

State of New Jersey
Department of Labor and Workforce Development



NEW JERSEY ADMINISTRATIVE CODE

N.J.A.C. 12:15	Scope
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CHAPTER 15

SCOPE

Authority

N.J.S.A. 34:1-20, 34:1A-3.c, and 43:21-1 et seq., specifically, 43:21-7.g and 43:21-65.

Source and Effective Date

Effective: March 14, 2018.
See: 50 N.J.R. 1162(a).

Chapter Expiration Date

Chapter 15, Scope, expires on March 14, 2025.

Chapter Historical Note

Chapter 15, Scope, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 15, Scope, was readopted as R.1990 d.419, effective June 30, 1990. See: 22 N.J.R. 1895(b), 22 N.J.R. 2508(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Scope, was readopted as R.1995 d.389, effective June 23, 1995. See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).

Subchapter 2, Disclosure of Information, was adopted as R.1997 d.141, effective March 17, 1997. See: 29 N.J.R. 89(a), 29 N.J.R. 896(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Scope, was readopted as R.2000 d.280, effective June 12, 2000. See: 32 N.J.R. 1487(a), 32 N.J.R. 2442(a).

Chapter 15, Scope, was readopted by R.2006 d.2, effective November 28, 2005. See: 37 N.J.R. 2295(a), 38 N.J.R. 333(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 15, Scope, was scheduled to expire on May 27, 2013. See: 43 N.J.R. 1203(a).

Chapter 15, Scope, was readopted as R.2011 d.143, effective April 21, 2011. See: 43 N.J.R. 24(a), 43 N.J.R. 1259(b).

Subchapter 3, Registration of Authorized Agents, was adopted as new rules by R.2011 d.261, effective November 7, 2011. See: 43 N.J.R. 1575(a), 43 N.J.R. 3031(a).

Chapter 15, Scope, was readopted, effective March 14, 2018. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:15-1.1 Purpose and scope of rules and regulations

(a) Under the Unemployment Compensation Law and the Temporary Disability Benefits Law, benefits financed from tax or contributions are paid to eligible workers who become unemployed, disabled or who require leave from work to participate in the providing of care for a family member made necessary by a serious health condition of the family member or to bond with a newborn or newly adopted child.

(b) The unemployment benefits are paid from moneys contributed to a State Unemployment Compensation Fund, and both temporary disability benefits and family leave insurance benefits from moneys contributed to the State Disability Benefits Fund or from private plans approved by the Department of Labor and Workforce Development and established by employers for such purposes.

(c) The rules and regulations contained in this subchapter are agency statements of general applicability, and are intended to assist in the implementation of the basic provisions of the laws pertaining to unemployment compensation, temporary disability benefits and family leave insurance benefits.

New rule, R.1985 d.423, effective August 19, 1985.
See: 17 N.J.R. 1378(a), 17 N.J.R. 2046(b).

This section expired December 31, 1984 and was readopted as a new rule pursuant to Executive Order 66(1978) effective August 19, 1985.

Amended by R.1995 d.389, effective July 17, 1995.

See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).

Amended by R.2006 d.2, effective January 3, 2006.

See: 37 N.J.R. 2295(a), 38 N.J.R. 333(b).

In (b), added "and Workforce Development."

Amended by R.2009 d.82, effective March 2, 2009.

See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

In (a), substituted a comma for "or" following "unemployed" and inserted "or who require leave from work to participate in the providing of care for a family member made necessary by a serious health condition of the family member or to bond with a newborn or newly adopted child"; in (b), inserted "both" and "and family leave insurance benefits"; and in (c), substituted a comma for "and" following "compensation" and inserted "and family leave insurance benefits".

Case Notes

Employer's control and employee's financial dependence precluded determination that boat broker qualified as independent contractor. *SFB Associates, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 59.

Employer owed unemployment compensation benefit contributions for payments made to employer's vice president where employer failed to prove that vice president was engaged in independently established business or trade. *Technical Testing, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 57.

Employer was liable for unemployment contributions, based upon its failure to show that sales representatives customarily engaged in independently established trade. *Holmdel Mausoleum, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 35.

Individual who derived majority of his income from one company qualified as employee for purposes of unemployment benefits eligibility. *R.D. Restoration, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 29.

Claimant working as consultant was not entitled to unemployment compensation benefits. In the *Matter of D.D.W.*, 96 N.J.A.R.2d (UCC) 12.

Lump-sum distribution of full employer-contributed pension benefits upon discharge precluded award of unemployment compensation benefits. In the *Matter of S.J.R.*, 96 N.J.A.R.2d (UCC) 9.

School board employee was not eligible for unemployment compensation benefits for summer before start of renewal contract, despite fact that board failed to give employee actual notice that contract had been renewed. In the *Matter of V.C.G.*, 96 N.J.A.R.2d (UCC) 8.

Repeated tardiness and excessive absences which resulted in discharge constituted misconduct which rendered claimant ineligible for unemployment compensation benefits. In the *Matter of T.D.*, 96 N.J.A.R.2d (UCC) 6.

Claimant who left job after employer repeatedly shorted paycheck was not disqualified from receiving unemployment compensation benefits. In the *Matter of R.B.*, 96 N.J.A.R.2d (UCC) 5.

Claimant who refused employment without good cause for doing so was not entitled to unemployment compensation benefits. In the *Matter of M.A.T.*, 96 N.J.A.R.2d (UCC) 5.

Claimant was not in school full-time and was not entitled to additional unemployment benefits during training. *Matter of A.P.*, 95 N.J.A.R.2d (UCC) 23.

Previous workers' compensation award for back injury did not preclude unemployment claimant's state plan disability award for pregnancy. *Matter of A.E.D.*, 95 N.J.A.R.2d (UCC) 22.

Unemployment claimant's work filling in for employee on maternity leave was not outside employer's usual course of business. *Matter of M.S.*, 95 N.J.A.R.2d (UCC) 21.

Unemployment claimant could not be paid benefits for disability that was compensable under workers' compensation. *Matter of J.T.S.*, 95 N.J.A.R.2d (UCC) 18.

Discharge of unemployment claimant for failure to renew license necessary to his employment was misconduct. *Matter of R.F.B.*, 95 N.J.A.R.2d (UCC) 17.

Unemployment claimant's resignation to avoid probation for absenteeism was without good cause. *Matter of D.G.A.B.*, 95 N.J.A.R.2d (UCC) 16.

Late appeal by unemployment claimant misinformed as to timely appeal procedure was for good cause. *Matter of C.B.*, 95 N.J.A.R.2d (UCC) 15.

Claimant laid off from preschool/day care facility during summer was not disqualified from unemployment. *Matter of J.S.R.*, 95 N.J.A.R.2d (UCC) 14.

Resignation after unemployment claimant's position was changed was without good cause attributable to work. *Matter of A.L.R., Jr.*, 95 N.J.A.R.2d (UCC) 13.

Unemployment claimant was ineligible for workforce development program grant and additional benefits during training. *Matter of L.J.B.*, 95 N.J.A.R.2d (UCC) 10.

Acceptance of early retirement option was voluntary without good cause attributable to unemployment claimant's work. *Matter of B.O.*, 95 N.J.A.R.2d (UCC) 9.

Unemployment claimant's acceptance of early retirement was voluntary with good cause attributable to work. *Matter of E.F.B.*, 95 N.J.A.R.2d (UCC) 8.

Requirements for a work search waiver in connection with unemployment claim were met. *Matter of G.A.W.*, 95 N.J.A.R.2d (UCC) 5.

Expression of an inability to work by unemployment claimant was not a refusal to perform available, suitable work. *Matter of D.M.D.*, 95 N.J.A.R.2d (UCC) 4.

Leaving work and accepting employer's early retirement plan upon plant shutdown was voluntary without good cause on part of unemployment claimant. *Matter of W.F.B.*, 95 N.J.A.R.2d (UCC) 3.

Employee who was incarcerated disqualified from unemployment benefits. In the *Matter of J.J.L.*, 95 N.J.A.R.2d (U.C.C.) 1.

Separation after unemployment claimant's incarceration due to conviction of criminal offense was voluntary without good cause. *Matter of J.J.L.*, 95 N.J.A.R.2d (UCC) 1.

Driving instructors were employees for purposes of assessment of unemployment and temporary disability contributions. *Dual Control Auto Driving School v. New Jersey Department of Labor*, 94 N.J.A.R.2d (LBR) 65.

Security guards were not independent contractors; unemployment and temporary disability contributions. *J. DiSanti Concrete Corp. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 55.

Company supplying personnel to churches; unemployment insurance contributions. *Church Personal Services, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 51.

Travel agency failed to prove that employees were independent contractors. *Ro-Burt Travel, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 46.

Contractor failed to prove that employees were independent contractors. *Taylor v. Department of Labor*, 94 N.J.A.R.2d (LBR) 33.

Bandleader ordered to pay unemployment and disability contributions as employer. *Koza v. Department of Labor*, 94 N.J.A.R.2d (LBR) 16.

Installers and salespersons were not independent contractors but employees. *Beautyguard Manufacturing Company of Middlesex, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 13.

Contractors were not independent operators but were employees. *Tri-County Appliance Service Company, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 7.

Monetary determination for unemployment was based on both school and non-school employment and wages. *Matter of D.E.E.*, 93 N.J.A.R.2d (UCC) 42.

Resignation in lieu of imminent discharge was not an unemployment disqualification. *Matter of D.S.*, 93 N.J.A.R.2d (UCC) 41.

Termination while on disability did not disqualify claimant from unemployment. *Matter of M.M.S.*, 93 N.J.A.R.2d (UCC) 40.

Remuneration while performing in employer's usual course of business constituted wages required for valid unemployment claim. *Matter of A.S.*, 93 N.J.A.R.2d (UCC) 39.

Resignation in face of probable discharge to protect record was involuntary separation in unemployment case. *Matter of A.P., Jr.*, 93 N.J.A.R.2d (UCC) 37.

Earlier insubordination was not reason for discharge and was not disqualifying misconduct in unemployment case. *Matter of J.J.M.*, 93 N.J.A.R.2d (UCC) 36.

Acceptance of gratuity in performance of duties as town sanitation laborer was work connected misconduct disqualifying claimant from unemployment. Matter of L.L.M., 93 N.J.A.R.2d (UCC) 35.

Failure of unemployment claimant to supply medical note for extended leave was misconduct connected with work. Matter of J.L.C., 93 N.J.A.R.2d (UCC) 35.

Recurring negligence in duties as bank teller was misconduct disqualifying unemployment claimant from benefits. Matter of V.L., 93 N.J.A.R.2d (UCC) 33.

Gross misconduct in discharge of duties as sheriff's officer operated as an unemployment disqualification. Matter of L.S., 93 N.J.A.R.2d (UCC) 31.

Services for employer operating three bridges connecting New Jersey with Pennsylvania were in New Jersey employment for unemployment purposes. Matter of G.W.M., 93 N.J.A.R.2d (UCC) 29.

Separation which occurred when unemployment claimant's own conduct resulted in loss of a prerequisite of employment was voluntary. Matter of M.K., 93 N.J.A.R.2d (UCC) 28.

Unemployment claimant ineligible for summer benefits when under reasonable assurance of performing similar services in next academic year. Matter of M.A.K., 93 N.J.A.R.2d (UCC) 27.

Summer lull between nonprofessional services in one school year and professional services in next school year was not a period of unemployment eligibility. Matter of J.M.B., 93 N.J.A.R.2d (UCC) 25.

Resignation after disability due to non-work connected accident was voluntary and disqualifying. Matter of S.D.G., 93 N.J.A.R.2d (UCC) 25.

Resignation after confrontation with co-worker was voluntary without good cause attributable to work. Matter of R.G., 93 N.J.A.R.2d (UCC) 24.

Cafeteria worker laid off during summer months from educational institutions was not eligible for unemployment benefits. Matter of C.E.O'B., 93 N.J.A.R.2d (UCC) 23.

Leaving work to avoid a foot problem was for a good cause attributable to unemployment claimant's work. Matter of P.B.P., 93 N.J.A.R.2d (UCC) 22.

Continuance of leave of absence after temporary disability excluded application of alternate base year to unemployment claim. Matter of M.Z.S., 93 N.J.A.R.2d (UCC) 22.

Separation when unable to return from maternity leave was voluntary and disqualified claimant from unemployment benefits. Matter of K.C., 93 N.J.A.R.2d (UCC) 18.

Leaving work as waitress was without good cause attributable to work. Matter of J.P.O., 93 N.J.A.R.2d (UCC) 17.

Restricting one's availability to work on a job below minimum renders one ineligible for unemployment benefits. Matter of D.J.V., 93 N.J.A.R.2d (UCC) 16.

Aiding a competitor contrary to employer's interest is misconduct connected with work. Matter of J.W.A., 93 N.J.A.R.2d (UCC) 15.

Employment for college while completing an educational program was excludable from base week calculation for unemployment benefits. Matter of J.G.M., 93 N.J.A.R.2d (UCC) 13.

Leaving of work was not due to misconduct and, when involuntary, was not disqualifying. Matter of J.M.C., 93 N.J.A.R.2d (UCC) 13.

Claim for unemployment benefits was invalid absent required number of base weeks and earnings. Matter of L.N.V., 93 N.J.A.R.2d (UCC) 12.

Employer failed to prove that deliverymen were independent contractors. Independent Newspaper Delivery, Inc. v New Jersey Department of Labor, 93 N.J.A.R.2d (LBR) 11.

Substitute teacher was not disqualified from unemployment when leaving position was not voluntary. Matter of C.W., 93 N.J.A.R.2d (UCC) 10.

Leaving of work due to congestive obstructive pulmonary disease was without good cause attributable to work. Matter of D.C., 93 N.J.A.R.2d (UCC) 9.

Maximum benefit allowance for unemployment was reduced on a weekly basis due to a pension offset. Matter of M.A.L., 93 N.J.A.R.2d (UCC) 8.

Discharge for theft of property disqualified claimant from receiving regular unemployment benefits. Matter of G.C., 93 N.J.A.R.2d (UCC) 6.

Refusal to work at new job site was not misconduct disqualifying claimant from receiving unemployment benefits. Matter of C.B., 93 N.J.A.R.2d (UCC) 6.

Carpenters were not independent contractors. Jate Building Company Corp. v. New Jersey Department of Labor, 93 N.J.A.R.2d (LBR) 5.

Refusal to take drug test was misconduct disqualifying claimant from unemployment benefits. Matter of J.D.M., 93 N.J.A.R.2d (UCC) 5.

Leaving employment for good cause attributable to one's work is not disqualifying unemployment. Matter of C.A.B., 93 N.J.A.R.2d (UCC) 4.

Undissolved corporation failed to show that it did not employ at least one employee. Sureway Excavators Corp. v. New Jersey Department of Labor, 93 N.J.A.R.2d (LBR) 3.

Loss of driver's license was voluntary act and was without good cause attributable to truck driver's work. Matter of H.S., 93 N.J.A.R.2d (UCC) 3.

Claimant's extended benefit entitlement shall be based on all age credits earned during the base year. Matter of J.R., 93 N.J.A.R.2d (UCC) 2.

Construction workers were not independent contractors. Beitz v. New Jersey Department of Labor, 93 N.J.A.R.2d (LBR) 1.

Drug use as air traffic controller was misconduct disqualifying claimant from unemployment benefits. Matter of H.M., 93 N.J.A.R.2d (UCC) 1.

Drywall installers were not independent contractors. Surran v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 37.

Limousine drivers were not independent contractors. A to Z Cab and Limousine Service, Inc., v. Department of Labor, 92 N.J.A.R.2d (LBR) 29.

Carpet installers were not independent contractors. Dilollo v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 21.

Drywall workers were not independent contractors. Executive Dry-wall Construction v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 16.

Construction workers were not independent contractors. Apicione v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 13.

Release by physician for part-time work did not qualify claimant for unemployment compensation. Matter of A.S., 92 N.J.A.R.2d (UCC) 11.

Extended benefit entitlement under emergency unemployment was based on all wage credits earned during base year. Matter of J.R., 92 N.J.A.R.2d (UCC) 9.

Acceptance of full-time work elsewhere was with good cause and was not disqualifying. Matter of A.F., 92 N.J.A.R.2d (UCC) 7.

Voluntary act of leaving a job due to dissatisfaction with supervisor was without good cause. Matter of E.C., 92 N.J.A.R.2d (UCC) 6.

Separation of registered nurse from temporary work assignment was due to illness and was not voluntary leaving of work. Matter of P.G., 92 N.J.A.R.2d (UCC) 5.

Claimant's participation in work stoppage was active and operated to disqualify claimant upon suspension. Matter of J.L., 92 N.J.A.R.2d (UCC) 4.

Leaving part-time work which became unstable when claimant lost full-time job was not disqualifying. Matter of L.K., 92 N.J.A.R.2d (UCC) 2.

Loss of driver's license was not misconduct disqualifying bus mechanic from unemployment benefits upon discharge. Matter of T.C., 92 N.J.A.R.2d (UCC) 2.

Workers were not independent contractors. ACME Maintenance Corporation v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 1.

Refusal to follow reasonable changes in procedure was misconduct disqualifying claimant from unemployment benefits upon discharge. Matter of F.G., 92 N.J.A.R.2d (UCC) 1.

12:15-1.1A Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Bond" or "bonding" with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). The development of this attachment or bond between child and care giver(s) requires being in one another's presence.

"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.

"Child" means a biological, adopted, or foster child, stepchild or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

As used in this definition, "incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities, such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

As used in this definition, "mental or physical impairment" means: 1. any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Civil union" means a civil union as defined in N.J.S.A. 37:1-29.

"Domestic partner" means a domestic partner as defined in N.J.S.A. 26:8A-3.

"Family leave" or "family temporary disability leave" means leave taken by a covered individual from work with an employer to participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the individual or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. "Family leave" does not include any period of time during which a covered individual is paid temporary disability benefits pursuant to N.J.S.A. 43:21-25 et seq. (the New Jersey Temporary Benefits Law), because the individual is unable to perform the duties of the individual's employment due to the individual's own disability.

"Family member" means a child, spouse, domestic partner, civil union partner or parent of a covered individual.

"Family temporary disability benefits" or "family leave insurance benefits" means the benefits payable to a covered individual under P.L. 2008, c. 17 in order to compensate for wage loss suffered because of the need of the covered individual to participate in providing care for a family member or to bond with a newborn or newly adopted child.

"Parent of a covered individual" means a biological parent, foster parent, adoptive parent, or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child.

"Serious health condition" means an 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.

As used in this definition, "continuing medical treatment or continuing supervision by a health care provider" means:

1. A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

i. Treatment two or more times by a health care provider; or

ii. Treatment by a health care provider on one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider;

2. Any period of incapacity due to pregnancy, or for prenatal care;

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;

4. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or

5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

"Stepparent of the covered individual" means the person to whom the covered individual's biological parent is either currently married or with whom the covered individual's biological parent is currently sharing a civil union.

"Twelve-month period" means, with respect to an individual who establishes a valid first claim for family leave insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim.

"Week" means a period of seven consecutive days.

New Rule. R.2009 d.82, effective March 2, 2009.

See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

12:15-1.2 Maximum weekly benefit rates

(a) For unemployment compensation claims commencing on or after January 1, 2020, the maximum weekly benefit rate under the Unemployment Compensation Law shall be \$713.00 per week.

(b) For periods of disability or family leave commencing on or after January 1, 2020, and prior to July 1, 2020, the maximum weekly benefit rate for State Plan temporary disa-

bility and family leave insurance benefits under the Temporary Disability Benefits Law shall be \$667.00 per week.

(c) For periods of disability or family leave commencing on or after July 1, 2020, and prior to January 1, 2021, the maximum weekly benefit rate for State Plan temporary disability and family leave insurance benefits under the Temporary Disability Benefits Law shall be \$881.00 per week.

Amended by R.1973 d.219, effective January 1, 1974.

See: 5 N.J.R. 316(c).

Amended by R.1974 d.236, effective January 1, 1975.

See: 6 N.J.R. 352(b).

Amended by R.1975 d.250, effective January 1, 1976.

See: 7 N.J.R. 432(b).

Amended by R.1976 d.257, effective January 1, 1977.

See: 8 N.J.R. 424(c).

Amended by R.1977 d.297, effective January 1, 1978.

See: 9 N.J.R. 439(b).

Amended by R.1978 d.282, effective January 1, 1979.

See: 10 N.J.R. 400(b).

Amended by R.1979 d.321, effective January 1, 1980.

See: 11 N.J.R. 449(d).

Amended by R.1980 d.355, effective January 1, 1981.

See: 12 N.J.R. 543(b).

Amended by R.1981 d.419, effective November 2, 1981 (to be operative January 1, 1982).

See: 13 N.J.R. 602(b), 13 N.J.R. 777(a), 13 N.J.R. 894(b).

(a) "\$145.00" was "\$133.00".

(b) "1982" was "1981".

Amended by R.1982 d.383, effective November 1, 1982 (to be operative January 1, 1983).

See: 14 N.J.R. 969(a), 14 N.J.R. 1218(b).

Maximum benefit rate changed from \$145.00 to \$158.00 per week.

Amended by R.1983 d.521, effective November 21, 1983, operative January 1, 1984.

See: 15 N.J.R. 1434(a), 15 N.J.R. 1944(c).

1984 disability benefits increased from \$158.00 to \$170.00 per week.

Amended by R.1984 d.517, effective November 5, 1984 (operative January 1, 1985).

See: 16 N.J.R. 2343(a), 16 N.J.R. 3049(a).

New (b); (b) changed to (c).

Amended by R.1985 d.545, effective November 4, 1985 (operative January 1, 1986).

See: 17 N.J.R. 2079(a), 17 N.J.R. 2666(a).

Benefit rates changed.

Amended by R.1986 d.451, effective November 17, 1986 (operative January 1, 1987).

See: 18 N.J.R. 1787(a), 18 N.J.R. 2330(b).

Benefit rates changed.

Amended by R.1987 d.468, effective November 16, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1622(a), 19 N.J.R. 2196(a).

Benefit rates changed.

Amended by R.1988 d.535, effective November 7, 1988.

See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).

Benefit rates raised and date changed.

Amended by R.1989 d.565, effective November 6, 1989.

See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).

Maximum weekly benefit rates increased in (a) and (b); effective date of benefits changed to January 1, 1990.

Amended by R.1990 d.597, effective December 3, 1990.

See: 22 N.J.R. 2885(a), 22 N.J.R. 3627(a).

In (a)-(b): maximum weekly benefit rates increased to \$291.00 from \$279.00 and to \$272.00 from \$261.00, respectively, for calendar year 1991.

Amended by R.1991 d.573, effective November 18, 1991.

See: 23 N.J.R. 2611(a), 23 N.J.R. 3519(a).

Maximum weekly benefit rates increased in (a) and (b); effective date of benefits changed to January 1, 1992.

Amended by R.1992 d.454, effective November 16, 1992.

See: 24 N.J.R. 3014(a), 24 N.J.R. 4269(a).

Revised text.
 Amended by R.1993 d.589, effective November 15, 1993.
 See: 25 N.J.R. 3922(a), 25 N.J.R. 5351(a).
 Amended by R.1994 d.552, effective November 7, 1994.
 See: 26 N.J.R. 3592(b), 26 N.J.R. 4410(a).
 Recodified from 12:15-1.3 and amended by R.1995 d.389, effective July 17, 1995.
 See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).
 Amended by R.1995 d.628, effective December 4, 1995.
 See: 27 N.J.R. 3760(a), 27 N.J.R. 4898(a).
 Amended by R.1996 d.513, effective November 4, 1996.
 See: 28 N.J.R. 4044(a), 28 N.J.R. 4789(a).
 Amended by R.1997 d.464, effective November 3, 1997.
 See: 29 N.J.R. 3768(a), 29 N.J.R. 4689(b).
 In (a) and (b), changed the benefit rates; and in (c), substituted "1998" for "1997".
 Amended by R.1998 d.546, effective November 16, 1998.
 See: 30 N.J.R. 3150(a), 30 N.J.R. 4052(a).
 In (a), raised the maximum weekly benefit from \$390.00 to \$407.00; in (b), raised the maximum weekly benefit from \$364.00 to \$381.00; and in (c), changed the calendar year from 1998 to 1999 throughout.
 Amended by R.1999 d.438, effective December 20, 1999.
 See: 31 N.J.R. 3035(a), 31 N.J.R. 4284(a).
 In (a) and (b), increased rates; and in (c), substituted references to 2000 for references to 1999 throughout.
 Amended by R.2000 d.488, effective December 4, 2000.
 See: 32 N.J.R. 3379(a), 32 N.J.R. 4258(c).
 In (a) and (b), increased dollar amounts; and in (c), changed the calendar year from 2000 to 2001.
 Amended by R.2001 d.406, effective November 5, 2001.
 See: 33 N.J.R. 2945(a), 33 N.J.R. 3752(a).
 In (a), substituted "\$475.00" for "\$446.00"; in (b), substituted "\$444.00" for "\$417.00"; in (c), substituted "2002" for "2001" throughout.
 Amended by R.2002 d.391, effective December 2, 2002.
 See: 34 N.J.R. 3056(a), 34 N.J.R. 4222(a).
 In (a), substituted "\$482.00" for "\$475.00"; in (b), substituted "\$450.00" for "\$444.00"; in (c), substituted "2003" for "2002" throughout.
 Amended by R.2003 d.505, effective December 15, 2003.
 See: 35 N.J.R. 4038(a), 35 N.J.R. 5546(b).
 In (a), substituted "\$ 490.00" for "\$ 482.00"; in (b), substituted "\$ 459.00" for "\$ 450.00"; in (c), substituted "2004" for "2003" throughout.
 Amended by R.2004 d.473, effective December 20, 2004.
 See: 36 N.J.R. 3986(a), 36 N.J.R. 5684(c).
 Increased the weekly benefit rate throughout; in (c), substituted "2005" for "2004" throughout.
 Amended by R.2005 d.449, effective December 19, 2005.
 See: 37 N.J.R. 3219(a), 37 N.J.R. 5045(a).
 In (a), increased the benefit rate from \$503.00 to \$521.00; in (b), increased the benefit rate from \$470.00 to \$488.00; in (c), updated the calendar year from 2005 to 2006 in two places.
 Amended by R.2006 d.448, effective December 18, 2006.
 See: 38 N.J.R. 3487(a), 38 N.J.R. 5389(a).
 In (a), substituted "\$536.00" for "\$521.00"; in (b), substituted "\$502.00" for "\$488.00"; and in (c), substituted "2007" for "2006" twice.
 Amended by R.2007 d.389, effective December 17, 2007.
 See: 39 N.J.R. 3713(a), 39 N.J.R. 5347(a).
 In (a), substituted "\$560.00" for "\$536.00"; in (b), substituted "\$524.00" for "\$502.00"; and in (c), substituted "2008" for "2007" twice.
 Amended by R.2008 d.376, effective December 15, 2008.
 See: 40 N.J.R. 4913(a), 40 N.J.R. 6980(a).
 In (a), substituted "\$584.00" for "\$560.00"; in (b), substituted "\$546.00" for "\$524.00"; and in (c), substituted "2009" for "2008" twice.
 Amended by R.2009 d.82, effective March 2, 2009.
 See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).
 In (b), inserted "temporary disability and family leave insurance"; and in (c), inserted "and family leave".
 Amended by R.2009 d.389, effective December 21, 2009.
 See: 41 N.J.R. 3194(a), 41 N.J.R. 4819(a).

In (a), substituted "\$600.00" for "\$584.00"; in (b), substituted "\$561.00" for "\$546.00"; and in (c), substituted "2010" for "2009" twice.
 Amended by R.2010 d.301, effective December 20, 2010.
 See: 42 N.J.R. 1992(a), 42 N.J.R. 3061(a).
 In (a), substituted "\$598.00" for "\$600.00"; in (b), substituted "\$559.00" for "\$561.00"; and in (c), substituted "2011" for "2010" twice.
 Amended by R.2011 d.315, effective December 19, 2011.
 See: 43 N.J.R. 2275(a), 43 N.J.R. 3366(b).
 In (a), substituted "\$611.00" for "\$598.00"; in (b), substituted "\$572.00" for "\$559.00"; and in (c), substituted "2012" for "2011" twice.
 Amended by R.2012 d.202, effective December 17, 2012.
 See: 44 N.J.R. 2161(a), 44 N.J.R. 3073(b).
 In (a), substituted "\$624.00" for "\$611.00"; in (b), substituted "\$584.00" for "\$572.00"; and in (c), substituted "2013" for "2012" throughout.
 Amended by R.2013 d.150, effective December 16, 2013.
 See: 45 N.J.R. 2021(a), 45 N.J.R. 2602(c).
 In (a), substituted "\$636.00" for "\$624.00"; in (b), substituted "\$595.00" for "\$584.00"; and in (c), substituted "2014" for "2013" twice.
 Amended by R.2014 d.191, effective December 15, 2014.
 See: 46 N.J.R. 1861(a), 46 N.J.R. 2417(a).
 In (a), substituted "\$646.00" for "\$636.00"; in (b), substituted "\$604.00" for "\$595.00"; and in (c), substituted "2015" for "2014" twice.
 Amended by R.2015 d.203, effective December 21, 2015.
 See: 47 N.J.R. 2234(a), 47 N.J.R. 3123(a).
 In (a), substituted "\$657.00" for "\$646.00"; in (b), substituted "\$615.00" for "\$604.00"; and in (c), substituted "2016" for "2015" twice.
 Amended by R.2016 d.175, effective December 19, 2016.
 See: 48 N.J.R. 1778(a), 48 N.J.R. 2816(a).
 In (a), substituted "\$677.00" for "\$657.00"; in (b), substituted "\$633.00" for "\$615.00"; and in (c), substituted "2017" for "2016" twice.
 Amended by R.2017 d.239, effective December 18, 2017.
 See: 49 N.J.R. 2881(a), 49 N.J.R. 4012(a).
 In (a), substituted "\$681.00" for "\$677.00"; in (b), substituted "\$637.00" for "\$633.00"; and in (c), substituted "2018" for "2017" twice.
 Amended by R.2018 d.206, effective December 17, 2018.
 See: 50 N.J.R. 1928(a), 50 N.J.R. 2553(a).
 In (a), substituted "\$696.00" for "\$681.00"; in (b), substituted "\$650.00" for "\$637.00"; and in (c), substituted "2019" for "2018" twice.
 Amended by R.2019 d.132, effective December 16, 2019.
 See: 51 N.J.R. 1395(a), 51 N.J.R. 1848(a).
 Rewrote the section.

12:15-1.3 Taxable wage base under the Unemployment Compensation Law

(a) In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first \$35,300 during the calendar year 2020.

(b) In accordance with the provisions of N.J.S.A. 43:21-7(b)(4), the "wages" of any individual with respect to any one employer for the purpose of contributions to the State Disability Benefits Fund, including the Family Temporary Disability Leave Account, shall include the first \$134,900 during the calendar year 2020.

R.1975 d.251, effective August 18, 1975.
 See: 7 N.J.R. 432(c).
 Amended by R.1976 d.258, effective January 1, 1977.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 2020.

R.1978 d.305, effective January 1, 1979.
 See: 10 N.J.R. 445(b).
 Amended by R.1979 d.327, effective January 1, 1980.
 See: 11 N.J.R. 450(a).
 Amended by R.1980 d.354, effective January 1, 1981.
 See: 12 N.J.R. 543(a).
 Amended by R.1981 d.418, effective November 2, 1981 (to be operative January 1, 1982).
 See: 13 N.J.R. 603(a), 13 N.J.R. 777(c).
 (b): "1982" was "1981".
 Amended by R.1982 d.381, effective November 1, 1982 (operative January 1, 1983).
 See: 14 N.J.R. 970(b), 14 N.J.R. 1219(b).
 Contribution rate changed from two percent (2%) to one and one-half percent (1.5%).
 Amended by R.1983 d.612, effective January 3, 1984.
 See: 15 N.J.R. 1829(a), 16 N.J.R. 50(a).
 1984 rate maintained at same rate of 1983.
 Amended by R.1984 d.518, effective November 5, 1984 (operative January 1, 1985).
 See: 16 N.J.R. 2344(b), 16 N.J.R. 3050(a).
 Year changed to "1985" from "1984".
 Amended by R.1985 d.543, effective November 4, 1985 (operative January 1, 1986).
 See: 17 N.J.R. 2079(c), 17 N.J.R. 2667(b).
 "1½ percent" changed to "1⅓ percent".
 Amended by R.1986 d.456, effective November 17, 1986 (operative January 1, 1987).
 See: 18 N.J.R. 1788(c), 18 N.J.R. 2331(a).
 Year changed from 1986 to 1987.
 Amended by R.1987 d.473, effective November 16, 1987 (operative January 1, 1988).
 See: 19 N.J.R. 1624(b), 19 N.J.R. 2196(c).
 1⅓ percent changed to 1⅔ percent.
 Amended by R.1988 d.535, effective November 7, 1988.
 See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).
 1⅔ percent changed to 1⅞ percent.
 Amended by R.1989 d.565, effective November 6, 1989.
 See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).
 Contribution rate lowered to 0.8 percent; benefit year changed to 1990.
 Amended by R.1990 d.597, effective December 3, 1990.
 See: 22 N.J.R. 2885(a), 22 N.J.R. 3627(a).
 Contribution rate changed to 0.6 percent for 1991 calendar year.
 Amended by R.1991 d.573, effective November 18, 1991.
 See: 23 N.J.R. 2611(a), 23 N.J.R. 3519(a).
 Contribution rate changed to 0.4 percent for 1992 calendar year.
 Amended by R.1992 d.454, effective November 16, 1992.
 See: 24 N.J.R. 3014(a), 24 N.J.R. 4269(a).
 Revised (b).
 Amended by R.1993 d.589, effective November 15, 1993.
 See: 25 N.J.R. 3922(a), 25 N.J.R. 5351(a).
 Amended by R.1994 d.552, effective November 7, 1994.
 See: 26 N.J.R. 3592(b), 26 N.J.R. 4410(a).
 Recodified from 12:15-1.5 by R.1995 d.389, effective July 17, 1995.
 See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).
 Amended by R.1995 d.628, effective December 4, 1995.
 See: 27 N.J.R. 3760(a), 27 N.J.R. 4898(a).
 Amended by R.1996 d.513, effective November 4, 1996.
 See: 28 N.J.R. 4044(a), 28 N.J.R. 4789(a).
 Amended by R.1997 d.464, effective November 3, 1997.
 See: 29 N.J.R. 3768(a), 29 N.J.R. 4689(b).
 Substituted "1998" for "1997".
 Amended by R.1998 d.546, effective November 16, 1998.
 See: 30 N.J.R. 3150(a), 30 N.J.R. 4052(a).
 In (b), changed the calendar year from 1998 to 1999.
 Amended by R.1999 d.438, effective December 20, 1999.
 See: 31 N.J.R. 3035(a), 31 N.J.R. 4284(a).
 In (b), substituted a reference to 2000 for a reference to 1999.
 Amended by R.2000 d.488, effective December 4, 2000.

See: 32 N.J.R. 3379(a), 32 N.J.R. 4258(c).
 In (b), changed the calendar year from 2000 to 2001.
 Amended by R.2001 d.406, effective November 5, 2001.
 See: 33 N.J.R. 2945(a), 33 N.J.R. 3752(a).
 In (b), substituted "2002" for "2001".
 Amended by R.2002 d.391, effective December 2, 2002.
 See: 34 N.J.R. 3056(a), 34 N.J.R. 4222(a).
 In (b), substituted "2003" for "2002".
 Amended by R.2003 d.505, effective December 15, 2003.
 See: 35 N.J.R. 4038(a), 35 N.J.R. 5546(b).
 In (b), substituted "2004" for "2003".
 Amended by R.2004 d.473, effective December 20, 2004.
 See: 36 N.J.R. 3986(a), 36 N.J.R. 5684(c).
 In (b), substituted "2005" for "2004".
 Amended by R.2005 d.449, effective December 19, 2005.
 See: 37 N.J.R. 3219(a), 37 N.J.R. 5045(a).
 In (b), updated the calendar year from 2005 to 2006.
 Amended by R.2006 d.448, effective December 18, 2006.
 See: 38 N.J.R. 3487(a), 38 N.J.R. 5389(a).
 In (b), substituted "2007" for "2006".
 Amended by R.2007 d.389, effective December 17, 2007.
 See: 39 N.J.R. 3713(a), 39 N.J.R. 5347(a).
 In (a), substituted "five-tenths of one percent (0.5 percent)" for "four-tenths of one percent (0.4 percent)"; and in (b), substituted "2008" for "2007".
 Amended by R.2008 d.376, effective December 15, 2008.
 See: 40 N.J.R. 4913(a), 40 N.J.R. 6980(a).
 In (b), substituted "2009" for "2008".
 Amended by R.2009 d.389, effective December 21, 2009.
 See: 41 N.J.R. 3194(a), 41 N.J.R. 4819(a).
 In (a), substituted "six-tenths" for "five-tenths" and "0.6" for "0.5"; and in (b), substituted "2010" for "2009".
 Amended by R.2010 d.301, effective December 20, 2010.
 See: 42 N.J.R. 1992(a), 42 N.J.R. 3061(a).
 In (a), substituted "seven-tenths" for "six-tenths" and "0.7" for "0.6"; and in (b), substituted "2011" for "2010".
 Amended by R.2011 d.315, effective December 19, 2011.
 See: 43 N.J.R. 2275(a), 43 N.J.R. 3366(b).
 In (b), substituted "2012" for "2011".
 Amended by R.2012 d.202, effective December 17, 2012.
 See: 44 N.J.R. 2161(a), 44 N.J.R. 3073(b).
 In (b), substituted "2013" for "2012".
 Amended by R.2013 d.150, effective December 16, 2013.
 See: 45 N.J.R. 2021(a), 45 N.J.R. 2602(c).
 In (b), substituted "2014" for "2013".
 Amended by R.2014 d.191, effective December 15, 2014.
 See: 46 N.J.R. 1861(a), 46 N.J.R. 2417(a).
 In (b), substituted "2015" for "2014".
 Amended by R.2015 d.203, effective December 21, 2015.
 See: 47 N.J.R. 2234(a), 47 N.J.R. 3123(a).
 In (b), substituted "2016" for "2015".
 Amended by R.2016 d.175, effective December 19, 2016.
 See: 48 N.J.R. 1778(a), 48 N.J.R. 2816(a).
 In (b), substituted "2017" for "2016".
 Amended by R.2017 d.239, effective December 18, 2017.
 See: 49 N.J.R. 2881(a), 49 N.J.R. 4012(a).
 In (b), substituted "2018" for "2017".
 Amended by R.2018 d.206, effective December 17, 2018.
 See: 50 N.J.R. 1928(a), 50 N.J.R. 2553(a).
 In (b), substituted "2019" for "2018".
 Amended by R.2019 d.132, effective December 16, 2019.
 See: 51 N.J.R. 1395(a), 51 N.J.R. 1848(a).
 In (a), substituted "shall be six-tenths" for "is hereby promulgated as being seven-tenths" and "0.6" for "0.7"; and in (b), substituted "2020" for "2019".

