of the employees, covered by the private plan, have agreed to private plan coverage by written election. Employers will provide information regarding the private plan and the proper forms to claim benefits to employees covered under the private plan.



# **APPENDIX**

## **Review of Signature Requirement For Processing of Claims**

The *State*, like any legally recognized entity, does require the *claimant* to certify that his statements are true, via a signature. This is the tacit agreement by the *claimant* that they are entering into a contractual agreement with the *State* for the processing and possible payment of a Temporary Disability Claim. This allows for the prosecuting of fraud cases or overpayments

We also require the same of the *Treating Medical Provider* and the *Employer*.

Obviously, signing the original claim document is acceptable. Faxed copies and photocopies of the claim paperwork are also accepted as if they were the original document. Lastly, the electronic acknowledgement for a Web Claim is accepted as the signature.

With the lack of cursive being taught in many schools, both here and abroad, printed signatures are accepted, as well as an X signature for the illiterate.

Due to Non Compos Mentis claims or the inability to physically sign any document due to injury, there exists a review process for agent signatures.

## **Severance Pay vs. Payment in Lieu of Notice**

### **Severance Pay with Notice**

If an employer gives an employee a notice of termination, with a specific last day of work some days or weeks later, then the severance pay given at the end of the period worked is considered a gift. (The claimant continued to work up to the date of termination.) In this situation, the severance pay is usually a lump sum payment and is not considered as salary. It is often contractual and based on years of service. This type of pay does not extend employment nor does it have any impact on the claim. It is a supplemental benefit.

### **Pay in Lieu of Notice**

If an employer gives an employee a notice of termination, but wants the worker to leave immediately, and in lieu of notice pays the claimant for the days/weeks until the official termination date, this is considered continuation pay and does extend employment. The individual is still an employee, but is no longer physically working on the employer's premises.

OR

If an employee gives notice to the employer of his intent to quit and the employer wants the worker to leave immediately, but still pays the claimant for the days/weeks (until the employee's stated intended date of voluntary leaving), this is continuation pay and does extend employment. The individual is still employed, but is no longer physically working on the employer's premises.

OR

### **WARN Act\***

If an employer gives an employee a notice of termination due to a plant closing or mass layoff and the Federal Worker Adjustment and Retraining Notification (WARN) Act applies, the worker must be given 60 days' notice. Should the employer want a worker to leave immediately, and in lieu of notice pays the claimant 60 days (8 weeks) of wages, the employment extends to the date of termination. This date may be in the future.

\*Applies to an employer who has greater than 100 employees and the plant closing will result in an employment loss for 50 or more employees during any 30-day period or the mass layoff will result in an employment loss during any 30-day period for 500 or more employees, or for 50-499 employees if they make up at least 33% of the employer's active workforce.

## **Medical Practitioners for Temporary Disability Claims**

### **Acceptable Medical Practitioners**

Medical Doctor	MD
Osteopath	DO
Podiatrist	OPM
Dentist	DDS
Optometrist	OD
Chiropractor	DC
Advanced Practice Nurse	APN
Advanced Practice Registered Nurse	APRN
Certified Nurse Practitioners	CNP
Clinical Nurse Specialists	CNS
Certified Nurse Midwife	CNM
Psychologist	

### **Acceptable Medical Practitioners**

*when under the supervision of a licensed physician*

Physician Assistant	PA
Certified Practicing Midwife	CPM

### **Unacceptable Medical Practitioners**

Licensed Clinical Social Workers	LCSW
Professional Counselors	
Faith Healers	
Clergy	

## **A Quick Guide to Dealing with LLC's**

### **LLC's file three types of Federal Income Tax Forms:**

Sole Proprietorship	:	1040C
Membership/Partnership	:	1065
Incorporation	:	1120/1120s

### **Special issues:**

Sole Proprietorship:	owner, spouse, parent, minor children	: 4F
	none of above	: Eligible
Membership/Partnership:	member/partner	: 4F
	none of above	: Eligible
Incorporation:	all	: Eligible

