



## Chapter 2 Unemployment & Disability Insurance Benefits

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The Temporary Disability Benefits Law protects against wage loss suffered because of inability to perform regular job duties due to illness or injury. You are required to pay disability insurance taxes and to give the Division of Temporary Disability Insurance certain information about your employees when they file claims for disability benefits. Therefore, you should be familiar with sections of the Temporary Disability Benefits Law covering initial and continuing eligibility for benefits and the amount of benefits a claimant may receive. These provisions are essentially as listed following.

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#### Coverage

A New Jersey employer subject to the Unemployment Compensation Law is also subject to the Temporary Disability Benefits Law, except for certain government entities. Government entities that are excluded from automatic disability insurance coverage may elect such coverage for their employees, effective January 1 of a calendar year, by filing a written notice to that effect with the Division of Employer Accounts within 30 days of January 1 of that year; that is, from December 1 through January 31. Such coverage must be extended to all employees whose employment is covered by the Unemployment Compensation Law. An election must remain in effect for at least two full calendar years. It may be terminated as of January 1 of any year thereafter by filing written notice with the Division of Employer Accounts at least 30 days prior to the termination date.

A subject employer is automatically covered under the State Plan unless workers are covered under an approved private plan for temporary disability insurance.

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#### Filing Claims

Disability insurance claims are processed by mail. The worker may apply for benefits from home or the hospital. [Form DS-1](#), "Claim for Disability Benefits," may be obtained by writing or telephoning the employer, a union, or the Division of Temporary Disability Insurance, PO Box 387, Trenton, New Jersey 08625-0387. All or some benefits may be forfeited if the claim is filed more than 30 days after the start of disability.

According to the Temporary Disability Benefits Law, an employer must issue to the worker and to the Division a "Claim For Disability Benefits," Form DS-1, containing the worker's name, address, Social Security number and wage information needed to determine the worker's eligibility for temporary disability benefits.

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#### Wage Requirements

To establish a valid claim, a worker must have had at least 20 base weeks of New Jersey covered employment or, in the alternative, must have earned \$7,300 or more in covered employment during the 52 weeks immediately preceding the week in which the disability begins. A base week is a calendar week in the base-year during which the worker earned in covered employment \$145 or more; that is, an amount equal to 20 times the state minimum hourly wage.

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#### 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.

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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 \$584 for disabilities beginning during calendar year 2013. 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% of the statewide average weekly wage.

[Top](#)**Total Benefits Payable**

The maximum amount of benefits that may be paid for each period of disability is one-third of the total wages in New Jersey covered employment paid to the worker during the base-year, or 26 times the weekly benefit amount, whichever is less.

[Top](#)**Limitation of Benefits**

No benefits are payable to any person:

- For the first seven consecutive days of each period of disability (the "waiting week"). The waiting week becomes compensable when disability benefits have been paid for all or some part of each of the three weeks immediately following the waiting week.
- For any period of disability that did not begin while the claimant was a covered individual. A covered individual means any person who is employed by a covered employer at the time the disability commences, or who has been out of such employment for 14 days or less.
- For any period during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, chiropractor, psychologist, advanced practice nurse or certified nurse midwife.
- 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.
- For any period during which the claimant performs any work for remuneration or profit.
- In a weekly amount which, together with any remuneration the claimant continues to receive from his/her employer, would exceed his/her regular wages immediately prior to disability.
- For any period during which the claimant would be disqualified under the Unemployment Compensation Law for participation in a labor dispute, unless the disability commenced prior to such period.
- For government workers: for any period during which a covered government worker has not exhausted all accumulated sick leave.

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In addition to the above limitations, the law also prohibits the payment of temporary disability benefits:

- For any period for which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of the State of New Jersey, or of any other state or the federal government (including permanent Social Security disability benefits).

However, if disability benefits are paid or payable under the disability benefits law of another state, or under the federal maritime law, a claimant may still be eligible for New Jersey benefits. In this circumstance, the weekly benefit rate would be reduced by the amount paid concurrently under the other state or maritime law.

- For any period during which workers' compensation benefits are paid or payable, other than for permanent partial or permanent total disability previously incurred.

Also, temporary disability benefits shall be reduced by the amount paid concurrently under any governmental or private retirement or pension program to which a worker's most recent employer contributed on his/her behalf. However, Social Security retirement benefits do not reduce State Plan disability benefits.

