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Frequently Asked Questions  
**2021**

## **New Jersey Temporary Disability Benefits (TDB) and Family Leave Insurance (FLI)**

**Group Insurance**

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**Prudential**

## Overview

### What is Statutory Mandated Leave?

New Jersey is among the jurisdictions that mandate benefits for workers. While each state's program is unique, the common goal of these plans is to provide short-term income replacement for non-occupational disabilities experienced by eligible workers. New Jersey's program is governed by the Temporary Disability Benefits (TDB) Law. Employers subject to TDB law are required to provide a minimum level of coverage in compliance with statutory guidelines.

### How does an employer register with New Jersey?

Employers with employees in New Jersey with a payroll of \$1,000 or more during a calendar year must register their business with the New Jersey Division of Revenue. An employer can do this by submitting a NJ-REG form which will then be forwarded to the Department of Labor and Workforce Development to determine liability for workers compensation and disability insurance. Additional information is available on the state's website:

<https://www.nj.gov/labor/ea/index.shtml>

### What plan options are available to employers to comply with New Jersey TDB & FLI requirements?

Employers have three options:

- Insure TDB or FLI coverage through an insurance carrier. Please note that Prudential does not administer FLI plans.
- Insure TDB or FLI coverage through the New Jersey State Plan. NOTE: Participation in the state plan is automatic unless the employer files a private plan.
- Self-insure TDB or FLI by filing their plan with the Division of Temporary Disability Insurance, Private Plan Operations and posting a security.

### Who is eligible?

An employee is eligible for New Jersey TDB and FLI if they have worked at least 20 base weeks of NJ covered employment or have earned \$11,000 or more in covered employment during the 52 weeks immediately prior to their disability. A base week is a calendar week during which the worker earned \$220 or more.

New hires may be eligible on their first day worked because "covered" employment may include service provided to a former "covered" employer. For example, if Mary worked for NJ Company A for five years, left on March 31 and started working for NJ Company B on April 1, she would be eligible for TDB coverage from NJ Company B on her first day, April 1, because she already has more than 20 base weeks of continuous New Jersey employment.

Excluded from coverage are federal and state government employees, non-profits, certain family employees, and workers in other categories specifically exempted by the law. In addition, New Jersey exempts certain services from TDB eligibility if they are also exempt from coverage under the Federal Unemployment Tax Act (FUTA). Employers should contact the state for additional information.

Ultimately, the onus to comply with New Jersey's employer laws falls on the employer and non-compliance could result in a penalty. If an employer is unsure if they are obligated to provide TDB and FLI benefits to their employees, they should contact the New Jersey Department of Labor and Workforce Development, Division of Employer Accounts (609-633-6400).

### **Are employees who telecommute from homes in New Jersey or salespeople with New Jersey territories eligible for TDB/FLI?**

Unfortunately, there is no definitive yes or no answer. The state needs to walk the employer through a set of "tests" regarding their business and the employee's job responsibilities. These tests will be asked about an employee's responsibilities in the following order: Localization of Service; Base of Operations, Place from Which the Service is Directed and Controlled; and Place of Residence. Due to the nature of the tests, the employer needs to discuss their unique situation with the state which will ultimately help them understand why their employees are eligible or not—knowledge that can be applied to future eligibility questions.

### **If an employer has a more generous STD plan in place, do they still need TDB?**

Yes. Employers must provide TDB coverage that is filed and approved by the state of New Jersey in order to comply with the law. STD and/or salary continuation plans will not fulfill the requirements and are considered "supplemental" to TDB.



## What does an employer need to consider when implementing an insured private plan?

### Effective Dates:

If an employer is moving out of the state plan to a private plan, the effective date must be the first day of a quarter (ex. January 1 or April 1) due to wage/tax reporting. The state will not approve new private plans with off-quarter effective dates. However, if an employer is moving a private plan from one insurer to another or from a self-insured private plan to an insured private plan, there are no restrictions on effective dates.

