

## FACT SHEET:

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### Know Your Rights: New York's Temporary Disability Insurance Law

Many New Yorkers do not receive any long-term paid time off work when they are seriously ill, injured, pregnant, or have recently given birth. The State of New York's Temporary Disability Insurance (TDI) program provides regular payments to some who are temporarily unable to work, including those with pregnancy-related disabilities and those workers who need time to recover from childbirth.

*This fact sheet addresses only the minimum requirements of the law—your employer may go beyond these requirements.*

#### Am I covered?

To be covered for TDI, you must:

- Be employed in New York State (where you live doesn't matter), and
- Have worked for your employer for 4 or more weeks in a row if you are a full-time employee, or for at least 25 days if you are a part-time employee.

However, many employers and employees fall into exceptions in the law. For example, the law does not cover clergy members or those who work in a teaching capacity for an educational institution. For a complete list of exceptions, visit [www.wcb.ny.gov/content/main/offthejob/WhoCovered\\_DB.jsp](http://www.wcb.ny.gov/content/main/offthejob/WhoCovered_DB.jsp).

Certain domestic workers are also covered by TDI. For more information about domestic workers and TDI, visit [www.wcb.ny.gov/content/main/DisabilityBenefits/CoverageSituations/domesticWorkers.jsp](http://www.wcb.ny.gov/content/main/DisabilityBenefits/CoverageSituations/domesticWorkers.jsp).

#### What counts as a disability?

To collect TDI payments, you must be unable to work because of an injury or sickness that occurred "off the job." This is different from Workers' Compensation, which covers people who are injured or become ill as a direct result of their job.

TDI also covers pregnancy-related disabilities or complications. For example, you are covered if you are unable to work due to a pregnancy-related medical condition. You can also receive TDI to recover from childbirth, both vaginal and Caesarian.

#### What benefits can I receive?

For covered workers, TDI provides cash payments equal to one-half of the worker's average weekly wage, up to a maximum of \$170 per week. TDI does *not* cover medical bills or any other expenses beyond those payments.

#### When can I start receiving benefits?

You can apply for TDI as soon as you become disabled. However, because of a statutory waiting period, you will not be eligible for benefit payments for the first week you are disabled. To receive your full benefits, you must submit your claim within 30 days of becoming disabled.

Once you submit your claim, there may be an additional delay before your first payment arrives. After that, benefits are payable every two weeks.

### **How long can I receive benefits for?**

You can receive TDI for up to 26 weeks in a year or for any particular “period of disability.” However, you can only receive TDI for the time you are disabled.

It is our understanding from the Disability Benefits Bureau, which administers TDI, that insurers generally consider someone disabled for six weeks after a vaginal delivery and eight weeks after a Caesarian section. In a healthy pregnancy, you may also be considered disabled for a few weeks before your due date if your doctor deems it necessary that you not go to work. Remember that there is a one week unpaid waiting period for all TDI benefits.

You cannot receive TDI for any period of time in which you are working for pay for any employer, even if you are working from home or working reduced hours.

### **How do I apply?**

If you are currently employed, you will need to complete a [DB-450 form](#).

- You should fill out and sign Part A.
- Your doctor or other appropriate health care provider will need to fill out and sign Part B as proof of your disability. You can only receive TDI if you are under the care of an appropriate health care provider.

Submit this form to your employer or, if your employer directs you to do so, to your employer’s disability insurance carrier.

### **What if I’m unemployed?**

If you were previously a covered employee and your unemployment began less than 26 weeks before you became disabled, you may be able to receive TDI while unemployed.

- If you were unemployed for less than four weeks before your disability began, submit your claim to your former employer or their insurance carrier (the same process as if you were still employed).
- If you were unemployed for more than four weeks, but less than 26 weeks, before your disability began:
  - You will need to complete a [DB-300 form](#).
    - You should fill out and sign Part A.
    - Your doctor or other appropriate health care provider will need to fill out and sign Part B as proof of your disability.
  - Mail this form to: Workers’ Compensation Board, Disability Benefits Bureau, 328 State Street, Schenectady, NY 12305.
- If you were unemployed for more than 26 weeks before you became disabled, you are generally not eligible for TDI.
- You must file your claim within 30 days of becoming disabled.

### **Can I take unemployment insurance (UI) and TDI at the same time?**

No. By law, you cannot claim TDI and UI at the same time. In order to receive TDI, you must be unable to work due to disability (including pregnancy); in order to receive UI, you must be ready, willing, and able to work.

Because UI benefits are generally more generous than TDI benefits, it may be beneficial to go back on UI as soon as you are ready, willing, and able to work again. If you are unemployed, be sure to

discuss with your doctor your desire to return to work as soon as you are able before he or she prepares your TDI documentation.

### **Does my employer have to hold my job for me?**

**No.** Your employer does not have to keep your job open for you (also known as “job protection”) while you are on TDI. Technically, your employer is not allowed to fire you or otherwise punish you solely *because* you took TDI payments, but because the TDI law does not provide job protection it can be extremely difficult to prove that you were fired or punished because you took TDI payments.

However, your employer *may* be required to hold your job for up to 12 weeks if you qualify for leave under the federal Family and Medical Leave Act.

### **How is TDI different from the Family and Medical Leave Act (FMLA)?**

The FMLA is a federal law that provides a legal right to up to 12 weeks of unpaid, job-protected time off when you are seriously ill, taking care of a family member who is seriously ill, or bonding with a new child. *However, many workers, including most part-time workers and those whose employers have fewer than 50 employees, are not covered by the FMLA.*

If you qualify for FMLA leave, you can receive TDI payments while on unpaid FMLA leave for your own serious illness, incapacity due to pregnancy, or recovery from childbirth. Your employer may require that FMLA leave and TDI run at the same time. With very limited exceptions, your employer *must* hold your job while you are on FMLA leave (even if you are also taking TDI), but only for the up to 12 weeks covered by the FMLA.

For more information about the FMLA, visit <http://www.abetterbalance.org/web/fmla>.

### **What other legal protections do I have?**

- If you are pregnant or have just given birth, you may be entitled to workplace protections and accommodations under state and federal law. For more information about your legal rights, visit [babygate.abetterbalance.org/new-york/](http://babygate.abetterbalance.org/new-york/).
- If you work in New York City, additional laws may protect you.
  - You may be eligible for up to forty hours of paid time off per year under [the Earned Sick Time Act](#).
  - You may be entitled to additional protections in the workplace under [the Pregnant Workers Fairness Act](#).

### **Where can I get more information?**

- The Disability Benefits Bureau of the Workers’ Compensation Board administers the law.
  - Visit their website: [www.wcb.ny.gov/content/main/offthejob/IntroToLaw\\_DB.jsp](http://www.wcb.ny.gov/content/main/offthejob/IntroToLaw_DB.jsp).
  - Call them at (518) 462-8881 or toll-free at (800) 353-3092.
- Call our free legal hotline at (212) 430-5982.

*This guide is designed to assist you in understanding your basic rights under the Temporary Disability Insurance program. It does not cover all aspects of the law and does not constitute legal advice. It is possible that other laws or additional TDI provisions or rules not described here may apply to your specific circumstances.*