12:15-1.5 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(c)(1) and (t)(3) and 43:21-27(h)(4), the base week amount shall be \$200.00 per week for calendar year 2020.

R.1984 d.521, effective November 5, 1984 (operative January 1, 1985).

See: 8 N.J.R. 424(b).
 Amended by R.1977 d.298, effective January 1, 1978.
 See: 9 N.J.R. 439(c).
 Amended by R.1978 d.281, effective January 1, 1979.
 See: 10 N.J.R. 400(a).
 Amended by R.1979 d.320, effective January 1, 1980.
 See: 11 N.J.R. 449(c).
 Amended by R.1980 d.356, effective January 1, 1981.
 See: 12 N.J.R. 543(c).
 Amended by R.1981 d.421, effective November 2, 1981 (to be operative January 1, 1982).
 See: 13 N.J.R. 602(c), 13 N.J.R. 777(b), 13 N.J.R. 894(b).
 (a): "\$8,200" was "\$7,500".
 (b): "1982" was "1981".
 Amended by R.1982 d.382, effective November 1, 1982 (operative January 1, 1983).
 See: 14 N.J.R. 970(a), 14 N.J.R. 1219(a).
 Taxable wage base changed from \$8,200 to \$8,800 per year.
 Amended by R.1983 d.522, effective November 21, 1983, operative January 1, 1984.
 See: 15 N.J.R. 1435(a), 15 N.J.R. 1944(d).
 1984 taxable wage base increased from \$8,800 to \$9,600.
 Amended by R.1984 d.519, effective November 5, 1984.
 See: 16 N.J.R. 2344(a), 16 N.J.R. 3049(b).
 "\$10,100" was "\$9,600" and "1985" was "1984".
 Amended by R.1985 d.545, effective November 4, 1985 (operative January 1, 1986).
 See: 17 N.J.R. 2079(b), 17 N.J.R. 2667(a).
 Contributions raised from \$10,100 to \$10,700.
 Amended by R.1986 d.452, effective November 17, 1986 (operative January 1, 1987).
 See: 18 N.J.R. 1787(b), 18 N.J.R. 2330(c).
 Contributions raised from \$10,700 to \$11,300.
 Amended by R.1987 d.469, effective November 16, 1987 (operative January 1, 1988).
 See: 19 N.J.R. 1623(a), N.J.R. 2196(b).
 Contributions raised from \$11,300 to \$12,000.
 Amended by R.1988 d.535, effective November 7, 1988.
 See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).
 Contributions raised from \$12,000 to \$12,800.
 Amended by R.1989 d.565, effective November 6, 1989.
 See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).
 Taxable wage base raised to \$13,900 during the 1990 calendar year.
 Amended by R.1990 d.597, effective December 3, 1990.
 See: 22 N.J.R. 2885(a), 22 N.J.R. 3627(a).
 Taxable wage base raised to \$14,400 for the 1991 calendar year.
 Amended by R.1991 d.573, effective November 18, 1991.
 See: 23 N.J.R. 2611(a), 23 N.J.R. 3519(a).
 Taxable wage base raised to \$15,300 for the 1992 calendar year.
 Amended by R.1992 d.454, effective November 16, 1992.
 See: 24 N.J.R. 3014(a), 24 N.J.R. 4269(a).
 Revised text.
 Amended by R.1993 d.589, effective November 15, 1993.
 See: 25 N.J.R. 3922(a), 25 N.J.R. 5351(a).
 Amended by R.1994 d.552, effective November 7, 1994.
 See: 26 N.J.R. 3592(b), 26 N.J.R. 4410(a).
 Recodified from 12:15-1.4 by R.1995 d.389, effective July 17, 1995.
 See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).
 Amended by R.1995 d.628, effective December 4, 1995.
 See: 27 N.J.R. 3760(a), 27 N.J.R. 4898(a).
 Amended by R.1996 d.513, effective November 4, 1996.
 See: 28 N.J.R. 4044(a), 28 N.J.R. 4789(a).
 Amended by R.1997 d.464, effective November 3, 1997.
 See: 29 N.J.R. 3768(a), 29 N.J.R. 4689(b).
 Changed the benefit rate and substituted "1998" for "1997".
 Amended by R.1998 d.546, effective November 16, 1998.
 See: 30 N.J.R. 3150(a), 30 N.J.R. 4052(a).
 Raised the taxable wage base from \$19,300 to \$20,200 and changed the calendar year from 1998 to 1999.
 Amended by R.1999 d.438, effective December 20, 1999.
 See: 31 N.J.R. 3035(a), 31 N.J.R. 4284(a).
 Increased the taxable wage base, and substituted a reference to 2000 for a reference to 1999.
 Amended by R.2000 d.488, effective December 4, 2000.

See: 32 N.J.R. 3379(a), 32 N.J.R. 4258(c).
 Increased dollar amount and changed the calendar year from 2000 to 2001.
 Amended by R.2001 d.406, effective November 5, 2001.
 See: 33 N.J.R. 2945(a), 33 N.J.R. 3752(a).
 Substituted "\$23,500" for "\$22,100" and "2002" for "2001".
 Amended by R.2002 d.391, effective December 2, 2002.
 See: 34 N.J.R. 3056(a), 34 N.J.R. 4222(a).
 Substituted "\$23,900" for "\$23,500" and "2003" for "2002".
 Amended by R.2003 d.505, effective December 15, 2003.
 See: 35 N.J.R. 4038(a), 35 N.J.R. 5546(b).
 Substituted "\$ 24,300" for "\$ 23,900" and "2004" for "2003".
 Amended by R.2004 d.473, effective December 20, 2004.
 See: 36 N.J.R. 3986(a), 36 N.J.R. 5684(c).
 Substituted "\$24,900" for "\$24,300" and "2005" for "2004".
 Amended by R.2005 d.449, effective December 19, 2005.
 See: 37 N.J.R. 3219(a), 37 N.J.R. 5045(a).
 Increased the contribution amount from \$24,900 to \$25,800; updated the calendar year from 2005 to 2006.
 Amended by R.2006 d.448, effective December 18, 2006.
 See: 38 N.J.R. 3487(a), 38 N.J.R. 5389(a).
 Substituted "\$26,600" for "\$25,800" and "2007" for "2006".
 Amended by R.2007 d.389, effective December 17, 2007.
 See: 39 N.J.R. 3713(a), 39 N.J.R. 5347(a).
 Substituted "\$27,700" for "\$26,600" and "2008" for "2007".
 Amended by R.2008 d.376, effective December 15, 2008.
 See: 40 N.J.R. 4913(a), 40 N.J.R. 6980(a).
 Substituted "\$28,900" for "\$27,700" and "2009" for "2008".
 Amended by R.2009 d.389, effective December 21, 2009.
 See: 41 N.J.R. 3194(a), 41 N.J.R. 4819(a).
 Substituted "\$29,700" for "\$28,900" and "2010" for "2009".
 Amended by R.2010 d.301, effective December 20, 2010.
 See: 42 N.J.R. 1992(a), 42 N.J.R. 3061(a).
 Substituted "\$29,600" for "\$29,700" and "2011" for "2010".
 Amended by R.2011 d.315, effective December 19, 2011.
 See: 43 N.J.R. 2275(a), 43 N.J.R. 3366(b).
 Substituted "\$30,300" for "\$29,600" and "2012" for "2011".
 Amended by R.2012 d.202, effective December 17, 2012.
 See: 44 N.J.R. 2161(a), 44 N.J.R. 3073(b).
 Substituted "\$30,900" for "\$30,300" and "2013" for "2012".
 Amended by R.2013 d.150, effective December 16, 2013.
 See: 45 N.J.R. 2021(a), 45 N.J.R. 2602(c).
 Substituted "\$31,500" for "\$30,900" and "2014" for "2013".
 Amended by R.2014 d.191, effective December 15, 2014.
 See: 46 N.J.R. 1861(a), 46 N.J.R. 2417(a).
 Substituted "\$32,000" for "\$31,500" and "2015" for "2014".
 Amended by R.2015 d.203, effective December 21, 2015.
 See: 47 N.J.R. 2234(a), 47 N.J.R. 3123(a).
 Substituted "\$32,600" for "\$32,000" and "2016" for "2015".
 Amended by R.2016 d.175, effective December 19, 2016.
 See: 48 N.J.R. 1778(a), 48 N.J.R. 2816(a).
 Substituted "\$33,500" for "\$32,600" and "2017" for "2016".
 Amended by R.2017 d.239, effective December 18, 2017.
 See: 49 N.J.R. 2881(a), 49 N.J.R. 4012(a).
 Substituted "\$33,700" for "\$33,500" and "2018" for "2017".
 Amended by R.2018 d.206, effective December 17, 2018.
 See: 50 N.J.R. 1928(a), 50 N.J.R. 2553(a).
 Substituted "\$34,400" for "\$33,700" and "2019" for "2018".
 Amended by R.2019 d.132, effective December 16, 2019.
 See: 51 N.J.R. 1395(a), 51 N.J.R. 1848(a).
 Inserted designation (a); in (a), substituted "\$35,300" for "\$34,400" and "2020" for "2019"; and added (b).

12:15-1.4 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law shall be six-tenths of one percent (0.6 percent) for the entire calendar year.

- See: 16 N.J.R. 2345(a), 16 N.J.R. 3050(b).
Amended by R.1985 d.525, effective October 21, 1985.
- See: 17 N.J.R. 2007(b), 17 N.J.R. 2561(a).
Base week amount raised from \$51.00 to \$72.00.
Amended by R.1985 d.544, effective November 4, 1985 (operative January 1, 1986).
- See: 17 N.J.R. 2080(a), 17 N.J.R. 2667(c).
Base week amount raised from "\$72.00" to "\$76.00".
Amended by R.1986 d.453, effective November 17, 1986 (operative January 1, 1987).
- See: 18 N.J.R. 1787(c), 18 N.J.R. 2331(b).
Weekly rate raised and disability commencing date changed from October 1, 1986.
Amended by R.1987 d.470, effective November 16, 1987 (operative January 1, 1988).
- See: 19 N.J.R. 1623(b), 19 N.J.R. 2196(d).
Base week raised from \$81.00 to \$86.00.
Amended by R.1988 d.535, effective November 7, 1988.
- See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).
Base week raised from \$86.00 to \$92.00.
Amended by R.1989 d.565, effective November 6, 1989.
- See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).
Base week amount raised to \$99.00 for 1990.
Amended by R.1990 d.597, effective December 3, 1990.
- See: 22 N.J.R. 2885(a), 22 N.J.R. 3627(a).
Base week amount raised to \$103.00 for 1991.
Amended by R.1991 d.573, effective November 18, 1991.
- See: 23 N.J.R. 2611(a), 23 N.J.R. 3519(a).
Base week amount raised to \$110.00 for 1992.
Amended by R.1992 d.454, effective November 16, 1992.
- See: 24 N.J.R. 3014(a), 24 N.J.R. 4269(a).
Revised text.
Amended by R.1993 d.589, effective November 15, 1993.
- See: 25 N.J.R. 3922(a), 25 N.J.R. 5351(a).
Amended by R.1994 d.552, effective November 7, 1994.
- See: 26 N.J.R. 3592(b), 26 N.J.R. 4410(a).
Recodified from 12:15-1.6 and amended by R.1995 d.389, effective July 17, 1995.
- See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).
Amended by R.1995 d.628, effective December 4, 1995.
- See: 27 N.J.R. 3760(a), 27 N.J.R. 4898(a).
Amended by R.1996 d.513, effective November 4, 1996.
- See: 28 N.J.R. 4044(a), 28 N.J.R. 4789(a).
Amended by R.1997 d.464, effective November 3, 1997.
- See: 29 N.J.R. 3768(a), 29 N.J.R. 4689(b).
In (a), changed the benefit rate; and in (a) and (b), substituted "1998" for "1997".
Amended by R.1998 d.546, effective November 16, 1998.
- See: 30 N.J.R. 3150(a), 30 N.J.R. 4052(a).
In (a), raised the base week amount from \$138.00 to \$144.00 and changed the calendar year from 1998 to 1999; and in (b), changed the calendar year from 1998 to 1999.
Amended by R.1999 d.438, effective December 20, 1999.
- See: 31 N.J.R. 3035(a), 31 N.J.R. 4284(a).
Increased base week amounts, and substituted references to 2000 for references to 1999 throughout.
Amended by R.2000 d.488, effective December 4, 2000.
- See: 32 N.J.R. 3379(a), 32 N.J.R. 4258(c).
In (a), increased dollar amount; and in (a) and (b), changed the calendar year from 2000 to 2001.
Amended by R.2001 d.298, effective August 20, 2001.
- See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).
Amended N.J.S.A. references and substituted "\$103.00" for "\$158.00"; deleted (b).
Amended by R.2001 d.406, effective November 5, 2001.
- See: 33 N.J.R. 2945(a), 33 N.J.R. 3752(a).
Substituted "2002" for "2001".
Amended by R.2002 d.391, effective December 2, 2002.
- See: 34 N.J.R. 3056(a), 34 N.J.R. 4222(a).
Substituted "2003" for "2002".
Amended by R.2003 d.505, effective December 15, 2003.
- See: 35 N.J.R. 4038(a), 35 N.J.R. 5546(b).
Substituted "2004" for "2003".
Amended by R.2004 d.473, effective December 20, 2004.
- See: 36 N.J.R. 3986(a), 36 N.J.R. 5684(c).
Substituted "2005" for "2004".
Amended by R.2005 d.449, effective December 19, 2005.
- See: 37 N.J.R. 3219(a), 37 N.J.R. 5045(a).
Increased the base week amount from \$103.00 to \$123.00; updated the calendar year from 2005 to 2006.
Amended by R.2006 d.448, effective December 18, 2006.
- See: 38 N.J.R. 3487(a), 38 N.J.R. 5389(a).
Substituted "\$143.00" for "\$123.00" and "2007" for "2006".
Amended by R.2007 d.389, effective December 17, 2007.
- See: 39 N.J.R. 3713(a), 39 N.J.R. 5347(a).
Substituted "2008" for "2007".
Amended by R.2008 d.376, effective December 15, 2008.
- See: 40 N.J.R. 4913(a), 40 N.J.R. 6980(a).
Substituted "2009" for "2008".
Amended by R.2009 d.389, effective December 21, 2009.
- See: 41 N.J.R. 3194(a), 41 N.J.R. 4819(a).
Substituted "\$145.00" for "\$143.00" and "2010" for "2009".
Amended by R.2010 d.301, effective December 20, 2010.
- See: 42 N.J.R. 1992(a), 42 N.J.R. 3061(a).
Substituted "2011" for "2010".
Amended by R.2011 d.315, effective December 19, 2011.
- See: 43 N.J.R. 2275(a), 43 N.J.R. 3366(b).
Substituted "2012" for "2011".
Amended by R.2012 d.202, effective December 17, 2012.
- See: 44 N.J.R. 2161(a), 44 N.J.R. 3073(b).
Substituted "2013" for "2012".
Amended by R.2013 d.150, effective December 16, 2013.
- See: 45 N.J.R. 2021(a), 45 N.J.R. 2602(c).
Substituted "2014" for "2013".
Amended by R.2014 d.191, effective December 15, 2014.
- See: 46 N.J.R. 1861(a), 46 N.J.R. 2417(a).
Substituted "\$165.00" for "\$145.00" and "2015" for "2014".
Amended by R.2015 d.203, effective December 21, 2015.
- See: 47 N.J.R. 2234(a), 47 N.J.R. 3123(a).
Substituted "\$168.00" for "\$165.00" and "2016" for "2015".
Amended by R.2016 d.175, effective December 19, 2016.
- See: 48 N.J.R. 1778(a), 48 N.J.R. 2816(a).
Substituted "2017" for "2016".
Amended by R.2017 d.239, effective December 18, 2017.
- See: 49 N.J.R. 2881(a), 49 N.J.R. 4012(a).
Substituted "\$169.00" for "\$168.00" and "2018" for "2017".
Amended by R.2018 d.206, effective December 17, 2018.
- See: 50 N.J.R. 1928(a), 50 N.J.R. 2553(a).
Substituted "\$172.00" for "\$169.00" and "2019" for "2018".
Amended by R.2019 d.132, effective December 16, 2019.
- See: 51 N.J.R. 1395(a), 51 N.J.R. 1848(a).
Substituted "shall be \$200.00" for "is hereby promulgated as being \$172.00", and "2020" for "2019".

Case Notes

Lack of sufficient base employment weeks precluded eligibility for additional unemployment compensation benefits during training. In the Matter of P.I.M., 96 N.J.A.R.2d (UCC) 10.

Employee working for two employers during a calendar week may have those weeks considered together to calculate his weekly benefit rate. In the Matter of F.M.P., 96 N.J.A.R.2d (UCC) 2.

12:15-1.6 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(c)(4)(B) and 43:21-41(d)(2), in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility shall be \$10,000 for unemployment compensation benefit years and periods of disability and family leave commencing on or after January 1, 2020.

R.1984 d.520, effective November 5, 1984.
See: 16 N.J.R. 2345(b), 16 N.J.R. 3050(c).

Amended by R.1985 d.542, effective November 4, 1985 (operative January 1, 1986).
 See: 17 N.J.R. 2080(b), 17 N.J.R. 2668(a).
 Alternative earnings amount raised from \$4,100 to \$4,600.
 Amended by R.1986 d.454, effective November 17, 1986 (operative January 1, 1987).
 See: 18 N.J.R. 1788(a), 18 N.J.R. 2331(c).
 Alternative earnings raised from \$4,600 to \$4,900.
 Amended by R.1987 d.471, effective November 16, 1987 (operative January 1, 1988).
 See: 19 N.J.R. 1623(b), 19 N.J.R. 2196(e).
 Alternative earnings raised from \$4,900 to \$5,200.
 Amended by R.1988 d.535, effective November 7, 1988.
 See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).
 Alternative earnings raised from \$5,200 to \$5,500.
 Amended by R.1989 d.565, effective November 6, 1989.
 See: 21 N.J.R. 2700(a), 21 N.J.R. 3535(a).
 Alternative earnings amount raised to \$6,000 for 1990.
 Amended by R.1990 d.597, effective December 3, 1990.
 See: 22 N.J.R. 2885(a), 22 N.J.R. 3627(a).
 Alternative earnings amount raised to \$6,200 for 1991.
 Amended by R.1991, d.573, effective November 18, 1991.
 See: 23 N.J.R. 2611(a), 23 N.J.R. 3519(a).
 Alternative earnings amount raised to \$6,600 for 1992.
 Amended by R.1992 d.454, effective November 16, 1992.
 See: 24 N.J.R. 3014(a), 24 N.J.R. 4269(a).
 Revised text.
 Amended by R.1993 d.589, effective November 15, 1993.
 See: 25 N.J.R. 3922(a), 25 N.J.R. 5351(a).
 Amended by R.1994 d.552, effective November 7, 1994.
 See: 26 N.J.R. 3592(b), 26 N.J.R. 4410(a).
 Recodified from 12:15-1.7 and amended by R.1995 d.389, effective July 17, 1995.
 See: 27 N.J.R. 1946(a), 27 N.J.R. 2693(a).
 Amended by R.1995 d.628, effective December 4, 1995.
 See: 27 N.J.R. 3760(a), 27 N.J.R. 4898(a).
 Amended by R.1996 d.513, effective November 4, 1996.
 See: 28 N.J.R. 4044(a), 28 N.J.R. 4789(a).
 Amended by R.1997 d.464, effective November 3, 1997.
 See: 29 N.J.R. 3768(a), 29 N.J.R. 4689(b).
 In (a), changed the benefit rate; and in (a) and (b), substituted "1998" for "1997".
 Amended by R.1998 d.546, effective November 16, 1998.
 See: 30 N.J.R. 3150(a), 30 N.J.R. 4052(a).
 In (a), raised the alternative earnings amount from \$8,300 to \$8,700 and changed the calendar year from 1998 to 1999; and in (b), changed the calendar year from 1998 to 1999.
 Amended by R.1999 d.438, effective December 20, 1999.
 See: 31 N.J.R. 3035(a), 31 N.J.R. 4284(a).
 Increased alternative earnings amounts, and substituted references to 2000 for references to 1999 throughout.
 Amended by R.2000 d.488, effective December 4, 2000.
 See: 32 N.J.R. 3379(a), 32 N.J.R. 4258(c).
 In (a), increased dollar amount; and in (a) and (b), changed the calendar year from 2000 to 2001.
 Amended by R.2001 d.298, effective August 20, 2001.
 See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).
 Amended N.J.S.A. reference and substituted "\$5,200" for "\$9,500"; deleted (b).
 Amended by R.2001 d.406, effective November 5, 2001.
 See: 33 N.J.R. 2945(a), 33 N.J.R. 3752(a).
 Substituted "2002" for "2001".
 Amended by R.2002 d.391, effective December 2, 2002.
 See: 34 N.J.R. 3056(a), 34 N.J.R. 4222(a).
 Substituted "2003" for "2002".
 Amended by R.2003 d.505, effective December 15, 2003.
 See: 35 N.J.R. 4038(a), 35 N.J.R. 5546(b).
 Substituted "2004" for "2003".
 Amended by R.2004 d.473, effective December 20, 2004.
 See: 36 N.J.R. 3986(a), 36 N.J.R. 5684(c).
 Substituted "2005" for "2004".
 Amended by R.2005 d.449, effective December 19, 2005.
 See: 37 N.J.R. 3219(a), 37 N.J.R. 5045(a).

Increased the earnings amount from \$5,200 to \$6,200; updated the calendar year from 2005 to 2006.
 Amended by R.2006 d.448, effective December 18, 2006.
 See: 38 N.J.R. 3487(a), 38 N.J.R. 5389(a).
 Substituted "\$7,200" for "\$6,200" and "2007" for "2006".
 Amended by R.2009 d.82, effective March 2, 2009.
 See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).
 Inserted "and family leave".
 Amended by R.2009 d.389, effective December 21, 2009.
 See: 41 N.J.R. 3194(a), 41 N.J.R. 4819(a).
 Substituted "\$7,300" for "\$7,200" and "2010" for "2007".
 Amended by R.2010 d.301, effective December 20, 2010.
 See: 42 N.J.R. 1992(a), 42 N.J.R. 3061(a).
 Substituted "2011" for "2010".
 Amended by R.2011 d.315, effective December 19, 2011.
 See: 43 N.J.R. 2275(a), 43 N.J.R. 3366(b).
 Substituted "2012" for "2011".
 Amended by R.2012 d.202, effective December 17, 2012.
 See: 44 N.J.R. 2161(a), 44 N.J.R. 3073(b).
 Substituted "2013" for "2012".
 Amended by R.2013 d.150, effective December 16, 2013.
 See: 45 N.J.R. 2021(a), 45 N.J.R. 2602(c).
 Substituted "2014" for "2013".
 Amended by R.2014 d.191, effective December 15, 2014.
 See: 46 N.J.R. 1861(a), 46 N.J.R. 2417(a).
 Substituted "\$8,300" for "\$7,300" and "2015" for "2014".
 Amended by R.2015 d.203, effective December 21, 2015.
 See: 47 N.J.R. 2234(a), 47 N.J.R. 3123(a).
 Substituted "\$8,400" for "\$8,300" and "2016" for "2015".
 Amended by R.2016 d.175, effective December 19, 2016.
 See: 48 N.J.R. 1778(a), 48 N.J.R. 2816(a).
 Substituted "2017" for "2016".
 Amended by R.2017 d.239, effective December 18, 2017.
 See: 49 N.J.R. 2881(a), 49 N.J.R. 4012(a).
 Substituted "\$8,500" for "\$8,400" and "2018" for "2017".
 Amended by R.2018 d.206, effective December 17, 2018.
 See: 50 N.J.R. 1928(a), 50 N.J.R. 2553(a).
 Substituted "\$8,600" for "\$8,500" and "2019" for "2018".
 Amended by R.2019 d.132, effective December 16, 2019.
 See: 51 N.J.R. 1395(a), 51 N.J.R. 1848(a).
 Substituted "shall be \$10,000" for "is hereby promulgated as being \$8,600", and "2020" for "2019".

12:15-1.7 Definitions

The following words and terms, when used in N.J.A.C. 12:15-1.8, 1.9, and 1.10 shall have the following meanings:

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a domestic violence specialist established by the New Jersey Association of Domestic Violence Professionals.

"Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 et seq., by an adult or an emancipated minor:

1. Homicide (N.J.S.A. 2C:11-1 et seq.);
2. Assault (N.J.S.A. 2C:12-1);
3. Terroristic threats (N.J.S.A. 2C:12-3);
4. Kidnapping (N.J.S.A. 2C:13-1);
5. Criminal restraint (N.J.S.A. 2C:13-2);
6. False imprisonment (N.J.S.A. 2C:13-2);
7. Sexual assault (N.J.S.A. 2C:14-2);

8. Criminal sexual contact (N.J.S.A. 2C:14-3);
9. Lewdness (N.J.S.A. 2C:14-4);
10. Criminal mischief (N.J.S.A. 2C:17-3);
11. Burglary (N.J.S.A. 2C:18-2);
12. Criminal trespass (N.J.S.A. 2C:18-3);
13. Harassment (N.J.S.A. 2C:33-4); and/or
14. Stalking (N.J.S.A. 2C:12-10).

“Domestic Violence and Workforce Development Initiative Act training” means instruction with regard to the effective implementation of section 2, subsections (b), (c), (d) and (e) of the Domestic Violence and Workforce Development Initiative Act, P.L. 2005, c. 309 (N.J.S.A. 34:1A-1.7 et seq.).

“Domestic violence liaison” means a designated Department employee within each One-Stop Career Center, to whom a self-assessed victim of domestic violence shall be directed and whose functions shall include with regard to:

1. Unemployment compensation claimants, to make referrals to services determined to be appropriate in the case of the claimant, including, but not limited to, any appropriate referral to a designated domestic violence agency as defined at N.J.S.A. 43:21-5(j) or a community shelter for victims of domestic violence certified pursuant to standards and procedures established by N.J.S.A. 30:14-1 et seq., and to disclose the rights that the claimant may have to unemployment compensation pursuant to N.J.S.A. 43:21-5(j); or

2. Individuals utilizing counseling or employment services under N.J.S.A. 34:15B-38, 34:15D-7 or 43:21-59, to make referrals to services determined to be appropriate in the case of the individual, including, but not limited to, any appropriate referral to a designated domestic violence agency as defined at N.J.S.A. 43:21-5(j) or a community shelter for victims of domestic violence certified pursuant to standards and procedures established by N.J.S.A. 30:14-1 et seq., to disclose the rights that the individual may have to unemployment compensation pursuant to N.J.S.A. 43:21-5(j), and to assume responsibility for counseling the individual in the design of his or her Employability Development Plan, which plan shall be developed to include appropriate accommodations for the individual’s needs as a victim of domestic violence.

“Emancipated minor” means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

“One-Stop Career Center” means any of the facilities established, sponsored or designated by the State, a political subdivision of the State and a Workforce Investment Board in a local area to coordinate or make available State and local programs providing employment and training services or other employment-directed and workforce development programs and activities, including job placement services, and

any other similar facility, as may be established, sponsored or designated at any later time to coordinate or make available any of those programs, services or activities.

“Victim of domestic violence” means a person protected under the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 et seq., and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or other person who is a present or former household member. “Victim of domestic violence” also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim anticipates having a child in common, if one of the parties is pregnant. “Victim of domestic violence” also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

New Rule, R.2008 d.280, effective September 15, 2008.
See: 40 N.J.R. 1750(a), 40 N.J.R. 5241(a).

12:15-1.8 Training of employees who will have direct, in-person, contact with victims of domestic violence in the context of processing of unemployment compensation claims

(a) All Department employees who process unemployment compensation claims and who the Department anticipates will have direct, in-person, contact with claimants shall receive Domestic Violence and Workforce Development Initiative Act training.

(b) Training provided under (a) above shall be conducted by a Certified Domestic Violence Specialist or, if a Certified Domestic Violence Specialist is not available to conduct the training, by another person approved by the Commissioner, in consultation with the Commissioner of the Department of Community Affairs, who possesses the following qualifications and expertise in the area of domestic violence:

1. 180 hours of domestic violence specific education; and
2. 1,000 hours of direct service experience with domestic violence clients.

(c) With regard to the qualifications listed in (b)1 and 2 above, at the discretion of the Commissioner, in consultation with the Commissioner of the Department of Community Affairs, direct service experience with domestic violence clients may be substituted for up to 140 hours of domestic violence education at a rate of 28 hours of direct service experience with domestic violence clients for every one hour of domestic violence education required.

New Rule, R.2008 d.280, effective September 15, 2008.
See: 40 N.J.R. 1750(a), 40 N.J.R. 5241(a).

12:15-1.9 Employee responsibilities – self-screening

(a) Each Department employee who processes unemployment compensation claims and who has direct, in-person,

contact with claimants within the context of processing unemployment claims shall make available to the claimant a document, which contains the following information:

1. A self-screening questionnaire, which asks a series of yes/no questions of the claimant designed to ascertain whether the claimant is a victim of domestic violence;
2. An instruction, that if the claimant has answered yes to any of the questions listed in the self-screening questionnaire, he or she may contact the office's designated domestic violence liaison;

3. A statement that any of the information that the claimant shares with the domestic violence liaison about his or her fears, dangers or abuse will be kept confidential within the Department of Labor and Workforce Development and at any support service programs to which the claimant is referred, with the exception that if the claimant informs the Department employee that any child or chil-

dren are being abused, the Department of Labor and Workforce Development must, pursuant to N.J.S.A. 9:6-8.10, report that information to the Division of Youth and Family Services; and

4. A listing of New Jersey Statewide domestic violence hotlines.

New Rule, R.2008 d.280, effective September 15, 2008.
See: 40 N.J.R. 1750(a), 40 N.J.R. 5241(a).

12:15-1.10 Employee responsibilities – individual has identified himself or herself as a victim of domestic violence

(a) Where, as a result of the self-screening described under N.J.A.C. 12:15-1.9, a claimant discloses to a Department employee other than the office's designated domestic violence liaison that he or she is a victim of domestic violence, the Department employee shall direct the claimant to the office's domestic violence liaison.

(b) It shall be the responsibility of the domestic violence liaison with regard to each claimant who, as a result of the self-screening described under N.J.A.C. 12:15-1.9, discloses that he or she is a victim of domestic violence, to provide the following information to the claimant:

1. Referrals to services determined by the domestic violence liaison to be appropriate in the case of the claimant, which services shall include, but not be limited to, any appropriate referral to a designated domestic violence agency as defined at N.J.S.A. 43:21-5(j) or a community shelter for victims of domestic violence certified pursuant to standards and procedures established by N.J.S.A. 30:14-1 et seq.; and

2. The rights that the claimant may have to unemployment compensation pursuant to N.J.S.A. 43:21-5.

(c) It shall be the responsibility of the domestic violence liaison with regard to each claimant who, as a result of the self-screening described under N.J.A.C. 12:15-1.9, discloses that he or she is a victim of domestic violence, to ensure compliance by the Department with all requirements regarding confidentiality of the claimant, including, as applicable, the requirements of N.J.S.A. 34:15B-38, 34:15D-7 and 43:21-59 and the "Address Confidentiality Program Act," N.J.S.A. 47:4-1 et seq.

New Rule, R.2008 d.280, effective September 15, 2008.
See: 40 N.J.R. 1750(a), 40 N.J.R. 5241(a).

SUBCHAPTER 2. DISCLOSURE OF INFORMATION

12:15-2.1 Disclosure of information; general prohibition

No disclosure of information obtained at any time from, and identifiable to, specific workers, employers or other persons in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits

Laws shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

Case Notes

Government Records Council (GRC) erred in simply accepting a records custodian's statement that all the records an individual sought were protected by statute; neither N.J.S.A. 43:21-11(g), nor N.J.A.C. 12:15-2.1, 12:15-2.2 barred access to all the requested documents, and the GRC should have reviewed them to determine which documents were protected from production under the Open Public Records Act, N.J.S.A. 47:1A-1 to 47:1A-13. *Paff v. New Jersey Dep't of Labor*, 379 N.J. Super. 346, 878 A.2d 31, 2005 N.J. Super. LEXIS 242 (App.Div. 2005).

12:15-2.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Laws may be authorized in the following cases for the following purposes:

1. To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other employment service functions.

2. To any properly identified claimant for benefits or payments under an unemployment compensation or trade readjustment allowance law of the Federal government, or of a state or territorial government, or of a foreign government with which reciprocal arrangements have been made, or to his or her duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his or her claim;

i. Requests for claim-related information received directly from a claimant or employers who are parties to a claim, in writing, in person or by telephone are to be honored once the identity of the claimant or employer has been verified and provided that the intended use of such information does not conflict with the provisions of N.J.S.A. 43:21-11(g).

ii. Telephone, informal, or written requests from an attorney or other individual who states that he or she is the claimant's representative are not to be honored unless the claimant provides the Department with a signed and dated authorization for the release of the specified information;

3. To claimants, employers, and the public, disclosure of the names, geographic location and standard industrial classification (SIC) or North American Industry Classification (NAIC) of employers except where the disclosure of physical location may jeopardize the health and/or safety of an employer, its workforce or its clients. Such release shall not include number of employees, employment rank, employment size class, wages, taxes, client information or any other data identifiable to individual employers, to more than one employer with the same trade name, or to employees;

4. To officers or employees of any agency of the Federal government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with the administration of an unemployment compensation or trade readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Laws.

i. Requests by law enforcement agents for the release of Departmental information shall be made in writing, and the identity of the requester shall be verified prior to the release of information by the showing of a badge, warrant, written and signed request on agency letterhead, or some other similar indication of official purpose.

(1) Information which may be released includes the claimant's name, current address, current or most recent employer, and the next scheduled reporting date; and

(2) A request for surveillance or photography in connection with an investigation must be approved in writing by the Director of the Division of Unemployment Insurance or the Director of Temporary Disability Insurance as appropriate.

ii. Public officials shall establish that the information requested is to be used in furtherance of their public duties and shall certify in writing that the confidentiality of the disclosed information shall be maintained.

(1) Telephone inquiries from public officials may be answered verbally, provided that the identity of the caller can be verified; and

(2) Written requests by public officials on official letterhead shall be honored, provided that the information shall be used in furtherance of their public duty or provided that the claimant has requested that the information be released.

iii. Information may be disclosed to third parties under contract to public agencies if the disclosure of such information is for the sole purpose of assisting officials in the furtherance of their public duties. Both the third party and the public agency official must certify in writing that the disclosed information will be used only for this purpose and that the confidentiality of the disclosed information will be maintained as mandated by State and/or Federal law.

5. To officers or administrators of public or private organizations such as colleges, universities, or foundations to perform research or engage in public service activities, which can be expected to benefit the residents of New Jersey by improving or promoting their health, safety, economic or social well-being, provided that the benefit of

such research or public service activity to New Jersey residents is certified in writing by the administrator of the New Jersey municipal, county or State executive agency, or his or her designated representative, and provided that such disclosure shall not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Laws, and provided that the officer or administrator of the agency engaged in research or other public service activities certifies in writing that the confidentiality of the disclosed information shall be maintained and provided that the agency agrees to share the results of any research based on the disclosed information with the Department of Labor and Workforce Development upon request.

(b) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining the information requested in accordance with the New Jersey Right-to-Know Law, N.J.S.A. 47:1A-2.