NOTE: Prudential recommends that employers come out of the state plan effective January 1. Premiums paid to the state do not apply to premiums due to Prudential for insuring coverage. If, for example, an employer moves their TDB coverage to Prudential in July, annual premium may have been paid in full to the state but premium for the private TDB plan would still need to be paid to Prudential to cover the cost of benefits from July through December.

### Elections:

As of February 19, 2019, employee elections are no longer required to make contributory plan benefits more restrictive or to move a non-contributory plan to contributory. Prior notice must be provided to the state in order to make a contributory plan more restrictive. **The application must be received prior to the requested effective date.** For example, a DP1 submitted in June with a requested effective date of April of the same year that makes the current plan provisions more restrictive will not be accepted.

### Prior Filing Documentation:

If Prudential is taking over an employer's existing New Jersey private plan, we request copies of the Private Plan Application (DP-1) filed by the prior carrier. This ensures that we match the plan design previously in place and expedites the implementation process.



## What services will Prudential provide as the private plan insurer?

- Private Plan Filing:

Prudential will file the employer's insured private plan with the state of New Jersey for approval. An Application for Approval or Modification of Insured Private Plan form (DP-1) will be submitted for each of the employer's FEINs with New Jersey Employees. Prudential will also file any subsequent FEIN additions or cancellations.

NOTE: If the employer is moving from the state plan to a private plan, Prudential's filing must be submitted to New Jersey prior to the effective date. Late filings will not be accepted. At this time, Prudential does not administer NJ FLI.

- Poster:

Prudential will prepare poster notices for each TDB plan filed with New Jersey. The employer is required to display these notices in a conspicuous location to advise employees of their right to claim disability benefits. Posters will be issued upon New Jersey filing approval and annual updates will be mailed to the client.

- Claim Management and Payment:

Prudential will perform all claim management and payment tasks for TDB claims in compliance with New Jersey statutory requirements.

- Appeal Handling:

Claimants have the right to appeal an insured TDB claim decision to Prudential, the state, or both. When an appeal is filed with New Jersey, Prudential will appear at any hearings required by the NJ Private Plan Hearing Officer.

- Annual and Semiannual Reports:

Prudential will prepare the required New Jersey claim and premium annual and semiannual reports.

- Plan Summaries:

Upon request, Prudential will provide a one page summary of NJ TDB plan provisions that the employer can distribute to eligible employees.

## What are Employer responsibilities?

- Notice Requirement:

TDB law requires that employers post details regarding the TDB/FLI plan in a conspicuous location accessible to all employees in a workplace. For insured private plans, Prudential will prepare the poster: “Notice of Your Employer’s New Jersey Temporary Disability Benefits Plan,” and send it to the employer at the same time that the TDB contract is issued. Separate posters will be issued for each FEIN filed with the state. Employers will receive updated versions of this notice annually when the NJ benefit rates are published and whenever there is a statutory- or employer-initiated change to the plan.

**For FLI, in addition to posting the poster** in locations accessible to all employees in each workplace, each employee must be provided with a **written copy** of the poster:

- At the time of his/her hiring.
- Whenever an employee notifies his/her employer that he/she is taking time off to bond with a child or to care for a seriously ill family member.
- At any time, upon the first request of an employee. The poster is located on the State of New Jersey Department of Labor and Workforce Development website ([http://lwd.dol.state.nj.us/labor/fli/empins/emp\\_important\\_info.html](http://lwd.dol.state.nj.us/labor/fli/empins/emp_important_info.html)).

- State Wage Reporting:

Employers may receive a Request for Employer Information Form (E10) and/or Claim Filed and Request for Information Form (E230). If you receive this form, it means:

- information was missing from the original application, and/or
- the information on the application conflicted with wage record
- we need to clarify the employee’s information.’

Employers have 10 days from the date the request is mailed to respond to the state. Failure to comply could result in a fine.