### **Sample Questions for Employer to Establish Coverage:**

- 1) What type of LLC are you? (Check off the correct option)
- a) Sole Proprietorship: filing form 1040C with Federal IRS \_\_\_\_\_
  - b) Membership/Partnership: filing form 1065 with Federal IRS \_\_\_\_\_
  - c) Incorporation: filing form 1120 with Federal IRS \_\_\_\_\_
- 2) Claimant relationship to LLC? (Check off the correct option)
- a) Owner \_\_\_\_\_
  - b) Spouse of owner \_\_\_\_\_
  - c) Child of owner \_\_\_\_\_
  - d) Parent of owner \_\_\_\_\_
  - e) Member/Partner \_\_\_\_\_

## **A Quick Guide for the Payment of Pregnancy Claims**

A policy of State Plan, not stated in TDB Law or Administrative Code.

### **Normal Pregnancy (Single Gestation)**

- ◇ The first day of disability (FDD) is within 4 weeks before the expected delivery date (EDC)
- ◇ If no delivery information is provided:
  - Pay the claim no more than 4 weeks after the EDC
- ◇ If the delivery information is provided:
  - (A) Abortion – pay 4 weeks after the confirmed delivery date
  - (B) Birth/Normal – pay 6 weeks after the confirmed delivery date
  - (M) Miscarriage – pay 6 weeks after the confirmed delivery date
  - (C) C-Section – pay 8 weeks after the confirmed delivery date

### **Normal Pregnancy (Multiple Gestation)**

- ◇ The FDD can be extended for multiple gestations. Add 4 weeks prior to the EDC for each gestation.
  - *Example:* Twins – the FDD can be no more than 8 weeks before the EDC
  - *Example:* Triplets – the FDD can be no more than 12 weeks before the EDC
- ◇ If no delivery information is provided:
  - Pay the claim no more than 4 weeks after the EDC
- ◇ If the delivery information is provided:
  - (A) Abortion – pay 4 weeks after the confirmed delivery date
  - (B) Birth/Normal – pay 6 weeks after the confirmed delivery date
  - (M) Miscarriage – pay 6 weeks after the confirmed delivery date
  - (C) C-Section – pay 8 weeks after the confirmed delivery date

### **Complicated Pregnancy**

- ◇ The FDD can be at any time during the pregnancy. However, the FDD must be confirmed. No future dates can be accepted. Refer to the physician's signature date to verify if the FDD is confirmed.

- ◇ If no delivery information is provided:
  - Pay the claim 6 weeks from either the physician’s signature date or the employer’s last day of work (LDW), whichever is later/more recent.
- ◇ If the delivery information is provided:
  - (A) Abortion – pay 4 weeks after the confirmed delivery date
  - (B) Birth/Normal – pay 6 weeks after the confirmed delivery date
  - (M) Miscarriage – pay 6 weeks after the confirmed delivery date
  - (C) C-Section – pay 8 weeks after the confirmed delivery date

**Complicated Pregnancy – Light Duty Requested**

- ◇ If claim is “complicated” by a light duty request send the following set of questions to the employer(s) to confirm if light duty is available:

Please provide a description of the above named claimant’s work duties:

If lifting, pushing or pulling are involved, comment on weight and frequency:

Were lighter job duties available to her as of the date shown above in Item 7?  
 Yes\_\_\_\_\_ No\_\_\_\_\_

Has the claimant delivered? Yes\_\_\_\_\_ No\_\_\_\_\_

Type: Birth\_\_\_\_\_ Miscarriage\_\_\_\_\_ C-Section\_\_\_\_\_

- ◇ When the Questionnaire is returned, review the information provided by the employer and if light duty is not available, the claimant is considered disabled.
- ◇ If no delivery information is provided:
  - Pay the claim 6 weeks from either the physician’s signature date or the employer’s last day of work (LDW), whichever is later/more recent.
- ◇ If the delivery information is provided:
  - Abortion – pay 4 weeks after the confirmed delivery date
  - (B) Birth/Normal – pay 6 weeks after the confirmed delivery date
  - (M) Miscarriage – pay 6 weeks after the confirmed delivery date
  - (C) C-Section – pay 8 weeks after the confirmed delivery date

## **Changes to Calculating Benefits**

The base year is the period of time within which the required wages must be earned by the claimant in order to establish a valid claim. Either 20 base weeks, being either \$200.00 per week or any week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year, or total earnings of \$10,000.00 must be present in the base year.