Amended by R.1998 d.547, effective November 16, 1998.

See: 30 N.J.R. 3152(a), 30 N.J.R. 4052(b).

In (a), rewrote 3, 4iii and 5.

Amended by R.2006 d.2, effective January 3, 2006.

See: 37 N.J.R. 2295(a), 38 N.J.R. 333(b).

In (a)5, added "and Workforce Development."

Case Notes

Government Records Council (GRC) erred in simply accepting a records custodian's statement that all the records an individual sought were protected by statute; neither N.J.S.A. 43:21-11(g), nor N.J.A.C. 12:15-2.1, 12:15-2.2 barred access to all the requested documents, and the GRC should have reviewed them to determine which documents were protected from production under the Open Public Records Act, N.J.S.A. 47:1A-1 to 47:1A-13. *Paff v. New Jersey Dep't of Labor*, 379 N.J. Super. 346, 878 A.2d 31, 2005 N.J. Super. LEXIS 242 (App.Div. 2005).

12:15-2.3 Benefit appeal related information

Any request for the release of information connected with the proper presentation of an unemployment, temporary disability benefits or family leave insurance benefits claim before the Appeal Tribunal or the Board of Review shall be considered in accordance with N.J.A.C. 1:12-10.1.

New Rule, R.1998 d.547, effective November 16, 1998.

See: 30 N.J.R. 3152(a), 30 N.J.R. 4052(b).

Former N.J.A.C. 12:15-2.3, Unauthorized disclosure of information, was recodified to N.J.A.C. 12:15-2.4.

Amended by R.2009 d.82, effective March 2, 2009.

See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

Substituted a comma for "or" following "unemployment" and substituted "benefits or family leave insurance benefits" for "insurance".

12:15-2.4 Unauthorized disclosure of information

Nothing contained in this subchapter shall, or shall be construed to, contravene 20 C.F.R. 401.1 et seq., relating to the disclosure of official records and information.

Recodified from N.J.A.C. 12:15-2.3 by R.1998 d.547, effective November 16, 1998.

See: 30 N.J.R. 3152(a), 30 N.J.R. 4052(b)

SUBCHAPTER 3. REGISTRATION OF AUTHORIZED AGENTS

12:15-3.1 Application and scope

(a) The rules in this subchapter are promulgated by the Department of Labor and Workforce Development in order to implement N.J.S.A. 43:21-6.2 through 6.8, which require that an authorized agent who represents a party or parties for a fee in communications with, or hearings or other proceedings before, the Division in connection with claims for unemployment benefits, charges or tax assessments, shall register with the Division.

(b) The provisions of this subchapter shall apply to all authorized agents, as that term is defined in N.J.A.C. 12:15-3.2.

(c) The provisions of this subchapter shall not apply to an individual, organization or business when that individual's, organization's or business' representation of a party or parties is for the sole purpose of filing with the Division of Revenue, within the Department of the Treasury, on behalf of that party or those parties such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller or his or her designee (for example, when a payroll service represents an employer for the sole purpose of filing a WR-30, wage report, or NJ-927, contribution report, on behalf of that employer).

12:15-3.2 Definitions

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

"Authorized agent" means an individual, organization or business that, for a fee, provides representation to parties in communications with, or hearings or other proceedings before, representatives of the Division in connection with claims for unemployment benefits, charges or tax assessments. In the case of an individual authorized agent representing an organization or business that provides representation to parties for a fee, both the individual and the organization or business shall register with the Division and both will be held responsible as authorized agents. An attorney is not an authorized agent for purposes of this subchapter and is not required to register with the Division. If an attorney is employed by, or otherwise provides service to, an organization or business which is an authorized agent, the organization or business shall register with the Division and will be considered the authorized agent for purposes of this subchapter. An authorized agent representing an employer shall be regarded as an agent of an employing unit for the purposes of N.J.S.A. 43:21-16 and be subject to all requirements and penalties imposed by that section for an agent of an employing unit.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

"Department" means the Department of Labor and Workforce Development.

"Director" means the Assistant Commissioner of Income Security, within the Department of Labor and Workforce Development, or his or her designee.

"Division" means the Divisions of Unemployment Insurance and Employer Accounts, within the Income Security Branch of the Department of Labor and Workforce Development.

"Hearing or other proceeding" means, with regard to unemployment compensation claims and charges, a fact-finding, Appeal Tribunal or Board of Review proceeding, and with regard to tax assessments, a field audit, informal hearing or Office of Administrative Law proceeding.

"Party" means any of the following parties to an appeal, hearing or other procedure of the Division: the Division; a claimant for unemployment compensation; or any employer against whom charges may be made or tax liability may be assessed due to the claim for unemployment compensation.

"Representative of the Division" means any individual or entity, including any deputy, Appeal Tribunal, the Board of Review or any other individual or entity which represents the Division in connection with claims, benefits, charges or taxes for unemployment compensation.

"Tax assessment" means liability determined as the result of a field audit, informal hearing or Office of Administrative Law proceeding.

12:15-3.3 Administration and enforcement

The Division shall administer and enforce this subchapter. All the powers, duties and responsibilities vested in the Commissioner by N.J.S.A. 43:21-6.2 through 6.8, are hereby delegated to and vested in the Director, except the power to adopt, amend or repeal rules and the power to make final administrative determinations resulting from any of the hearings required or permitted to be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.

12:15-3.4 Registration required

(a) No authorized agent shall represent a party for a fee in any procedure with the Division regarding claims for unemployment benefits or any obligations of employers regarding charges or taxes for unemployment compensation, including any filing of information or any appeal, hearing or other proceeding regarding unemployment benefit claims, charges or taxes before any representative of the Division,

unless the authorized agent is registered with the Director pursuant to this subchapter.

(b) An authorized agent that seeks to register under this subchapter shall apply to the Director. For this purpose, the Division shall prepare a "New Jersey Department of Labor and Workforce Development Application for Authorized Agent Registration." This form shall be available from the Department at the address listed at N.J.A.C. 12:15-3.9(b)1.

(c) As part of its application to the Director, an authorized agent shall provide all required information and documents requested in the Application for Authorized Agent Registration.

(d) The information to be submitted under (c) above by an applying authorized agent, who is an individual, shall include the following identifying information:

1. The individual's name;
2. The individual's permanent address; and
3. The individual's telephone number.

(e) The information to be submitted under (c) above by an applying authorized agent, which is an organization or business, shall include the following identifying information:

1. Name of the organization or business;
2. Local address of the organization or business;
3. Telephone number of the organization or business;
4. Address of the organization's or the business' principal place of business, if different than in (e)2 above;
5. Telephone number of the organization's or the business' principal place of business, if different than in (e)3 above; and
6. The names of principals in the organization or business or others authorized to act on behalf of the organization or business and to receive notice.

(f) An applicant shall fully and accurately complete all relevant parts of the Application for Authorized Agent Registration. Failure to provide a complete application shall result in rejection without prejudice.

(g) The Director shall not charge authorized agents a fee for registration.

12:15-3.5 Issuance of registration number

(a) Upon receipt of a fully completed Application for Authorized Agent Registration and any additional information or documentation required by the Director, the Director shall assign the applying authorized agent a registration number.

(b) An individual authorized agent registered with the Director shall indicate his or her registration number in all

communications with, or appearances before, any representative of the Division.

(c) An individual authorized agent registered with the Director who is communicating or appearing on behalf of an organization or business registered with the Division shall indicate the registration number of the individual and the registration number of the organization or business in all communications with, or appearances before, any representative of the Division.

(d) Notwithstanding the attorney exemption contained within the definition of "authorized agent" at N.J.A.C. 12:15-3.2, if an attorney is employed by, or otherwise provides service to, an organization or business that is an authorized agent, the attorney shall provide the registration number of the organization or business in all communications with, or appearances before, any representative of the Division relative to that organization or business.

(e) A registered authorized agent shall within 10 days of any change in identifying information report the change to the Director.

(f) A registered authorized agent shall within 30 days after the authorized agent has ceased activity as an authorized agent notify the Director that it has ceased activity as an authorized agent and the date on which it ceased such activity.

12:15-3.6 Violations—first determination

As an alternative to or in addition to any other sanctions provided in N.J.S.A. 43:21-1 et seq., where the Director has determined that an authorized agent has violated more than one of the provisions of N.J.S.A. 43:21-6.2 through 6.8, or other provisions of N.J.S.A. 43:21-1 et seq., including any violations of the provisions of N.J.S.A. 43:21-16 that apply to the agents of employing units, the Director shall notify the authorized agent in writing of his or her finding and that the Division will monitor the authorized agent for a period not to exceed 12 months in order to ascertain whether the violations continue.

12:15-3.7 Violations—second determination

(a) At the conclusion of the period of monitoring referred to in N.J.A.C. 12:15-3.6, where the Director determines that the authorized agent has continued to violate any of the provisions of N.J.S.A. 43:21-6.2 through 6.8, or other provisions of N.J.S.A. 43:21-1 et seq., including any of the provisions of N.J.S.A. 43:21-16 that apply to the agents of employing units, the Director may suspend the registration of the authorized agent for a period of time determined to be appropriate by the Director.

(b) In evaluating the appropriateness of the period of suspension under (a) above, the Director shall consider the following factors:

1. Whether the violations represent a continuation of the violations identified in the previous determination;
2. The gravity and duration of the violations;
3. The amount of harm resulting from the violations;
4. The experience of the authorized agent;
5. The authorized agent's history of previous violations or complaints filed of a similar or different nature;
6. The number of violations identified;
7. The existence of mitigating circumstances;
8. Whether the authorized agent made good faith efforts to comply with any applicable requirements; and
9. Any other factors the Director considers relevant.

(c) Where the Director has determined under (a) above that the authorized agent has continued to violate any of the provisions of N.J.S.A. 43:21-6.2 through 6.8, or other provisions of N.J.S.A. 43:21-1 et seq., including any of the provisions of N.J.S.A. 43:21-16 that apply to the agents of employing units, the Director shall continue to monitor the conduct of the authorized agent for a period of not more than 12 months after the determination made under (a) above.

12:15-3.8 Violations—third determination

At the conclusion of the period of monitoring referred to in N.J.A.C. 12:15-3.7(c), where the Director determines that the authorized agent has continued to violate any of the provisions of N.J.S.A. 43:21-6.2 through 6.8, or other provisions of N.J.S.A. 43:21-1 et seq., including any of the provisions of N.J.S.A. 43:21-16 that apply to the agents of employing units, the Director shall revoke the registration of the authorized agent.

12:15-3.9 Appeals

(a) Whenever the Director shall find cause to suspend or revoke the registration of an authorized agent, he or she shall notify the authorized agent of the reasons therefor, in writing, and provide an opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All requests for a hearing shall be filed within 15 business days from the date of issuance of the notice.

1. All requests for a hearing shall be in writing and shall be directed to the following address:

NJ Department of Labor and Workforce
Development
Assistant Commissioner, Income Security
PO Box 058
Trenton, NJ 08625-0058.

(c) Following a hearing, the Commissioner shall issue a final administrative determination in accordance with the applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) In the absence of a timely request for a hearing, pursuant to (b) above, the determination of the Director shall be deemed the final administrative determination of the Commissioner in the given matter.

(e) Following the final administrative determination under either (c) or (d) above, any authorized agent who has had his or her registration suspended or revoked (the individual), or which has had its registration suspended or revoked (the organization or business), for violations enumerated in this subchapter shall not be permitted to represent a party for a fee in any procedure with the Division regarding claims for unemployment benefits or any obligations of employers regarding charges or taxes for unemployment compensation, including any filing of information, or any appeal, hearing or other proceeding regarding unemployment benefit claims, charges or taxes before any representative of the Division.

(f) All requests for a hearing shall be reviewed by the Director in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

CHAPTER 16

CONTRIBUTIONS, RECORDS, AND REPORTS

Authority

N.J.S.A. 43:21-1 et seq.

Source and Effective Date

R.2018 d.162, effective July 27, 2018.
See: 50 N.J.R. 1026(a), 50 N.J.R. 2012(a).

Chapter Expiration Date

Chapter 16, Contributions, Records, and Reports, expires on July 27, 2025.

Chapter Historical Note

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969.

Subchapter 20, Work Relief and Work Training Programs, was adopted as R.1987 d.102, effective February 17, 1987. See: 18 N.J.R. 1683(a), 19 N.J.R. 363(b).

Subchapter 21, Zip Code Reporting, was adopted as R.1989 d.39, effective January 17, 1989. See: 20 N.J.R. 2625(b), 21 N.J.R. 167(a).

Subchapter 10, Hearings, was repealed and Subchapter 22, Hearings, was adopted as R.1989 d.208, effective April 17, 1989. See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1990 d.217, effective March 23, 1990. See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Subchapter 23, Services Excluded from Coverage by the Unemployment Compensation Law, was adopted as R.1995 d.84, effective February 6, 1995. See: 26 N.J.R. 4730(a), 27 N.J.R. 501(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1995 d.138, effective February 9, 1995, and Subchapter 11, Excess Worker Deductions, was recodified as Subchapter 10, Subchapter 11, Special Employment Situations, was adopted as new rules, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed by R.1995 d.138, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.2000 d.68, effective January 27, 2000. See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Subchapter 24, Employee Leasing Companies, was adopted as R.2002 d.294, effective September 3, 2002. See: 34 N.J.R. 1892(a), 34 N.J.R. 3089(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2005 d.108, effective March 10, 2005. See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Subchapter 1A, Definitions, was adopted as new rules by R.2009 d.20, effective January 5, 2009. See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from March 10, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 2371(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2011 d.085, effective February 10, 2011. See: 42 N.J.R. 2371(a), 43 N.J.R. 639(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Contributions, Records and Reports, was scheduled to expire on February 10, 2018. See: 43 N.J.R. 1203(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2018 d.162, effective July 27, 2018. As a part of R.2018 d.162, the chapter was renamed Contributions, Records, and Reports, effective September 17, 2018. See: Source and Effective Date. See, also, section annotations.

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- 12:16-24.13 Rescission of the registration of an employee leasing company or professional employer organization
- 12:16-24.14 Dissolution of an employee leasing company or professional employee organization
- 12:16-24.15 Violations
- 12:16-24.16 Appeals

SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

ployment Compensation Law and list such number on the employer's records.

12:16-1.1 Ascertainment of worker's Social Security account number

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unem-

12:16-1.2 Reporting of worker's Social Security account number

Each employer shall report a worker's Social Security account number in making any report required by the Department with respect to such worker.

12:16-1.3 Evidence of application for Social Security account number

(a) If an employer has a worker engaged in employment who does not have a Social Security account number, the worker shall be requested to provide a receipt issued by an officer of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) The receipt shall be retained by the worker, but a copy or facsimile shall be retained by the employer.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-1.4 Employer to inform worker without Social Security account number

An employer shall inform each worker who has not secured a Social Security account number that such number must be filed on or before the seventh day after the date on which the worker first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.

12:16-1.5 Employer to inform worker in certain cases

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 1A. DEFINITIONS**12:16-1A.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Bond" or "Bonding" with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary caregiver(s). The development of this attachment or bond between child and caregiver(s) requires being in one another's presence.

"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.

"Child" means a biological, adopted, or foster child, step-child or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

"Civil union" means a civil union as defined in N.J.S.A. 37:1-29.

"Domestic partner" means a domestic partner as defined in N.J.S.A. 26:8A-3.

"Family leave" or "family temporary disability leave" means leave taken by a covered individual from work with an employer to:

1. Participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member; or
2. Be with a child during the first 12 months after the child's birth, if the individual or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual.

"Family leave" does not include any period of time during which a covered individual is paid temporary disability benefits pursuant to N.J.S.A. 43:21-25 et seq. (the New Jersey Temporary Benefits Law), because the individual is unable to perform the duties of the individual's employment due to the individual's own disability.

"Family member" means a child, spouse, domestic partner, civil union partner or parent of a covered individual.

"Family temporary disability benefits" or "family leave insurance benefits" means the benefits payable to a covered individual under P.L. 2008, c. 17 in order to compensate for wage loss suffered because of the need of the covered individual to participate in providing care for a family member or to bond with a newborn or newly adopted child.

"Incapable of self-care," solely for the purpose of defining the term "child," means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities, such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

“Parent of a covered individual” means a biological parent, foster parent, adoptive parent or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child.

“Physical or mental impairment,” solely for the purpose of defining the term “child” means:

1. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Private plan” means a private plan approved by the Division as defined in N.J.S.A. 43:21-32.

“Serious health condition” means an 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.

As used in this definition, “continuing medical treatment or continuing supervision by a health care provider” means:

1. A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two or more times by a health care provider; or
 - ii. Treatment by a health care provider on one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider;
2. Any period of incapacity due to pregnancy, or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
4. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer’s disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health

care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

“Week” means a period of seven consecutive days.

“12-month period” means, with respect to an individual who establishes a valid first claim for family leave insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim.

Administrative correction.
See: 41 N.J.R. 806(a).

SUBCHAPTER 2. RECORDS

12:16-2.1 Payroll records

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

Amended by R.1995, d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;
2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;
4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;
5. Such information as may be necessary to determine remuneration on a calendar week basis.
6. The number of base weeks (see N.J.S.A. 43:21-19(t)) and wages.

Amended by R.1995, d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.3 Records defined

Records are defined as all books of original entry plus any summarizations or other media used to post to a general ledger or its equivalent as well as all Federal and State tax returns. Records shall also include machine sensible data media used for recording, consolidating, and summarizing accounting transactions within an employing unit's automatic data processing system.

12:16-2.4 Records retention

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue

hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

Amended by R.1995, d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

SUBCHAPTER 3. POWER OF ATTORNEY**12:16-3.1 Power of attorney; requirements**

(a) An employer may grant power of attorney to another person to represent the employer before the Employment Security Agency in all matters affecting quarterly contribution reports, experience rating, tax liability, and claims for benefits.

(b) The power of attorney document must contain the following:

1. The corporate seal unless the employer is an individual or a partnership;
2. The signature of the employer(s) or duly authorized corporate officers;
3. Specific mention of the Employment Security Agency as the entity before whom representation will be made on behalf of the employer;
4. The signature of a notary public and the expiration date of commission;
5. The signature of the representative and a statement acknowledging power of attorney authorization.

(c) If the address of record for the employer is changed to that of the representative on the tax file, the benefit file, or both, the representative must accept all reports, notices, billings, and correspondence pertinent to the particular file on which the address had been changed.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

6. Benefits paid to employees in the public sector for work related illness under Sick Leave Injury (SLI);
7. Payment of sick leave made after retirement or separation from employment;
8. Family leave insurance benefits paid from the State plan;
9. Family leave insurance benefits paid by an insurance carrier under an approved private plan (see N.J.A.C. 12:16-4.11 for exceptions);
10. Family leave insurance benefits paid by a union under an approved self-insured private plan (see N.J.A.C. 12:16-4.11 for exceptions); and
11. Family leave insurance benefits paid by the employer under an approved self-insured private plan (see N.J.A.C. 12:16-4.11 for exceptions).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Section was "Sick leave payments". In the introductory paragraphs of (a), (b), and (c), inserted "and continuation pay for family leave"; in the introductory paragraph of (a), inserted "or for periods of family leave"; in (b)4 and (c)7, substituted a semicolon for a period at the end; and added (b)5 and (c)8 through (c)11.

12:16-4.3 Fringe benefit payments

(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.

(b) Taxable fringe benefits may include:

1. Vacation pay (both before and after dismissal);
2. Separation/severance pay (if made under a contractual obligation or by custom);
3. Guaranteed annual wage payments;
4. Difference between regular salary and jury duty pay;
5. Employer payments to employees' IRA;
6. Draw against future earnings (taxable when paid) unless the employer takes legal steps to recoup the overpayments;
7. Payment of employee's portion of Federal or State income tax unemployment/disability insurance taxes, or social security tax.
8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;
9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses; and
10. Expense allowances for which no accounting is made to the employer.

(c) Non-taxable fringe benefits may include:

1. Employer payments to retirement plans including, SEP-IRA plans (See (d) below);
2. Payments to hospitalization and medical/dental plans, and payments made under such plans;
3. Payments to union welfare funds;
4. Life insurance premiums;
5. Tuition reimbursements and payments.

(d) In general, the entire gross remuneration for services rendered by an employee is taxable up to the maximum yearly wage base. This includes all types of deferred compensation, including amounts deducted for payment into a deferred savings program that lets the employee set aside money for his or her retirement.

Amended by R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In (b): added 8-10.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

In (d), inserted ". This includes all types of deferred compensation," following "base".

12:16-4.4 Section 401(k) Plans

Effective January 1, 1984, employer contributions to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-4.5 Push payments

(a) Push payments are commission or bonus type payments made by a manufacturer to sales persons for "pushing" a certain product or product lines. These may also be referred to as push money, premiums, or incentive payments. Push payments take differing formats and are made in varying manners.

1. Push payments made directly by a manufacturer to its own sales-persons are taxable.
2. Payments made by one entity to employees of another are taxable remuneration to the actual employer when made pursuant to a contractual obligation, written or oral, expressed or implied.

12:16-4.6 Officer's remuneration

(a) For the purpose of the Unemployment Compensation and Temporary Disability Benefits Laws, each officer of a

12:16-4.18 Co-employed individuals, employee leasing clients

A client company is the employer responsible for contribution payments when remuneration for services is paid directly by the client company to workers co-employed under an employee leasing agreement.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.17 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS
12:16-5.1 Accrual as remuneration earned

(a) Employer's contributions shall accrue as remuneration is earned by workers in covered employment, but will not become due until payment or payment in kind is actually or constructively made.

(b) Payment of employers' contributions shall be made as prescribed within this chapter.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Cross References

Unemployment benefits, partial benefits, records in addition to those required under this section, see N.J.A.C. 12:17-4.1.

Case Notes

Hirees treated as employees for employment contributions if they lack independent business status. *Regency Real Estate Appraisal, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 21.

Service station owner was ordered to pay unemployment compensation contributions on wages paid to mechanic who performed automobile repairs at service station. *Carroll t/a Carroll Service v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 108.

Tile setters were contractors' employees, despite fact that tile setters considered themselves to be independent contractors and that it was industry practice to treat them as such, and thus contractors would be required to pay unemployment compensation and temporary disability benefit contribution arrearages. *Dandorf and Pezzano v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 105.

Attorney who received percentage of fees generated by other attorneys sharing office was liable for unemployment compensation benefits insurance contributions on wages of other attorneys. *Logan v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 102.

Engineer working out of his car was liable for unemployment compensation benefits insurance contributions for typist and draftsman that he occasionally employed. *Green v. Department of Labor*, 96 N.J.A.R.2d (LBR) 89.

Travel agency was required to pay unemployment compensation insurance tax for agents who booked travel arrangements out of central office. *Another World of Travel v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 87.

Public notice specifying dollar amounts for categories in (c).
 See: 21 N.J.R. 3564(c).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 22 N.J.R. 3057(c); 23 N.J.R. 2787(a); 24 N.J.R. 3182(a); 25 N.J.R. 6067(a); 26 N.J.R. 4228(c).
 Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 28 N.J.R. 4121(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 28 N.J.R. 4817(a).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 29 N.J.R. 4201(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 30 N.J.R. 3556(a).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 31 N.J.R. 3537(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 32 N.J.R. 4146(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 33 N.J.R. 3771(a).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 35 N.J.R. 3967(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 37 N.J.R. 3463(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 38 N.J.R. 3681(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 40 N.J.R. 220(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 41 N.J.R. 3326(a).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 42 N.J.R. 2646(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 43 N.J.R. 2534(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 44 N.J.R. 2254(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 45 N.J.R. 2405(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 46 N.J.R. 1909(b).
 Public Notice: Rates for board and room, meals and lodging furnished by employers.
 See: 47 N.J.R. 2312(d).
 Public Notice: Rates for board and room, meals, and lodging furnished by employers.
 See: 48 N.J.R. 2501(a).
 Public Notice: Rates for board and room, meals, and lodging furnished by employers.
 See: 49 N.J.R. 3368(a).
 Public Notice: Rates for board and room, meals, and lodging furnished by employers.
 See: 51 N.J.R. 113(a).

12:16-4.9 Tips and gratuities

If a worker receives gratuities and/or tips regularly in the course of employment from other than the employer, the gratuities and/or tips so received, if reported in writing to the employer, shall be considered taxable. The entire amount of charge tips are covered wages and are taxable to the maximum base even though the employee has not reported the entire amount to the employer. If the employee omits reporting tips, but the employer considers tips as part of an hourly rate for meeting the requirements of a Federal or State minimum wage law, it is considered that, in effect, tips have been reported to the employer to that extent and are therefore included as taxable wages.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-4.10 Temporary disability payments

(a) Payments made to employees under an approved Private Plan shall be considered as taxable remuneration, if payments are for a period of seven or less consecutive days following the date of disability.

(b) Payments made for periods after the seventh consecutive day following the date of disability shall not be considered as taxable.

(c) If the period of disability extends to the twenty-second day of disability and payment is made for the twenty-second day, then the first seven days, referred to in (a) above would not be considered taxable.

New Rule, R.1986 d.21, effective February 3, 1986.
 See: 17 N.J.R. 2850(b), 18 N.J.R. 284(b).

12:16-4.11 Family leave insurance benefits payments

(a) Family leave insurance benefits payments made to employees under an approved private plan shall be considered taxable remuneration if the payments are for a period of seven or less consecutive days following the first day that the individual establishes a claim.

(b) Family leave insurance benefits payments made for periods after the seventh consecutive day following the first day that the individual establishes a claim shall not be considered taxable remuneration.

(c) Family leave insurance benefits payments made for seven or less consecutive days following the first day that the individual establishes a claim referred to in (a) above would not be considered taxable remuneration when:

1. The period during which family leave insurance benefits have been paid extends to 22 consecutive days, or

Employer's failure to present evidence that former employee receiving unemployment compensation benefits had customarily engaged in separate business supported assessment for employer's failure to pay unemployment insurance. *Le Fante Associates Corp. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 81.

Science equipment salespersons and consultants were not independent contractors for purposes of unemployment compensation and temporary disability insurance contributions. *Arthur Williams & Associates, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 63.

Part-time business which was not financially independent of employer warranted unemployment insurance contribution assessment. *Software Systems v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 25.

Newspaper publisher must make unemployment insurance contributions for telemarketers. *New Jersey Shield Publishing Co. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 22.

Consultant to textile producer qualifies as employee rather than as exempt independent contractor for purposes of unemployment insurance contributions. *Sullivan, Carson, Inc. v. Department of Labor*, 96 N.J.A.R.2d (LBR) 17.

Courier service must make unemployment insurance contributions for couriers who did not qualify as independently established operators. *Cardar Enterprises v. Department of Labor*, 96 N.J.A.R.2d (LBR) 14.

12:16-5.2 Due dates

(a) Employer's contributions shall be paid and contribution reports filed on a quarterly basis, for all employers other than domestic employers, as follows:

<u>Quarter Ending</u>	<u>Due Date</u>
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

Effective January 1, 2000, domestic employers shall pay contributions and file a contribution report on an annual basis. For the calendar year ending December 31, the payment of contributions and the filing of the contribution report would be due January 31 following the close of the calendar year.

(b) Notwithstanding (a) above, the Controller or his or her designee is authorized to require an employer or employers to file contribution reports and pay contributions on a monthly or other basis when, in his or her discretion, it is considered necessary to do so.

Amended by R.1986 d.22, effective February 3, 1986.
 See: 17 N.J.R. 2851(a), 18 N.J.R. 285(a).
 Due dates for July, October and January changed from "31" to "30"; (c) deleted.
 Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
 Amended by R.2000 d.68, effective February 22, 2000.
 See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).
 Rewrote (a).

Cross References

Unemployment benefits, partial benefits, records in addition to those required under this section, see N.J.A.C. 12:17-4.1.

Case Notes

Penalties for failing to pay employer contributions could not be reduced for cooperation. *South Jersey Drywall Co., Inc. v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 35.

12:16-5.3 Payment of contributions

(a) The payment for each reporting period shall include contributions computed with respect to wages paid for employment in all work periods (weekly, biweekly, semi-monthly, monthly) ended within the reporting period.

(b) In computing and paying employer contributions to the Unemployment Compensation Fund or the State Disability Benefits Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) Payment of contributions shall be by electronic means, which includes, but is not limited to, electronic funds transfer (EFT) or Internet methods, and shall comply with the provisions regarding payment by electronic means contained in N.J.S.A. 54:48-4.1 et seq., which provisions are incorporated herein by reference.

(d) For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic payment requirement in (c) above, thereby permitting the employer or third-party payroll processor to make a payment of contributions for that reporting period by other than electronic means.

(e) Where an employer or third-party payroll processor has made application to the Commissioner under (d) above, the Commissioner may, upon a showing of good cause, as that term is defined under (f) below, waive the electronic payment requirement, thereby permitting the employer or third-party payroll processor to make a payment of contributions for that reporting period by other than electronic means.

(f) For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by New Jersey Court Rule 1:4-4, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of making electronic payment of his or her contributions for that reporting period to the Unemployment Compensation Fund or the State Disability Benefits Fund.

(g) Nothing in this section shall be construed to exempt an accelerated payor from its obligation either under N.J.A.C. 18:35-7.3(b) to remit monthly payment of withheld taxes or under N.J.A.C. 18:35-7.3(c) to remit weekly payment of withheld taxes, and nothing in this section shall be construed to exempt an accelerated payor from its obligation to remit such payments in the manner prescribed in either N.J.A.C.

corporation receiving remuneration for any personal services performed for that corporation shall be considered to be in its employ, and such payments shall be taxable.

(b) An election to report under the Small Business Corporation provisions of Section 1368 of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. Reasonable remuneration as determined through facts and circumstances, shall be considered wages for benefit and contribution purposes when paid to officers of corporations having made such an election if the officers perform any services.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Corporation engaged in construction trade that completely failed to provide a single document supporting its positions that its owner/CEO did not receive any pay from the corporation for services rendered and that a worker seen on a construction site where the corporation was providing services was not employed by the corporation was properly required to pay \$14,868.55 on account of unreported and/or underreported wages for specified years. *KBK Constr. & Materials, Inc., v. N.J. Dep't of Labor & Workforce Develop.*, OAL DKT. NO. LID 13903-13, 2016 N.J. AGEN LEXIS 203, Initial Decision (April 18, 2016).

CEO who was the sole stockholder and employee of a N.J. corporation was properly required to make contributions to unemployment and temporary disability benefit funds because governing regulations provided that any corporate officer receiving remuneration for personal services was to be considered to be in the corporation's employ and such payments were taxable. Neither the fact that the corporation was an "S corp" under federal tax law nor that it had never been audited by the IRS afforded grounds for relief. *N.J. Dep't of Labor & Workforce Dev v. Adirondack Chimney & Carpentry, Inc.*, OAL DKT. NO. LID 13905-13, 2015 N.J. AGEN LEXIS 394, Initial Decision (July 23, 2015).

12:16-4.7 Back pay, residuals, aliens

(a) Back pay awards are taxable remuneration where the discharge from employment was held invalid and reinstatement of the job ordered. Back pay is not taxable if considered damages for an illegal act without job reinstatement.

(b) Residual payments made to entertainers for reuse of commercial recordings are taxable if the original services were performed in this State.

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number. This subsection applies both to aliens who are workers legally admitted to the United States and to aliens who are workers and whose work status remains undocumented.

Amended by R.1989 d.208, effective April 17, 1989.
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

At (c) deleted all reference to Federal Regulation 31.3306(c)(18)-1, added, "All wages paid to aliens are taxable and reportable ...".

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

In (c), inserted the last sentence.

12:16-4.8 Other remuneration

(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from an employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employing unit for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations.

(b) The Controller or his or her designee shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. Where a money value for board and room, meals and lodging, or for any of such items, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon shall be deemed the cash value of such item or items.

2. The Controller or his or her designee shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—35 percent of the current taxable wage base divided by 52;

ii. Meals per day—20 percent of the current taxable wage base divided by 260;

(1) If less than 3 meals per day, the individual meals shall be valued as follows:

(A) Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;

(B) Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;

(C) Dinner (meals served between 4:00 P.M. and 12:00 midnight)—40 percent of meals rate; and

iii. Lodging per week—15 percent of the current taxable wage base divided by 52.

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

Amended by R.1986 d.23, effective February 3, 1986.

See: 17 N.J.R. 2859(a), 18 N.J.R. 284(a).

Remuneration rates raised.

Amended by R.1989 d.303, effective June 5, 1989.

See: 21 N.J.R. 690, 21 N.J.R. 1576(a).

Full board and room, meals and lodging rates changed from dollar amounts to percentages of the current taxable wage base divided by 52, in (c). Method of computation of dollar amounts added at (d).

Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (c), substituted "representative on the tax file" for "representative on the status (tax) file".

SUBCHAPTER 4. REMUNERATION

12:16-4.1 Remuneration defined

(a) The New Jersey Unemployment Compensation Law, at N.J.S.A. 43:21-19(p), states that "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.18.

1. Sick leave payments;
2. Fringe benefit payments;
3. Section 401(k) plans;
4. Push payments;
5. Officer's remuneration;
6. Back pay awards;
7. Residuals, aliens;
8. Other remuneration;
9. Tips and gratuities;
10. Temporary disability payments;
11. Personal use of a company vehicle;
12. Dependent care assistance programs;
13. Interest on below-market interest rate loans;
14. Section 125 Cafeteria plans;
15. Stock options;
16. Deferred payments;
17. Co-employed individuals, employee leasing clients; and
18. Family leave insurance benefits payments.

Amended by R.1990 d.217, effective April 16, 1990.
See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In b: changed "4.9" to "4.14."

Added (b) 10-13.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), amended the N.J.A.C. reference in the introductory paragraph and added 15 through 17.

Amended by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

In the introductory paragraph of (b), substituted "4.18" for "4.17"; in (b)16, deleted "and" from the end; in (b)17, substituted "; and" for a period at the end; and added (b)18.

Case Notes

CEO who was the sole stockholder and employee of a N.J. corporation was properly required to make contributions to unemployment and temporary disability benefit funds because governing regulations provided that any corporate officer receiving remuneration for personal services was to be considered to be in the corporation's employ and such payments were taxable. Neither the fact that the corporation was an "S corp" under federal tax law nor that it had never been audited by the IRS afforded grounds for relief. N.J. Dep't of Labor & Workforce Dev. v. Adirondack Chimney & Carpentry, Inc., OAL DKT. NO. LID 13905-13, 2015 N.J. AGEN LEXIS 394, Initial Decision (July 23, 2015).

12:16-4.2 Sick leave payments and continuation pay for family leave

(a) Sick leave payments (also known as continuation pay) and continuation pay for family leave made by employers to employees for periods of disability or for periods of family leave are wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes.

(b) Those types of sick leave payments and continuation pay for family leave deemed wages and therefore taxable are:

1. Continuation of pay during periods of sickness or injury;
2. Payment of the difference between temporary disability benefits paid under the State Plan or an approved Private Plan and full salary;
3. Payment of the difference between Workers' Compensation benefits and full salary;
4. Payment of unused sick leave made to an employee while still in employment;
5. Payment of the difference between family leave insurance benefits paid under the State plan or an approved private plan and full salary.

(c) Those types of sick leave payments and continuation pay for family leave deemed benefits and therefore non-taxable are:

1. Benefits paid from the State Plan for temporary disability insurance;
2. Benefits paid by an insurance carrier under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
3. Benefits paid by a union under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
4. Benefits paid by the employer under an approved self-insured Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
5. Benefits paid for work related injury under Workers' Compensation;

2. The claimant is eligible for at least one day of family leave insurance benefits in three separate weeks subsequent to the week in which the claim for family leave insurance benefits was established.

New Rule, R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.11, Personal use of a company vehicle, recodified to N.J.A.C. 12:16-4.12.

12:16-4.12 Personal use of a company vehicle

(a) The personal use of a company vehicle shall be taxable remuneration.

1. Such personal use shall be valued pursuant to Section 61 of the Internal Revenue Code.

(b) If personal use is present (except for de minimis usage such as a lunch stop during company business), and such personal use has not been properly reported, the personal use shall be valued at the highest manner available.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.11 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.12, Dependent care assistance programs, recodified to N.J.A.C. 12:16-4.13.

12:16-4.13 Dependent care assistance programs

(a) Employer contributions on behalf of, or reimbursements to, an employee under a Dependent Care Assistance Program (Section 129 of the Internal Revenue Code) shall be taxable remuneration.

(b) If a Dependent Care Assistance Program is financed by an employee voluntary salary reduction, the amount of remuneration received under the program shall be determined as that amount which the employee could have elected to receive in lieu of making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.12 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.13, Interest on a below-market interest rate loan, recodified to N.J.A.C. 12:16-4.14.

12:16-4.14 Interest on a below-market interest rate loan

The amount of remuneration generated by a below-market interest rate loan shall be the same amount as that computed for purposes of F.U.T.A.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.13 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.14, Section 125 cafeteria plans, recodified to N.J.A.C. 12:16-4.15.

12:16-4.15 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Recodified from N.J.A.C. 12:16-4.14 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.15, Stock options, recodified to N.J.A.C. 12:16-4.16.