- Advise Prudential of New or Inactive FEINs with New Jersey Employees:

If an employer acquires a new associated company with New Jersey employees, Prudential must file the new entity’s FEIN with the state in addition to the company’s existing FEIN. Likewise, if New Jersey wages are no longer being reported under an FEIN (ex. out of business, merger/acquisition, employee transfers, etc.) Prudential must file to terminate coverage for that employer. Clients are expected to notify Prudential of any new or terminating entities subject to TDB coverage.

## Where can an employer find more information?

Additional information is available on the state’s website: <http://lwd.dol.state.nj.us/labor/tdi/tdihome.html>.



## Plan Design

### What is the statutory TDB benefit plan design?

Benefit Percentage	85% of employee's weekly wage (rounded down to the nearest \$1.00)
Maximum Weekly Benefit	\$903
Elimination Period	7 days for accident and sickness 0 day for disabilities due to organ or bone marrow donation (effective 5/20/2020) If the disability lasts for 22 or more days, benefits are paid retroactive to the first day of disability.
Maximum Duration	26 weeks
Partial Disability	<ul style="list-style-type: none"> <li>• Effective June 17, 2020 NJ TDB will allow for a partial return to work benefit, if the employer agrees.</li> <li>• Claimant must be totally disabled for 7 consecutive days and then released to return to work.</li> <li>• Benefit is prorated based upon disability earnings</li> <li>• Maximum duration of partial disability is 8 weeks but can be up to 12 weeks if medically supported.</li> </ul>
Standard Maternity Guideline	<ul style="list-style-type: none"> <li>• Four (4) weeks pre-partum</li> <li>• Six (6) weeks post-partum (normal delivery); or</li> <li>• Eight (8) weeks post-partum (c-section)</li> </ul>
Exclusions	<ul style="list-style-type: none"> <li>• Occupational injuries</li> <li>• Self-inflicted injuries</li> <li>• Perpetration of a crime (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> degree)</li> <li>• Acts of war</li> <li>• No benefits payable while the employee is receiving Unemployment Benefits (UI) or is ineligible to receive UI benefits due to gross misconduct.</li> </ul>
Recurrent Disability	<ul style="list-style-type: none"> <li>• Periods of disability separated by 14 calendar days or less of active work will be treated as the same disability, subject to the original 26-week maximum duration.</li> <li>• Periods of disability separated by more than 14 days of active work will be treated as separate claims, with the potential for another 26 weeks of benefits starting with the second disability.</li> <li>• After return to work, a new period of disability caused by a different medical condition will be treated as a new claim, with the potential for another 26 weeks of benefits starting with the second disability.</li> </ul>
Post-termination coverage	14 days Benefits are payable by the employee's last employer for disabilities which commence within 14 days of his/her last day worked unless the employee becomes subsequently employed/covered.

## **When are benefits paid retroactive to the first day of disability?**

Although the elimination period for TDB is seven days, benefits will be paid retroactive to the first day of disability if an employee is disabled for 22 or more calendar days. Effective May 20, 2020, disabilities due to organ and bone marrow donation are not subject to an elimination period and will begin on the first day of disability.

## **What is the definition of disability under TDB? Is it different from Prudential's STD plan?**

A person is disabled under TDB if due to a non-work-related injury or sickness, he/she cannot do all of the duties of their job. To receive benefits, the employee must be under the care of a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist, optometrist, advanced practice nurse, or certified nurse midwife.

The TDB definition of disability is different than the Prudential STD definition of disability. Most STD plans will pay benefits for partial disability as long as the employee has a 20% earnings loss. Beginning June 17, 2020, partial disability benefits will be available for TDB. The claimant must be totally disabled and then released to return to work. The maximum duration of partial disability is 8 weeks but cannot be extended to more than 12 weeks.

## **Can an employer provide better benefits than required by TDB law?**

Yes, an employer has two options to improve upon benefit levels required by New Jersey.

