Understanding New Jersey’s Temporary Disability Benefits Law (TDBL)

—Overview—

Since 1948, New Jersey has required employers and employees to pay payroll taxes to fund a wage replacement insurance program for employees who suffer from a non-work related sickness or injury that prevents them from working. The Temporary Disability Benefits Law (TDBL) provides qualified employees with up to 26 weeks of partial wage replacement. New Jersey is one of five states, and Puerto Rico to offer this benefit.

—Background—

During the national Depression of the 1930s, the United States began implementing social insurance programs such as unemployment and Social Security benefits. Federal statutes provided no basis for a system of compensation for wage loss due to short-term sickness or disability that was comparable to the Federal-State system of unemployment insurance. As a result, some states enacted laws that became known as temporary disability insurance or cash sickness insurance. In New Jersey, most workers whose employment is covered by the New Jersey Unemployment Compensation Law are also protected by a mandatory disability insurance program which covers a non-work related illness, injury, or disability.

With certain limited exceptions, the TDBL covers all employers who employ one or more individuals and pay wages of $1,000 or more in a calendar year. In order to qualify for TDBL benefits in 2016, the claimant must have had at least 20 base weeks of New Jersey covered employment in which they have earned $168 per week or have earned $8,400 or more over the base year (the 52 weeks immediately preceding the week in which the disability begins).

—How are TDBL benefits funded?—

The TDBL permits employers to participate in either the State Plan, which is administered by the Department of Labor and Workforce Development, or to establish their own Private Plan to provide benefits. For 2016, employers are required to contribute 0.5 percent of the employee’s total wages, up to $32,600 in a calendar year. The employer contribution can vary from year to year, as TDBL is an experience rated fund, based on the amount of benefits paid to the employees of the business. Therefore, as more employees utilize the TDBL benefits, the contribution paid by the employer will increase.
—Who is eligible for benefits under the TDBL?—

Any person who is in employment, as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.), for which the individual is entitled to remuneration from a covered employer, or who has been out of such employment for less than two weeks.

—How is an employee’s weekly benefit amount calculated?—

The weekly benefit amount is figured individually on the basis of the claimant’s average weekly wage. Each claimant is paid two-thirds of his/her average weekly wage, up to the maximum amount payable, which is $615 for disabilities beginning during calendar year 2016. There is no provision in the law for the payment of dependency benefits to disability claimants. The maximum weekly amount is recalculated annually and is equal to 53 percent of the statewide average weekly wage.

The method of calculating a claimant’s average weekly wage for disability insurance is different from that used for unemployment insurance. Under the Temporary Disability Benefits Law, the average weekly wage generally is based on the base-week earnings in the eight calendar weeks immediately before the week in which the disability begins. The total base-week wages earned during these weeks are divided by the number of base weeks in the eight-week period to obtain the average weekly wage. The weekly wage may include overtime pay, tips and/or the cash value of remuneration other than cash.

If the average weekly wage used to calculate the weekly benefit amount is less than the average weekly wage that the individual earned during the 26 weeks immediately preceding the period of leave, the individual may request that the weekly benefit amount be recalculated using those 26 weeks. The request must be in writing to the Division of Temporary Disability Insurance.

—What is the limitation of benefits under the State Plan?—

Under the State Plan, no benefits are payable:

- For the first seven consecutive days of each period of disability;
- For more than 26 weeks within one period of disability;
- For any period of disability which did not begin while the employee was a covered individual;
- For any period of disability when the employee was not under the care of a licensed physician, etc.;
- For any period during which the employee performed any work for remuneration or profit;
- If the employee is a covered government worker and has not exhausted all available sick leave;
- For any period in which the employee is disqualified under the Unemployment Compensation Law;
- If the weekly amount, when combined with remuneration from the employer, exceeds the regular weekly wages immediately prior to the disability; and,
- For any period of disability due to willfully and intentionally self-inflicted injury, or injury sustained in the perpetration by the claimant of an act punishable as a crime of the first, second, third, or fourth degree under the New Jersey Criminal Code of Justice or for any period that the claimant would be disqualified for unemployment benefits due to gross misconduct.
—What are an employer’s obligations under the law?—

Employers must post notification in a place accessible to all employees, of the covered employee’s rights regarding benefits payable under the TDBL. Employers must also provide each employee with a written copy of the notification:

- At the time of the employees hiring;
- Whenever the employee notifies the employer that he/she is taking time off for circumstances under which the employee is eligible for benefits under TDBL; and,
- At any time, upon the first request of the employee.