12:16-4.16 Stock options

(a) The value of a stock option is taxable remuneration at the time the option is exercised when the individual exercising the option is a current employee. The value of the stock option is also taxable remuneration when exercised after separation from employment but during the same calendar year in which the separation occurred.

(b) The value of a stock option is not taxable remuneration when exercised by a former employee in a calendar year following the calendar year in which the separation occurred.

(c) A wholly owned subsidiary company is the employer responsible for contribution payments when an employee of the subsidiary company exercises stock options of the parent corporation.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.15 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.16, Deferred payments, recodified to N.J.A.C. 12:16-4.17.

12:16-4.17 Deferred payments

Deferred payment of remuneration for services accrued by an employer that is not included as part of a qualified pension, profit sharing or stock option plans or another pension arrangement where a trust is created is taxable remuneration at the time payment is made.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.16 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.17, Co-employed individuals, employee leasing clients, recodified to N.J.A.C. 12:16-4.18.

18:35-7.3(b) (for monthly payments) or 7.3(c) (for weekly payments).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Added (c) and (d).

Amended by R.2009 d.64, effective February 17, 2009.

See: 40 N.J.R. 5527(a), 41 N.J.R. 886(a).

Deleted (c); recodified former (d) as (c); in (c), inserted "shall be", "which", and a comma following "methods"; and added (d) through (g).

12:16-5.4 First contributions of newly subject employer

(a) Except as to liability by election as provided in N.J.A.C. 12:16-14 (Election of Coverage), the first contribution payment of an employer who becomes newly liable in any calendar year shall be payable on or before the due date of the reporting period in which the subject status occurs.

(b) The first payment of such an employer becoming liable in the course of a calendar year shall include employer contributions with respect to all wages paid for employment from the first day of subjectivity in the calendar year. Subjectivity is defined as the employer's contribution date as determined by the Controller or his or her designee. (See N.J.A.C. 12:16-5.2 with respect to due dates.)

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-5.5 Installment payments

The Controller or his or her designee may permit the payment of liability in installments, but if any installment is not paid on or before the due date, the total amount of the unpaid liability shall become payable upon notice and demand by the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-5.6 Voluntary payment of additional contributions

(a) A voluntary payment of an additional contribution must be made within 30 days after the date of mailing of the Form AC-174.1, Notice of Employer Contribution Rate, unless, for good cause, the date of payment has been extended by the Controller or his or her designee for not more than an additional 60 days or October 28, whichever is earlier. A request for an extension for good cause must be made in writing to the Controller or his or her designee within the initial 30 day period.

(b) No payment forwarded as an additional contribution will be applied to the recomputation of an employer's rate for the current tax year (July 1-June 30) if the employer has any reporting or payment delinquency as to any period prior to the current tax year. In such case, the remittance will be first applied to the past indebtedness and the balance, if any, will be considered as an additional contribution.

(c) Any adjustment resulting from the payment of an additional contribution shall be made only in the form of a credit against accrued or future contributions.

(d) The voluntary payment of additional contributions will not affect employers having one of the following:

1. The basic rate which is assigned where an employer has not been subject to the Law during some period in each of the last three consecutive calendar years;
2. A specially assigned rate, determined by the employer's reserve balance and the unemployment trust fund reserve ratio, which rate is assigned because during the past three calendar years, there has been, at least, one calendar year in which no contributions have been paid, even though there was covered employment; or

3. During the year the transfer occurs and the next full calendar year, the rate assigned under N.J.S.A. 43:21-7(c)(7)(D) when an employer transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the predecessor employer and the successor in interest are, at the time of the transfer, under common ownership, management or control.

(e) The determination of the amount of an additional contribution is the sole responsibility of the employer.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.2006 d.425, effective December 4, 2006.
See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

In (d)1, substituted a semicolon for a period at the end; in (d)2, substituted "; or" for a period at the end; and added (d)3.

12:16-5.7 Payment in guaranteed funds

The Controller or his or her designee may require payment in guaranteed funds of any amount required to be paid under the Unemployment Compensation Law of New Jersey, the Temporary Disability Benefits Law of New Jersey or rules or regulations promulgated thereunder, in any case in which he or she considers such type of payment necessary or desirable.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-5.8 Seamen's wages

(a) For the purpose of this section, the term "work period" means the period of a voyage or engagement of the crew of a vessel under "Articles of Agreement" pursuant to Title 46 of the United States Code.

(b) Notwithstanding any other provisions of N.J.A.C. 12:16-5.2 (Due Dates) and 12:16-5.3 (Basis of contribution payments), if a work period as defined in (a) above began in one calendar quarter and ended in another calendar quarter, the total amount of wages for such work period may be reported for the calendar quarter in which such work period terminated, and contributions with respect to wages so earned paid accordingly.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-5.9 Special fringe benefit agent accounts

(a) Special fringe benefit agents accounts may be approved by the Controller or his or her designee for the purpose of reporting payments such as vacation and holiday payments which have been negotiated in union-management contracts. Approval will only be given when it is shown that to do otherwise would create a hardship on the employer.

(b) The agent is assigned the basic rates for a new employer and is responsible for:

1. The timely submission of quarterly reports with payment of all contributions attributed to special fringe benefit payments; and

2. The submission of a quarterly benefit payment allocation schedule listing the employers it represents and their corresponding taxable wages.

(c) The primary employer will maintain its own individual rates based on his or her own employment experience and is responsible for:

1. The submission of quarterly reports timely with payment of all contributions due exclusive of the reporting of the agent account; and

2. The annual submission of a request for refund of excess employer contributions together with a listing which outlines in detail names of employees, Social Security numbers, taxable wages by the employer, taxable wages by the agent, unemployment contributions deducted by the agent.

(d) Upon auditing and verifying the request, the Controller or his or her designee will make proper transfers of taxable wages and payments to the primary employer's account and issue a refund of any net credits outstanding. The refund is to be computed at the unemployment rate of the employer or the basic rate whichever is the lesser.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 6. REIMBURSEMENT OPTION FOR NON-PROFIT ORGANIZATIONS

12:16-6.1 Application

(a) Any non-profit organization, as described in Section 501(c)(3) of the Internal Revenue Code and which is exempt from income tax under Section 501(a) of the Internal Revenue Code, may elect to reimburse the Unemployment Trust Fund for benefits paid to its former employees by filing a written notice of its intention not later than 120 days immediately following the date of its subjectivity defined at N.J.A.C. 12:16-5.4(b), or not later than 30 days after the organization has been notified of its subjectivity, whichever is later.

(b) Any non-profit organization, as described in (a) above which has been paying contributions under the Unemployment Compensation Law and wishes to make such an election may do so by filing a written notice of its intention no later than February 1 of any calendar year.

(c) For good cause, the period within which a notice of election must be filed may be extended and a retroactive election may be permitted.

(d) Upon an employer's written notice of its intention to elect the reimbursement option, the Controller or his or her designee shall supply the form on which the employer will request the reimbursement option, and the form shall be completed and returned to the Controller or his or her designee within 30 days from the date of mailing.

(e) The employer shall be advised as to the disposition of its request and, if approved, such approval shall be conditioned upon the employer's meeting the security requirement as defined in N.J.A.C. 12:16-6.2(a) below.

(f) Other than the date of subjectivity defined in N.J.A.C. 12:16-5.4(b), an election for reimbursement in lieu of contributions shall be effective only as of the first day of January of any calendar year.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-6.2 Financial security requirements

(a) A non-profit organization electing coverage under the reimbursement option may be required to file with the Controller or his or her designee within 30 days after the effective date of its election, a security bond or to deposit with the Controller or his or her designee monies or securities in an amount as determined by the Controller or his or her designee. This amount shall not be less than the organization's taxable wages for the preceding calendar year or the estimated taxable wages for the current calendar year, whichever is the greater, multiplied by the maximum unemployment insurance contribution rate in effect at the beginning of the calendar year.

1. If the security requirement is not met within the prescribed time limits, the previously issued conditional approval shall be withdrawn retroactively to its effective date, and the employer shall be liable for contributions as if such approval had not been issued.

2. The Controller or his or her designee may make a periodic review of the adequacy of the security furnished by the non-profit reimbursable employer to determine if any adjustment is necessary.

3. The Controller or his or her designee may deduct from any monies deposited under (a) above by a non-profit organization, or may sell the securities so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest or penalties.

4. The Controller or his or her designee may extend for good cause the applicable filing, deposit or adjustment period by not more than 90 days.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-6.3 Termination

(a) If any non-profit employer fails to meet the security requirements as set forth in N.J.A.C. 12:16-6.2(a) the Controller or his or her designee may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for no less than 24 calendar months beginning with the first quarter in which such termination becomes effective.

(b) Any non-profit organization which has been making payments in lieu of contributions for a minimum of two calendar years and wishes to change to the contribution method of payment may do so by filing a written notice of its intentions no later than February 1 of any calendar year.

(c) When an election to make payments in lieu of contributions is terminated, and the non-profit organization begins or resumes payments under the contribution method, it may not revert to the reimbursement option for at least two full calendar years after such termination.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-6.4 Liability

(a) If a non-profit organization's election to make payments in lieu of contributions is terminated by the Controller or his or her designee, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned during the effective period of the election.

(b) As of the effective date of the termination of an election to make payments in lieu of contributions, a non-profit organization shall become liable to pay unemployment contributions on taxable wages paid to its employees.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Public Notice: Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages during Calendar Year 2005.
See: 36 N.J.R. 4545(a).

SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS

12:16-7.1 Purpose

The purpose of this subchapter is to outline the conditions under which a governmental employer can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment benefits may use the surplus amount remaining in an unemployment trust fund.

New Rule, R.1988 d.437, effective September 6, 1988.
See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Contributory" means the method of payment by which a governmental entity or instrumentality pays unemployment contributions into an unemployment trust fund.

"Governmental entity or instrumentality" means the State of New Jersey, any instrumentality of New Jersey or any

political subdivision thereof, or any instrumentality of the State and one or more other states or political subdivisions.

"Reimbursable" means the method of payment by which a governmental entity or instrumentality finances benefits by payments in lieu of contributions.

New Rule, R.1988 d.437, effective September 6, 1988.
See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

12:16-7.3 Application

(a) Any governmental entity or instrumentality which is or becomes subject to the Unemployment Compensation Law and wishes to elect to pay contributions rather than to reimburse the Unemployment Trust Fund for benefits paid may do so by filing a written notice of its intention not later than 120 days immediately following the date of its subjectivity (defined at N.J.A.C. 12:16-5.4(b)) or not later than 30 days from the date such entity or instrumentality is notified of its subjectivity, whichever is the later.

(b) Any governmental entity or instrumentality which has been reimbursing the Unemployment Trust Fund and wishes to change its method of financing by electing to pay contributions as of January 1 of any year, may do so by filing a written notice of its intentions no later than February 1 of that same calendar year.

(c) The employer shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions, or other substantiating document which confirms the election of the contributory option.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.S.R. 61(a), 27 N.J.R. 919(a).

12:16-7.4 Finance

(a) On or before September 1 of each year, the Controller or his or her designee shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and shall recommend a contribution rate for the following calendar year to the Commissioner.

(b) The Commissioner of Labor and Workforce Development shall establish the contribution rate for the following calendar year after considering the recommendation.

(c) Any governmental entity or instrumentality electing to pay contributions shall appropriate each year, out of its general funds, monies to pay the projected costs of contributions at the rate determined under (b) above. These funds are to be held in a trust fund by the governmental entity or instrumentality strictly for this purpose. Any surplus in the fund may be retained in reserve for payment of benefits costs for subsequent years either by contributions or payments in lieu of contributions.

Amended by R.1988 d.437, effective September 6, 1988.
See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

Substituted "contributions" for "benefits" and deleted "covered"; recodified from 4.2.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), inserted "and Workforce Development" following "Labor".

12:16-7.5 Use of surplus funds

(a) A governmental entity or instrumentality using the contributory method may use the surplus in its unemployment trust fund pursuant to the following conditions:

1. The governmental entity or instrumentality must request, in writing, permission to use a portion of the surplus funds. Upon written approval of the Commissioner or his or her designee, the governmental entity or instrumentality may proceed with its withdrawal of funds;

2. Worker contributions shall not be diverted from the fund;

3. In addition to worker contributions that remain in the fund, an amount equal to the highest one of the previous three years' contribution payments must remain in the fund to cover the next year's anticipated contributions.

(b) A governmental entity or instrumentality using the reimbursable method may not use the surplus in its unemployment fund for any purpose other than payment of benefits.

1. Governmental entities or instrumentalities which change from the reimbursable method to the contributory method pursuant to N.J.S.A. 43:21-7.3(b) may divert surplus trust funds subject to the provisions of this subchapter.

i. Surplus trust funds may be diverted only after the governmental entity or instrumentality has received written approval from the Commissioner or his or her designee.

New Rule, R.1988 d.437, effective September 6, 1988.

See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-7.6 Termination

(a) Any governmental entity or instrumentality which has been paying contributions for a minimum of two calendar years and wishes to change to making payments in lieu of contributions may do so by filing a written notice of its intention no later than February 1 of the calendar year for which the change is requested.

(b) When an election to pay contributions is terminated and the governmental entity or instrumentality resumes making payments in lieu of contributions, it may not revert to the contributory option for at least two full calendar years after such termination.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-7.7 Liability

(a) The change of financing options shall have no effect upon the liability incurred under the prior financing option.

(b) If the governmental entity or instrumentality election to pay contributions is terminated, the governmental entity or instrumentality shall remain liable for all contributions incurred during the period of its election to pay contributions.

(c) As of the effective date of the termination of an election to pay contributions, a governmental entity or instrumentality shall become liable to make payments in lieu of contributions.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-7.8 Penalties

(a) A governmental entity or instrumentality which diverts funds in violation of the provisions of this subchapter shall be required to immediately restore the amount diverted to the fund.

(b) A governmental entity or instrumentality which fails to comply with the provisions of this subchapter, shall be liable for a fine not to exceed \$50.00 per day for each day of violation.

New Rule, R.1988 d.437, effective September 6, 1988.

See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

SUBCHAPTER 8. GROUP ACCOUNTS

12:16-8.1 Establishment

(a) Two or more employers liable for payments in lieu of contributions may apply for the establishment of a group account for the purpose of sharing the risk of unemployment benefit costs.

(b) The group account will be established as of the first day of any calendar quarter and will remain in effect for not less than two calendar years unless otherwise determined by the Controller or his or her designee.

(c) The request for establishment of a group account shall be filed by the designated group agent listing the names and New Jersey registration numbers assigned by the Controller or his or her designee to the employers seeking group membership. The request shall be accompanied by consent documents executed by each applicant for membership authorizing the group agent to act in its behalf for the group account. The employers shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions or other substantiating document which confirms the intent of the employer to become a member of the group.

(d) In establishing the group account, the Controller or his or her designee may modify or waive the security required of any of the group members and in lieu thereof the Controller or his or her designee may establish a security requirement of the group as a whole.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-8.2 Participation

(a) New members may be added to an established group at the request of the group. The request for the addition of a new member will require the filing of a consent document executed by the new applicant for membership authorizing the group agent to act in its behalf for the group account.

(b) No employer may become a member of a group if it has any reporting or payment delinquency.

(c) No employer may be a member of more than one group at a time.

12:16-8.3 Termination

(a) Group membership will be terminated for any employer upon the cancellation of its reimbursement payment option as of the effective date of the cancellation.

(b) With the approval of the Controller or his or her designee, membership in the group will be terminated for any member at the request of that member or at the request of the group agent. The membership will be terminated at the end of the calendar quarter in which the request for termination is received.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-8.4 Liability

(a) The group account will provide risk sharing for its members only with respect to unemployment benefits liability and interest attributable thereto.

(b) Membership in the group will not relieve any member of any liability charged to its account.

(c) The group will be liable for payment of reimbursable unemployment benefits charged to its members' accounts during their period of membership in the group; plus the reimbursable unemployment benefits charged to any terminated member through the next two complete calendar quarters following the date of its membership termination.

(d) Amounts received in payment of liability payable through the group account will be applied against the outstanding liability of the group as a whole in each quarterly period, beginning with the outstanding liability in the earliest quarterly period.

12:16-8.5 Dissolution

(a) Request for dissolution of a group account will require the consent of two-thirds of its active members. The effective date of dissolution will be determined by the Controller or his or her designee.

(b) The group agent must advise the Controller or his or her designee of the ratio of each member's liability to the total liability of the group, if there is any group liability outstanding at the time of dissolution. Such liability will be due immediately from each employer in accordance with the balance of group liability remaining in its individual account as determined by the group agent.

(c) A group account may be dissolved by the Controller or his or her designee for reporting or payment delinquency, failure to post required bond or other security, or similar good cause.

(d) Except as required herein, the Controller or his or her designee is not a party to any agreement between the group, the group agent or any of its members.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS

12:16-9.1 Workers' contribution-trust fund

(a) Every employer shall withhold workers' contributions from their wages at each time of payment of such wages.

(b) In withholding workers' contributions from their wages and in paying any contributions to the Unemployment Compensation Fund, the State Disability Benefits Fund, the Workforce Development Partnership Fund, and the Health Care Subsidy Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) The moneys so withheld, while in the possession of the employer, shall constitute a trust fund and shall be accounted for apart from employer's contributions.

(d) Such account shall be kept posted up to date by the employer so as to show at all times the amount withheld from workers, the amount of each remittance to the Controller or his or her designee, and the amount of workers' contributions withheld but not remitted to the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-9.2 Evidence of amounts withheld furnished workers

(a) Every employer, at the time of making each payment of wages, shall furnish to each of its workers a statement showing clearly the total amount deducted for contributions

for the Unemployment Compensation Fund, the State Disability Benefits Fund and the Workforce Development Partnership Fund.

(b) The statements shall be such as can be delivered to workers to enable them to determine whether the total amount of their contributions is correctly computed.

(c) A notation on a paycheck or a pay envelope showing the total wages and, as a separate item, the amount deducted for contribution to the Controller or his or her designee for the said funds will constitute compliance with the provisions of this section.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2011 d.085, effective March 7, 2011.

See: 42 N.J.R. 2371(a), 43 N.J.R. 639(a).

In (a), substituted a comma for "and" following "Benefits Fund" and deleted ", and the Health Care Subsidy Fund" following "Partnership Fund".

12:16-9.3 Reporting and paying workers' contributions

(a) Every employer shall include on its contribution report the amount of contributions due and payable on behalf of its workers.

(b) Every contribution report shall be accompanied by a remittance for the amount of both the employer contributions and the contributions payable by the employer on behalf of its workers.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS

Case Notes

Claimant is provided with notice and a hearing before imposition of a fine. *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978), on remand 166 N.J.Super. 523, 400 A.2d 119.

12:16-10.1 Excess disability deductions

If a worker receives wages from more than one employer, and the sum of the contributions required and deducted from his or her wages and deposited in the State Disability Benefits Fund, plus the contributions, if any, required and deducted from his or her wages, toward the costs of benefits under one or more plans approved under N.J.S.A. 43:21-33, or the sum of all contributions required and deducted from his or her wages toward the costs of benefits under two or more such private plans, if covered only by said plans, exceeds an amount equal to one-half of one percent of the taxable wage base in any calendar year, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

Recodified from 12:16-11.1 and amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-10.2 Excess unemployment, workforce development and supplemental workforce fund for basic skills deductions

If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the State Unemployment Compensation Fund or in a trust fund for the purpose of repaying benefits, the Workforce Development Partnership Fund and the Supplemental Workforce Fund for Basic Skills exceeds seventeen-fortieths of one percent of the taxable wage base for the period beginning January 1, 2002, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation within two calendar years after the end of the calendar year in which the wages were received.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Rewrote (a) and (b); and in (c), substituted "January 1, 1998" for "January 1, 1993 and ending December 31, 1997" following "beginning".

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Rewrote the section.

Amended by R.2011 d.085, effective March 7, 2011.

See: 42 N.J.R. 2371(a), 43 N.J.R. 639(a).

Section was "Excess unemployment, health care, workforce development and supplemental workforce fund for basic skills deductions". Deleted "the Health Care Subsidy Fund," following "repaying benefits," and deleted a comma following "Partnership Fund".

12:16-10.3 Wage deduction statements

(a) Employers shall furnish to workers the following information on Form W-2:

1. The taxpayer identification number assigned by the Division of Revenue;
2. The private plan number, if any, assigned by the Bureau of Private Plans; and
3. Any amount deducted in accordance with State law.

(b) The refund of any deductions in excess of the legal maximum made from a worker's wages by an individual employer is the responsibility of the employer who made such excess deductions.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Rewrote (a)1.

Case Notes

Claimant is provided with notice and a hearing before imposition of a fine (citing former N.J.A.C. 12:16-10.4). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:16-10.4 Refund of excess deductions

Any worker who meets the requirements of N.J.A.C. 12:16-10.1 and 10.2 but is not required to file a New Jersey Gross Income Tax return or whose claim has been rejected by the Division of Taxation, may apply to the Controller or his or her designee for a refund of any excess unemployment, disability, health care and/or workforce contributions made from his or her wages if he or she makes a claim therefor within two calendar years after the end of the calendar year in which the wages were paid.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Claimant is provided with notice and a hearing before imposition of a fine (citing former N.J.A.C. 12:16-10.5). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:16-10.5 Assessment for governmental reimbursable employers

(a) All governmental entities who repay benefits in lieu of contributions shall be notified of the applicable portion to be repaid to the Controller or his or her designee from their trust funds for the amounts of any excess unemployment insurance deductions either refunded to their employees or credited to their employees' New Jersey State Gross Income Tax.

(b) Payment to the Controller or his or her designee shall be made within 30 days of the date of mailing of the notice. Payments received after the 30 day period shall be liable to the assessment of interest as specified in N.J.S.A. 43:21-14(b).

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Case Notes

Under former rules, the Division Director determined the nature and scope of the penalty to be imposed, which decision is reviewed by the Commissioner (citing former N.J.A.C. 12:16-10.6). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS**12:16-11.1 Real estate managing agents**

(a) An individual working for an agent of a property owner is an employee of the property owner, if the agent operates on a fee plus expenses basis. This type of arrangement gives the agent a fee plus reimbursement of all operating expenses on a dollar for dollar basis.

(b) An individual working for an agent of a property owner is an employee of the agent, if the agent operates on a flat fee

basis. This type of arrangement gives the agent a flat fee rather than reimbursing expenses on a dollar for dollar basis.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-11.2 Limited liability companies

(a) A limited liability company (LLC) is composed of one or more authorized persons who complete and file a certificate of formation with the Division of Revenue. An LLC must have one or more members and may commence operations at any date or time after filing the certificate of formation.

(b) An LLC consisting of two or more members shall be classified as a partnership unless classified otherwise for Federal income tax purposes.

(c) An LLC consisting of one member shall be classified as a sole proprietorship unless the LLC elected a corporate classification for Federal income tax purposes by completing IRS Form 8832; or if the member is a corporation. In the event that the member is a corporation, and where the LLC is disregarded for Federal income tax purposes, the member shall be considered the employer with regard to all individuals performing services for the LLC.

New Rule, R.1997 d.219, effective May 19, 1997.
See: 29 N.J.R. 834(b), 29 N.J.R. 2463(a).
Amended by R.1999 d.439, effective December 20, 1999.
See: 31 N.J.R. 3037(a), 31 N.J.R. 4284(b).

In (a), substituted "one" for "two" following "must have" in the second sentence; in (b), substituted a reference to LLCs consisting of two or more members for a reference to LLCs; and added (c).

Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), substituted "Division of Revenue" for "Secretary of State of the State of New Jersey".

SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS**12:16-12.1 Separate accounts**

Each employer, for each calendar year in which it is subject to the Unemployment Compensation and Temporary Disability Benefits Law, is separately and distinctly liable for contributions, up to the yearly maximum taxable wage, based upon remuneration paid to each of its employees regardless of whether or not any such employees are common to other employing units which are jointly owned or controlled by the same interests.

12:16-12.2 Common paymaster

(a) If two or more related entities concurrently employ the same individual and compensate that individual through a common paymaster that is one of the related entities, each entity will be considered to have paid the individual the amounts that it actually dispersed.

(b) If one of the related entities actually dispersed all the wages as agent for the rest, but such wage payments were charged back to the individual entities for record keeping, income tax or other purposes, the individual related entities shall be considered to be the employer for purposes of the Unemployment Compensation and the Temporary Disability Benefits Laws.

(c) A single entity can report the wages of related companies if all the following conditions are satisfied.

1. The reporting entity has a majority interest and control over the related companies;
2. The related entities share a general system of operation and each entity is organized for a common purpose or each is a coordinated part of the entire operation; and
3. The reporting entity exercises control of central financing, common management, personnel policies, operational procedures, pricing, collections and other related operating practices.

(d) A single entity electing to report wages of any related entities must inform the Division of Employer Accounts of its intent to report related entities. Notification thereof must be received by the Division at least 30 days prior to the effective quarter in which the common reporting is to commence. All entities reported in common must be identified, including employer identification numbers, legal and trade names, business locations and the type of activity conducted by each entity.

(e) A single entity electing to report wages of related entities, must report all the employees of the related entities and reporting cannot be limited to classifications or categories of workers.

(f) A single entity electing to report wages of related entities, will result in the employment experience of the related entities being merged into the reporting entity's experience rating in order to determine an aggregate employment experience rating.

(g) In the event that a single entity elects to report wages and pay contributions of related entities, each related entity will remain jointly and severally liable for its share of the contributions.

Amended by R.2003 d.105, effective March 3, 2003.
See: 34 N.J.R. 4019(a), 35 N.J.R. 1274(b).
Added (c) through (g).

SUBCHAPTER 13. REPORTS

12:16-13.1 Reports required

Every employer shall file with the Division of Revenue, within the Department of the Treasury, such contribution and statistical reports, and reports of wages paid to individual

workers as may be required by the Controller or his or her designee, and every employing unit shall file with the Division of Revenue, within the Department of the Treasury, such reports as may be required by the Controller or his or her designee with respect to employment as shall be necessary to determine its status under the law.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.2006 d.425, effective December 4, 2006.
See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

Inserted "with the Division of Revenue, within the Department of the Treasury," two times.

12:16-13.2 Force and effect of instructions relating to reports

The employer shall follow and comply with all departmental instructions relating to any report or report form required or provided by a department.

12:16-13.3 Penalty for failure to file reports

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through the date of receipt recorded by the Division of Revenue, within the Department of the Treasury.

(b) If an employer or employing unit who has been granted an extension of time fails to file its report on or before the termination of the period of extension for the filing thereof, the penalty for failure to file shall be payable from the original due date as if no extension had been granted.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.2006 d.425, effective December 4, 2006.
See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

In (a), substituted "date of receipt recorded by the Division of Revenue, within the Department of the Treasury" for "post mark date on the envelope in which the report is received by the Controller or his or her designee".

12:16-13.4 Penalty abatement

(a) The Controller or his or her designee may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. The employer makes a written request for penalty abatement consideration within one year of the date of initial notification that a penalty has been assessed;
2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department. All evidence and documentation in support of

the employer's request must be submitted with the affidavit;

3. All quarterly contribution reports and employer reports of wages paid have been filed;

4. All liability, other than the penalty for which abatement is being requested, has been paid.

(b) The Department will consider the following factors in evaluating a request for penalty abatement:

1. The reason(s) for the late, inaccurate or incomplete filing;

2. The number of quarters involved;

3. The effect the late, inaccurate or incomplete filing had on the operations of the Department;

4. The employer's history of compliance;

5. Previous request(s) for abatement; and

6. Other factors brought to the attention of the Department by the employer.

(c) Penalty abatement consideration will be based upon the written submissions of the employer and the records on file in the Department, unless it is determined that a material and controlling dispute of fact exists.

(d) When abatement is granted for only a part of the penalty, the employer must make payment of all unabated penalty within 30 days of the date of notification of the decision of the Controller or his or her designee. If this condition is not met, the abatement may be rescinded.

(e) Request for reconsideration must be submitted within 30 days of receipt of the penalty abatement determination. The request must show the following:

1. New information not presented in the original application that may change the outcome, along with reasons why the information was not previously submitted; or

2. That material previously submitted was not considered.

(f) All decisions made by the Controller or his or her designee concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

Amended by R.1989 d.208, effective April 17, 1989.

See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Imposed a time limit for the filing of penalty abatement requests; (b) added, establishing Controller's decisions as final administrative decision of the Department appealable to Appellate Division of NJ Superior Court.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-13.5 Wages paid reported currently

(a) The Controller or his or her designee may require any employer to report wages paid to every worker employed within seven days from the date of payment thereof, if the Controller or his or her designee deems it necessary for the effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law. Failure to comply will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

(b) Any employer or employing unit required to comply with N.J.A.C. 12:16-13.1 (Reports required) will be duly notified by the Department.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-13.6 Reporting wages, remuneration and other information

(a) An employer or employing unit shall furnish the record of wages and remuneration paid to a worker, and such other information as may be required under the provisions of N.J.S.A. 43:21-6(b).

(b) Failure to comply with (a) above will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-13.7 Wage reporting

(a) Each employer other than employers of domestic service workers shall file a report, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, within 30 days after the end of each quarter in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury, listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns.

(b) For the purposes of this section, a "domestic service worker" is an employee in a private home of the employer, such as a babysitter, nanny, health aide, private nurse, maid, caretaker, yard worker or similar domestic employee.

(c) Effective January 1, 2001 and each year thereafter, each employer of domestic service workers shall file an annual Employer Report of Wages Paid, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, listing the name, social security number and wages paid to each employee and the number of base weeks worked each quarter during the preceding calendar year. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns. For the calendar

year ending December 31, the report would be due January 31 following the close of the calendar year.

1. An employer subject to this subsection shall, within 10 days of the separation from employment of an employee in domestic service, report to the Commissioner of the Department of Labor and Workforce Development, on a form determined by the Commissioner, wage information for all calendar quarters of employment in a manner as described in (c) above not previously reported and such other information as may be required to process an unemployment or disability compensation claim.

(d) Any employer who fails, without reasonable cause, to comply with the reporting requirements of this section shall be liable for a penalty in the following amount for each employee who is not included in the report or for whom the required information is not accurately or timely reported:

1. For the first failure for one quarter, in any eight consecutive quarters, \$5.00 for each employee;
2. For the second failure for any quarter, in any eight consecutive quarters, \$10.00 for each employee; and
3. For the third failure of any quarter, in any eight consecutive quarters, and for any failure in any eight consecutive quarters which failure is subsequent to the third failure, \$25.00 for each employee.

(e) The following pertains to electronic reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 2000, all employers who would report in excess of 50 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury.

2. For all calendar quarters subsequent to the quarter ending December 31, 2000, all third-party payroll processors, who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," shall file such reports for all such clients via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury, if the aggregate number of all employees for all clients processed and so reported by the third-party exceeds 50 in any calendar quarter.

3. For all calendar quarters subsequent to the quarter ending December 31, 2005, all employers who would report in excess of 10 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports and any amendments to such reports via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury.

4. For all calendar quarters subsequent to the quarter ending December 31, 2005, all third-party payroll proc-

essors who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," shall file such reports and any amendments to such reports for all clients via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury, if the aggregate number of all employees for all clients processed and so reported by the third party exceeds 10 in any calendar quarter.

5. For all calendar quarters subsequent to the quarter ending December 31, 2007, all employers who would report in excess of four employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports and any amendments to such reports via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury.

6. For all calendar quarters subsequent to the quarter ending December 31, 2007, all third-party payroll processors who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," shall file such reports and any amendments to such reports for all clients via electronic transmission in a form and manner specified by the Division of Revenue, within the Department of the Treasury, if the aggregate number of all employees for all clients processed and so reported by the third-party exceeds four in any calendar quarter.

7. For all calendar quarters subsequent to the quarter ending December 31, 2008, all employers and all third-party processors shall file Form WR-30, "Employer Report of Wages Paid," and any amendments to the "Employer Report of Wages Paid," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury, regardless of the number of employees reported.

8. For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic filing requirement in (e)7 above, thereby permitting the employer or third-party payroll processor to file his or her wage report for that reporting period by other than electronic means.

9. Where an employer or third-party payroll processor has made application to the Commissioner under (e)8 above, the Commissioner may, upon a showing of good cause, as that term is defined under (e)10 below, waive the electronic filing requirement, thereby permitting the employer or third-party payroll processor to file his or her wage report for that reporting period by other than electronic means.

10. For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by New Jersey Court Rule 1:4-4, which affidavit shall state that the

employer or third-party payroll processor has no access to a computer, through any means, for the purpose of filing his or her wage report for that reporting period electronically.

11. If an employer or a third-party payroll processor fails to comply with the provisions of this subsection, the penalties specified in (d) above shall apply.

12. The filing of form WR-30 via electronic transmission includes Internet methods.

Amended by R.1989 d.208, effective April 17, 1989.
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

At (a) added language to clarify use of -0- in a column rather than to leave blank.

Amended by R.1994 d.527, effective October 17, 1994.
See: 26 N.J.R. 2863(a), 26 N.J.R. 4194(a).

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.1999 d.439, effective December 20, 1999.
See: 31 N.J.R. 3037(a), 31 N.J.R. 4284(b).

In (c), rewrote 3, inserted new 4 and 5, recodified former 4 and 5 as 6 and 7, and changed an internal reference in the new 6.
Amended by R.2001 d.476, effective December 17, 2001.

See: 33 N.J.R. 3403(b), 33 N.J.R. 4379(b).

In (a), inserted "other than employers of domestic service workers" preceding "shall file a report"; inserted new (b) and (c), and recodified former (b) and (c) as new (d) and (e).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), substituted "Each employer" for "For the calendar quarter commencing July 1, 1984, and each quarter thereafter, each employer"; in (c), inserted "and Workforce Development" following "Department of Labor"; rewrote (e).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

Substituted "Division of Revenue, within the Department of the Treasury" for "Controller or his or her designee" throughout; in (a) and the introductory paragraph of (c), inserted ", as required by the Controller"; and in (e)8, substituted "Employers" for "Employer".

Amended by R.2007 d.153, effective May 7, 2007.

See: 39 N.J.R. 16(a), 39 N.J.R. 1743(a).

Rewrote (e).

Amended by R.2009 d.64, effective February 17, 2009.

See: 40 N.J.R. 5527(a), 41 N.J.R. 886(a).

Deleted former (e)7; added (e)7 through (e)10; and recodified former (e)8 and (e)9 as (e)11 and (e)12.

12:16-13.8 Suspension of business

(a) Where a suspension of the business operations of any employer occurs in this State, such employer shall give advance notice thereof to the Controller or his or her designee. In the event that it is impracticable to give such advance notice, the employer shall notify the Controller or his or her designee within 48 hours after such suspension.

(b) Such notice shall be filed with the Controller or his or her designee and shall contain the following information:

1. The name and address of the employer;
2. The expected date or date of suspension of business operations;
3. The reason(s) for such action;

4. Whether such suspension of operations is permanent or temporary;

5. Whether wage and separation information will be available for a period of one year from date of suspension of business operations;

6. The name and address of the person or organization from whom such information will be obtainable.

(c) Upon receipt and examination of the notice required in (a) and (b) above, the Department shall determine whether or not the employer shall be required to furnish wage and separation reports.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-13.9 Transfer of business

(a) When a transfer, in whole or in part, of the business operations of any employer occurs in this State it shall be the responsibility of the acquiring unit to notify the Controller or his or her designee of such acquisition within 30 days of the transfer.

(b) The successor shall supply the Controller or his or her designee with the name, address and, if possible, the registration number of the acquired unit.

(c) This notification, if possible, should be made on Form NJ REG; otherwise, a letter will be acceptable.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (c), substituted "Form NJ REG" for "Form UC-1".

12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have its account withdrawn to an inactive status upon written application to the Controller or his or her designee.

1. The inactivity date shall not be earlier than the last day of the preceding calendar quarter.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-13.11 Contribution reporting

(a) Each employer other than employers of domestic service workers shall file a report, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, within 30 days after the end of each quarter in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury, listing the total of all wages paid, the wages paid in excess of the taxable maximum, the taxable wages on which contributions are due, the

number of workers employed during the pay period and the number of workers insured under a "private plan" for temporary disability insurance. If wages or base weeks are zero, then the employer must enter "-0-" in the appropriate columns.

(b) For all quarters subsequent to the quarter ending December 31, 2008, the report required to be filed in (a) above shall also include the number of workers insured under a "private plan" for family leave insurance pursuant to P.L. 2008, c. 17.

(c) For the purposes of this section, a "domestic service worker" is an employee in a private home of the employer, such as a babysitter, nanny, health aide, private nurse, maid, caretaker, yard worker or similar domestic employee.

(d) Each employer of domestic service workers shall file an annual report, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, listing the total of all wages paid, the wages paid in excess of the taxable maximum, the taxable wages on which contributions are due and the average number of workers employed for each quarter. If the wages are zero, then the employer must enter "-0-" in the appropriate columns. For the calendar year ending December 31, the report would be due January 31 following the close of the calendar year.