### Statutory Enriched:

A statutory enriched plan improves upon or enriches at least one benefit provision of the statutory plan in a manner approved by the state. Provisions an employer may choose to enrich include the elimination period (ex. change seven days to first day accident), maximum benefit duration (ex. increase 26 weeks to 30), maximum weekly benefit, or benefit percentage. Examples of provisions which cannot be changed with an enriched plan are the definition of disability and expanded benefits for partial disability.

### Supplemental STD Plan:

A supplemental STD plan adds to or supplements the underlying statutory plan. The TDB benefits are paid first and are then subtracted or "offset" from any additional STD benefit payable. A supplemental STD plan allows an employer to offer plan provisions otherwise unavailable on statutory or enriched plans, such as partial disability. However, these plan provisions only apply to the non-statutory portion of the benefit. Additionally, a supplemental STD plan allows an employer to limit STD plan features to specific classes of employees. For example, a supplemental STD plan can be limited to salaried employees only versus a TDB plan, which must cover all eligible New Jersey employees.

## **How much can an employee be asked to contribute to the plan?**

Employers can offer TDB on a non-contributory or contributory basis. If the plan is contributory, the TDB law indicates that employees can be asked to contribute up to contribute up to 0.47% of the first \$138,200 in taxable wages, not to exceed an annual maximum of \$649.54 (effective 1/1/2021).

NOTE: Contributions are calculated as a percentage of taxable wage, not premium.



## Claims

### How does the claims process differ for TDB?

- Claim Submission Timeframes:  
Claims must be submitted within thirty (30) days after the first day of disability.
- Claim Denials:  
Prudential will advise the claimant of the reason for the denial and his/her right to appeal the decision to the NJ Department of Labor and Workforce Development. We will mail a copy of the denial letter and a copy of the claim file to the state for review. If the state disagrees with our decision, the Claims Review Unit will notify Prudential of the corrective action required.
- Appeals:  
Claimants whose NJ TDB benefits have been terminated or denied have the right to appeal to the New Jersey Department of Labor and Workforce Development within one year of the date their disability began. If a claimant appeals a decision, Prudential will appear at appeal hearings as required and abide by the ruling of the hearing officer.

### **Are TDB benefits taxed?**

Yes, TDB benefits are taxed similarly to how STD and LTD benefits are taxed. If the plan is non-contributory, disability contributions are reported as taxable wages and therefore benefits are fully taxed. If the plan is contributory (paid all or in part by the employee with after-tax dollars), the amount of benefits attributable to the employer's contribution is taxable to the employee as income. NOTE: It is the client's responsibility to calculate and provide the contribution rates to Prudential in accordance with IRS Regulation 1.105-1.

### **Can an employer have TDB payments redirected to them as reimbursement for salary continuation benefits already paid to an employee?**

New Jersey requires that TDB claim checks be made payable to the claimant. However, upon request Prudential will mail checks to the client for delivery to the claimant, who then can be asked to sign it over to his/her employer. The following conditions must be met in order for Prudential to mail the statutory benefit to the employer, instead of the employee:

- Employer's salary continuation plan must pay 100% of pre-disability earnings; and
- Private Plan must contain a provision to prevent the employee from receiving greater than 100% of his/her pre-disability earnings in TDB plus salary continuation payments ("Limitation (h)").

Once the employee is no longer receiving full salary continuation, Prudential must mail the TDB check to the employee.

### **Can Prudential withhold deductions from an employee's TDB benefit?**

No, New Jersey does not permit deductions to be withdrawn from TDB benefit payments.

### **How will a TDB claim be handled for an employee on a temporary leave of absence?**

Once an employee is no longer working due to a leave of absence, their TDB coverage is extended for a period of 14 days. For unpaid leaves of absence, the 14 days is calculated from the last day worked. For paid leaves of absence, TDB coverage continues while the employee is still receiving wages from the employer and the 14-day extension is calculated from the date wages from the employer end (i.e. leave becomes unpaid or employment is terminated).

