

I am, therefore, of opinion that all employees of the State who become members of your retirement system must continue as such members unless they withdraw from the service or cease to be employees of the State. Of course, we know of the exceptions in the statute (R. S. 43:14-43 and 43:14-44) with respect to withdrawal by (1) veterans, and (2) employees of the State who were drafted and discharged before induction into the army during any war, and (3) members of the National Guard to whom Federal recognition was extended prior to November 11, 1918.

The holding above likewise applies to members of your fund in counties and municipalities which have adopted by referendum the provisions of your act, some of which so adopting, not having adopted civil service, and also applies to certain governmental agencies which, under warrant of law, have been permitted to enroll their employees in your fund.

In view of the practice which has heretofore prevailed of allowing those members of your system who are not in the classified service of the civil service law to withdraw their accumulated deductions, I think your board should notify each such member of the ruling herein made and give each member an opportunity to withdraw within a limited period of time to be prescribed by the board.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

TB:B

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May 18, 1949.

HONORABLE HARRY C. HARPER, *Commissioner,*  
*Department of Labor and Industry,*  
State House,  
Trenton, New Jersey.

FORMAL OPINION—1949. No. 52.

DEAR COMMISSIONER:

You recently submitted a copy of a letter from the Director of the Division of Employment Security wherein it was requested that an opinion be secured interpreting the Temporary Disability Benefits Law. The particular problem presented was the interpretation of Sections 14 and 15 thereof as to what days the division should consider as the waiting period for the purpose of paying benefits.

You are advised that the first calendar day an individual is unable to perform the duties of his employment, by reason of a compensable disability, is the beginning of the period of disability.

The Temporary Disability Benefits Law, Chapter 110 of P. L. 1948, Section 14 thereof, provides as follows:

"Disability benefits shall be payable with respect to disability which commences while a person is a covered individual under this act, and shall be payable with respect to the eighth consecutive day of such disability and each day thereafter that such disability continues but not in excess of the individual's maximum benefits."

Section 15 thereof, provides as follows:

"Limitation of benefits. Notwithstanding any other provision of this act, no benefits shall be payable under the State plan to any person: (a) for the first seven consecutive days of each period of disability, or for more than twenty-six weeks with respect to any one period of disability, or for any period of disability which did not commence while the claimant was a covered individual;"

An examination of the statute shows that the word "day" is not defined therein. A day is the period of time which elapses between midnights or the twenty-four hours. Section 14, hereinabove quoted, provides that benefits shall be payable with respect to the eighth consecutive day of disability and each day thereafter that it continues. Section 15 mentions that no benefits shall be payable for the first seven consecutive days of each period of disability. In using the word "day," evidently the Legislature intended that an individual was required to complete seven full calendar days as his waiting period. The use of the word "consecutive" in Sections 14 and 15 in the statute means that the first day is to be a calendar day or a full day during which the individual is unable to perform the duties of his employment.

In the letter submitted by you requesting an opinion, it states that an individual entered the hospital on January 2, 1949, for an appendectomy which was performed on January 3, 1949. He had been ill on New Year's Day, called the doctor the same day and was under his care. It is assumed that he became ill sometime during the day of January 1st. The first full calendar day that he was unable to perform the duties of his employment was January 2, 1949, and such day is to be considered as the day beginning a period of disability.

In the other example contained in the letter is the case of a claimant who recovered from a previous illness on Sunday, January 2, 1949, and expected to return to work on January 3, 1949. On January 3, 1949, he arose at 5:30 A. M., intending to go to work when he suffered an attack of stomach pains and was unable to leave his home. His doctor visited him the same day and he entered the hospital on January 4 and was operated for an appendectomy. The first full calendar day that he was unable to perform the duties of his employment was January 4, and this establishes the commencement of the period of disability.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: WILLIAM C. NOWELS,  
*Deputy Attorney General.*