The possible base years are defined as:

**Regular Base Year**, established by the first day of disability, means the first four quarters of the last five completed quarters of the calendar year immediately preceding the period of disability.

**Alternative Base Year I**, established by the first day of disability, means the last four completed quarters of the calendar year immediately preceding the period of disability.

**Alternative Base Year II**, established by the first day of disability, means the last three completed quarters of the calendar year plus the balance of the unfinished quarter immediately preceding the period of disability.

1. If the individual has sufficient base weeks or wages in the **Regular Base Year** to qualify for benefits, the **Regular Base Year** must be used to establish the monetary benefit.
2. If the individual does not have sufficient base weeks or wages in the **Regular Base Year** to qualify for benefits, only then does the individual have the option of designating that the individual's Base Year be the **Alternative Base Year I**.

If the individual has sufficient base weeks or wages in the **Alternative Base Year I** to qualify for benefits, the **Alternative Base Year I** must be used to establish the monetary benefit.

3. If the individual does not have sufficient **Base Weeks or Base Wages** in the **Alternative Base Year I** to qualify for benefits, only then does the individual have the option of designating that the individual's Base Year be the **Alternative Base Year II**.

If the individual has sufficient base weeks or wages in the **Alternative Base Year II** to qualify for benefits, the **Alternative Base Year II** must be used to establish the monetary benefit.

If the individual does not have sufficient **Base Weeks or Base Wages** in the **Alternative Base Year II** to qualify for benefits, the individual has an invalid claim and can be denied for insufficient weeks and wages.



## **2020 UI/DI RATES**

Base Week Amount .....	\$200.
Alternate Earnings Test .....	\$10,000.
Maximum Unemployment Compensation Weekly Benefit Rate.....	\$713.
Maximum State Plan Temporary Disability Weekly Benefit Rate - TDI & FLI	
Jan. 1, 2020–June 30,2020* .....	\$667.
July 1, 2020–Dec. 31, 2020* .....	\$881.
<b><u>Taxable Wage Base</u></b>	
Unemployment Compensation (workers and employers) .....	\$35,300.
TDI & FLI (employers) .....	\$35,300.
TDI & FLI (workers only) ** .....	\$134,900.

NOTE: The base week amount will increase from \$172 to \$200 and the alternative earnings criteria will increase from \$8,600 to \$10,000 for 2020 because of the increase in the state minimum hourly wage from \$8.85 to \$10.00 per hour, effective July 1, 2019.

\* Effective July 1, 2020, the TDI and FLI maximum weekly benefit rate will increase from 53% to 70% of the statewide average weekly wage (SAWW).

\*\* Effective January 1, 2020, TDI and FLI work contributions will be based on a taxable base equal to 107 times the SAWW, an increase from 28 times the SAWW.

## **2020 REGULAR BASE YEAR CHART**

The REGULAR BASE YEAR period used for all claims will be the first four of the LAST FIVE completed CALENDAR QUARTERS. The chart below lists the CALENDAR QUARTERS and the corresponding BASE YEAR.