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In order to medically substantiate a claim, the claimant may be required to submit to a physical examination by a state-appointed physician. In addition, the employer may request an independent medical examination if there is good cause to suspect that the employee is not disabled. There is no cost to the employee or the employer for the examination. Failure to submit to an examination is cause for denial of benefits. For more information about the medical examination process or to request a medical examination, submit an [online request](#), call 609-633-8718, or FAX 609-292-1692.

[Top](#)**Disability Fraud Hot Line**

If you have reason to believe that an employee is collecting temporary disability benefits and working for another employer, call 609-984-4540, FAX 609-292-1692, or submit the information [online](#).

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If the claimant indicates on a claim form that he/she worked for you at some time during his/her base-year period (52 weeks immediately preceding the week in which the disability began) the Division may send you a wage report request. You are required by law to supply the requested wage information. If you do not comply within 21 days from the time that the form was mailed to you, the Division will assess a \$250 penalty.

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The employer for whom the claimant last worked immediately prior to the onset of the disability will assume all the charges for all benefits paid to the claimant for that period of disability.

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**Federal Tax Deductions**

Benefits payable under the Temporary Disability Benefits Law are considered "third party sick pay." Federal law provides that the portion of gross disability benefits paid, which is attributable to the chargeable employer's contributions for disability insurance coverage, is subject to federal taxation for Social Security, Medicare, FUTA and federal income tax.

Based on the chargeable employer's average experience rate for State Plan temporary disability insurance during the most recent three years, the Division calculates the worker's portion of Social Security (FICA) contributions and Medicare contributions of each benefit authorization. That amount is deducted from the benefits to be paid to the claimant and is forwarded to a federal depository. To calculate the FICA and Medicare contribution that you, the employer, must remit to the federal government, refer to the "Taxable Amount" column on the Division's [Form DS-7C](#), "Notice of Disability Benefits Charged or Credited." The figure in this column specifies the portion of benefits to use in calculating the employer's contribution at the applicable employer rate.

Upon the claimant's completion of Form W4S, "Request for Federal Income Tax Withholding from Sick Pay," a federal income tax deduction may also be made from the payable disability benefit gross amount. This deduction is indicated on Form DS-7C in the "Federal Tax Withheld" column. The employer is not required to match this withholding amount.

If you have questions about payment of FUTA taxes on the portion of paid benefits that is attributable to your disability insurance contributions as an employer, direct them to the Internal Revenue Service. The Division makes no deduction from paid benefits to meet employer FUTA liability.

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If a worker or employer disagrees with a determination on a disability claim and wishes to appeal, it must be done in writing. The appeal must be filed within 10 days of the date of mailing of the determination or within seven days of receipt of the determination. However, if a claimant disagrees with a demand for refund of disability benefits, he/she must do so in writing within 24 days of the date of mailing or within 20 days of receipt of such demand for refund. If the appeal is not filed within the required time limits, an explanation of the reason for the delay must be provided. The appeal period will be extended only if good cause for filing late is shown. Good cause exists when it can be shown that the delay was due to circumstances beyond the appellant's control, which could not have been reasonably foreseen or prevented. An appeal that is filed late without good cause will be dismissed.

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The New Jersey Division of Temporary Disability Insurance uses an automated claims processing system (DABS). Automation has reduced the time required to determine a disability claim.

There are samples of DABS-generated forms in the [Forms Section](#) of this handbook.

A brief synopsis of the automated functions of DABS includes:

1. Daily mailing of benefit checks to claimants in conjunction with daily mailing of notices for these payments to the chargeable employer.
2. Daily mailing of requests for information not received on the claimant's original disability claim form (DS-1). When the forms are returned, the system automatically directs the form to the examiner assigned to the case.
3. System-generated determinations calculated from the information received by State Plan Disability. The chargeable employer is mailed a copy of all determinations rendered by the system.
4. Various internal controls built into the system to protect the chargeable employer from fraudulent claims.

These automated functions have improved the overall accuracy and consistency of determinations issued by the State Plan Bureau. In addition, automation has increased capacity and efficiency in handling and responding to telephone and written inquiries from claimants, employers, and all other interested parties.