—Does TDBL provide job protection while an employee is on leave?—

The TDBL in and of itself does not require an employer to rehire a claimant once the disability is over. Additionally, the employee has no right to take action against an employer who refuses to restore the employee to employment after the leave is over. However, as discussed below, an employee’s job may be protected if TDBL is taken concurrently with other leave laws.

—Suppose an employer is not able to hold the job of an employee who is on Temporary Disability Insurance leave?—

First, an employer must be certain that the leave does not fall under a protected leave entitlement like a local sick leave ordinance, the federal Family and Medical Leave Act (FMLA) or the New Jersey Security and Financial Empowerment (NJ SAFE) Act. The FMLA applies to companies with 50 or more employees and permits an employee to take up to 12 weeks of protected leave for their own medical condition. The NJ SAFE Act is a job protection statute that provides 20 days of protected unpaid leave for an employee who is the victim of domestic violence or sexual assault. In most cases, an employee who is covered by the FMLA and/or NJ SAFE is entitled to return to the position or to an equivalent position after the leave has ended.

The employer should also be aware of the interplay of temporary disability leave with other laws including local sick leave ordinances, the federal Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (NJLAD). In some instances, the medical condition requiring the leave may be considered a "disability" or “handicap” under those laws. If so, the employee may be entitled to certain protections not available under other laws. Both the ADA and the NJLAD broadly define the term disability and handicap to include activities that substantially limit one or more major life activities, or include conditions where the person has a record of having an impairment or is regarded as having an impairment. Acute conditions with little or no lasting effects such as colds, flus, and sprained or broken bones are not likely to qualify as a disability.

Additionally, recent amendments to the LAD also now clearly require employers to make “reasonable accommodations” for pregnancy-related needs when requested by an employee with a doctor’s note. These accommodations include, but are not limited to: bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work, for needs related to the pregnancy. Likewise, the law now specifically prohibits employers from penalizing pregnant employees in terms, conditions or privileges of employment for using an accommodation.
Both the ADA and the LAD require employers to engage in the "interactive process" by having dialogue with the employee if they request an adjustment or change at work for a reason related to a disability/handicap. In these cases, employers must consider the possibility of providing a reasonable accommodation before taking an adverse employment action or risk a discrimination claim. Possible reasonable accommodations include approving an additional leave of absence or a reduced work schedule if doing so would not cause undue hardship.

Once an employer is sure that the leave taken only falls under TDBL, he or she should communicate the terms and conditions of the leave as soon as possible. Specifically, the employer should discuss when the employee anticipates returning to work. The employer should also be sure the employee understands that there is no guarantee his or her job will still be available when the leave is over. That said, if the employer determines there is need to fill the position while the employee is on leave, the employer should inform the employee as soon as possible. As a best practice, the employer may want to search for a replacement before terminating the employee and give the employee the option to return before a replacement is hired. To assist in the decision-making process, the employer may want to ask the employee to communicate with him or her on a weekly basis on the status of the leave. Many employers choose to set these terms and conditions in a letter sent to the employee on leave. However, such a letter should always be drafted in consultation with an attorney to reduce the employer's exposure to liability.

— **What are the tax implications of TDBL benefits?** —

State Plan TDBL benefits must be reported on an employee’s federal income tax return, as they are considered third-party pay for both Social Security (FICA) and federal income tax purposes. The payment of these benefits should be included on the W-2 Form issued by the employer. TDBL benefits are not subject to the New Jersey state income tax.

— **Do TDBL benefits apply to pregnancies?** —

Employees may be entitled to TDBL benefits if they are disabled due to pregnancy. The normal payment period may be up to four weeks prior to the expected due date and up to six weeks after the child is actually delivered. The doctor may certify an employee for a longer period of disability if there are complications with the pregnancy that would render the employee incapable of doing their regular work.