### **How will a TDB claim be handled for an employee receiving unemployment?**

If an employee is receiving unemployment, he/she is ineligible to receive TDB benefits. However, an employee may be eligible to receive benefits from the state of New Jersey under the Unemployment Compensation Law and Temporary Disability Benefits Law.

NOTE: When an employee is terminated, the former employer is required to provide 14 days of TDB coverage unless he/she subsequently becomes employed by another employer providing TDB coverage.



### **Is a separate, TDB-specific claim form required?**

No, claimants are encouraged to use Prudential's standard claim form to submit their TDB or combined TDB/STD claim. When Prudential receives the completed form via mail or fax, it is scanned directly into our claim system. This streamlines the claim process by quickly creating the claim so that the evaluation process can begin.

New Jersey has standard TDB Claim Forms (DS-1). Prudential will accept New Jersey standard TDB Claim Forms (DS-1); however, they require manual input into our claim system.

### **If a New Jersey employee's TDB benefits are denied or terminated, can he/she appeal to the state?**

Yes, Employees always have a right to appeal a TDB claim decision to the New Jersey Department of Labor and Workforce Development. Information about the state's appeal process and how to contact the state will be included with Prudential's decision letter.

## **New Jersey Family Leave Insurance (FLI)**

At this time, Prudential does not administer FLI programs.

### **What is FLI?**

Family Leave Insurance provides New Jersey workers cash benefits for up to six weeks to bond with a newborn, newly adopted, newly placed foster child, or to provide care for a seriously ill or injured family member.

### **What is the FLI benefit?**

Information about the FLI benefit includes the following:

- The benefit is 85% of an employee's average weekly wage, up to a maximum of \$903.
- Benefits are paid up to 12 weeks for any one period of family leave within a 12-month period.
- If an employee has a personal disability for pregnancy and then immediately takes FLI leave for bonding, a second waiting period is not applicable.

### **Who pays for FLI and how much do they pay?**

When the employer participates in the state plan:

- FLI is 100% funded by employee payroll tax; there is no employer contribution. The tax is 0.28% of the first \$138,200 of taxable wages (\$386.96 maximum) effective 1/1/2021.
- Only wages earned during the taxable wage base are subject to the contribution. This means the contribution can only be taken from the first \$138,200 earned in the calendar year. Once gross earnings reach \$138,200 in calendar year 2021, contributions must cease.
- The taxable wages are subject to the state plan FLI program and are reported on the "Employer Quarterly Report," form NJ-927.
- The worker contributions deducted for FLI are remitted together with the other contributions due on the "Employer Quarterly Report," forms NJ-927 or NJ-927-W.
- The deduction for Temporary Disability Insurance (TDI) and FLI must be displayed separately on the W-2 form.

The law permits employers to establish a contributory private plan. When the employer establishes a private FLI plan:

- The employer may pay the full cost of a private plan. The state sets no limit to the amount an employer pays for a private FLI plan.
- Employee contributions toward a private plan can never exceed the amount of contribution an employee would pay if covered under a FLI plan administered by the state. See above for the maximum amount of employee contributions permitted. It is possible that the cost of a private plan could be in excess of employee contributions permitted by the state. The employer is responsible for any shortfall.
- Employee contributions collected under a private plan are not sent to the state. Contributions used to fund the private plan.

## **For what reasons can employees take paid leave?**

Employees can take paid leave in order to:

- Care for a newborn, within 12 months of birth.
- Care for a newly adopted child, within 12 months of placement.
- Care for a family member with a serious health condition.
  - a. Family member means spouse, civil union partner, domestic partner, parent, or child.
  - b. Parent means biological, foster, adoptive, step, or legal guardian.
  - c. Child means biological, adopted, foster, step, legal ward, or child of a domestic partner or civil union partner who is under 19, or over 19 but incapable of self-care because of mental or physical impairment.
  - d. Care means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters, and personal attendant services.
  - e. Serious health condition means illness, injury, impairment, or physical or mental condition which requires:
    - 1. Inpatient care in a hospital, hospice, or residential medical care facility; or
    - 2. Continuing medical treatment or continuing supervision by a health care provider.