The Division of Temporary Disability Insurance conducts informational seminars. Interested employers or their representatives have the opportunity to learn more about the New Jersey Division of Temporary Disability Insurance Program and the DABS claims-processing system by contacting:

New Jersey Department of Labor and Workforce Development  
Division of Temporary Disability Insurance  
PO Box 387  
Trenton, New Jersey 08625-0387  
(609) 984-4540

[Top](#)**Disability During Unemployment: 4(f)**

A worker who becomes totally disabled and who has been out of covered employment for more than 14 days may be eligible for benefits under the Disability During Unemployment program.

Claims filed under this program are governed by both the Unemployment Compensation and Disability Benefits laws. However, these claims are primarily unemployment insurance claims, established under Section 4(f) of the Unemployment Compensation law. Therefore, to be eligible for benefits, the claimant must meet all the requirements of this law, and be totally unable to work. The claimant must also be under the care of a legally licensed physician, dentist, podiatrist, optometrist, chiropractor, psychologist, or advanced practice nurse.

To have a valid 4(f) claim, the claimant must have been paid a minimum amount of wages while in a job covered by New Jersey's disability insurance program during the base period of the claim. Employment with local governments that have not elected disability coverage for their workers is not covered for disability benefits; nor is out-of-state employment, even though it is covered for unemployment insurance.

To file for benefits, the claimant must complete Form DS-1, "Claim for Disability Benefits," and mail it to the Division of

Temporary Disability Insurance, PO Box 387, Trenton, New Jersey 08625, where the claim will be processed.

If the claimant has an unemployment insurance claim and becomes disabled while unemployed during the benefit year, he/she may be paid 4(f) benefits against the claim. In most cases the claimant will receive the same weekly rate as was received on the unemployment insurance claim. The maximum that one can collect on unemployment insurance and 4(f) benefits combined is one and one-half times the maximum benefit amount of the claim.

If the 4(f) claim is the initial claim, it will be processed under the wage record system. This system generates a monetary determination listing all New Jersey subject employers for which the claimant worked during the base period. The determinations also include all wages reported by each of those employers.

A claim filed for disability will be valid if the claimant earned at least \$145 in covered employment in each of 20 calendar weeks, or earned at least \$7,300 during the base period. The regular base period is the first four calendar quarters of the last five completed calendar quarters before the date of the claim.

If a claim was originally determined invalid under the regular base period, there are two alternative base periods that can be used to establish monetary eligibility. Alternative Base Year #1 consists of the four most recently completed calendar quarters preceding the date of claim, and Alternative Base Year #2 consists of the three most recently completed calendar quarters preceding the date of the claim plus weeks in the filing quarter up to the date of claim.

The maximum benefit for 2013 is a weekly rate of \$624, and a maximum amount of \$16,224. The claimant is entitled to one week of potential benefits for each week worked in covered employment, subject to a maximum of 26 weeks.

Once the claimant completes Form W4S, "Request for Federal Income Tax Withholding from Sick Pay," a federal income tax deduction at the rate of 10% will be made.

Information necessary to determine eligibility is obtained from the claimant, to whom we mail a packet of forms the claimant must complete and return. This includes dependency information, as well as student, corporate officer or pension status. Separation information is also obtained from the employer. Both the claimant and the employer have opportunities for rebuttal through telephone calls, which are documented by memoranda.

Upon receipt of all information, a determination will be made. It remains in effect and is applicable to any claim that the claimant might make during the same benefit year for unemployment insurance benefits.

Benefits payments made under the Disability During Unemployment program are not charged to the claimant's base-year covered employer(s); such payments are charged to the unemployment disability account within the State Disability Benefits Fund. However, because claimants may use 4(f) claims to claim unemployment benefits after recovery from the disabling condition, it is important that employers respond timely to any [Form BC-28](#), "Request for Separation Information," issued in connection with a 4(f) claim. Charges for unemployment benefits potentially payable during the benefit year of a 4(f) claim may be affected by the information provided by employers on Form BC-28.

A claimant who disagrees with a determination of 4(f) benefits and wishes to appeal may do so in writing within 10 days from the date the decision was mailed or within seven days of receipt of the determination. However, if a claimant disagrees with a demand for refund of 4(f) benefits, he/she may do so in writing within 24 days of the date of mailing or within 20 days of receipt of such demand for refund. If the appeal is not filed within the required time limits, an explanation for the delay must be provided. The appeal period will be extended only if good cause for filing late is shown. Good cause exists when it can be shown that the delay was due to circumstances beyond the appellant's control, which could not have been reasonably foreseen or prevented. An appeal that is filed late without good cause will be dismissed.

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