If the claim is filed in <b>2020</b>	The claim is based on wages paid from:
January • February • March	October 1, 2018 to September 30, 2019
April • May • June	January 1, 2019 to December 31, 2019
July • August • September	April 1, 2019 to March 31, 2020
October • November • December	July 1, 2019 to June 30, 2020

## **Continued Pay and Other Benefits Impact List**

<b>Continued Pay</b>	
<b>Impact</b>	<b>No Impact</b>
Sick Pay – allocated to period of time during the disability Vacation Pay – allocated to a period of time during the disability Severance Pay in lieu of notice Regular Weekly Wage (RWW) – paid during the disability Holiday Pay - paid during the disability Maintenance and Cure – Merchant Seaman	Unallocated Sick Pay Unallocated Vacation Pay Severance Pay with notice Employer pays the difference (EPD) Bonus Commission earned on sales made prior to disability
<b>Pensions</b>	
<b>Impact</b>	<b>No Impact</b>
Company Pension* Union Pension* Lump Sum Distributions* 401(k) Distributions*  *only if the chargeable employer contributed	Military Pensions Federal Government Pensions Railroad Retirement Pensions Postal Employee Pensions Pension from a non-chargeable prior employer
<b>Benefits</b>	
<b>Impact</b>	<b>No Impact</b>
Social Security Disability Benefits (SSD) Workers' Compensation Benefits (WC) Unemployment Insurance Benefits (UI)	Social Security Retirement Benefits Supplemental Security Income Benefits Welfare Benefits Supplemental Union Benefits Supplemental Disability Insurance Benefits No-fault Auto Insurance Benefits

**NOTICE OF TEMPORARY DISABILITY CLAIM DECISION**

Private Plan Carrier: \_\_\_\_\_

Claimant Name and Address:

Date of this notice: \_\_\_\_\_

Social Security #: \_\_\_\_\_

Last Date Worked: \_\_\_\_\_

First Date Disabled: \_\_\_\_\_

Employer \_\_\_\_\_

Address: \_\_\_\_\_

Benefits paid on this claim prior to the date of this notice:

NONE

GROSS WEEKLY BENEFIT RATE PAID: \$ \_\_\_\_\_

FROM \_\_\_\_\_ TO \_\_\_\_\_

**YOU ARE HEREBY NOTIFIED THAT YOUR CLAIM FOR DISABILITY BENEFITS IS REJECTED FOR THE REASON(S) CHECKED BELOW:**

- 1. Returned to work after disability.
- 2. Disability ended during waiting period.
- 3. Maximum benefits exhausted.
- 4. Employment not covered under Law.
- 5. No medical documentation received.
- 6. Disabled due to self-inflicted injury.
- 7. Disability occurred during commission of crime of first, second or third degree.
- 8. Working during disability.
- 9. Receiving continued pay from employer during disability.
- 10. Disability occurred during labor dispute.
- 11. Disability began more than 14 days after last day worked.
- 12. Disability is work related.
- 13. Received U.I., S.S. Disability Benefits or Maintenance and Cure during disability.
- 14. Worked less than 20 base weeks (either with earnings of \$200 per week or a week (up to 13 weeks) in which the claimant is separated from employment due to a declared state of emergency during the base year) OR did not earn \$10,000 in base year.
- 15. Late filing of claim without good cause.
- 16. Failure to appear for impartial medical examination.
- 17. Impartial medical examination found claimant able to work.
- 18. Not too disabled to perform duties of regular employment.
- 19. Failed to provide other required information.
- 20. Not in class covered by employer's Private Plan.
- 21. Disability began before effective date of Private Plan.
- 22. Disability began after termination date of Private Plan.
- 23. Private Plan not insured by this insurer.
- OTHER

Explanation: \_\_\_\_\_

**APPEALS**

**IF YOU DISAGREE WITH THIS DECISION, YOU HAVE THE RIGHT TO APPEAL OUR DECISION BY CONTACTING PRIVATE PLAN COMPLIANCE, PO BOX 957, TRENTON, NJ 08625-0957.**

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

## CONCLUSION

It is hoped the information in this manual will help you reach prompt, accurate decisions on New Jersey temporary disability claims. The Claims Review Unit welcomes your calls at any time when questions or unique claim problems arise. Call (609) 633-9202 or send an e-mail to [william.perry@dol.nj.gov](mailto:william.perry@dol.nj.gov)

You may request a visit to our office. Our representative will meet with you to discuss claims procedures, review your Private Plan(s) and the Law, and answer your questions. To request a visit, please call the Claims Review Unit at (609) 633-9202.