## **Can employees receive Family Leave Insurance (FLI) benefits if they work part time?**

Yes. Employees working part time and suffering a wage loss due to family care or bonding leave may receive benefits provided all other eligibility requirements are met. FLI is a wage loss protection program that provides partial wage replacement regardless of whether a claimant is a full-time or part-time employee.

## **Are FLI benefits taxable?**

FLI benefits are subject to federal income tax (FIT) and to federal rules on reporting income and paying taxes. They are not subject to New Jersey state income tax.

- When an employee applies for benefits, he/she can choose to have 10% of benefits withheld for federal income tax.
- For a state-administered FLI plan, Form 1099-G will be sent to the employee to use when filing a federal income tax return after the end of each calendar year.



## **What is the difference between FLI and other leave laws?**

Differences between FLI and other leave laws are as follows:

- The FLI benefits program provides covered individuals with a monetary benefit, not a leave entitlement.
- FLI does not change either FMLA or NJFLA in any way and is completely separate from them. FLI is insurance that provides up to six weeks of paid benefits to workers who suffer a wage loss when they take time off from work to care for others.
- Employers are not required under FLI law to restore employees to their employment upon expiration of the leave.
- Employers with fewer than 50 employees, and therefore not covered by FMLA or NJFLA, may permanently replace employees who take leave under the FLI law.
- Employers with 50 or more employees must restore employees to their employment pursuant to the FMLA and/or NJFLA if the employee is eligible for leave under one or both of those laws.

## **Can an employee receive FLI benefits concurrently with Temporary Disability Benefits (TDB)?**

FLI benefits are not payable for any period the claimant receives TDB

## **Are employees required to take leave under FMLA or NJFLA at the same time they are receiving FLI benefits?**

FLI does not reduce or impact leave rights under FMLA or NJFLA. FLI runs concurrently with FMLA and/or NJFLA leave.



### What is the statutory FLI benefit plan design?

<b>Covered Employer</b>	All employers that are subject to the New Jersey Unemployment Compensation Law.
<b>Eligibility</b>	20 base weeks of NJ covered employment, <b>OR</b>  Earned \$11,000 or more in covered employment during the 52 weeks immediately prior to the leave
<b>Covered Family Members</b>	Care for a family member with a serious health condition  Family member means: <ul style="list-style-type: none"> <li>• Parents, spouse, children of any age, parents-in-law, siblings, grandparents, grandchildren, domestic partners, any other individuals related by blood, any other individuals with whom the employee considers to be family</li> </ul>
<b>Leave Types</b>	<ul style="list-style-type: none"> <li>• Employee’s own serious health condition</li> <li>• Care for a newborn, within 12 months of birth</li> <li>• Care for a newly adopted or foster child, within 12 months of placement</li> <li>• Care for a family member with a serious health condition</li> </ul>
<b>Waiting Period</b>	None
<b>Weekly Benefit</b>	85% of weekly wages (rounded down to the nearest \$1.00)
<b>Maximum Weekly Benefit</b>	\$903
<b>Maximum Duration</b>	12 weeks The intermittent leave maximum is 56 days
<b>Program Funding</b>	Effective 1/1/2021 FLI is 100% funded by employee payroll tax; there is no employer contribution. 0.28% of the first \$138,200
<b>Prudential Plan Options</b>	FLI – currently not available

For more information, please visit: <https://myleavebenefits.nj.gov/>



This policy provides disability income insurance only. It does NOT provide basic hospital, basic medical, or major medical insurance as defined by the New York Department of Financial Services.

Group Disability Insurance coverages are issued by The Prudential Insurance Company of America, a Prudential Financial Company, Newark, NJ. The Booklet-Certificate contains all details, including any policy exclusions, limitations and restrictions, which may apply. (Contract Series: 83500, GRP 100489)

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