(e) The following pertains to electronic reporting:

1. For all quarters subsequent to the quarter ending December 31, 2008, all third-party payroll processors and employers other than employers of domestic service workers shall file Form NJ-927, "Employer's Quarterly Report" and any amendments to the "Employer's Quarterly Report," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

2. For all calendar years subsequent to the calendar year ending December 31, 2008, all employers of domestic service workers shall file form NJ-927H, "Domestic Employer's Annual Report," and any amendments to the "Domestic Employer's Annual Report," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

3. For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic filing requirement in (e)1 or 2 above, thereby permitting the employer or third-party payroll processor to file his or her contribution report for that reporting period by other than electronic means.

4. Where an employer or third-party payroll processor has made application to the Commissioner under (e)3 above, the Commissioner may, upon a showing of good cause, as that term is defined under (e)5 below, waive the

electronic filing requirement, thereby permitting the employer or third-party payroll processor to file his or her contribution report for that reporting period by other than electronic means.

5. For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by New Jersey Court Rule 1:4-4, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of filing his or her contribution report for that reporting period electronically.

(f) Nothing in this section shall be construed to exempt an accelerated payor from its obligation either under N.J.A.C. 18:35-7.3(b) to remit monthly payment of withheld taxes or under N.J.A.C. 18:35-7.3(c) to remit weekly payment of withheld taxes, and nothing in this section shall be construed to exempt an accelerated payor from its obligation to remit such payments in the manner prescribed in either N.J.A.C. 18:35-7.3(b) (for monthly payments) or 7.3(c) (for weekly payments).

New Rule, R.2009 d.64, effective February 17, 2009.
See: 40 N.J.R. 5527(a), 41 N.J.R. 886(a).

SUBCHAPTER 14. ELECTION OF COVERAGE

12:16-14.1 Application for election

(a) An employing unit desiring to elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Laws may request from the Controller or his or her designee forms for voluntary election to become an employer, or to extend its coverage to individuals performing services which do not constitute employment.

(b) The forms for voluntary election to become an employer under the Unemployment Compensation and Temporary Disability Benefits Laws or to extend coverage shall be prescribed by the Controller or his or her designee. Election of coverage shall be made in writing, on the forms and in the manner prescribed by the Controller or his or her designee. The payment of contributions does not constitute an application for the election of coverage for otherwise exempt services. Any payment of contributions for an otherwise exempt individual shall be reimbursed to the employer for a period of up to not more than two years from the date of payment.

(c) The employing unit making application for voluntary election of subject status must, at the time of making such application, be exempt and have at least one individual, not a member of his or her immediate family, in employment who would be affected by the voluntary election.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
 Amended by R.2000 d.68, effective February 22, 2000.
 See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).
 In (b), added the second through fourth sentences.

12:16-14.2 Date of filing

The date of filing a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-14.3 Effective date of election

In cases where claims for benefits against an employing unit are known to be pending, no retroactive voluntary election shall be approved for an effective date prior to the first day of the calendar quarter in which such claims were filed, unless contributions were actually paid for prior quarter(s) before the date(s) of claim for benefits.

12:16-14.4 Election subject to approval

(a) Any written election for a period prior to the date of filing shall become binding upon approval by the Controller or his or her designee, and notification of the approval shall be forwarded to the employer.

(b) If for any reason the Controller or his or her designee does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-14.5 Effect of election approval

(a) Each approval of an election shall state the date upon which the approval becomes effective.

(b) The first contribution payment, of any employing unit which elects to become an employer, shall become due and shall be paid on or before the due date (see N.J.A.C. 12:16-5.2) of the reporting period during which the conditions of becoming an employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval.

(c) Such first payment shall also include workers' contributions with respect to all wages paid for employment occurring after the date when the employing unit satisfied all the conditions of becoming an employer by election.

SUBCHAPTER 15. JOINT ACCOUNTS

12:16-15.1 Application for a voluntary joint account

(a) Two or more employers desiring to have their accounts joined for the purpose of N.J.S.A. 43:21-7 of the Unemployment Compensation Law may request from the Controller or his or her designee forms for making application therefor.

(b) Such forms shall be completed and filed jointly by all the employers desiring to have their accounts joined into one account.

(c) The form of application for the establishment of a joint account shall be prescribed by the Controller or his or her designee.

(d) This rule is not to be construed to make available joint accounts for Temporary Disability Insurance contributions.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-15.2 Eligibility for a voluntary joint account

(a) A joint account shall be established only after it has been shown to the satisfaction of the Controller or his or her designee that the conditions of eligibility have been met as indicated below:

1. The employers desiring to have their accounts joined shall have filed with the Controller or his or her designee Form UC-38 Application for Establishment of a Joint Account not later than May 31 of such calendar year;
2. At the time of application, all the employers requesting such joint account have employment covered by the New Jersey Unemployment Compensation Law and are owned or controlled directly or indirectly by the same interests;
3. None of such employers or their predecessors, if any, were participating in another joint account throughout the preceding calendar year;
4. The requirements of paragraphs (3) and (4) of N.J.S.A. 43:21-7(c) of the Unemployment Compensation Law have been met by all such employers;
5. Such employers intend to maintain the common ownership or control for at least three calendar years and will notify the Controller or his or her designee promptly of any change in such ownership or control; and
6. All contributions, interest, penalties and assessments which have become due from such employers on or before the date of application have been paid.

Amended by R.1995 d.138, effective March 6, 1995.
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-15.3 Effective date: duration of a voluntary joint account

(a) A voluntary joint account shall be established only as of the first day of any calendar year and shall become effective after approval by the Controller or his or her designee.

(b) The voluntary joint account so established shall remain in force for not less than three full calendar years, subject to the provisions of N.J.A.C. 12:16-15.5 (Modifications) and 12:16-15.6 (Dissolution).

(c) Contribution rates based on such voluntary joint accounts shall become effective for the fiscal year which begins on the first day of July of each calendar year following the approval of the application.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-15.4 Maintenance of a voluntary joint account

(a) Separate accounts shall be maintained for each employer participating in a voluntary joint account.

(b) At the beginning of each calendar year the separate accounts shall be combined for the purpose of computing a joint contribution rate.

(c) Such joint rate shall be the contribution rate for each employer participating in the voluntary joint account.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-15.5 Modification of a voluntary joint account

(a) Another employer may be added to an existing voluntary joint account if all the employers involved jointly make application for a new voluntary joint account and comply with the requirements of this subchapter.

(b) If during any calendar year an employing unit participating in a voluntary joint account ceases to be an employer under the New Jersey Unemployment Compensation Law, or ceases to be owned or controlled by the same interests, such employing unit shall be separated from the voluntary joint account as of the first day of such calendar year, but shall continue for the current fiscal year with the contribution rate computed under the voluntary joint account.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

12:16-15.6 Dissolution of a voluntary joint account

(a) Voluntary joint accounts may be dissolved as of January 1 of any calendar year under any one of the conditions set forth below:

1. If at any time the Controller or his or her designee finds that with respect to such calendar year any one of the eligibility conditions set forth in N.J.A.C. 12:16-15.2 (Eligibility) with respect to employment, contributions, interest, penalties and assessments, and ownership or control, no longer exists and that it would not be in the best interest of the State to continue the voluntary joint account; or

2. Upon written application of one or more of the employers whose accounts have been joined, if such application is filed with the Controller or his or her designee on or before January 31 of such calendar year and the Controller or his or her designee finds that the voluntary joint account has been in existence for at least three calendar years. The form of application for dissolution of a voluntary joint account shall be prescribed by the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 16. NOTICE TO WORKERS**12:16-16.1 Unemployment compensation coverage**

(a) Every employer subject to the provisions of the Unemployment Compensation Law of New Jersey (including every employer who has elected to become subject pursuant to N.J.S.A. 43:21-8) shall post and maintain printed notices to its employees informing them that they are covered by the Unemployment Compensation Law of New Jersey, and that the employer has been so registered by the Controller or his or her designee.

(b) Such notices shall be displayed in prominent and conspicuous places at each worksite.

(c) No such notice shall be posted by any person, employing unit or employer who has not complied with the provisions of the Unemployment Compensation Law, or who, in accordance with the provisions of the law, has ceased to be an employer as defined in the law.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).
Rewrote (c).

12:16-16.2 (Reserved)

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Repealed by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).
Section was "Termination of subject status".

SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. TRANSFER OF EMPLOYMENT
EXPERIENCE**12:16-18.1 Transfer of predecessor's whole experience**

(a) Upon receipt of notification that a predecessor employer has transferred its organization, trade or business, or substantially all its assets to a successor in interest, the Controller or his or her designee shall transfer the employment experience of the predecessor employer to the successor in interest if the employment experience of the predecessor with respect to the organization, trade or business, or assets may be considered indicative of the anticipated employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) The successor in interest may, within four months of the date of such transfer of the organization, trade or business, or assets, or thereafter upon good cause shown, request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate to the satisfaction of the Controller or his or her designee, that the employment experience of the predecessor employer is not indicative of the future employment experience of the successor in interest.

(c) If a predecessor employer who transfers in whole his, her or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the predecessor employer and the successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience of the successor in interest.

(d) The transfer of employment experience under (c) above is mandatory and not subject to appeal or protest.

(e) Upon the transfer in whole of the organization, trade, assets or business of a predecessor employer to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the Controller or his or her designee finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

Rewrote (b); and added (c) through (e).

Case Notes

Construction company was successor entity. *Spencer White and Prentis Associates Corporation v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 39.

12:16-18.2 Rate following transfer of predecessor's whole experience

(a) Any employer who acquires the organization, trade or business, or assets of another employer, shall continue to pay contributions at the rate currently assigned, for the period from the date of acquisition to the following July 1.

(b) Any employer who acquires the organization, trade or business, or assets of another employer, and the employment experience of the predecessor employer represents substantially all of the employment experience of the successor in interest and may be considered indicative of the future employment experience of the successor in interest, shall have its contribution rate determined by combining the employment experience of the predecessor employer and successor in interest as they appear on the records of the Controller or his or her designee. Such rate shall be in effect for the period from the date of acquisition to the following July 1.

(c) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of an employer shall be assigned the contribution rate of the predecessor employer for the period from the date of acquisition to the following July 1.

(d) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of two or more employers shall be assigned the rate of the predecessors, if they have the same rate. If the predecessors do not have the same rate, the successor employer shall be assigned a contribution rate based upon the combined employment experience of the predecessors as of the date of acquisition to the following July 1.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Formerly "Transfer of part of predecessor's experience by application".

12:16-18.3 Transfer of predecessor's experience in part

(a) Where both a predecessor employer and a successor in interest are, at the time of the acquisition by the successor in interest of a portion of the business of the predecessor employer, under common ownership, management or control, then the employment experience attributable to the portion of the business so acquired shall be transferred to and combined with the employment experience of the successor in interest.

(b) The transfer of employment experience under (a) above is mandatory and not subject to appeal or protest.

(c) A predecessor employer and successor in interest, except those addressed under (a) above, may jointly make

application, on Form UC-47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade or business, or assets acquired by the successor in interest. Under the circumstances set forth in this subsection, the employment experience will be transferred if the following conditions are met:

1. Either the predecessor or successor in interest shall report the transfer and acquisition within 120 days from the date of acquisition.
2. Both the predecessor and the successor in interest must complete and file form UC-47 within 120 days from the date of acquisition.
3. The employment experience of the predecessor employer with respect to the portion of the organization, trade or business, or assets to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(d) The predecessor and successor in interest may choose to have the employment experience transferred either on an actual or percentage basis.

1. Under the first option, the actual portion of the organization, trade or business, or assets which have been transferred is both distinguishable and identifiable and can be supported through the furnishing by the predecessor and successor in interest of all of the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer.
2. Under the second option, the portion of employment experience to be transferred, which is both distinguishable and identifiable from the predecessor to the successor in interest, is determined by taking a percentage of the number of employees transferred from the predecessor to the successor in interest as of the date of acquisition.
3. Only one of the options may be selected to transfer contributions, benefit charges, three and five year taxable wage average and final experience rate from the predecessor to the successor in interest.

(e) As used in this section, the term "distinguishable" means the portion of the organization, trade or business, or assets acquired by the successor in interest must be recognizable as distinct and different from the organization, trade or business, or assets remaining with the predecessor. The acquired portion must be able to operate as an employing unit apart and distinct from the predecessor, such as an entire operating division or a severed sales or production function.

(f) As used in this section, the term "identifiable" means the part of the organization, trade or business, or assets

acquired by the successor in interest must have definitive characteristics that separate it from the predecessor and it must be recognizable by those characteristics as unique and different from the predecessor.

(g) Upon the transfer in part of the organization, trade, assets or business to a successor in interest, the employment experience of the predecessor employer shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the Controller or his or her designee finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Formerly "Rate following acquisition".

Amended by R.2004 d.381, effective October 4, 2004.

See: 36 N.J.R. 2581(a), 36 N.J.R. 4473(a).

In (a), rewrote 1 and 2; added (c) through (e).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

Added new (a) and (b); recodified former (a) through (d) as (c) through (f); in the introductory paragraph of (c), inserted ", except those addressed under (a) above," and substituted "Under the circumstances set forth in this subsection, the" for "The"; deleted former (e); and added (g).

Case Notes

Law firm no longer entitled to certain unemployment credits after partial transfer of business to new entity. *Rubin v. Department of Labor*, 96 N.J.A.R.2d (LBR) 1.

12:16-18.4 Rate following transfer of predecessor's experience in part

(a) The effective date of the transfer of a portion of employment experience from a predecessor to a successor in interest shall be the first day of the calendar quarter following the acquisition by the successor in interest.

(b) As of the effective date of the transfer of employment experience in part, the employment experience rate of the successor in interest shall be recalculated by merging its existing employment experience, if any, with the employment experience acquired from the predecessor employer.

(c) As of the effective date of the transfer of employment experience in part, the employment experience rate of the predecessor employer shall be recalculated based on the employment experience remaining subsequent to the transfer.

(d) For the period from the date of the acquisition by the successor in interest of a portion of the business of the predecessor employer through the last day of the calendar quarter in which the acquisition occurred, the employment experience rates of the successor in interest and the predecessor employer shall be assigned as follows:

1. A successor in interest, which is not an employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., in its own right as of the date of acquisition shall be assigned the new employer rate.

2. A successor in interest, which is an employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., in its own right as of the date of the acquisition shall continue to use its existing rate.

3. A predecessor employer which continues to operate after the acquisition by the successor in interest of a portion of its business shall continue to use its existing rate.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Formerly "Assignment of contribution rates for interim periods".
Amended by R.2006 d.425, effective December 4, 2006.
See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

Deleted (a); recodified (b) as (a) and rewrote new (a); and added (b) through (d).

SUBCHAPTER 19. BENEFIT CHARGES

12:16-19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to whom such determination relates, and when the benefit payment is made, the Department shall send notification to the employer against whose account the benefits are to be charged on a quarterly basis.

Amended by R.1987 d.104, effective February 17, 1987.
See: 18 N.J.R. 1682(a), 19 N.J.R. 363(a).
Defined who should send notification.
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-19.2 Annual summary statement

All employers shall be furnished an annual summary statement of benefits charged to their accounts.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS

12:16-20.1 Work relief and work training programs: exempt employment

(a) In order to qualify for the exemption provided by N.J.S.A. 43:21-19(i)(1)(D)(v), an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a state or political subdivision of a State, must have as a minimum the following characteristics:

1. The employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy;

2. Qualifications for the jobs take into account as indispensable factors the economic status, that is, the standing conferred by income and assets, of the applicants;

3. The products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

(b) In order to qualify as an exempt unemployment work-relief or work-training program, it must also have one or more of the following characteristics:

1. The wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

2. The jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

3. The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors;

4. The jobs do not displace regularly employed workers or impair existing contracts for services.

"Employer" means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In "Commissioner" and "Department", inserted "and Workforce Development" following "Department of Labor".

12:16-21.3 Reporting requirement

(a) Every employer shall report, on an annual basis, the Zip Code of the following:

1. The residence of each employee; and
2. The location where the employee regularly works.

(b) The information specified in (a) above is required only for employees who are employed by the employer at the time of receipt of the report form.

(c) The employer shall submit the information required under this section, on a form prescribed by the Commissioner, to the Department of Transportation. An envelope imprinted with the address of the Department of Transportation shall be provided to the employer with the information form.

(d) Any questions concerning the provisions of this subchapter may be addressed to:

Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, New Jersey 08625-0600

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

SUBCHAPTER 21. ZIP CODE REPORTING

12:16-21.1 Scope

This subchapter is applicable to all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

12:16-21.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Employee" means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or regular part-time basis.

SUBCHAPTER 22. HEARINGS

12:16-22.1 Scope

All hearings involving any question of coverage, status, liability for contributions, reporting, refunds, or rates of contribution shall be conducted according to the procedure outlined in this subchapter.

12:16-22.2 Application

(a) Any written notice of determination by a representative of the Department as to any question of coverage, status, liability for contributions, reporting, refunds, or rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing on the prescribed form within 30 days after the date of the notice.

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied

with the written confirmation letter sent by the Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) All completed requests shall be returned to the Chief Auditor within the required 30 days.

(d) If a party determined by the Department to be an employer asserts that it acted as an agent for another party pursuant to N.J.S.A. 43:21-19(g), or the nature of the business evidences an agency relationship may exist, the Department shall name both the agent and principal as parties to the administrative proceedings.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

In (a) and (c), substituted references to 30 days for references to 15 days.

12:16-22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

(d) An employer may be represented by him or herself or by an attorney at the informal conference, or may be assisted by a non-attorney at the conference.

(e) If an employer fails to appear at an informal conference and fails to respond to the Chief Auditor's notice granting the employer 10 days to contact the Chief Auditor or the Chief Auditor's representative to reschedule the conference, the Department shall consider the employer to have withdrawn his or her request for hearing and to be liable for the unemployment and temporary disability insurance assessment.

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d) and (e).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (e), substituted references to the Chief Auditor for references to the Division.

12:16-22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

New Rule, R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-22.6 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

Recodified from 12:16-22.5 by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

12:16-23.1 Exempt services

(a) Persons who perform services and receive remuneration are employees under the Unemployment Compensation Law unless the services meet the Unemployment Compensation Law definition of independence set forth in N.J.S.A. 43:21-19(i)(6).

(b) The Unemployment Compensation Law lists certain categories of services as being exempt from Unemployment Compensation coverage. However, these services are exempt only if there is a corresponding exemption under the Federal Unemployment Tax Act ("FUTA") or the services are otherwise not subject to tax or coverage under FUTA.

1. If an employing unit pays remuneration for services not specifically listed as exempt under the provisions of FUTA and seeks an exemption under this section, the employing unit has the burden of proof to show that the services are either exempt under FUTA or otherwise not subject to the tax imposed by FUTA.

2. The Department will hold such class of individuals or type of service in covered employment pending receipt of proof of exemption under N.J.A.C. 12:16-23.2 below and determination of exemption.

Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), substituted "Department" for "Division of Unemployment Insurance/Disability Insurance Financing" in 2.

12:16-23.2 Evidence of FUTA exemption

(a) Evidence that services are not covered under FUTA may include among other things:

1. Private letter ruling(s) from the Internal Revenue Service;

2. An employment tax audit conducted by the Internal Revenue Service after 1987 which determined that there was to be no assessment of employment taxes for the services in question; however, the determination must not have been the result of the application of Section 530 of the Revenue Act of 1978; or

3. Determination letter(s) from the Internal Revenue Service.

(b) The Department reserves the right to examine the circumstances surrounding the relationship between the parties to determine if the conditions of the relationship with the employer have changed.

Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), substituted "Department" for "Division".

Amended by R.2018 d.162, effective September 17, 2018.
See: 50 N.J.R. 1026(a), 50 N.J.R. 2012(a).

In (a)2, inserted "or"; in (a)3, substituted a period for "; and/or"; and deleted (a)4.

Case Notes

On remand, the Commissioner of Labor and Workforce Development concluded that so long as a trucking company continued to demonstrate that the services provided by truck drivers met the IRS test for independence, such services would continue to be exempt from coverage by the State's Unemployment Compensation Law because there was sufficient evidence of a FUTA exemption to satisfy the requirements of law. *Big Daddy Drayage, Inc. v. N.J. Dep't of Labor & Workforce Dev.*, OAL DKT. NO. LID 17680-16 (ON REMAND LID 11214-15) AGENCY DKT. NO. DOL 15-006, 2017 N.J. AGEN LEXIS 1175, Final Agency Determination (December 11, 2017).

Using the IRS test for determining the employment status of an individual, an ALJ concluded on remand that individuals who were the owner-operators of tractor trailers and drove for a drayage company were independent contractors. Since the owner-operators were not "employees" of the drayage company, the company was not liable for FUTA contributions on account of payments made to them. *Big Daddy Drayage, Inc. v. N.J. Dep't of Labor & Workforce Dev.*, OAL DKT. NO. LID

17680-16 (On Remand), 2017 N.J. AGEN LEXIS 692, Initial Decision (September 11, 2017).

In the context of a claim, by the State of New Jersey, that a shipping company was liable to pay FUTA taxes on account of services rendered by truckers, the company's naked claim that the so-called "ABC test" did not apply and that N.J.A.C. 12:16-23.2 rendered it exempt from FUTA lacked merit because the company had not submitted a Form SS-8 as required by federal law. *Big Daddy Drayage, Inc. v. N.J. Dep't of Labor and Workforce Dev.*, OAL DKT. NO. LID 11214-15, 2016 N.J. AGEN LEXIS 671, Initial Decision (August 10, 2016).

Agency rejected the finding and recommendation of an ALJ to the effect that an employer was not liable for contributions to state unemployment compensation and disability benefit funds on behalf of the mother of the owner of an incorporated medical practice because the employer did not show that the mother's services met the IRS 20-factor test for determining whether the owner's mother was an employee or an independent contractor. *Quality-Care Pediatrics, Inc. v. N.J. Dep't of Labor & Workforce Dev.*, OAL DKT. NO. LID 15163-13, 2014 N.J. AGEN LEXIS 1313, Final Administrative Determination (November 24, 2014).

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

12:16-24.1 Application and scope

(a) The rules in this subchapter set forth the requirements and methodology by which an employee leasing company, also known as a professional employer organization (PEO), shall register with the Commissioner of the Department of Labor and Workforce Development, pursuant to P.L. 2001, c. 260, as amended, N.J.S.A. 34:8-67 et seq. The rules in this subchapter also set forth the requirements and methodology by which an assurance organization shall obtain approval from the Commissioner of the Department of Labor and Workforce Development, pursuant to P.L. 2001, c. 260, as amended, N.J.S.A. 34:8-67 et seq.

(b) The provisions of this subchapter apply to all employee leasing companies, employee leasing company groups, out-of-State employee leasing companies and assurance organizations.

Amended by R.2005 d.108, effective April 4, 2005.
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), inserted "and Workforce Development" following "Commissioner of Labor".

Amended by R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Rewrote (a) and (b).

12:16-24.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Assurance organization" means an independent and qualified entity approved by the Commissioner pursuant to N.J.A.C. 12:16-24.8 to certify the qualifications of an employee leasing company or employee leasing company group for registration under P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.)

“Benefit experience” means the relationship between an employer’s contributions paid on his or her own behalf with respect to employment occurring during a specified period and benefits paid with respect to unemployment and temporary disability and charged against the account of the employer in whose employment such individual established base weeks constituting the basis of such benefits. Benefit experience for temporary disability purposes shall also take into account contributions paid by the employer’s workers.

“Client company” means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees performing services in New Jersey by the employee leasing company.

“Commissioner” means the Commissioner of Labor and Workforce Development.

“Covered employee” means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

“Department” means the Department of Labor and Workforce Development.

“Division of Revenue” means that unit of New Jersey State Government within the Department of Treasury which is responsible for the registration of employers for the payment of gross income taxes, unemployment and temporary disability contributions, and other State taxes.

“Employee leasing agreement” or “professional employer agreement” means an arrangement, under written contract, whereby:

1. An employee leasing company and a client company co-employ covered employees; and
2. The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company’s work force.

“Employee leasing company” or “professional employer organization” means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in N.J.S.A. 34:8-68.

“Employee leasing company group” means two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person.

“Financial statement” means a financial statement prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

“Out-of-State employee leasing company” means an employee leasing company that:

1. Is not domiciled in New Jersey;
2. Is licensed or registered as an employee leasing company in a state other than New Jersey;
3. Does not maintain an office in New Jersey or directly solicit client companies located or domiciled in New Jersey; and
4. Is not responsible for more than 50 covered employees employed in New Jersey on the date of registration or renewal.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In “Commissioner” and “Department”, inserted “and Workforce Development” following “Labor”.

Amended by R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Added definitions “Assurance organization”, “Employee leasing company group”, “Financial statement”, and “Out-of-State employee leasing company”.

12:16-24.3 Initial and annual registration

(a) An employee leasing company or professional employer organization, as defined in N.J.A.C. 12:16-24.2, shall register with the Commissioner or his or her designee. This registration is separate from, and in addition to, any statutory requirements to register as an employer in this State or to conduct business in this State.

1. The form for the initial registration of an employee leasing company or professional employer organization shall be prescribed by the Commissioner or his or her designee, and is available on the Department website at: www.state.nj.us/labor/admin/forms.htm, or may be requested by contacting the Department directly, by calling the Labor and Workforce Development hotline at (609) 633-6400. This form requires the business to record its beginning date, the name of the business incorporation information, the names, social security numbers and home addresses of the owners, partners or responsible corporate officers, and relevant wage, salary and commission information, as well as indicating the status of the business in regard to various State and Federal contributory programs (for example, Unemployment Compensation).

2. An employee leasing company or professional employer organization shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.

3. The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of mailing. If the registration form is completed on the Department of Labor and Workforce Development website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.

(b) After initial registration, an employee leasing company or professional employer organization shall register annually on a form prescribed by the Commissioner or his or her designee.

(c) The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), inserted "and Workforce Development" preceding "hotline" in 1 and "website" in 3.

12:16-24.4 Financial security requirements

(a) An employee leasing company or professional employer organization shall submit a financial statement to the Commissioner or his or her designee with the initial registration on or before the dates detailed in N.J.A.C. 12:16-24.3(a)3 and, following initial registration, shall submit a financial statement to the Commissioner or his or her designee on an annual basis in the manner set forth within (a)2, 3, 4, and 5 below.

1. Every initial registration shall be accompanied by a financial statement prepared within 13 months of the application, which statement shall show a positive working capital, computed as current assets minus current liabilities.

2. Following initial registration, an employee leasing company shall file with the Commissioner or his or her designee on an annual basis, within 180 days of the end of the employee leasing company's fiscal year, a current financial statement, which statement shall show a positive working capital, computed as current assets minus current liabilities.

3. The financial statement filed under either (a)1 or 2 above shall be without qualification as to the going concern status of the employee leasing company.

4. Regarding the filing requirement under (a)2 above, an employee leasing company may request that the Commissioner or his or her designee grant an extension of the filing deadline, which request shall be accompanied by a letter from the employee leasing company's independent certified public accountant stating the reasons for the request and the anticipated date of the completion of the financial statement.

5. The Commissioner or his or her designee may for good cause shown grant a request for extension filed under (a)4 above.

(b) An employee leasing company or professional employer organization that, upon initial registration or, as required under (a)2 above, on an annual basis, fails to establish that it has a positive working capital, shall provide to the Commissioner or his or her designee a bond, irrevocable letter of credit, or securities with a minimum market value equaling the amount necessary to achieve a positive working capital plus up to \$100,000, such additional amount to be determined by the Commissioner or his or her designee on a case-by-case basis.

1. The Commissioner or his or her designee may make a periodic review of the adequacy of the security furnished by the employee leasing company or professional employer organization to determine if any adjustment may be necessary.

2. The Commissioner or his or her designee may sell the securities so deposited to the extent necessary to satisfy any unpaid unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee. The employee leasing company or professional employer organization will be notified of the sale of such securities and the amount used.

3. The Commissioner or his or her designee may also require the bond, irrevocable letter of credit, or securities described in (b) above if he or she finds that the employee leasing company or professional employer organization has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any Federal or State payroll

taxes or unemployment and/or disability contributions when due, or for other good cause.

4. An employee leasing company or professional employer organization that has had its security reduced to satisfy any unemployment and/or disability taxes, interest, penalties, and/or assessments or any wages, benefits, or other entitlement due a covered employee, and has not had its registration rescinded, shall file with the Commissioner or his or her designee an additional bond, irrevocable letter of credit, or securities, which when combined with any unused portion of the prior bond, irrevocable letter of credit, or securities will have a current market value equaling the amount necessary to achieve a positive working capital plus up to \$100,000, such additional amount to be determined by the Commissioner or his or her designee. Such additional bond, irrevocable letter of credit, or securities must be received no later than 60 days after the notification of sale of such securities as set forth in (b)2 above.

5. The Commissioner or his or her designee may extend for good cause the date for complying with the security requirement for a period of up to 30 days beyond the original due date.

Amended by R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Rewrote the section.

12:16-24.5 Employee leasing company groups

(a) An employee leasing company group may satisfy the registration requirements of N.J.A.C. 12:16-24.3 and the financial reporting requirements of N.J.A.C. 12:16-24.4 on a combined or consolidated basis, provided that the employee leasing company group demonstrates positive working capital pursuant to N.J.A.C. 12:16-24.4(a).

(b) In the event that an employee leasing company group is unable to demonstrate positive working capital pursuant to N.J.A.C. 12:16-24.4(a), then each employee leasing company in the employee leasing company group shall, for that registration year, be required to register separately under N.J.A.C. 12:16-24.3 and separately satisfy the financial reporting requirements of N.J.A.C. 12:16-24.4.

(c) The provisions of N.J.A.C. 12:16-24.4(b) shall not apply to an employee leasing company group.

(d) Each employee leasing company covered under an employee leasing company group registration shall guarantee the financial capacity obligations of each other employee leasing company covered under the employee leasing company group registration.

New Rule, R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.5, Payroll tax certification, recodified to N.J.A.C. 12:16-24.10.

12:16-24.6 Out-of-State employee leasing companies

(a) An out-of-State employee leasing company shall register on an initial and annual basis with the Commissioner or his or her designee using a form that shall, pursuant to N.J.S.A. 34:8-70d, elicit limited information from the registrant, such as information establishing that the registrant meets the definition of "out-of-State employee leasing company" as well as a list of client companies and the number of covered employees at each of those companies. The registration form for out-of-State employee leasing companies is available on the Department website at: <http://lwd.dol.state.nj.us/labor/employer/ea/empinfo/Empleasing.html> or may be requested by contacting the Department directly, by calling the Department's hotline at (609) 633-6400.

(b) An out-of-State employee leasing company shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.

(c) The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of mailing. If the registration form is completed on the Department's website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.

(d) The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

(e) An out-of-State employee leasing company shall not be required to comply with the financial reporting requirements of N.J.A.C. 12:16-24.4.

(f) If, during the term of a limited registration under this section, an out-of-State employee leasing company becomes responsible for more than 50 covered employees, the out-of-State employee leasing company shall within 30 days of the end of the quarter in which the out-of-State employee leasing company became responsible for more than 50 covered employees, re-register with the Commissioner or his or her designee as an employee leasing company under N.J.A.C. 12:16-24.3.

New Rule, R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.6, Workers' compensation insurance, recodified to N.J.A.C. 12:16-24.11.

12:16-24.7 Assurance organizations

(a) An assurance organization approved by the Commissioner or his or her designee pursuant to N.J.A.C. 12:16-24.8 may submit initial and annual registration forms to the Commissioner or his or her designee on behalf of an employee leasing company, employee leasing company group, or out-of-State employee leasing company under N.J.A.C. 12:16-24.3, 24.5, or 24.6, respectively.

(b) An assurance organization approved by the Commissioner or his or her designee pursuant to N.J.A.C. 12:16-24.8 may on behalf of an employee leasing company or employee leasing company group ensure compliance with the financial security requirements set forth in N.J.A.C. 12:16-24.4.

(c) An assurance organization approved by the Commissioner or his or her designee pursuant to N.J.A.C. 12:16-24.8 may on behalf of an employee leasing company submit to the Commissioner or his or her designee the quarterly payroll tax certification of an independent certified public accountant under N.J.A.C. 12:16-24.10.

New Rule, R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.7, Dissolution of employee leasing agreement, recodified to N.J.A.C. 12:16-24.12.

12:16-24.8 Assurance organizations—approval

(a) No assurance organization shall perform any of the functions authorized under N.J.A.C. 12:16-24.7, unless it has first obtained a certificate of approval issued by the Commissioner or his or her designee under this section.

(b) An assurance organization that seeks a certificate of approval under this section shall apply to the Commissioner or his or her designee. For this purpose, the Commissioner or his or her designee shall prepare a "New Jersey Department of Labor and Workforce Development Application for an Assurance Organization Certificate of Approval." This form shall be available on the Department website at: <http://lwd.dol.state.nj.us/labor/employer/ea/empinfo/Empleasing.html> or may be requested by contacting the Department directly, by calling the Department's hotline at (609) 633-6400.

(c) As part of its application to the Commissioner or his or her designee, an assurance organization shall provide all required information and documents requested in the Application for an Assurance Organization Certificate of Approval.

1. The information and documents requested in the application shall include identifying information, such as the name of the organization, the organization address, the telephone number of the organization, the address of the organization's principal place of business if different than its listed address, and the names of the principals in the organization.

2. The information and documents requested in the application shall also include that which is being elicited by the Commissioner or his or her designee in order to satisfy the Commissioner or his or her designee that the organization is qualified to certify the qualifications of an employee leasing company or employee leasing company group and that the organization is independent of the control or influence of any employee leasing company or employee leasing company group.

(d) An applicant shall fully and accurately complete all parts of the Application for an Assurance Organization

Certificate of Approval. Failure to provide a complete application shall result in rejection without prejudice.

(e) An approved assurance organization shall apply on an annual basis to the Commissioner or his or her designee for renewal of the certificate of approval.

(f) The annual approval renewal form shall be available at the website address or using the same telephone number listed in (b) above and shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

New Rule, R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.8, Rescission of the registration of an employee leasing company or professional employer organization, recodified to N.J.A.C. 12:16-24.13.

12:16-24.9 Assurance organizations—appeals

The Commissioner or his or her designee shall notify the assurance organization in writing of the reason for rejecting an application for certificate of approval, which notice shall advise of the right to request a hearing using the procedures set forth at N.J.A.C. 12:16-22.

New Rule, R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.9, Dissolution of an employee leasing company or professional employee organization, recodified to N.J.A.C. 12:16-24.14.

12:16-24.10 Payroll tax certification

(a) An employee leasing company or professional employer organization shall provide the Commissioner or his or her designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant on a form prescribed by the Commissioner or his or her designee that all applicable Federal and State payroll taxes for covered employees in New Jersey have been paid on a timely basis.

(b) The payroll certification form shall be filed quarterly by the following dates:

Quarter Ending		Due Date	
March	31	May	30
June	30	August	29
September	30	November	29
December	31	March	1

(c) The Commissioner or his or her designee shall notify the client companies reported on the most recent registration form if an employee leasing company or professional employer organization fails to file its quarterly payroll tax certification within 10 business days of the mailing of the notice of delinquency in accordance with N.J.S.A. 34:8-71.

Recodified from N.J.A.C. 12:16-24.5 and amended by R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

In (a), inserted “for covered employees in New Jersey”; and in (c), inserted “business”. Former N.J.A.C. 12:16-24.10, Violations, recodified to N.J.A.C. 12:16-24.15.

12:16-24.11 Workers’ compensation insurance

Provision of workers’ compensation insurance to covered employees is governed by N.J.S.A. 34:8-68.a(8).

Recodified from N.J.A.C. 12:16-24.6 by R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

Former N.J.A.C. 12:16-24.11, Appeals, recodified to N.J.A.C. 12:16-24.16.

Amended by R.2018 d.162, effective September 17, 2018.

See: 50 N.J.R. 1026(a), 50 N.J.R. 2012(a).

Rewrote the section.

12:16-24.12 Dissolution of employee leasing agreement

(a) When one or more employee leasing agreements are to be dissolved, the employee leasing company or professional employer organization shall give advance notice of dissolution to the Commissioner or his or her designee. In the event that it is impracticable to give such advance notice, the employee leasing company or professional employer organization shall notify the Commissioner or his or her designee within 10 business days of such dissolution.

(b) Such notice shall contain the following information:

1. The name, address, and taxpayer identification number of the employee leasing company or professional employer organization;
2. The expected or actual date of dissolution; and
3. The name, address, and taxpayer identification number or Federal employer identification number of each client company for whom an employee leasing agreement is or will be dissolved.

(c) For each client company that leased its total workforce, or any part thereof, from the employee leasing company or professional employer organization for a period of less than two full calendar years, such notice shall include the names and social security numbers of the leased employees and the amount of taxable wages, employer unemployment and disability contributions and unemployment and disability benefit charges attributable to the client company during the duration of the leasing agreement.

Recodified from N.J.A.C. 12:16-24.7 by R.2013 d.101, effective August 19, 2013.

See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

12:16-24.13 Rescission of the registration of an employee leasing company or professional employer organization

(a) The registration of an employee leasing company or professional employer organization may be rescinded by the Commissioner, or his or her designee, for violations as set forth in N.J.S.A. 34:8-67 through 78 and for non-compliance

with this subchapter. The rescission shall be effective as of the first day of the next calendar quarter.