— **What can employers do to reduce disability insurance costs?** —

There are many steps that employers can take in order to reduce their unemployment and disability insurance costs. Employers can avoid unnecessary charges by submitting all reports accurately and on time, and by reviewing the accuracy of determinations, appeal decisions and charge notices. Additionally, employers may lower their experience rating by making voluntary contributions.

— **Can an employee collect TDBL benefits if they were injured on the job?** —

No. Work-related injuries or illnesses are not covered under the TDBL. However, in the event that an employee files for Workers’ Compensation and the claim is contested by the carrier, temporary disability benefits may be paid until a final determination of the Workers’ Compensation claim is made. However, if Workers’ Compensation benefits are eventually granted, the employee is not entitled to both TDBL and workers’ compensation benefits; there is no duplication of benefits.
—Can an employer require a medical certification?—

Employers have the right to request an independent medical examination. However, they must make this request as soon as a problem with the claim is suspected. This is a routine procedure with no charge to either the employer or the employee. The findings of this examination will be used to determine whether the employee will be paid additional benefits. Additional information may be found here: http://lwd.dol.state.nj.us/labor/tdi/employer/state/sp_emp_imp_exam.html

—Can an employer deny disability leave?—

While an employer cannot deny disability leave, the employer may permit or require the employee to use any paid sick leave, vacation time or other leave at full pay, before the individual is eligible for disability.

—Where can an employer get a TDBL application?—

Employers can obtain an application from the DOL’s website on the “Applications and Brochures” page, which can be found here: http://lwd.dol.state.nj.us/labor/tdi/apply/application_landing_page.html

Additionally, employers may contact the Division of Temporary Disability Insurance, PO Box 387, Trenton, New Jersey 08625-0387, or call 609-292-7060. Employers may also request a claim form from their employee or through their union.

—Is there a time limit for filing a disability claim?—

Yes. Employees have 30 days from the first day of disability to file their claim. If their claim is received more than 30 days from the start of the disability, they must show good cause why the claim was not filed in a timely manner. This statement should be attached to the claim form, but if good cause is not shown, benefits may be reduced or denied.

TDBL Private Plan

—What are the requirements under Private TDBL Plan?—

Under the TDBL, employers can provide coverage through an approved Private Plan instead of the State Plan. All Private Plans must first be approved by the Division of Temporary Disability Insurance. Private Plans must have the same, if not more, liberal benefit amounts, eligibility requirements and duration of payments as the State Plan. It is important to note that under a Private Plan, the cost cannot be more for an employee than it is under the State Plan. Additionally, Private Plan disability benefits may be subject to Social Security (FICA) and federal income taxes.

—Can an employer with a Private Plan switch to the State Plan?—

Yes. Employers who would like to terminate their Private Plan coverage must give 30 days’ notice in writing to the Private Plan Compliance Section, Plan Approval Unit, PO Box 957, Trenton, New Jersey 08625. Benefits must be paid by the Private Plan throughout any disability that starts prior to the approved termination date, even if the disability extends beyond the termination date of the Private Plan.
Where can employers find a list of approved private insurers of TDBL benefits?

A list of insurance companies currently licensed to provide short-term group temporary disability coverage in New Jersey is located on the DOL’s website.
http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_insurance_co.html

Additional Resources

Temporary Disability Insurance Page on the Department of Labor and Workforce Development’s Website
http://lwd.dol.state.nj.us/labor/tdi/tdiindex.html

Frequently Asked Questions
http://lwd.dol.state.nj.us/labor/tdi/content/faq.html

Temporary Disability Insurance Program Brochure
http://lwd.dol.state.nj.us/labor/forms_pdf/tdi/WPR-117.pdf

TDBL Application
http://lwd.dol.state.nj.us/labor/tdi/apply/application_landing_page.html

Information on Requesting an Independent Medical Examination
http://lwd.dol.state.nj.us/labor/tdi/employer/state/sp_emp_imp_exam.html

Approved Private Plans
http://lwd.dol.state.nj.us/labor/tdi/employer/private/pp_emp_insurance_co.html

For More Information

If you need additional information, please contact NJBIA’s Member Action Center at 1-800-499-4419, ext. 3 or member411@njbia.org.

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This publication is not intended to give legal advice. Failing to comply with the Temporary Disability Benefits Law raises potential legal hazards for the employer. NJBIA urges its members to always consult an attorney to ensure that they are in compliance.