(b) After the registration of an employee leasing company or professional employer organization has been rescinded, all of the client companies will be notified by the Commissioner or his or her designee that they are required to file reports and submit payment of contributions on their own behalf effective with the date of the rescission. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(c) A client company of an employee leasing company which has had its registration rescinded shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

Recodified from N.J.A.C. 12:16-24.8 by R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

12:16-24.14 Dissolution of an employee leasing company or professional employer organization

(a) Upon the dissolution of an employee leasing company or professional employer organization, all of the client companies shall file reports and submit payment of contributions on their own behalf effective with the date of dissolution. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(b) A client company which has dissolved its employee leasing arrangement shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

Recodified from N.J.A.C. 12:16-24.9 by R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

12:16-24.15 Violations

(a) If an employee leasing company knowingly and willfully fails to file a contribution or wage report by the due

date, the Commissioner, or his or her designee, shall consider such failure as a separate violation for each client with whom the leasing company has an employee leasing agreement.

(b) If an employee leasing company fails to file a contribution or wage report or fails to remit payment within 15 days of the due date, the Commissioner, or his or her designee, shall consider such failure as egregious violations under N.J.S.A. 34:8-76c and shall result in rescission.

(c) In determining if rescission is an appropriate remedy, the Commissioner may also consider the following factors:

1. The record of previous violations by the employee leasing company;
2. The significance or scale of the violations;
3. The existence of outstanding reports or failure to pay;
4. Failure to respond to a request to produce records, documents, or proof of payment;
5. Submission of falsified or altered records, forms, documents, or proof of payment;
6. Whether the violations were willful or knowing; and
7. Good faith efforts by the employee leasing company to remedy any violations.

Recodified from N.J.A.C. 12:16-24.10 by R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

12:16-24.16 Appeals

The Commissioner, or his or her designee, shall notify the employee leasing company or professional employer organization in writing of the reason for rescission which notice shall include a "Request for Hearing" as provided for in N.J.A.C. 12:16-22.

Recodified from N.J.A.C. 12:16-24.11 by R.2013 d.101, effective August 19, 2013.
See: 44 N.J.R. 1951(a), 45 N.J.R. 1960(c).

CHAPTER 16A

(RESERVED)

Historical Note

This chapter "Payments in Lieu of Contributions" became effective February 9, 1973 as R.1973 d.48. See: 5 N.J.R. 13(d), 5 N.J.R. 86(c).

The chapter became effective with 11 subchapters. Subchapters 1 through 10 (Reserved) and Subchapter 11, Group Account. The text of Subchapter 11 was codified at N.J.A.C. 12:16-8 in 1985. In an effort to avoid duplication the agency has repealed this chapter.

CHAPTER 17

UNEMPLOYMENT BENEFIT PAYMENTS

Authority

N.J.S.A. 43:21-1 et seq., specifically, 43:21-7g.

Source and Effective Date

R.2009 d.21, effective December 10, 2008.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17, Unemployment Benefit Payments, expires on December 10, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were adopted and became effective prior to September 1, 1969.

Subchapter 9, Procedures for Wage Benefit Conflicts, was adopted as new rules by R.1975 d.142, effective May 28, 1975. See: 7 N.J.R. 335(a).

Subchapter 10, Determination and Demand for Refund of Unemployment Benefits, was adopted as new rules by R.1980 d.468, effective October 23, 1980. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c).

Subchapter 11, Offset of Unemployment Insurance Benefits by Retirement and Pension Income, was adopted as new rules by R.1980 d.561, effective January 1, 1981. See: 13 N.J.R. 102(a).

Amendments to Subchapter 10 became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a).

Subchapter 12, Dependency Benefits, was adopted as new rules by R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on October 23, 1985, and new rules on the same subject were adopted as R.1985 d.657, effective January 6, 1986. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a).

Pursuant to Executive Order No. 66(1978), Subchapter 11 was readopted as R.1985 d.718, effective December 30, 1985. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, was readopted as R.1991 d.46, effective January 4, 1991. See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.1996 d.25, effective December 13, 1995. See: 27 N.J.R. 4123(b), 28 N.J.R. 270(a).

Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998). See: 29 N.J.R. 5158(a), 30 N.J.R. 2027(a).

Subchapter 20, Worker Profiling and Reemployment Services, and Subchapter 21, Relief from Benefit Charges, were adopted as R.1999 d.115, effective April 15, 1999. See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2003 d.276, effective June 13, 2003. See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2009 d.21, effective December 10, 2008. See: Source and Effective Date. See, also, section annotations.

Subchapter 22, Claims for Family Leave Insurance Benefits During Unemployment, was adopted as new rules by R.2009 d.82, effective March 2, 2009. See: 40 N.J.R. 5509(a), 41 N.J.R. 1052(c).

Subchapter 10, Claims Adjudication—Misconduct and Gross Misconduct Connected with Work, was renamed Claims Adjudication—Misconduct Connected with the Work by R.2015 d.079, effective May 18, 2015. See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

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SUBCHAPTER 1. PURPOSE AND SCOPE

12:17-1.1 Purpose and scope

(a) The Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq., provides income security through the payment of unemployment insurance benefits to qualified individuals who are involuntarily unemployed. The UCL establishes the Unemployment Insurance (UI) Trust Fund which is financed by worker and employer contributions.

(b) The New Jersey Department of Labor and Workforce Development is charged with the administration of the Unemployment Insurance Program. This chapter will enable the Department to meet this charge by providing for the prompt and efficient payment of benefits to eligible individuals while protecting the interests of workers and employers who contribute to the Fund.

(c) The provisions of this chapter shall be applicable to all employers and to all workers who file claims for unemployment insurance with the New Jersey Department of Labor and Workforce Development.

(d) These rules shall be considered the basis by which the statutory purposes of the Unemployment Insurance benefit payment system are carried out. The Commissioner may relax these rules for good cause on a case-by-case basis, on notice

to affected parties, in order to effectuate the purpose of the Unemployment Compensation Law.

(e) These rules shall be effective July 7, 2003.

1. New and additional claims filed on or after July 7, 2003 shall be subject to these rules.

2. For claims filed prior to July 7, 2003, continued issues adjudicated on or after July 7, 2003 shall be subject to these rules.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (e), substituted references to July 7, 2003 for references to July 5, 1998 throughout.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (b) and (c), added "and Workforce Development".

SUBCHAPTER 2. DEFINITIONS

12:17-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agent state" means any state in which an individual files a claim for benefits against another state.

"Benefits" means the compensation payable to an individual with respect to his or her unemployment, under the unemployment compensation law of any state.

"Civil union" means the legally recognized union of two eligible individuals of the same sex established pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union couple" means two persons who have established a civil union pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union license" or "civil union certificate" means a document that certifies that the persons named on the license or certificate have established a civil union in New Jersey in compliance with N.J.S.A. 37:1-28 et seq.

"Civil union partner" means "one partner in a civil union couple," as that phrase is defined at N.J.S.A. 37:1-29; that is, a person who has established a civil union pursuant to the provisions of N.J.S.A. 37:1-28 et seq.

"Connected with the work" means not only misconduct that occurs in the course of employment during working hours, but includes any conduct that occurs outside of working hours or off the employer's premises where there is substantial evidence that the conduct adversely impacts the employer or the individual's ability to perform the duties of his or her job.

“Controller” means the Controller of the New Jersey Department of Labor and Workforce Development.

“Commissioner” means the Commissioner of the New Jersey Department of Labor and Workforce Development.

“Department” means the New Jersey Department of Labor and Workforce Development.

“Deputy” means a representative of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Director” means the Director of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Division” means the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Employee” means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or part-time basis.

“Employer” means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employer-agent” means a person or entity that acts on behalf of an employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employment service office” means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801 et seq.

“Gross misconduct” means an act punishable as a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq.

“Interstate Benefit Payment Plan” means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

“Interstate claimant” means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that in accordance with the Interstate Benefit Payment Plan commuting would result in excessive travel time or cost to the claimant.

“Liable state” means the state against which an individual files a claim for benefits through another state.

“Maximum benefit amount” on claims with benefit years commencing on or after July 1, 1986 and before July 1, 2003, means the total benefits payable to a claimant equal to three-quarters of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Moreover, maximum benefit amount on claims with benefit years commencing on or after July 1, 2003 means the total benefits payable to a claimant equal to the number of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Pursuant to N.J.S.A. 43:21-3(d)(2), the maximum benefit amount shall not exceed 26 times the individual’s weekly benefit rate.

“Misconduct” means conduct that is improper, intentional, connected with the individual’s work, within the individual’s control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer’s lawful and reasonable rules made known to the employee or a deliberate disregard of the standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

“One-Stop Career Center” means one of the centers designated by the local Workforce Investment Boards and certified by the State Employment and Training Commission to provide workforce investment services.

“Remuneration” means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash, including payments “in kind” as defined at N.J.A.C. 12:16-4.8.

“State” means the states of the United States of America, the District of Columbia, the Virgin Islands or Puerto Rico.

“Unemployment” means the state of being unemployed (that is, not having a job, out of work). An individual shall be deemed “unemployed” for any week during which he or she is not engaged in full-time work and with respect to which his or her remuneration is less than the individual’s weekly benefit rate, including any week during which he or she is on vacation without pay; provided such vacation is not the result of the individual’s voluntary action. However, an officer of a corporation, or a person who has more than a five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be deemed to be unemployed in any week during the individual’s term of office or ownership in the corporation.

“Wages” means remuneration paid by employers for employment including “in kind” payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her “wages” shall also include the gratuities received, if reported in writing to the employer in accordance with regulations of the Division at N.J.A.C. 12:16-4.9. If gratuities are

not reported, the individual's "wages" shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from the employer, whichever is the higher.

"Week" means the calendar week ending at midnight Saturday.

"Weekly benefit rate" means 60 percent of the claimant's average weekly wage, subject to a maximum of 56 2/3 percent of the Statewide average weekly remuneration paid to workers by employers subject to the Unemployment Compensation Law.

"Week of disqualification" means a calendar week ending at midnight Saturday with respect to any disqualification arising under N.J.S.A. 43:21-5.

"Week of unemployment" includes any week of unemployment as defined in the Unemployment Compensation Law of the liable state from which benefits with respect to such week are claimed.

"Week of partial unemployment" means a calendar week ending at midnight Saturday in which an individual is employed not more than 80 percent of the hours normally worked in that individual's occupation, profession, trade, or industry; due to lack of work; and earns remuneration which does not exceed the weekly benefit rate plus 20 percent of such rate.

"Week of total unemployment" means a calendar week ending at midnight Saturday in which an individual performs no services and with respect to which the individual receives no remuneration.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In "Employment service office", inserted "or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801 et seq."; in "Interstate Benefit Payment Plan", substituted "National Association of State Workforce Agencies" for "Interstate Conference of Employment Security Agencies"; in "Interstate claimant", substituted "Interstate Benefit Payment Plan" for "Interstate Benefit Plan" following "in accordance with the"; added "One-Stop Career Center".

Amended by R.2005 d.385, effective November 7, 2005.
See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added "and Workforce Development" to definitions "Controller," "Commissioner," "Department," "Deputy," "Director" and "Division"; rewrote definition "Maximum benefit amount."

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Added definitions "Civil union", "Civil union couple", "Civil union license", and "Civil union partner".

Amended by R.2015 d.079, effective May 18, 2015.
See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Added definitions "Connected with the work", "Gross misconduct", "Malicious", "Misconduct", "Severe misconduct", and "Simple misconduct".

Amended by R.2020 d.031, effective March 2, 2020.
See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

Deleted definitions "Malicious", "Severe misconduct", and "Simple misconduct"; and rewrote definition "Misconduct".

SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

12:17-3.1 Instructions to workers at time of separation

(a) Whenever a worker is separated from work (permanently, temporarily, or for an indefinite period) for any reason, at the time of the separation, the employer shall deliver to the worker the Department form entitled, "Instructions for Claiming Unemployment Benefits," instructing the worker to report to a Department Reemployment Call Center by telephone or via the Internet at www.njuifile.net to file a claim for benefits. Such instructions shall contain the employer's name, complete address, and New Jersey Employer Identification Number.

(b) Failure to comply with this requirement may subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(c). However, it shall not relieve the claimant of the responsibility of reporting to file an unemployment claim.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); in (b), deleted "in person to the unemployment claims office" in the second sentence.

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), substituted "the Department form entitled, 'Instructions' for "Form BC-10 (Instructions" and "Benefits, instructing" for "Benefits), instructing", and inserted "Department" and "at www.njuifile.net"

12:17-3.2 Request for separation or wage information

(a) Upon request by the Division for information regarding wages or the reason for separation from any worker from employment, the employer shall, within 10 calendar days after the date of mailing of the form requesting information, complete and return it to the appropriate office. The response shall be considered timely if it is postmarked or received by the Division within 10 calendar days after the date of mailing.

(b) Failure to comply with any request for information shall subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(b)(1).

(c) If an employer fails to respond to a request for wage information within 10 calendar days after the mailing date, the Division shall rely on information from other sources, including an affidavit from the claimant certifying wages and time worked. If available, the affidavit should be supported by evidence of wages and employment including, but not limited to, payroll stubs, W-2 forms, Federal or State income tax returns, copies of pay checks, etc.

1. An individual who claims or attempts to claim benefits through false or fraudulent representation shall be subject to disqualification under N.J.S.A. 43:21-5(g) and fines and the refund of benefits under N.J.S.A. 43:21-16.

(d) Whenever an initial monetary determination is based upon information other than that supplied by an employer because the employer failed to respond to the Division's re-

quest for information, the initial monetary determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to the employer's account because of benefits paid prior to the close of the calendar week following the receipt of the subsequent reply. The initial monetary determination shall be redetermined if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring subsequent to the close of the calendar week following the receipt of the employer's subsequent reply shall be paid in accordance with the redetermination.

(e) Except in the event of fraud, no refund liability shall be incurred by the claimant for any overpaid benefits resulting from information supplied on the affidavit which were paid prior to the receipt of the employer's subsequent reply.

(f) A claimant will be liable to refund any overpaid amount resulting from receipt of benefits paid subsequent to the employer's reply which resulted in a redetermination of the initial monetary determination.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "from employment," for "from an employment," preceding "the employer shall" and substituted "the appropriate office" for "the office that initiated the request" following "return it to".

12:17-3.3 Finality of benefit determinations

(a) After receiving wage and separation information, the Division shall make a determination regarding the claimant's eligibility for benefits which will be mailed to the claimant and employer. The benefit determination shall become final 10 days after the date of mailing or seven days after date of delivery unless an appeal is filed timely or late with good cause by the claimant or employer in accordance with N.J.A.C. 12:20-3.1.

(b) The Division may reconsider a final determination for the following reasons:

1. Fraud, misrepresentation or misconduct of a party;
2. Newly discovered evidence not ascertainable at the time of the initial benefit determination by the exercise of reasonable diligence and the making of proper inquiry which would probably alter the determination;
3. Obvious material mistake or error which requires correction;
4. To vacate a determination which is entered without legal right and is void; or
5. The correction of inadvertent, premature, or clearly erroneous action.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote the second sentence.

12:17-3.4 Notice of failure to apply for or to accept work

(a) When any claimant fails to apply for, or to accept, work when offered by an employer, the employer shall, within 48 hours, complete the Department form entitled, "Notice of Failure to Apply for, or to Accept, Suitable Work," setting forth the facts relating to the individual's failure to apply for, or to accept, work and forward it to the appropriate office. (See N.J.A.C. 12:17-11, Claims Adjudication—Refusal to Apply for or Accept Suitable Work.)

(b) Whenever an employer is notified by a One-Stop Career Center office that an individual has been referred to the employer for work, the employer shall, within 24 hours after the appointment, advise the latter office of the results of the referral.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "appropriate" for "proper unemployment claims" preceding "office" in the first sentence, and rewrote the second sentence; in (b), substituted "a One-Stop Career Center" for "an employment service" following "is notified by" and substituted "latter" for "employment service" following "advise the".

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), substituted "the Department form entitled, 'Notice'" for "Form BC-6 (Notice" and "Work," setting" for "Work) setting", and inserted a comma following "N.J.A.C. 12:17-11".

12:17-3.5 Notice of unemployment due to mass separation

(a) For the purposes of this subchapter, the term "mass separation" means the separation of 25 or more employees in a single establishment (either permanently or for an indefinite period) at or about the same time and for the same reason, except where the separation or unemployment is due to a labor dispute.

(b) As soon as possible, but not later than 48 hours prior to any mass separation, the employer shall file a notice thereof with the Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058. Where the employer has no advance knowledge of the mass separation, such notice shall be filed within 24 hours after the mass separation occurs. Such notice shall contain the following information:

1. The name and address of the employer;
2. A statement of the cause of separation;
3. The number and job titles of employees affected;
4. The expected duration of the period of unemployment; and
5. Whether or not the employer will have sufficient employees to handle requests for wage information that may be issued by the Division.

(c) The employer shall provide the Division with information relating to payments made to affected employees for

vacation, sick leave, pension, remuneration in lieu of notice and severance.

(d) Where a mass separation has not occurred but is threatened or likely to occur, the employer shall submit to the Division when requested such information as may be required.

(e) The employer shall deliver the Department form entitled, "Instructions for Claiming Unemployment Benefits," to each employee at the time of mass separation.

(f) Employers that have completed the notification requirements under the Federal Worker Adjustment and Retraining Notification Act contained at 20 C.F.R. Part 639 and N.J.A.C. 12:40 shall be considered in compliance with (b) above.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted ", or with an expected duration of seven or more days" following "an indefinite period"; in (b), substituted "unit of the One-Stop Career Center" for "claims office" in the first sentence of the introductory paragraph and substituted "the Division" for "unemployment claims offices" in 5.

Administrative correction.

See: 38 N.J.R. 2834(b).

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In the introductory paragraph of (b), inserted a comma following "possible" and substituted "Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058" for "unemployment unit of the One-Stop Career Center located nearest the place of employment"; and in (e), substituted "the Department form entitled, 'Instructions' for 'Form BC-10 (Instructions' and 'Benefits,' to each" for "Benefits) to each".

12:17-3.6 Notice of unemployment due to labor dispute

In case of unemployment due to a labor dispute, the employer shall file a notice immediately with the Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058. Such notice shall include information concerning the existence and nature of a labor dispute, the approximate number of individuals involved and the name and address of the bargaining unit. See N.J.A.C. 12:17-12.2.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Substituted "unit of the One-Stop Career Center" for "claims office" in the first sentence.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Substituted "Director of the Division of Unemployment Insurance, P.O. Box 058, John Fitch Plaza, Trenton, New Jersey 08625-0058" for "unemployment unit of the One-Stop Career Center located nearest the place of employment".

12:17-3.7 Notice of temporary separation from work

(a) Whenever an individual is temporarily separated for lack of work, the employer, upon request by the Division, shall provide the expected duration of the individual's period of unemployment, the reason for separation, and the date on which the employer expects the individual to return to work.

(b) If the period of temporary unemployment is for eight weeks or less and the employer has furnished the information required in (a) above, the individual shall be entitled to benefits provided all of the conditions of benefit eligibility are met. However, the individual will not be required to actively seek work during this period.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "Division" for "unemployment claims office" preceding ", shall provide".

SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES

12:17-4.1 General reporting requirements

(a) Individuals shall report as directed by the Division as to date, time, and place in person, by telephone, by mail, via an Internet application or as the Division may otherwise prescribe.

(b) An individual who fails to report as directed will be ineligible for benefits unless, pursuant to a fact-finding hearing, it is determined that there is "good cause" for failing to comply. For the purposes of this subchapter, "good cause" means any situation which was substantial and prevented the claimant from reporting as required by the Division.

(c) A claimant, who without "good cause," fails to report to a scheduled in-person appointment at a One-Stop Career Center office will be ineligible for benefits for the week in which he or she failed to report.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "via an Internet application" following "by mail,"; in (b), rewrote the second sentence; rewrote (c).

12:17-4.2 Reporting to file an initial or reopened claim

(a) An individual shall telephone a Reemployment Call Center or contact the Division via an Internet application to file an initial claim for benefits, unless another method of filing is prescribed by the Division. The effective date of an initial claim for benefits is the Sunday of the week in which the claimant first reports to claim benefits. The effective date of the initial claim establishes the period of time during which wages may be used to determine the monetary eligibility.

(b) Each claimant may reopen his or her claim any time during the 52-week period after first filing a claim, by reporting by telephone or via an Internet application to a Reemployment Call Center or as the Division may otherwise prescribe. The effective date of a reopened claim for benefits is the Sunday of the week in which the claimant first reports to the Reemployment Call Center to claim benefits.

(c) A claimant who returns to full-time work for more than one calendar week and then becomes unemployed shall report by telephone or via an Internet application to the Reemployment Call Center, or as the Division may otherwise prescribe, to reopen the claim. The claim shall be reopened as of the week in which the claimant first reports to claim benefits.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the first sentences of (a), (b) and (c).

12:17-4.3 Reporting requirements for claiming completed weeks of unemployment benefits, employment services appointments, and other appointments

(a) A claimant shall be assigned a reporting method, in person, by mail, telephone, via an Internet application or as the Division may otherwise prescribe, and shall be required to report as directed to claim completed weeks of unemployment benefits.

(b) A claimant shall be issued written instructions, which shall indicate when and how the individual is to claim benefits, including when and how the individual is to claim continued benefits.

(c) Reporting by telephone to claim continued benefits requires the claimant to telephone the "State of New Jersey Unemployment Certification System" to claim a completed, designated, benefit period as indicated on the written instructions referred to in (b) above. Reporting via an Internet application means on the web form prescribed by the Division. An individual shall be ineligible for benefits unless the claimant completes a certification telephone call or an Internet application during the assigned week as directed by the Division, or within 21 calendar days of the last day of the designated benefit period. For the purposes of this section, a "designated benefit period" is the two consecutive calendar weeks that can be claimed for payment and which ends on the Saturday of the second week.

(d) When a claimant who reports by telephone, or by Internet application, and who, at the completion of the call, is directed to report to the Division in person, he or she shall be ineligible for benefits unless he or she reports in person or otherwise contacts the office within the 21 calendar days following the attempt to claim benefits by telephone or shows good cause as defined in N.J.A.C. 12:17-4.1 for failing to do so.

(e) An individual must be in continuous reporting status to be eligible for unemployment benefits. Once an individual is ineligible for benefits because of his or her failure to comply with reporting requirements for a designated benefit period, he or she may reassert his or her claim for later weeks of unemployment only if the individual contacts the Division within 14 days of the subsequent two-week designated benefit period. An individual who is ineligible for the second designated benefit period for failure to comply shall continue to be ineligible for benefits until such calendar week in which he or

she reports or otherwise contacts the Division to claim benefits.

(f) In addition to reporting to the Division by telephone, by Internet application, or mail, an individual may be required to report in person to the One-Stop Career Center to register for work and for other work search related activities. A claimant who fails to report to an in-person appointment at a One-Stop Career Center shall be ineligible for the week in which he or she failed to report, unless good cause is shown. Additionally, the claimant shall comply with assigned telephone reporting instructions.

1. A claimant who, without "good cause," as defined in N.J.A.C. 12:17-4.1, refuses to report for the purpose of participating in, or to complete a scheduled activity (for example, claims interview, work search activity, etc.) at the One-Stop Career Center shall be held unavailable for work and ineligible for benefits for the week in which the refusal occurred. Additionally, he or she will continue to be ineligible indefinitely until the week he or she contacts the Division and agrees to be rescheduled to participate.

(g) A claimant may be assigned a date and time to be available for a telephone fact-finding interview to determine his or her eligibility for benefits. If the claims examiner is scheduled to contact the claimant by telephone at a designated time, and the claimant fails, without good cause, as defined in N.J.A.C. 12:17-4.1, to make himself or herself available at the designated time, the claimant shall be ineligible for benefits for the week in which he or she failed to participate in the fact-finding interview.

(h) A claimant who fails to comply with reporting requirements by any method directed by the Division shall report to the Division to claim benefits. Unless the claimant has "good cause," as defined in N.J.A.C. 12:17-4.1, for failing to report timely by the method directed by the Division, the claimant shall be ineligible for benefits for the designated benefit period.

Repeal and New Rule, R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Section was "Reporting requirements for in-person appointments and for claiming completed weeks of unemployment benefits".

Amended by R.2015 d.042, effective March 16, 2015.

See: 46 N.J.R. 1408(a), 47 N.J.R. 651(a).

Added new (b), recodified former (b) through (g) as new (c) through (h); in (c), substituted "written instructions referred to in (b) above" for the first occurrence of "certification" and "section" for "subsection", and deleted "indicated on the certification" following the first occurrence of "period"; in (d), deleted "or to mail in the certification" following "Division in person", and deleted ", mails in the certification," following "reports in person"; and in (h), deleted "on the certification" following "period".

12:17-4.4 Reporting claim information after leaving reporting status

(a) When the Division mails the claimant a request for information to resolve an eligibility issue the claimant is allowed 14 days from the mailing date, as determined by the returned postmark or received date, to respond.

(b) If the claimant fails to respond to the request for information, the Division may make a determination of benefit eligibility based upon available information.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); in (b), deleted "timely" following "respond".

12:17-4.5 Proof of claimant identification and address

(a) An individual who files a claim for benefits shall, when requested, present proper identification, including a valid Social Security card and other documentation showing the claimant's legal name and address.

1. If a claimant is unable to present a valid Social Security card when requested by the Division in order to verify his or her identity, the claimant shall be required to obtain a duplicate Social Security card. The claimant shall be given eight weeks from the end of the week in which the request was made to present a valid Social Security card to the Division, unless good cause, as defined in N.J.A.C. 12:17-4.1, is shown as to why additional time would be required to obtain same.

2. If the Division's records indicate any discrepancies with the Social Security Account Number presented, the claimant shall comply as directed by the written instructions of the Division to resolve those discrepancies. The claimant shall be given 14 days from the date of mailing to respond, unless good cause is shown why additional time would be required to respond to the Division. The claimant may receive pended credit for the weeks claimed during the time period necessary to resolve any discrepancies if he or she is otherwise eligible therefor.

3. Any claimant who refuses to cooperate with the Division in its efforts to verify the validity of the Social Security number by failing to present the required documentation within the required time frame shall be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

(b) A claimant shall provide the Division with his or her address at the time the claim is filed. The claimant shall also provide the Division with any change of address for up to one year after the expiration of the claim.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a).

12:17-4.6 Forms prescribed for filing unemployment benefit claims

Initial and continued claims for unemployment benefits shall be made on the appropriate forms or in the manner prescribed by the Division.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

12:17-4.7 Benefit determination notice

(a) A notice of monetary or benefit eligibility shall include a statement of appeal rights. Unless good cause exists, as provided in N.J.A.C. 12:20-3.1(i), all determinations shall be appealed in person or in writing within seven days from the date of receipt or 10 days from the date of mailing of the notice. Appeal procedures are found at N.J.A.C. 12:20 and 1:12.

(b) The Division shall provide to a claimant a written determination of the information used to determine monetary eligibility and a written notice if he or she is found ineligible or disqualified for benefits.

(c) The Division shall provide to a claimant's chargeable employer a written determination including the portion of the claimant's monetary entitlement which is based on work with that employer. When an employer is an interested party to an adjudicated issue, the Division shall provide the employer with a written determination of the claimant's benefit eligibility. For the purpose of this section, an interested party is a chargeable employer on the claim or the employer from whom the claimant was most recently separated as of the date of initial claim for benefits who has information which is relevant to a separation, refusal to apply or accept suitable work, or pension issue adjudication.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), substituted "a separation, refusal to apply or accept suitable work, or pension issue adjudication" for "the adjudicated issue" following "which is relevant to".

12:17-4.8 Refusal to cooperate with quality control reviews

(a) A claimant shall be determined ineligible for unemployment benefits if he or she, without "good cause," as defined in N.J.A.C. 12:17-4.1, fails to report as directed for a quality control review interview, or fails to cooperate in a quality control review of the claim.

(b) A claimant shall be determined to be ineligible as of the week in which the failure to report for a quality control review interview or the refusal to cooperate occurs, and shall remain ineligible until such time as he or she agrees to cooperate with the review.

(c) Any employer or employer's agent who, without "good cause," as defined in N.J.A.C. 12:17-4.1, refuses or fails to provide wage information, separation information, dates of employment, work search verification, or other information required by the quality control program will be found to have refused to provide reports deemed necessary for the administration of the Unemployment Compensation Law, and shall be subject to the penalties set forth at N.J.S.A. 43:21-16.

12:17-4.9 Reporting to claim benefits after one year

A request for payment of a benefit week(s) made more than one year after the claim has expired, or more than one year after a final decision of eligibility, whichever is later, shall be denied unless there is "good cause," as defined in N.J.A.C. 12:17-4.1, for a late request.

SUBCHAPTER 5. MONETARY REQUIREMENTS FOR BENEFIT ELIGIBILITY

12:17-5.1 Basic eligibility requirements

(a) To be eligible for benefits, an individual during his or her base year period, consisting of the first four of the most recent five completed calendar quarters preceding the date of the claim, shall have met the following requirements:

1. Established 20 base weeks as defined at N.J.S.A. 43:21-19(t)(3) as an amount equal to 20 times the State minimum hourly wage;
2. If the individual has not met the above requirement in (a)1 above, he or she must have earned an amount equal to 1,000 times the State minimum hourly wage; or
3. If the individual has not met the requirements in (a)1 or 2 above, he or she must have performed at least 770 hours of service in the production and harvesting of agricultural crops.

Amended by R.2001 d.298, effective August 20, 2001.
See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).

Rewrote section.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), amended the N.J.S.A. reference in 1.

Case Notes

Final decision denying a claim for New Jersey unemployment benefits pursuant to N.J. Stat Ann. § 43:21-19(i)(2) was affirmed because although the claimant was employed by the company's New Jersey office, she performed all of her work in North Carolina, therefore, she was entitled to unemployment benefits in North Carolina, not New Jersey. *Gundecha v. Board of Review*, 118 A.3d 366, 2015 N.J. Super. LEXIS 107, Unemployment Ins. Rep. (CCH) P8675 (2015).

Localization rule continues to be the simplest and most efficient method for determining jurisdiction for unemployment benefits despite the modern technology advances that could not have been imagined

when the states adopted it; it remains feasible and most practicable for the employee's physical presence to be the determinative factor in determining localization. *Gundecha v. Board of Review*, 118 A.3d 366, 2015 N.J. Super. LEXIS 107, Unemployment Ins. Rep. (CCH) P8675 (2015).

Financial corporation liable for unemployment and temporary disability insurance assessments for computer expert hired to debug system since expert did not qualify as independent contractor. *Jonassen and Associates, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 9.

Pharmaceutical consulting firm liable for unemployment and temporary disability insurance assessments for consultants since these experts failed to qualify as independent contractors. *Kessler v. Department of Labor*, 97 N.J.A.R.2d (LBR) 7.

12:17-5.2 Alternative base years

(a) If an individual does not qualify for benefits pursuant to N.J.A.C. 12:17-5.1 during the base year, he or she may use wages paid during an alternative base year consisting of the most recent four completed calendar quarters preceding the date of the claim.

(b) If the individual does not qualify for benefits using wages paid in the alternative base year provided in (a) above, he or she may use wages paid during the current calendar quarter up to the date of the claim and the three previous completed calendar quarters.

12:17-5.3 Exceptions to the use of alternative base years

Alternative base year periods may be used to qualify for benefits only when an individual cannot qualify for benefits due to insufficient base weeks and/or wages during the regular base year period. An alternative base year period may not be used when an individual's ineligibility is caused by a wage credit reduction due to his or her disqualification for gross misconduct. Similarly, an alternative base year may not be used when an individual's ineligibility for benefits is caused by the individual's corporate officer or ownership status, or the individual's employment with an educational institution.

12:17-5.4 Use of wages to qualify for benefits

(a) If wages from a base year or an alternative base year are required to establish a valid claim, those wages cannot be used again to establish any future claim(s).

(b) If wages are required from the most recent completed calendar quarter, all the wages paid in that quarter shall be used.

(c) If wages are required from the quarter in which the claim was filed, only those wages paid prior to the date of the claim shall be used; any subsequent wages earned from the date of the claim in that quarter may be used to establish eligibility for future claims.

12:17-5.5 Requests for wage information and affidavits

(a) When wage information regarding base weeks and wages is not available in the Division's records, the Division

shall request that information from employers needed to determine the claimant's eligibility for benefits.

(b) If necessary, the Division shall request base week and wage information from all employers that the claimant identifies up to the date of claim. This information may be used in any of the alternative base years in order to reduce the number of contacts to employers to determine eligibility. The Division shall also request information about the claimant's separation from work.

(c) If the wage information is not received by the Division within 10 calendar days of mailing, the Division may accept an affidavit of wages and time worked from the claimant. The claimant shall be advised to present appropriate documentation, including payroll stubs, W-2 forms, Federal and State income tax returns, etc., if available. A determination of benefits based on an alternative base year shall be adjusted when the quarterly wage report from the employer is received if that information causes a change in the determination.

1. Except in the event of fraud, if it is determined that any information provided by the claimant on an affidavit is erroneous, no penalty or refund of benefits shall be imposed on the claimant for periods prior to the calendar week in which an employer provides subsequent wage information.

2. When a benefit determination is based on information provided by the claimant on an affidavit because the employer failed to reply to the Division's request for information, the employer shall not be relieved of excess charges to the employer's account because of benefits paid prior to the close of the calendar week following the receipt of the employer's subsequent reply.

Amended by R.2003 d.276, effective July 7, 2003.
Sec: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted "only" following "the Division shall request".

12:17-5.6 Alternative base years for individuals claiming benefits after a period of disability

(a) An individual, who files a claim for benefits immediately after a period of disability compensable under the provisions of the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. or compensable under the Workers' Compensation Law, N.J.S.A. 34:1-1 et seq., may have the option of using an alternative base year consisting of the first four of the most recent five completed calendar quarters preceding the date his or her disability began, to establish eligibility for, or increase entitlement for, unemployment benefits. If the previous position is available, but the individual is no longer able to perform the duties of the position, the alternative base year provisions of this section shall not apply. If the individual does not qualify for benefits pursuant to N.J.A.C. 12:17-5.1 during this base year, he or she may use wages paid during the alternate base years prescribed in N.J.A.C. 12:17-5.2, but defined as preceding the date of disability.

1. This section applies only to those individuals whose employment is not available at the conclusion of the disability period, provided the individual files his or her claim within four weeks of recovery, except where he or she has shown good cause as defined at N.J.A.C. 12:17-4.1 for filing a claim after four weeks.

2. This section applies to individuals receiving Workers' Compensation for a period not to exceed two years.

(b) An individual who files a claim under the provisions of this section shall not be disqualified for benefits for voluntarily leaving work, provided the individual contacts the employer and his or her employment is not available.

Amended by R.2003 d.276, effective July 7, 2003.

Sec: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted ", but defined as preceding the date of disability" following "N.J.A.C. 12:17-5.2" in the introductory paragraph.

SUBCHAPTER 6. EMPLOYER RECORDS AND CLAIMS FOR PARTIAL UNEMPLOYMENT BENEFITS

12:17-6.1 Records for employees receiving partial unemployment benefits

(a) In addition to the requirements set forth in N.J.A.C. 12:16-2 concerning employer records, each employer shall keep payroll records in such form that it is possible from an inspection thereof to determine whether a regular employee may be eligible for partial benefits including:

1. Remuneration for each calendar week ending at midnight Saturday.

2. Whether any such period was a week of less than full-time work, as determined according to the norm or custom associated with the individual's occupation, profession, trade, or industry; and

3. Time lost, if any, during such week when work was available.

12:17-6.2 Evidence of weekly partial unemployment

(a) For each week of partial unemployment the employer shall provide the individual with a written statement (that is, pay envelope, pay check stub, copy of pay check or similar voucher) which provides the following information:

1. The name and address of the employer;
2. The name of the employee;
3. The date of the last day of such week; and
4. The amount of remuneration for such week;

5. A notation that the individual earned "less than full-time remuneration because of lack of work," signed by the employer or the authorized agent supplying the information.

(b) The number of hours which constitutes less than full-time work shall mean not more than 80 percent of the hours worked according to the norm or custom associated with the individual's occupation, profession, trade, or industry during the week of unemployment.

(c) Any employer or agent of any employer who refuses or fails, without good cause, to cooperate with and provide information required by this subchapter shall be subject to penalties set forth at N.J.S.A. 43:21-16. For purposes of this section good cause means any situation over which the employer or agent did not have control and which was so compelling as to prevent the employer from reporting the information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), deleted "be construed to" following "full-time work shall" and inserted "during the week of unemployment" following "or industry".

12:17-6.3 Registration and filing claims

(a) An individual claiming partial unemployment benefits shall file a bi-weekly benefit claim as required by N.J.A.C. 12:17-4.3(a), and shall provide for each week, the gross remuneration amount, number of hours worked, and, if so instructed, the employer's name, address, and telephone number.

(b) Notwithstanding the provisions of N.J.A.C. 12:17-6.1, concerning regular employee records, the claim for a week of partial unemployment shall be filed within four weeks after the employer provides the individual with the wage information required in N.J.A.C. 12:17-6.2(a). The Division may for good cause as defined in N.J.A.C. 12:17-4.1(b) extend the time period for filing a claim for a week of partial unemployment. In the absence of an extension, no claim for partial benefits shall be accepted after the four week time period and the claimant shall be ineligible for benefits.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); in (b), inserted "in" preceding "N.J.A.C. 12:17-4.1(b)".

SUBCHAPTER 7. DEPENDENCY BENEFITS

12:17-7.1 Calculation of dependency payment

(a) A claimant's weekly benefit rate shall be increased by seven percent for the first dependent and four percent each for the next two dependents, up to a maximum of three dependents, except that the maximum weekly benefit rate payable for an individual claiming dependency benefits shall not exceed the maximum amount determined in N.J.A.C. 12:15-1.2, which delineates the maximum weekly benefit rate. If an individual's spouse or civil union partner is employed during the week the individual files an initial claim for benefits, this section shall not apply.

(b) The claimant shall not be paid dependency benefits for any week for which no regular or extended unemployment benefits are payable.

(c) If a claimant is eligible for partial unemployment benefits for a week claimed, the benefit payment shall equal the difference between 120 percent of the established weekly benefit rate (which includes any determined dependency allowance) and the individual's remuneration earned during the week claimed.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "employed" for "not unemployed".

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), updated the N.J.A.C. reference, and inserted "or civil union partner".

12:17-7.2 Definition of dependent

(a) "Dependent" means an individual who is unemployed during the calendar week in which the claimant files an initial or transitional claim, and is limited to the claimant's:

1. Unemployed spouse or civil union partner, that is, a person to whom the claimant is legally married or with whom the claimant is in a civil union; and is a dependent; and/or

2. Dependent unemployed unmarried child, that is, a son, daughter, stepson, stepdaughter, legally adopted son or legally adopted daughter under the age of 19, or under the age of 22 and attending an educational institution as defined in N.J.S.A. 43:21-19(y) on a full-time basis.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "on a full-time basis" following the N.J.A.C. reference in 2.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a)1, inserted "or civil union partner" and "or with whom the claimant is in a civil union".

12:17-7.3 Claiming dependents

(a) An individual shall declare in writing on an application form or as otherwise prescribed by the Division, dependents claimed within six weeks of the date of claim. The individual shall provide proof of those dependents claimed in a form and manner prescribed by the Division in accordance with N.J.A.C. 12:17-7.4.

(b) If both unemployed spouses or civil union partners establish initial or transitional claims with benefit years or benefit rights, which are concurrent in any part, only one of those claimants may receive dependency allowance benefits.

(c) If an individual is ineligible to receive dependency benefits because he or she is entitled to the maximum weekly benefit rate, the individual's spouse or civil union partner may declare the same dependent(s) on a claim for benefits.

(d) The death of a claimant during the benefit year of a claim, which includes a dependency allowance shall constitute termination for the assignment of eligible dependent(s) to that claim as of the date of the claimant's death. An unemployed spouse or civil union partner of the deceased claimant may claim a dependency allowance for eligible dependent(s) provided the individual complies with the provisions of this subchapter.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. ().

In (a), rewrote the first sentence.

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), deleted "also" preceding "provide"; in (b), inserted "or civil union partners" and a comma following "rights"; in (c) and (d), inserted "or civil union partner"; and in (d), inserted a comma following the first occurrence of "claim".

12:17-7.4 Verification and proof of dependency status

(a) An individual who claims a dependent for allowance purposes shall provide to the Division within six weeks from the date of the claim appropriate verification and proof of the declared dependency status, which shall be evidenced by the Federal or State income tax return(s) filed for the tax year immediately preceding the filing of the application for dependency allowance. If the tax return is not a joint return, the individual tax return for the spouse or civil union partner being claimed as a dependent shall be submitted. In the case that the income tax return is not available or insufficient to prove current dependency status, the Division may consider a combination of the following documents to verify the status of claimed dependents: birth, baptismal, marriage, or civil union certificate(s) or certified copies thereof; certified divorce, dissolution, child support, annulment or adoption order(s) or any other legal documents, which verify the status of claimed dependents. The presentation of a birth or baptismal document shall not in and of itself be sufficient to establish dependency status.

(b) If a claimant who is married or in a civil union declares an unemployed spouse or civil union partner as a dependent, the spouse's or civil union partner's Social Security number shall be provided to the appropriate office no later than six weeks from the date of the claim for the purpose of ascertaining whether the spouse or civil union partner is, in fact, unemployed.

(c) An individual who is eligible for unemployment compensation benefits and who upon request by the Division has not yet submitted the required verification and proof of declared dependency status shall be paid only the determined weekly benefit rate, which does not include the dependency allowance based on the declared number of eligible dependents, until the verification and proof requirement has been met.

(d) If the verification and proof requirement is not satisfied within six weeks of the date of claim (eight weeks for interstate claims) the claimant shall be ineligible to receive

the dependency allowance benefits for the duration of the claim.

(e) Any individual who is determined by the Division to have illegally received or attempted to receive dependency benefits as a result of any false or fraudulent representation shall be subject to the disqualification and penalty provisions of N.J.S.A. 43:21-5(g) and 43:21-16.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), inserted "a" preceding "married claimant" and substituted "appropriate" for "unemployment claims" following "provided to the".
Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Inserted "or civil union partner" throughout; in (a), deleted "or" preceding "marriage", and inserted "or civil union", "dissolution", and a comma following the second occurrence of "documents"; in (b), substituted "claimant who is married or in a civil union" for "married claimant", inserted "or civil union partner's" and inserted "the" preceding "claim"; and in (c), inserted "upon request by the Division".

SUBCHAPTER 8. REDUCTION OF BENEFITS BY RETIREMENT IN PENSION INCOME AND OTHER EARNED INCOME

12:17-8.1 Benefit reduction due to receipt of pension from base period or chargeable employers

(a) When a pension is received from a base period or chargeable employer, benefits shall be reduced if the pension, retirement or retired pay, annuity, or other similar payment is under a plan maintained or contributed to by such employer.

(b) If the remuneration for services performed for the employer during the base year by the individual does not affect eligibility for, or increase the amount of, the pension, retirement or retired pay, annuity, or similar payment then the individual's unemployment benefits shall not be reduced by the amount of the pension.

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (b), deleted "chargeable" preceding "employer", and inserted "during the base year".

12:17-8.2 Amount of benefit reduction

(a) The amount of the benefit reduction shall be determined by taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment. The following schedule will apply:

1. If such payment is made under a plan to which the individual did not contribute, the weekly and maximum amount of benefits payable to the individual shall be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount shall be computed to the

next lower multiple of \$1.00 if not already a multiple thereof.

2. If such payment is made under a plan to which the employer and individual contributed, the amount of benefits payable to the individual for any week will be reduced by an amount equal to 50 percent of the amount of the pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

3. If such payment is made under a plan to which the individual contributed 100 percent, the amount of benefits payable to the individual for any week shall not be reduced.

4. No reduction in benefits shall be made if the pension, retirement or retired pay, annuity or other similar periodic payment received by the individual is from the Social Security pension to which the individual has made any contribution.

12:17-8.3 Lump sum pension reduction

(a) In those cases where an individual is the recipient of a lump sum payment from his or her employer in lieu of a periodic payment of a pension, retired or retirement payment, including 401K plans, annuity or other similar periodic payment, the calculation for the reduction of benefits shall be made, consistent with the provisions of N.J.A.C. 12:17-8.1 and 8.2, by prorating the dollar value of the payment over the life expectancy of the individual at the time of separation from the employer using approved actuarial tables.

(b) The lump sum pension payable to an individual, who is involuntarily and permanently separated from employment prior to the date at which the individual may retire with full pension rights, shall be assigned to the week in which the individual receives the lump sum payment or, at the claimant's option, may be prorated pursuant to (a) above.

1. For purposes of this subsection, the term "involuntarily," when used to describe an individual's separation from employment, shall mean both those instances when an individual has been discharged from employment and those instances when an individual has left work voluntarily with good cause attributable to such work, as the phrase "good cause attributable to such work" is used within N.J.S.A. 43:21-5.

2. For purposes of this subsection, the phrase "date at which the individual may retire with full pension rights" shall mean the date upon which the claimant has attained the age at which the Internal Revenue Code provides that an individual's receipt of a distribution from a qualified retirement plan is not subject to a 10 percent additional early distribution tax as defined in 26 U.S.C. §72(t)(2)(A)(i).

Amended by R.2006 d.43, effective January 17, 2006.
See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

In (b), substituted "with full pension rights" for "without penalty to his or her pension rights" and added (b)1 and 2.

12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions

(a) A reduction in benefits shall be made as of the first calendar week commencing after the claimant is given constructive receipt of a retirement pension award. Constructive receipt occurs when an individual has applied for a payment or benefit covered by section 3304(a)(15) of the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq. and is notified in writing that it has been determined by responsible authorities that he or she is entitled to such payment or benefit in specified amounts for the same period that unemployment compensation is payable.

(b) Notwithstanding (a) above, an individual who receives a retroactive pension payment shall be subject to benefit reduction as of the first calendar week commencing after the effective date of pension entitlement as provided in this subchapter for any week he or she also received unemployment benefits and shall be liable to refund any resulting overpayment of benefits.

(c) There will be no reduction of benefits where there is a transfer of an eligible rollover distribution from a qualified trust to an eligible retirement plan (as defined under section 402(c)(8) of the Internal Revenue Code of 1986), if all the requirements of section 402 of the Internal Revenue Code are met within 60 days of receipt by the individual.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "Notwithstanding (a) above, an" for "A" preceding "individual who receives" and substituted "as of the first calendar week commencing after" for "from" preceding "the effective date".

Amended by R.2006 d.43, effective January 17, 2006.

See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

Deleted (c).

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Added (c).

12:17-8.5 Reduction of benefits due to earned income

(a) An individual's eligibility for weekly benefits shall be reduced by an amount equal to any wages or remuneration, including remuneration from casual work, received in excess of 20 percent of the individual's weekly benefit rate.

(b) For purposes of the subchapter, "wages" means remuneration paid by employers for employment, including "in kind" payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her wages shall also include the gratuities received if reported in writing to the employer in accordance with the rules of the Division at N.J.A.C. 12:16-4.9. If gratuities are not reported, the individual's "wages" shall be determined in accordance with the

minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from the employer, whichever is higher.

(c) "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, including "in kind" payments as provided N.J.A.C. 12:16-4.8.

Amended by R.2009 d.21, effective January 5, 2009.
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (b), inserted "the" preceding "rules", and updated the second N.J.A.C. reference.

12:17-8.6 Disqualification for benefits for remuneration in lieu of notice

(a) An individual receiving remuneration in lieu of notice is disqualified for benefits and the claim for benefits is invalid because the claimant is considered not unemployed. Notwithstanding any provision of this subsection, an individual who receives remuneration in lieu of notice for a period less than a calendar week may be eligible for partial benefits for such week.

(b) An individual shall be disqualified for benefits for any week for which he or she receives remuneration in lieu of notice. Such payment shall be deemed to be in lieu of notice if:

1. The remuneration, in fact, is in place of the employer's giving notice to the employee that he or she is being terminated and the employer is legally required or has an established custom of providing such payment, or
2. The payments are made to individuals in accordance with the Federal Worker Adjustment and Retraining Notification Act.

12:17-8.7 Severance or separation pay

(a) For the purposes of this subchapter, "severance or separation pay" shall mean any lump sum payment or periodic payment made to an individual by an employer at termination under contract or obligation or by custom which is based on past services performed for the employer.

(b) The receipt of severance or separation pay in periodic payments or in a lump sum shall not be a bar to eligibility for unemployment benefits. However, the payments do not extend the individual's employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

12:17-8.8 Salary continuation through date of termination

(a) An employer may elect to continue wage or salary payments and forego the services normally performed by the employee through the date of termination provided for by contract or other agreement. A claim filed by an individual

receiving such payments shall be invalid and he or she shall be ineligible for benefits through the date of termination of contract or other agreement. However, salary continuation payments may be used to establish a claim for benefits after the period for which the individual has received such payments.

(b) An employee who receives a lump sum payment shall be considered to be employed and ineligible for benefits through the date of termination of contract or other agreement in accordance with (a) above.

Case Note

Unemployment workers' compensation claimant was not entitled to unemployment benefits for period of time, pursuant to agreement with employer, during which her employment relationship had ended, but she still continued to be on active payroll status, in lieu of separation pay; unemployment compensation system was not designed to benefit someone who, though formally being paid for work previously performed or for past services, was continued on active payroll status and received her same pay and benefits in order to achieve a vested pension. *Helen T. Darby v. Board of Review*, 359 N.J.Super. 479, 820 A.2d 666.

12:17-8.9 Receipt of residuals

"Residuals" are deferred payments or commissions usually made to individuals for the reuse of commercial recordings. The receipt of residuals shall not be a bar to eligibility for unemployment benefits. These payments do not extend the individual's employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

12:17-8.10 Vacation and holiday pay

(a) An individual who voluntarily takes a vacation is ineligible for benefits as the individual is unavailable for work. "Vacation" means a period of absence from work taken voluntarily by the employee with the employer's consent and with the intention of not working.

(b) Where a union or employment contract calls for a vacation or holiday period with pay and permits the employer to close its operations for a specified period, the employees shall be ineligible for benefits. However, any employee who does not receive pay for the contractual vacation period or any part thereof may receive unemployment benefits if otherwise eligible.

(c) The receipt of a lump sum payment at termination representing unused accrued vacation leave is not a bar to the receipt of unemployment benefits.

12:17-8.11 Sick leave pay

(a) An individual who receives periodic sick leave payments from an employer is considered employed and is ineligible for unemployment benefits because the claim is invalid.

(b) When an individual's employment is terminated, any lump sum payment of unused accrued sick leave is not a bar to the receipt of unemployment benefits.

12:17-8.12 Pay for work as a board worker for a county board of elections on an election day

(a) For the purposes of eligibility for unemployment insurance benefits, an unemployed individual, who is otherwise eligible for benefits, shall not be deemed unavailable for work or ineligible solely by reason of the individual's work as a board worker for a county board of election on an election day.

(b) An individual's eligibility for unemployment insurance benefits shall not be affected, and the amount of benefits received by the individual shall not be reduced, as result of election day work at the polls.

New Rule, R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

**SUBCHAPTER 9. CLAIM ADJUDICATION—
VOLUNTARILY LEAVING WORK**

**12:17-9.1 Disqualification for voluntarily leaving—
general principles**

(a) An individual shall be disqualified for benefits for the week in which he or she has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the Federal government, and has earned in employment at least 10 times the individual's weekly benefit rate, as determined in each case. See N.J.S.A. 43:21-5(a).

(b) For the purpose of this subchapter, "good cause attributable to such work" means a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment.

(c) The burden of proof is on the claimant to establish good cause attributable to such work for leaving.

(d) An individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified for benefits.

(e) An individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for the following reasons including, but not limited to:

1. Lack of transportation;
2. Care of children or other relatives;

3. School attendance;
4. Self-employment;
5. Lack of housing;
6. Relocating to another area for personal reasons;
7. Relocating to another area to accompany a spouse, a civil union partner, or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (e)7, inserted ", a civil union partner,".

Amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), substituted "eight" for "four" and "10" for "six".

Case Notes

Where the undisputed facts supported the conclusion that the claimant resigned from the employer's business for work-related transportation problems rather than for personal reasons, the claimant was entitled to statutory unemployment benefits. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified from unemployment benefits. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

When commuting problems arise solely from the personal circumstances of the worker, unrelated to an alteration in the terms or conditions of employment, the worker who voluntarily quits the job cannot show good cause qualifying the worker for unemployment benefits. However, there could be circumstances in which the employer set in motion a chain of events that led to a worker's inability to get to work, thus qualifying that employee for unemployment benefits, such as a sudden change in employment circumstances greatly increasing the commuting distance from home to job. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Board of Review erred in determining that claimant, who had both full- and part-time jobs and was terminated from the former through no fault of her own, was partially disqualified from benefits after she left a second part-time job due to unsafe conditions because she voluntarily quit prior part-time job, even though it did not interfere with her quest for full-time employment; as N.J.A.C. 12:17-9.2 explains that partial disqualification may be avoided when the claimant leaves part-time employment for personal reasons "which arise from the loss of the full-time employment," and as claimant's second part-time job had better pay and benefits, the Board's reasons for partial disqualification were insufficient. *Frazier v. Bd. of Review*, 439 N.J. Super. 130, 106 A.3d 1252, 2015 N.J. Super. LEXIS 12, Unemployment Ins. Rep. (CCH) P8673 (2015).

N.J.A.C. 12:17-9.6, which allowed employees participating in a voluntary layoff or early retirement program to receive unemployment compensation benefits, was invalid because the regulation was directly contrary to the New Jersey Department of Labor's own regulation defining "good cause," in N.J.A.C. 12:17-9.1. In re N.J.A.C. 12:17-9.6 by the N.J. Dep't of Labor, 395 N.J. Super. 394, 928 A.2d 956, 2007 N.J. Super. LEXIS 278 (2007).

Employer's inappropriate request for lie detector test good cause for voluntarily leaving work. In the Matter of J.C., 97 N.J.A.R.2d (UCC) 45.

12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time work and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as defined in N.J.A.C. 12:17-9.1(b). The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount. The partial disqualification shall remain in effect until the individual becomes reemployed and works eight weeks in employment, which may include employment for the Federal government, and he or she has earned in employment 10 times the individual's weekly benefit rate, as determined in each case.

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.

2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

(b) A worker who is employed by two or more employers on a part-time basis and who leaves one employer voluntarily without good cause attributable to such work, shall be subject to disqualification for voluntarily leaving work.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), added the last sentence in the introductory paragraph.
Amended by R.2015 d.079, effective May 18, 2015.
See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), substituted "eight" for "four" and "10" for "six".

Case Notes

Board of Review erred in determining that claimant, who had both full- and part-time jobs and was terminated from the former through no fault of her own, was partially disqualified from benefits after she left a second part-time job due to unsafe conditions because she voluntarily quit prior part-time job, even though it did not interfere with her quest for full-time employment; as this rule explains that partial disqualification may be avoided when the claimant leaves part-time employment for personal reasons "which arise from the loss of the full-time employment," and as claimant's second part-time job had better pay and benefits, the Board's reasons for partial disqualification were insufficient. *Frazier v. Bd. of Review*, 439 N.J. Super. 130, 106 A.3d 1252, 2015 N.J. Super. LEXIS 12, Unemployment Ins. Rep. (CCH) P8673 (2015).

12:17-9.3 Voluntary leaving for health or medical reasons

(a) An individual who leaves work because of a disability which has a work-connected origin is not subject to disqualification for voluntarily leaving work, provided there was no other suitable work available which the individual could have performed within the limits of the disability.

(b) An individual who leaves a job due to a physical and/or mental condition or state of health which does not have a work-connected origin but is aggravated by working conditions will not be disqualified for benefits for voluntarily leaving work without good cause "attributable to such work," provided there was no other suitable work available which the individual could have performed within the limits of the disability. When a non-work connected physical and/or mental condition makes it necessary for an individual to leave work due to an inability to perform the job, the individual shall be disqualified for benefits for voluntarily leaving work.

(c) Notwithstanding (b) above, an individual who has been absent because of a personal illness or physical and/or mental condition shall not be subject to disqualification for voluntarily leaving work if the individual has made a reasonable effort to preserve his or her employment, but has still been terminated by the employer. A reasonable effort is evidenced by the employee's notification to the employer, requesting a leave of absence or having taken other steps to protect his or her employment.

(d) When an individual leaves work for health or medical reasons, medical certification shall be required to support a finding of good cause attributable to work.

Case Notes

Board of Review of the New Jersey Department of Labor and Workforce Development's imposition of a general requirement that an unemployment benefits claimant prove notice to the employer and a request for an accommodation in order to satisfy the burden imposed by this rule could not be implemented by means of the adjudication of an action because that interpretation established a legal standard and agency policy that required rulemaking; accordingly, that aspect of the Board's interpretation of this rule was plainly unreasonable. *Ardan v. Board of Review*, 2018 N.J. LEXIS 123 (2018).

While this rule does not generally impose a notice-and-inquiry requirement on every unemployment benefits claimant who has departed her work because it aggravated a medical condition, plaintiff failed to meet the burden imposed by this rule because she did not investigate less physically demanding nursing opportunities but instead surmised that her employer would not provide them. *Ardan v. Board of Review*, 2018 N.J. LEXIS 123 (2018).

12:17-9.4 Voluntary leaving for health or safety conditions

An individual shall not be disqualified for benefits for voluntarily leaving work if he or she can establish that working conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work.

12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge

If an individual leaves work after he or she is notified by the employer of an impending layoff or discharge, he or she shall be subject to disqualification for benefits unless the individual will be separated within 60 days. For purposes of this section, imminent layoff or discharge is one in which the individual will be separated within 60 days.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In former (a), deleted the designation and substituted "60 days" for "four weeks" throughout; deleted former (b).

Case Notes

Former employee was not disqualified from receiving unemployment compensation benefits under N.J.S.A. 43:21-5(a) for voluntarily leaving her position as a veterinarian as she established that she was compelled to resign because of a real, imminent, and substantial risk of losing her job after being advised by the employer to leave. The employer's advisement that her continued employment was no longer desired conveyed a very strong likelihood of imminent discharge, subject to the parties' contractual agreement to provide 60 days notice before termination. *Shuster v. Bd. of Review*, 396 N.J. Super. 240, 933 A.2d 641, 2007 N.J. Super. LEXIS 332, Unemployment Ins. Rep. (CCH) P8658 (App.Div. 2007).

12:17-9.6 Voluntary leaving work – trailing spouse or civil union partner

(a) No otherwise eligible individual shall be denied benefits for any week in which the individual left work voluntarily and without good cause attributable to the work, if the individual left work to accompany his or her spouse or civil union partner who is an active member of the United States Armed Forces, as defined in N.J.S.A. 38A:1-1(g), to a new place of residence outside the State, due to the armed forces member's transfer to a new assignment in a different geographical loca-

tion outside the State, provided that the following requirements are also met:

1. The otherwise eligible individual moves to the new place of residence not more than nine months after the spouse or civil union partner is transferred; and

2. Upon arrival at the new place of residence, the otherwise eligible individual is in all respects available for suitable work.

(b) No employer's account shall be charged for the payment of benefits to an individual who left work under the circumstances set forth in (a) above, except that this shall not be construed as relieving the State of New Jersey and any other governmental entity or instrumentality or nonprofit organization electing or required to make payments in lieu of contributions from its responsibility to make all benefit payments otherwise required by law and from being charged for those benefits as otherwise required by law.

New Rule, R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.6, Discharge after giving notice of resignation, recodified to N.J.A.C. 12:17-9.7.

Repeal and New Rule, R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Section was "Voluntary layoff and/or early retirement incentive policy or program".

12:17-9.7 Discharge after giving notice of resignation

(a) When an individual gives the employer notice of resignation and the employer subsequently terminates the individual's employment prior to the effective date of the notice, the individual's separation shall be reviewed as a voluntarily leaving work issue as of the effective date of the resignation. However, the individual may receive benefits up to the date of resignation, if otherwise eligible.

(b) If the discharge in (a) above was the result of misconduct connected with the work, in addition to the voluntary leaving disqualification, the claimant will be subject to disqualification for misconduct connected with the work.

Recodified from N.J.A.C. 12:17-9.6 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.7, Assignment of work under a union contract, recodified to N.J.A.C. 12:17-9.8.

12:17-9.8 Assignment of work under a union contract

If a union contract provides that a worker may be assigned other work when there is a lack of work in the worker's usual occupation, such assignment does not constitute an offer of new work since this change in duties is covered by the terms of the existing contract. If separated from employment for this reason, the employee shall be disqualified for benefits for voluntarily leaving work without good cause attributable to such work.

Recodified from N.J.A.C. 12:17-9.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.8, Recall from temporary layoff, recodified to N.J.A.C. 12:17-9.9.

12:17-9.9 Recall from temporary layoff

If an unemployed individual is on a temporary layoff of up to 10 weeks and has a definite date of recall to work with a former employer and fails to return to such work, he or she shall be subject to disqualification for benefits for voluntarily leaving work.

Recodified from N.J.A.C. 12:17-9.8 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.9, Loss of license needed as a condition of employment, recodified to N.J.A.C. 12:17-9.10.

12:17-9.10 Loss of license needed as a condition of employment

(a) If an individual is discharged due to the loss of a prerequisite license which is necessary to perform the duties of his or her employment, such discharge shall subject the individual to disqualification for benefits for voluntarily leaving work if he or she engaged in an act which resulted in the loss of the license.

(b) If an individual fails to apply for or renew a prerequisite license which is needed to perform the duties of his or her employment, and he or she is separated from work for not possessing the required license, the separation from work shall be considered a voluntary leaving of work and the individual shall be disqualified for benefits.

(c) If an individual is separated from work by the employer due to the individual's failure to pass a licensing or other qualifying examination, the separation from work shall be considered a discharge.

Recodified from N.J.A.C. 12:17-9.9 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.10, Job abandonment, recodified to N.J.A.C. 12:17-9.11.

12:17-9.11 Job abandonment

(a) An employee who is absent from work for five or more consecutive work days and who without good cause fails to notify the employer of the reasons for his or her absence shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work. For purposes of this section good cause means any situation over which the claimant did not have control and which was so compelling as to prevent the employee from notifying the employer of the absence.

(b) An employee who has not returned to work following an approved leave of absence pursuant to the employer's written policy, union contract or business custom and who without good cause has not notified the employer of the reasons for failing to return to work within five consecutive work days shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work.

(c) This section shall not apply where an employer provides an employee with a date certain for return to work following an approved leave of absence, where on or prior to that date the employee communicates to the employer that he or she will not be returning to work on that date, and where the employee, in fact, does not return to work on that date. Under the circumstances described in this subsection, the individual's eligibility for unemployment compensation shall be evaluated under the remaining sections of this subchapter, relative to whether the individual left work voluntarily without good cause attributable to such work.

(d) Nothing in (c) above shall be altered by virtue of the employee communicating to the employer within five consecutive work days following the date certain for return to work or thereafter that he or she is no longer unable to return to work and would now like to return to work. Under such circumstances, the individual's eligibility for unemployment compensation shall, as indicated in (c) above, be evaluated under the remaining sections of this subchapter, relative to whether the individual left work voluntarily without good cause attributable to such work.

Recodified from N.J.A.C. 12:17-9.10 and amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), inserted "without good cause" preceding "has not notified the employer". Former N.J.A.C. 12:17-9.11, Voluntary leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence, recodified to N.J.A.C. 12:17-9.12.

Amended by R.2010 d.242, effective November 1, 2010.

See: 41 N.J.R. 3779(a), 42 N.J.R. 2633(b).

Added (c) and (d).

Case Notes

Pursuant to N.J.A.C. 12:17-9.11(b), an employee could not be deemed to have abandoned her employment by failing to return to work until the expiration of five consecutive days from the last day of an approved leave of absence. Thus, a claimant was not disqualified for unemployment benefits as a "voluntary quit" under N.J.S.A. 43:21-5(a), because her employer terminated her on the day she was ordered to return to work. *Espina v. Bd. of Review*, 402 N.J. Super. 87, 952 A.2d 1108, 2008 N.J. Super. LEXIS 170, Unemployment Ins. Rep. (CCH) P8662 (App.Div. 2008).

12:17-9.12 Leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence

(a) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in N.J.S.A. 2C:25-19.

(b) No employer's account, including non-profit and governmental entities electing the reimbursable method pursuant to N.J.S.A. 43:21-7.2, shall be charged for the payment of benefits to an individual who left work due to circumstances resulting from the individual being a victim of domestic violence.

(c) For the purposes of this section, the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following:

1. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
2. A police record documenting the domestic violence;
3. Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in N.J.S.A. 2C:25-19;
4. Medical documentation of the domestic violence issued by a licensed medical practitioner;
5. Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or
6. Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

(d) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Youth and Family Services in the Department of Human Services and is under contract with the Division for the express purpose of providing such services.

New Rule, R.2000 d.326, effective August 7, 2000.
See: 32 N.J.R. 1699(a), 32 N.J.R. 2907(a).
Recodified from N.J.A.C. 12:17-9.11 and amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
Rewrote (b).

SUBCHAPTER 10. CLAIMS ADJUDICATION—
MISCONDUCT CONNECTED WITH THE WORK

12:17-10.1 Disqualification for misconduct connected with the work—general principles

(a) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the five weeks that immediately follow that week. (See N.J.S.A. 43:21-5(b)).

(b) Unless a final discharge is changed to a suspension for misconduct connected with the work, if the discharge is rescinded by the employer voluntarily or as a result of mediation or arbitration, this section shall not apply. However, an individual who is restored to employment with back pay shall return any benefits received for any week of unemployment for which the individual is subsequently compensated by the employer.

(c) If the individual's discharge was for gross misconduct connected with the work because he or she committed an act punishable as a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., the individual shall be disqualified for benefits for the week in which he or she was discharged and for each week thereafter until the individual becomes reemployed and works eight weeks in employment and has earned at least 10 times the individual's weekly benefit rate. The individual will have no benefit rights based upon wages from that employer for services rendered prior to the day upon which he or she was discharged.

(d) An individual who is suspended for gross misconduct connected with the work shall be disqualified for benefits in the same manner as an individual who has been finally discharged for gross misconduct connected with the work.

(e) To sustain disqualification under this section, the burden of proof is upon the employer, who shall, prior to a determination by the Department of misconduct, provide written documentation demonstrating that the employee's actions

constitute misconduct or gross misconduct. However, in the case of gross misconduct, the following apply:

1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution or conviction shall not be required to sustain that the claimant has engaged in gross misconduct.

2. If an individual has been convicted of a crime of the first, second, third, or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.

(f) Nothing within this subchapter shall be construed to interfere with the exercise of rights protected under the National Labor Relations Act, 29 U.S.C. §§ 151 et seq., or the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100 (N.J.S.A. 34:13A-1 et seq.).

Amended by R.2015 d.079, effective May 18, 2015.
See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Section was "Disqualification for misconduct and gross misconduct connected with work—general principles". Rewrote the section. Administrative correction.

See: 47 N.J.R. 2380(a).

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

In (a), deleted "simple" preceding "misconduct" and substituted "five" for "seven"; deleted former (b); recodified former (c) through (f) as (b) through (e); rewrote (e); and inserted (f).

Case Notes

Implementation of employment settlement no bar to employee's unemployment benefits. *Robinson v. Camden County Health Services Center*, 97 N.J.A.R.2d (CSV) 669.

12:17-10.2 Discharge or suspension for unauthorized absence

(a) An individual shall be disqualified for benefits for misconduct connected with the work, if he or she did not have good cause for being absent from work or failed without justification to take steps necessary to notify the employer of the absence and the reason therefor.

(b) For the purpose of this section, "good cause" means any compelling personal circumstance, including illness, which would normally prevent a reasonable person under the same conditions from reporting to work.

(c) An unauthorized absence for five or more consecutive work days may constitute job abandonment and subject an individual to disqualification for benefits for voluntarily leaving work without good cause under N.J.A.C. 12:17-9.11.

The following annotation applies to N.J.A.C. 12:17-10.2 prior to its repeal by R. 2015 d.079:

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "malicious, and within the individual's control, and is either a deliberate violation" for "malicious, within the individual's control, a deliberate violation".

The following annotations apply to N.J.A.C. 12:17-10.2 subsequent to its recodification from N.J.A.C. 12:17-10.3 by R. 2015 d.079:

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), amended the N.J.A.C. reference.

Recodified from N.J.A.C. 12:17-10.3 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), inserted "simple". Former N.J.A.C. 12:17-10.2, Misconduct defined, repealed.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

In (a), deleted "simple" preceding "misconduct", and deleted a comma following the second occurrence of "work".

Case Notes

Pursuant to N.J.A.C. 12:17-9.11(b), an employee could not be deemed to have abandoned her employment by failing to return to work until the expiration of five consecutive days from the last day of an approved leave of absence. Thus, a claimant was not disqualified for unemployment benefits as a "voluntary quit" under N.J.S.A. 43:21-5(a), because her employer terminated her on the day she was ordered to return to work. *Espina v. Bd. of Review*, 402 N.J. Super. 87, 952 A.2d 1108, 2008 N.J. Super. LEXIS 170, Unemployment Ins. Rep. (CCH) P8662 (App.Div. 2008).

12:17-10.3 Discharge or suspension for tardiness

(a) Tardiness shall constitute misconduct if it was:

1. Chronic or excessive and is repeated after verbal and/or written warnings from the employer; and

2. Without reasonable excuse, or could have been anticipated by the individual and he or she failed without justification to take necessary steps to notify the employer of the expected tardiness.

Recodified from N.J.A.C. 12:17-10.4 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In the introductory paragraph of (a), inserted "simple". Former N.J.A.C. 12:17-10.3, Discharge or suspension for unauthorized absence, recodified to N.J.A.C. 12:17-10.2.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

In the introductory paragraph of (a), deleted "simple" preceding "misconduct".

12:17-10.4 Discharge or suspension for falsification of application or other records

An individual shall be considered to have committed an act of misconduct when it is established that he or she falsified an employment application or other records required by the employer, or omitted information which created a material misrepresentation of his or her qualifications or suitability for the job.

Recodified from N.J.A.C. 12:17-10.5 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Substituted "simple" for "willful". Former N.J.A.C. 12:17-10.4, Discharge or suspension for tardiness, recodified to N.J.A.C. 12:17-10.3.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

Deleted "simple" preceding "misconduct".

12:17-10.5 Discharge or suspension for insubordination or violation of an employer's rule

(a) An individual shall be considered to have been discharged for an act of misconduct where it is established that he or she has committed an act of "misconduct" and met one of the following:

1. Refused without good cause to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary job duties;
2. Acted beyond the expressed or implied authority granted to the individual by the employer; or
3. Violated a reasonable rule of the employer which the individual knew or should have known was in effect.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote the introductory paragraph and inserted "without good cause" following "Refused" in 1.
Recodified from N.J.A.C. 12:17-10.6 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In the introductory paragraph of (a), inserted the first occurrence of "simple", and substituted "simple misconduct" for "misconduct as defined in N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.5, Discharge or suspension for falsification of application or other records, recodified to N.J.A.C. 12:17-10.4.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

In the introductory paragraph of (a), deleted "simple" preceding both occurrences of "misconduct".

12:17-10.6 Discharge or suspension for unsatisfactory work performance

An individual's discharge for failure to meet the employer's standard(s) relating to the quantity or quality of work shall not be considered misconduct, unless it is established that he or she deliberately performed below the standard(s), in a manner that is consistent with "misconduct," and that the standard(s) was reasonable.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

Recodified from N.J.A.C. 12:17-10.7 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Substituted "simple misconduct," for "misconduct" and "simple misconduct," for "N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.6, Discharge or suspension for insubordination or violation of an employer's rule, recodified to N.J.A.C. 12:17-10.5.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

Inserted "the" preceding "quantity", and deleted "simple" preceding both occurrences of "misconduct".

12:17-10.7 Discharge or suspension for failure to observe safety standards

Where an individual has violated a reasonable safety standard imposed by the employer, such violation shall constitute

an act of misconduct if the violation is consistent with the definition of "misconduct."

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

Recodified from N.J.A.C. 12:17-10.8 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Inserted the first occurrence of "simple", and substituted "simple misconduct." for "misconduct as defined in N.J.A.C. 12:17-10.2". Former N.J.A.C. 12:17-10.7, Discharge or suspension for unsatisfactory work performance, recodified to N.J.A.C. 12:17-10.6.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

Deleted "simple" preceding both occurrences of "misconduct".

12:17-10.8 Failing or refusing to take an employer drug test

(a) Where a drug-free workplace and/or drug testing is a prerequisite of employment, an employee who tests positive for illegal drugs on a bona fide drug test of the employer or refuses to provide a test sample for the employer violates a condition of employment. If separated from employment for this reason, the employee shall be disqualified for benefits for misconduct connected with such work.

(b) In order for the disqualification for benefits in (a) above to apply, the employer shall have a written drug test policy which has been conveyed to the employees.

Recodified from N.J.A.C. 12:17-10.9 and amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a), inserted "simple". Former N.J.A.C. 12:17-10.8, Discharge or suspension for failure to observe safety standards, recodified to N.J.A.C. 12:17-10.7.

Amended by R.2020 d.031, effective March 2, 2020.

See: 51 N.J.R. 1595(a), 52 N.J.R. 473(a).

In (a), deleted "simple" preceding "misconduct".

12:17-10.9 (Reserved)

Recodified to N.J.A.C. 12:17-10.8 by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

Section was "Failing or refusing to take an employer drug test".

**SUBCHAPTER 11. CLAIMS ADJUDICATION—
REFUSAL TO APPLY FOR OR ACCEPT
SUITABLE WORK****12:17-11.1 Disqualification period for failure to apply for or accept suitable work—general principles**

An individual shall be disqualified for benefits if it is found that the individual has failed, without good cause, either to apply for available, suitable work when directed by the employment service office or the Director, or to accept

suitable work when it is offered. The disqualification shall continue for the week in which the failure to apply occurred and for the three weeks which immediately follow that week. This disqualification for failure to accept suitable work shall be imposed during the week in which the individual refused the work or, if there is a definite starting date, the week in which the work is to begin. (See N.J.S.A. 43:21-5(c).)

12:17-11.2 Suitability of work defined

(a) In determining whether or not the work is suitable, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

1. For a position to be considered suitable, all of the factors in (a) above must be judged with respect to the particular individual involved.

2. For purposes of this subchapter, and restricted to those offers of work made during an individual's benefit year, suitability in terms of wages means eighty percent of the claimant's average weekly wage (including the value of employee benefits) during the base year.

3. Notwithstanding any other provisions of this subchapter an offer of work at a rate of pay less than provided by the State minimum hourly wage shall be unsuitable.

(b) No work may be deemed suitable, and an individual will not be disqualified for benefits because of his or her refusal to accept work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable than those prevailing for similar work in the labor market area; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote 2.

12:17-11.3 Establishing bona fide offers of work

(a) An individual shall not be disqualified for benefits pursuant to this subchapter unless it has been established that there was a bona fide offer of work or referral to work which he or she refused. An employer should document offers of work and should contact the Division if unable to reach the

claimant. In order for a bona fide offer or referral to exist it must be shown that:

1. There was an offer of work to a specific job evidenced by details of the job including job duties, rate of pay, hours of work; and

2. The offer was conveyed in writing or verbally to the individual.

(b) If an individual prevents the details of the job from being relayed by refusing the job or the referral at the beginning of the interview, the offer is still considered bona fide.

12:17-11.4 Good cause for refusal of suitable work

For purposes of this subchapter, "good cause" means any situation over which the claimant did not have control or which was so compelling as to prevent the claimant from accepting work. In order to establish good cause, the claimant must have made a reasonable attempt to remove the restrictions pertaining to the refusal.

12:17-11.5 Offers of new work

(a) An individual shall be subject to disqualification for benefits if he or she fails to accept or apply for suitable new work. For purposes of this subchapter, "new work" means:

1. An offer of work made to an unemployed individual by an employer with whom he or she has never worked;

2. An offer of reemployment made to an unemployed individual by any former employer, following an indefinite layoff with no recall date; or

3. An offer of work made by an individual's present employer of substantially different duties, terms or conditions of employment from those he or she agreed to perform in his or her existing contract of hire. Examples of factors which may be weighed when considering whether there is a substantial change in the terms or conditions of employment which constitute "new work" include, but are not limited to, the employer's change of hours or shift, job duties, location, salary, benefits, work environment and health and safety conditions.

(b) An individual who accepts suitable work for a brief period, and voluntarily leaves such work for reasons not attributable to the work, shall not be disqualified for benefits for voluntarily leaving work. The individual may be subject to disqualification for refusal to accept suitable work in accordance with N.J.S.A. 43:21-5(c).

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), rewrote the first sentence and added the second sentence.

SUBCHAPTER 12. CLAIMS ADJUDICATION—OTHER
BENEFIT ELIGIBILITY ISSUES

12:17-12.1 Corporate officers, owners and creditors

(a) An officer of a corporation and/or a person who has more than five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be considered unemployed in any week during the individual's term of office or ownership in the corporation and the claim shall be determined invalid.

1. An equitable interest in the corporation is defined as the ownership of the corporate stock.

2. A debt interest in the corporation is defined as being a creditor of the corporation.

3. A corporation is considered viable unless it has permanently ceased operations and has filed for formal dissolution in accordance with the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq.; or has filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.

(b) If an individual is determined ineligible for benefits, and if he or she has sufficient earnings in other employment to qualify for a valid claim, an adjusted monetary determination shall be made based solely on such employment. Benefits can be payable based on the adjusted monetary determination, provided he or she otherwise meets all other eligibility requirements for unemployment insurance benefits.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "permanently ceased operations and has filed for formal dissolution" for "been dissolved" in 3; added (b).

Case Notes

Before denying petition for unemployment compensation, Board of Review was required to consider petitioner's contention that he had divested himself of his ownership interest in the corporation that had employed him. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Owner of 25% equity share in corporation was not entitled to unemployment benefits after his employment with corporation was terminated, where corporation had not been formally dissolved, regardless of the reason corporation had not been formally dissolved. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Under statute and regulation, an officer of a corporation and/or a person who has more than a 5% equitable or debt interest in the corporation is ineligible for unemployment compensation benefits while that person still holds his or her stock or office or debt interest, and the corporation has neither been dissolved nor filed for bankruptcy. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Claimant, who was corporate treasurer and a 25% shareholder, was not "unemployed" and was precluded from receiving unemployment benefits even though restaurant (employer) had ceased operating; owner remained active for collection of debts. *Fernicola v. Board of Review*, 335 N.J.Super. 523 (A.D. 2001).

12:17-12.2 Labor disputes

(a) The following words and terms, as used in this section, shall have the following meanings:

1. "Labor dispute" means any controversy concerning wages, hours, working conditions or terms of employment between an employer and a bargaining unit or a group of employees.

2. "Stoppage of work" means a substantial curtailment of work which is due to a labor dispute. Justification for the labor dispute may not be considered. An employer is considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met.

(b) A claimant shall be disqualified for benefits if he or she is unemployed due to a work stoppage which occurs because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed. Separate branches of work which are commonly conducted as separate business in separate premises or are conducted in separate departments of the same premises, shall be deemed to be a separate factory, establishment, or other premises. The individual shall be disqualified if:

1. He or she is participating in, financing or directly interested in the labor dispute; and

2. Immediately before the work stoppage began, he or she belongs to a grade or class of workers employed at the premises which are participating in, financing or directly interested in the dispute.

(c) A claimant shall not be disqualified for benefits in accordance with N.J.S.A. 43:21-5(d):

1. If the claimant has been prevented from working by the employer, even though:

i. The individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment; and

ii. The employees had not engaged in a strike immediately before being prevented from working;

2. If the claimant was separated from employment for reasons which occurred prior to the labor dispute, or was laid off due to lack of work without a definite recall date, even if the layoff was caused by a labor dispute at an industry upon which the employer is dependent;

3. From the date the claimant was discharged during the labor dispute, however, this shall not preclude a determination of disqualification under other provisions of the law; or,

4. The employer has permanently closed and ceased operations, has commenced bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Code, has sold the business and its assets or has permanently relocated.

Amended by R.2006 d.43, effective January 17, 2006.

See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

In (a)2, deleted "There is no distinction made with regard to whether the work stoppage is caused by a strike or a lockout."; added (c)1; recodified former (c)1-3 as (c)2-4.

Case Notes

Employer's loss of revenue attributable to a strike, which does not result in a substantial curtailment of work at the place of employment, is not the equivalent of a "stoppage of work" for purposes of N.J.A.C. 12:17-12.2(a)(2) or N.J.S.A. 43:21-5(d), and thus is not a basis for denying unemployment benefits to striking employees. *Lourdes Med. Ctr. v. Board of Review*, 197 N.J. 339, 963 A.2d 289, 2009 N.J. LEXIS 6, Unemployment Ins. Rep. (CCH) P8663, 185 L.R.R.M. (BNA) 2939, 157 Lab. Cas. (CCH) P60748 (2009).

Although a hospital served the public's immediate health needs, was highly regulated, and could not close down without government permission, it was not exempt from N.J.A.C. 12:17-12.2(a)(2) or N.J.S.A. 43:21-5(d). Therefore, striking nurses who were exercising their rights to bargain collectively under N.J. Const. art. I, para. 19 were entitled to unemployment benefits because there had been no "stoppage of work," the hospital having continued in full operation during the strike despite a loss of revenue. *Lourdes Med. Ctr. v. Board of Review*, 197 N.J. 339, 963 A.2d 289, 2009 N.J. LEXIS 6, Unemployment Ins. Rep. (CCH) P8663, 185 L.R.R.M. (BNA) 2939, 157 Lab. Cas. (CCH) P60748 (2009).

Regulation set forth in N.J.A.C. 12:17-12.2(a)2, which provides for an exception to striking workers generally being disqualified from the receipt of unemployment benefits by allowing receipt of such benefits if an employer has not experienced a stoppage of work, with an employer being considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met, is consistent with N.J.S.A. 43:21-5(d) and not ultra vires. The regulation is consistent with long-existing case law interpreting the term "stoppage of work" as referring to the cessation or substantial curtailment of work; the 80-percent rule is not arbitrary and capricious on its face; nor does the regulation violate New Jersey's public policy in favor of state neutrality in labor disputes. *Lourdes Medical Ctr. v. Bd. of Review*, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656 (2007).

Order of the Board of Review, Department of Labor granting striking nurses unemployment benefits upon concluding that the labor dispute disqualification of N.J.S.A. 43:21-5(d) did not apply by virtue of N.J.A.C. 12:17-12.2(a)2 was reversed on appeal since the agency had to consider the revenue implications to the employing hospital as to whether a work stoppage had occurred. *Lourdes Medical Ctr. v. Bd. of Review*, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656 (2007).

12:17-12.3 Employees on leave of absence

(a) A voluntary and mutually agreed upon leave of absence between an employer and employee connotes a continuity of employment. An individual on an approved leave of absence is not considered unemployed under the Unemployment Compensation Law and any claim for benefits filed during this period shall be invalid except, if the leave of absence is granted in part due to disability or a projected disability of the individual, the validity of any claim filed under N.J.S.A. 43:21-4(f) shall not be effected by the leave of absence while the claimant is disabled from work.

(b) The failure of an employer to grant or extend a personal leave of absence for other than the individual's personal health reasons does not establish good cause attributable to such work for the individual to leave such employment provided the denial was not in violation of Federal or State Laws including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. which would provide for such leave.

(c) Any request for a leave of absence for personal health reasons of an individual must be supported by competent medical certification.

(d) However, if an individual's request for a leave of absence is denied, and he or she takes the leave, any termination of employment shall be reviewed as a voluntary leaving of work issue unless the reason for the leave is related to the individual's personal health, or if the leave is covered by any Federal or State law, including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. regulation or other policy, bargaining contract or contract of hire.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), substituted "However, if" for "If" preceding "an individual's request".

12:17-12.4 School employees

(a) An employee of an educational institution shall be ineligible for benefits for any week that begins during the period between academic years or terms and during vacation periods and holiday recesses, if the employee has reasonable assurance of returning to work in any such capacity, during the succeeding academic year or term or after the vacation period or holiday recesses.

1. The term "reasonable assurance" of returning to work means a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year, term, or remainder of a term. "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

2. Reasonable assurance of recall does not exist when an individual performs full-time services under an annual contract and during the next academic year or term is offered day-to-day substitute work.

3. An employee who is employed for all or part of a term in a day-to-day substitute position has reasonable assurance of recall if he or she is placed on a substitute list for the next academic year or term.

(b) Where reasonable assurance is subsequently given to the individual between school years or terms, any ineligibility under this section begins the first calendar week following the date the individual received reasonable assurance of recall. If such assurance is given on a Sunday, that Sunday would be the first day of ineligibility.

(c) Where reasonable assurance of recall exists, claims involving both school and non-school wage credits shall be processed as follows:

1. Initially a monetary determination shall be made using all covered base year employment wages.

2. If a claimant is determined to be ineligible for benefits and if he or she has sufficient non-school employment and earnings to establish a valid claim, an adjusted monetary determination shall be made solely on the non-school base year employment. Benefits would be payable under this adjusted monetary determination.

3. Benefits claimed and paid for prior to or subsequent to any denial periods shall be paid to eligible claimants at the initial monetary rate determined in (c)1 above.

(d) If a claimant employed in a non-professional capacity is denied benefits, solely because he or she had reasonable assurance of returning to work, the claimant may receive benefits retroactively if the educational institution subsequently does not offer him or her an opportunity to return to work and the following requirements are met:

1. The claimant complied with continued claims reporting requirements provided in N.J.A.C. 12:17-4; and

2. The claimant is otherwise eligible for benefits.

(e) An individual who is employed under a 12-month contract and offered a 10-month contract in the next academic year of term shall not be ineligible under these provisions.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), rewrote the first sentence.

12:17-12.5 Claimant engaged in a temporary business

(a) A claimant who seeks to augment his or her income through a temporary business may be eligible to receive unemployment benefits only if he or she is available for work, actively seeking employment and otherwise meets the eligibility requirements set forth in the Unemployment Compensation Law. "Temporary business" means any work performed by an unemployed person for the purpose of augmenting his or her unemployment benefits while actively seeking employment.

(b) In determining if an individual is available for work and eligible for benefits, the following criteria shall be considered:

1. Income received from the temporary business measured against both the prior salary the individual received and the salary sought in the work search;

2. The hours dedicated to the temporary business versus the efforts expended to seeking work in outside employment on the general labor market;

3. The continued availability of the individual to a broad range of employment appropriate to his or her skills, training and work experience; and

4. The accouterments (that is, furnishings, equipment and other investments) of permanent business established by the claimant.

(c) The fact that substantial income may not have been received during the start-up period of the individual's temporary business is not a determining factor in deciding whether the individual is available for work.

(d) The income received from a temporary, unincorporated business is not considered wages for unemployment benefit and contribution purposes.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), inserted ", unincorporated" following "temporary".

12:17-12.6 Student disqualification for benefits

(a) An individual, who is a student in full-time attendance at, or on vacation from, an educational institution, is disqualified for benefits, unless:

1. The individual is attending a training program approved by the Division to enhance the individual's earning power and/or employability; or

2. During the claimant's base year, the individual, who during periods other than established and customary vacation periods or holiday recesses at the educational institution, has earned in employment sufficient wages while in full or part-time attendance at an educational institution to establish a claim for benefits.

3. For purposes of this section, full-time attendance is defined as:

i. Consisting of not less than 20 hours per week of classroom work and structured assignments for individuals in attendance at an educational institution other than an institution of higher education;

ii. Consisting of not less than 12 credit hours for individuals pursuing a degree at an institution of higher education; or

iii. Consisting of a minimum of nine credit hours for individuals pursuing a post-graduate degree at an institution of higher education.

12:17-12.7 Limiting availability to less than full-time work

(a) No individual, who is otherwise eligible, shall be deemed unavailable for work or ineligible for benefits solely for the reason that the individual is available for, seeks, applies for, or accepts only part-time work, instead of full-time work, if the claim is based on part-time employment and the individual is actively seeking and is willing to accept work under essentially the same conditions as existed in connection with the employment from which the individual became eligible for benefits.

(b) An individual who limits his or her availability to part-time work shall be ineligible for benefits unless the following conditions are met:

1. The individual has worked in part-time work during a substantial portion of the individual's base year. A "substantial portion" of the individual's base year is defined as earning sufficient wage credits in part-time employment to establish a claim for benefits;

2. There is sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and

3. The individual is available for enough weekly hours to be able to earn remuneration equal to at least the individual's weekly benefit amount.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote 2.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added new (a); recodified former (a) as (b) and rewrote the subsection.

SUBCHAPTER 13. PROCEDURES FOR WAGE-BENEFIT CONFLICTS

12:17-13.1 Pre-determination notice and fact-finding

(a) Where there is evidence that a claimant may have been employed during a period(s) for which he or she received unemployment benefits and/or temporary disability benefits, the Division shall afford the claimant an opportunity for a fact-finding interview before any determination is made with respect to the alleged wage-benefit conflict.

(b) The Division shall mail a pre-determination notice to the claimant's last known address of record, that evidence exists of a possible wage-benefit conflict as soon as possible after the evidence is discovered.

(c) The pre-determination notice shall specify the benefit periods at issue and the employer(s) involved. It shall provide the claimant with the opportunity to rebut or confirm the possible wage-benefit conflict, and offer the claimant an opportunity for a fact-finding interview to review and/or rebut the information.

12:17-13.2 Fact-finding interview

(a) Upon receipt of a claimant's request for a fact-finding interview, the Division will schedule a fact-finding interview before a deputy. The Division shall notify the claimant by mail of the date, time and place of the fact-finding interview.

(b) The claimant may be represented at the fact-finding interview by himself or herself, an attorney or a non-attorney representative at the claimant's expense.

(c) Upon conclusion of the fact-finding interview, the Bureau of Benefit Payment Control shall issue a written determination and may refer the matter to the Attorney General for criminal prosecution.

(d) The written determination shall advise the claimant and other interested parties of appeal rights.

12:17-13.3 Claimant's failure to appear

If the claimant fails to report or to otherwise respond to the pre-determination notice within 10 days, or fails to report for any fact-finding interview subsequently scheduled, the Division shall issue a written determination on the facts available, and mail a copy thereof to the claimant. The written determination shall advise the claimant and other interested parties of appeal rights in accordance with N.J.A.C. 12:20 and 1:12.

SUBCHAPTER 14. DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT BENEFIT PAYMENTS

12:17-14.1 Statutory period for demanding refund

The Division shall issue a demand for refund of unemployment benefits in each case when a determination of overpayment is made. Except in the case of fraud, an individual shall be notified of the demand for refund within four years after benefits were received. Notification is accomplished when the demand of refund is mailed to the claimant's last known address. In case of fraud, the matter may be forwarded to the Attorney General for investigation and criminal prosecution.

12:17-14.2 Waiver of recovery of benefit overpayment

(a) Upon request of the claimant or the claimant's representative, the Director may grant the claimant a full waiver of recovery of an overpayment of benefits only after the Director has determined that the claimant has not misrepresented or withheld any material fact in obtaining benefits and only under the following circumstances:

1. Where the claimant is deceased;
2. Where the claimant is disabled and no longer able to work; or
3. Where the recovery of the overpayment, as determined by the Director with the Controller's concurrence, would be patently contrary to the principles of equity.

(b) For purposes of determining under (a) above whether a claimant is prohibited from receiving a waiver of recovery of an overpayment of benefits because he or she misrepresented or withheld any material fact in obtaining benefits, either the willful or the negligent misrepresentation or withholding of any material fact shall, alone, constitute sufficient grounds for a determination by the Director that the claimant is not eligible to receive a waiver of recovery of an overpayment of benefits.

(c) For purposes of determining under (a)2 above whether a claimant is “disabled and no longer able to work”, a claimant’s current receipt of Social Security disability benefits may be deemed evidence of current permanent disability. The Director may also accept a diagnosis of permanent disability from the claimant’s physician. In addition, the Director has the discretion to require the claimant to submit to an impartial physical examination by a legally-licensed physician at the expense of the State.

(d) For purposes of determining under (a)3 above whether the recovery of the overpayment would be “patently contrary to the principles of equity,” the Director and Controller shall consider whether the terms of a reasonable repayment schedule would result in economic hardship to the claimant.

(e) Any appeal from a denial of a waiver of recovery will be in accordance with N.J.A.C. 1:12, the rules governing unemployment benefit cases.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); added a new (b); recodified former (b) as (c).

Amended by R.2006 d.304, effective August 21, 2006.

See: 38 N.J.R. 1513(a), 38 N.J.R. 3308(a).

Deleted (a) and (b); recodified (c) as (e); and added new (a) through (d).

12:17-14.3 Requirements for repaying overpaid benefits

A payment of benefits for which a waiver of recovery is not granted must be repaid in full. The Division may use any means of collection provided by law to satisfy the debt including, but not limited to, offsets permitted under N.J.S.A. 54A:9-8.1 and 8.2. Any individual with an outstanding overpayment who subsequently becomes entitled to benefits shall have such benefits offset by the debt until the debt is repaid in its entirety. However, for any claimant whose overpayment is determined to be the sole result of the Division’s error, the offset amount shall be limited to 50 percent of the claimant’s weekly benefit rate for each week of benefits subsequently claimed.

12:17-14.4 Overpayment of benefits involving two determinations of entitlement

(a) A determination of entitlement is defined to mean determinations that state that a claimant is both eligible and not disqualified.

(b) If there are two determinations of entitlement, benefits for such period of entitlement shall be paid regardless of the outcome of any appeal which may be taken.

(c) If benefits are paid under (b) above, no claimant shall be required to repay such benefits to the Division and no employer’s account shall be charged with benefits so paid through the completed calendar week prior to the date of the appeal hearing, if the decision is finally reversed.

SUBCHAPTER 15. BENEFIT ELIGIBILITY FOR CLAIMANTS EMPLOYED BY TEMPORARY HELP SERVICE FIRMS

12:17-15.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Continuing employment” means employment offered no later than the next business day following the end of the last assignment, within the scope of a written agreement or, if no written agreement exists, under similar terms and conditions of the last assignment; and with a definite starting date of no more than four weeks from the end date of the last assignment.

“Temporary help service firm” means a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, pays Federal Social Security taxes and State and Federal unemployment insurance taxes and carries workers’ compensation insurance as required by State law. A temporary help service firm is required to comply with the provision of N.J.S.A. 56:8-1 et seq.

“Written agreement” means a signed understanding between a temporary help service firm and the employee which outlines the scope of employment and includes the general type of work to be performed, salary parameters, and acceptable commuting distance for assignments. The agreement shall require that the employee contact the temporary help service firm upon completion of an assignment and state that unemployment benefits may be denied for failure to fulfill this obligation.

12:17-15.2 Employment with temporary help service firm under a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing work, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual’s claim which is based on employment with a temporary help service firm shall be reviewed as a voluntary leaving of work issue if the individual fails to contact the temporary help service firm for reassignment by

the end of the next business day after completion of the last assignment unless a greater time period is specified in the written agreement.

12:17-15.3 Employment with temporary help service firm without a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment

which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing employment, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these

reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual's claim which is based on employment with a temporary help service firm shall be reviewed as an

available for work issue if the individual fails to contact the firm for reassignment by the end of the next business day after completion of the last assignment and there is no written agreement between the temporary help service firm and the individual.

ELIGIBILITY CONDITIONS FOR TEMPORARY HELP SERVICE FIRM CLAIMANTS

	<u>Failure to Contact for Reassignment</u>	<u>Refusal of New Assignment</u>	<u>Refusal of Suitable Work issue if:</u>
Separate with signed Agreement	Voluntary Leaving Issue (N.J.S.A. 43:21-5(a))	Voluntary Leaving issue if: —within scope of agreement and; —starts within four weeks and; —offered at end of assignment (N.J.S.A. 43:21-5(a))	—not within scope of agreement or; —starts in more than four weeks or; —offered after end of the current assignment (N.J.S.A. 43:21-5(c))
Separation without signed Agreement	Availability Issue (N.J.S.A. 43:21-4(c))	Voluntary Leaving issue if: —new job similar in terms and conditions to last assignment and; —starts within four weeks and; —offered at end of current Assignment (N.J.S.A. 43:21-5(a))	—terms and conditions of new job are not similar to last assignment or; —starts in more than four weeks or; —offered after end of current assignment (N.J.S.A. 43:21-5(c))

SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

12:17-16.1 Cooperation with other states

This subchapter shall govern the Division in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

12:17-16.2 Benefit rights of interstate claimants

(a) If a claimant files a claim against any state, which determines that the claimant has available benefit credits in such state, then a claim shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available credits.

(b) For the purpose of this subchapter, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a restriction that prohibits the payment of benefits to an individual employed in a seasonal industry during the off season.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "to an individual" for "to individual" following "the payment of benefits".

12:17-16.3 Requirement to register for work

(a) Each interstate claimant shall be registered for work, through any employment service office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

12:17-16.4 Reporting requirements for interstate benefit claims

(a) Claims for benefits or waiting periods shall be filed by interstate claimants on uniform interstate claim forms or by telephone and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be dated in accordance with the agent state's definition of week of the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent state regulations for intrastate claims in employment service offices, or at an itinerant point, by mail or by telephone.

(c) With respect to claims for weeks of unemployment in which an individual was not working for his or her regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim which is filed late. If a claimant files more than one reporting period late without "good cause" as defined under N.J.A.C. 12:17-4.1(b),

an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to his or her regular employer, the liable state shall accept any claim which is filed within the time period applicable to such claims under the law of the agent state.

12:17-16.5 Role of the agent state in benefit determinations

(a) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

12:17-16.6 Appeals of benefit determinations

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(b) With respect to the time period imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

12:17-16.7 Reciprocal claims with Canada

This subchapter shall apply to claims taken in and for Canada.

SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

12:17-17.1 Notice and proof of disability

(a) A written notice of disability on which a claim for disability benefits during unemployment is based shall, within 30 days after the commencement of the period of disability for which benefits are claimed, be furnished to the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development by the claimant or an authorized representative. The notice shall state the claimant's full name, address and Social Security number, as well as the date on which the claimant was too sick (or disabled) to work. The filing of the Department form entitled, "Proof and Claim for Disability Benefits," accompanied by the certification of the attending licensed physician, advanced practice

nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist as required hereinafter, shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the disability during unemployment program is based shall be furnished by any claimant who expects to be or has been totally unable to perform any work and is under the care of a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. Such proof may also be furnished by the claimant's authorized representative. Additional medical certification shall be filed as proof of continued disability, when requested by the Division.

(c) The failure to furnish a written notice of or proof of disability within the 30-day time period required by (a) above shall not invalidate or reduce any claim, if the Division determines that there was good cause for late filing. If a notice or proof is furnished after 30 days and the claimant does not have good cause for failing to submit the notice of proof in a timely manner, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt or postmark of the notice of proof of disability, subject to the waiting period requirement. For purposes of this section, "good cause" means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from filing his claim within the prescribed period.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), substituted "proof in a timely manner" for "proof timely manner" following "submit the notice of".

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (a), added "and Workforce Development."

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a) and (b), inserted "advanced practice nurse,"; and in (a), substituted "the Department form entitled, 'Proof' for "Form DS-1 (Proof" and "Benefits,' accompanied" for "Benefits) accompanied".

12:17-17.2 Procedures for filing of claims for benefits

(a) All claims and other required documents relating to a claim for disability benefits during unemployment may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete as of the postmarked date unless the claimant can provide evidence of an earlier date of mailing.

(b) Disability benefits shall be payable to a claimant residing in another state or in Canada, provided he or she complies with the requirements of the Unemployment Compensation Law and this subchapter. In such cases, the attending physician, advanced practice nurse, dentist, chiropractor, podiatrist, practicing psychologist or optometrist shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

(c) If an independent medical examination of a claimant is required, the Division shall authorize such examination to be made by a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. The payment of examination fees shall be consistent with those fees established in N.J.A.C. 12:18-3.1(g) concerning temporary disability examination fees.

(d) If a claimant refuses to submit to an independent medical examination by a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist, or optometrist designated by the Division, he or she shall be disqualified for receiving all benefits for the period of disability in question, except for benefits already paid.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), substituted "designated" for "designed" following "optometrist".

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Inserted "advanced practice nurse," throughout.

12:17-17.3 Waiver of registration and reporting requirements

The giving of notice of disability and the filing of proof of a claim for disability benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:17-4 concerning registering for work and reporting to the Division for the period covered by the claim.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Substituted "the Division" for "an unemployment claims office" preceding "for the period covered by the claim".

12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers

(a) This section provides that weeks and wages earned by an individual employed by an employer that is not covered under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., out-of-State or by the Federal government, shall be excluded from benefit calculations under the Disability During Unemployment Program.

(b) Where an individual becomes ill or disabled and his or her most recent employing unit was not an employer covered by the Temporary Disability Benefits Law, disability benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f), provided he or she has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for disability benefits during unemployment which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for disability benefits during unemployment shall

be based solely on wages earned as a covered individual during the base year to establish a valid claim for benefits.

12:17-17.5 Simultaneous unemployment and disability benefit periods

(a) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work because of illness or disability during a portion of such week, a claim for disability benefits during unemployment may be filed and benefits paid to such an individual, provided he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the disability, the claimant must file a claim in accordance with N.J.A.C. 12:17-17.1.

2. If the simultaneous benefit period occurs at the end of the disability, the claimant must assert his or her ability to work by reporting to the Division during the calendar week of his or her recovery or in the calendar week immediately following; or

3. If the claimant returns to work during the calendar week of his or her recovery or in the calendar week immediately following.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "Division" for "unemployment office" preceding "during the calendar week" in 2.

12:17-17.6 Benefit determination

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

Recodified from N.J.A.C. 12:17-17.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-17.6, Eligibility for benefits during the waiting period, repealed.

SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM

12:17-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise:

"Full-time basis," with respect to the amount of time spent in participating in self-employment assistance activities and

efforts to establish a business, means a minimum of 35 hours per week.

“Peer group” means a group of not more than 20 participating individuals who provide mutual assistance and support for each other’s efforts to establish businesses and become self-employed entrepreneurs.

“Reemployment services” means job search assistance and job placement services, including counseling, testing, assessment, job search workshops, job clubs, referrals to employers and providing occupational and labor market information.

“Regular benefits” means benefits payable to an individual under the Unemployment Compensation Law, including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 U.S.C. § 85. Regular benefits do not include extended benefits payable under N.J.S.A. 43:21-24.12 et seq. or any other State or Federal program which would provide benefits beyond the duration of regular benefits or additional benefits for training payable pursuant to the Workforce Development Partnership (WDP) Act as provided at N.J.S.A. 43:21-57 et seq.

“Self-employment assistance activities” means activities, approved by the Division, in which an individual participates for the purpose of establishing a business and becoming self-employed.

“Self-employment assistance allowance” means an allowance, payable in lieu of regular benefits from the Unemployment Insurance Trust Fund, to an individual participating in self-employment assistance activities who meets the requirements of N.J.S.A. 43:21-67 et seq.

“Self-employment assistance services” means services provided to an individual, including entrepreneurial training, business counseling and technical assistance, to help the individual to develop a business plan, establish a business and become self-employed.

“Worker profiling system” means the worker profiling system established pursuant to the Unemployment Compensation Law at N.J.S.A. 43:21-4.1 and N.J.A.C. 12:17-20. The system identifies unemployment benefit claimants who are most likely to exhaust benefits, using a computerized series of screens and a statistical model to develop a numerical ranking of claimants.

“Workforce Development Partnership Program” means the program created pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:14D-1 et seq.

12:17-18.2 Self-employment assistance program

(a) The Self-Employment Assistance Program (SEA), established pursuant to N.J.S.A. 43:21-67 et seq. provides for the following:

1. An individual participating in the SEA Program (activities and services which assist an individual in establishing a business and becoming self-employed) may receive an allowance, in lieu of unemployment benefits for which he or she would have qualified;

2. An individual need not actively seek work while he or she is engaged in self-employment activities;

3. Counseling and technical assistance including assistance in developing a business plan; and

4. A training grant for entrepreneurial training and assistance approved by a WDP counselor in an amount not to exceed \$400.00, or, if the grant is for training provided by any public institution of higher education under N.J.S.A. 18A:62-1 which governs public higher education institutions, not to exceed \$1,500.

12:17-18.3 Eligibility requirements

(a) To be eligible for selection to participate in the SEA Program and to receive allowances, an individual shall meet all of the following requirements:

1. Be a dislocated worker who has been determined through the worker profiling system to be likely to exhaust benefits. The Division shall give priority to those individuals who, through the profiling system, have received scores which indicate the highest probability of exhausting unemployment benefits since the maximum number of individuals receiving SEA allowance may not exceed one percent of the number of claimants receiving regular unemployment benefits;

2. Be eligible to receive benefits on his or her unemployment insurance claim;

3. Have a viable business plan approved by a qualified job counselor pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:15D-1;

4. Be willing to work full-time in developing the business;

5. Participate in full-time entrepreneurial training and/or counseling in combination with other business activities as required by the Division; and

6. Have the financial resources needed to start and sustain the business until it becomes self-supporting.

12:17-18.4 Self-employment assistance allowance

(a) SEA allowances are paid to eligible participants “in lieu of” unemployment benefits in an amount equal to the individual’s weekly benefit rate and maximum benefit amount.

(b) Weekly SEA allowances shall not be reduced by any income generated from the individual's business. However, the weekly benefit rate shall be reduced by any earnings from other employment which the individual may have.

(c) The total payment of a combination of unemployment benefits and SEA allowances shall not exceed the maximum benefit amount of the claim for regular unemployment benefits.

(d) Individuals who terminate participation in the SEA Program shall be disqualified for SEA allowances and shall not be reinstated in the program. However, such individuals may be eligible to receive regular unemployment benefits.

(e) Individuals determined eligible for SEA allowances shall not be eligible to receive extended benefits or additional benefits during training pursuant to the Workforce Development Partnership Act. Individuals who temporarily suspend participation in the SEA Program may receive regular benefits with respect to the benefit year if otherwise eligible until the total amount of regular benefits and SEA allowances paid to the individual equals the maximum benefit amount. Such individuals may also be paid extended benefits if otherwise eligible. Whether such individuals shall be eligible to receive benefits under other Federal or State extended benefit programs is subject to the statute providing for such extensions.

12:17-18.5 Appeals

(a) Denials of grants under the SEA Program may be appealed in accordance with N.J.A.C. 12:23-3.7 concerning appeal procedures for the denial of training grants.

(b) Denials of claims for SEA allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

(c) Denials of grants in combination with denials of Self-Employment Assistance allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

12:17-18.6 Overpayment of self-employment assistance allowances

Overpayment of SEA allowances improperly paid for any reason shall be recovered by the Department by offset of future unemployment benefits or in any other manner as provided in N.J.S.A. 43:21-1 et seq.

SUBCHAPTER 19. VOLUNTARY WITHHOLDING OF
FEDERAL INCOME TAX FROM
UNEMPLOYMENT BENEFITS

12:17-19.1 Notice to claimants of voluntary withholding of Federal income tax from unemployment benefits

(a) An individual receiving unemployment benefits shall be notified at the time he or she files a claim for benefits that unemployment benefits are subject to Federal income tax, the requirements pertaining to estimated tax payments and that the individual may elect to have Federal income tax deducted and withheld from his or her unemployment benefit payment at the amount specified in the Internal Revenue Code.

(b) The individual may change a previously elected withholding status once during the benefit year of a claim by written request to the Division.

Amended by R.2001 d.458, effective December 3, 2001.
See: 33 N.J.R. 3303(a), 33 N.J.R. 4128(a).

In (a), substituted "at the" for "in an" following "unemployment benefit payment", and deleted "equal to 15 percent of the payment as" preceding "specified in".

12:17-19.2 Transfer of withheld unemployment benefits

Amounts deducted and withheld from unemployment benefits shall remain in the unemployment fund until transferred to the Federal taxing authority as a payment of income tax. The Commissioner shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax.

12:17-19.3 Other withholdings

(a) Amounts shall be deducted and withheld under this subchapter only after amounts are deducted and withheld for any overpayments of unemployment benefits, child support obligations or any other amounts required to be deducted and withheld under the New Jersey Unemployment Compensation Law or Federal law.

(b) Amounts deducted and withheld for overpayments of unemployment benefits, child support obligations or any other reason are considered paid to the claimant.

SUBCHAPTER 20. WORKER PROFILING AND
REEMPLOYMENT SERVICES

12:17-20.1 Purpose and scope

(a) All new claimants who file for regular unemployment compensation shall be profiled in accordance with Federal requirements set forth at 42 U.S.C. § 503(j), incorporated herein by reference, as amended and supplemented.

(b) Profiling is a system that:

1. Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
2. Refers identified claimants early in the claims series to reemployment services;
3. Collects follow-up information relative to the services provided to such claimants and the employment outcome for such claimants; and
4. Meets other such requirements as the U.S. Secretary of Labor determines are appropriate.

12:17-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Early in the claims series" means no later than the fifth week from the date of claim.

"New claimant" means any individual who files an initial or additional claim for benefits, and receives a first payment early in the claims series.

"Reemployment services" means job search assistance and job placement services, such as counseling, occupational testing, providing occupational and labor market information, assessment, job search workshops, job clubs, referrals to employers, entrepreneurial training, business counseling, and other similar services, and does not mean vocational skills and/or education training.

“Regular compensation” means compensation payable under any state unemployment compensation law, other than extended compensation and additional compensation. This includes Unemployment Compensation for Ex-service members (UCX), Unemployment Compensation for Federal Employees (UCFE) and Combined Wage Claims (CWC).

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In “Reemployment services”, deleted “and” following “testing,” “skills” following “information,” and “and” following “clubs”.

12:17-20.3 Identifying claimants

(a) All claimants receiving full first payments within 35 days after the date of their claim will be placed in a potential profiling pool. The following individuals will be screened out of the pool:

1. Claimants who receive first payments that are for partial unemployment;
2. Claimants with a definite recall date or in a seasonal industry with a strong likelihood of recall;
3. Claimants who seek work through an approved union hiring hall; and
4. Claimants who have an interstate claim. (Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.)

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

12:17-20.4 Statistical modeling process

(a) Claimants who are not excluded by the factors specified in N.J.A.C. 12:17-20.3 shall be passed through a statistical modeling process developed by the Division of Program Planning, Analysis and Evaluation within the New Jersey Department of Labor and Workforce Development, to determine their probability of exhausting benefits based on coefficients assigned to nondiscriminatory variables, which shall include industry and/or occupation and may include, but are not limited to, the following:

1. Education;
2. Job tenure; and
3. Local area unemployment rate.

(b) Identified individuals shall be assigned a profiling score and ranked in order of probability of benefit exhaustion on a daily basis.

(c) The following characteristics shall not be used in the profiling system:

1. Age;
2. Race or ethnic group;

3. Gender;
4. Color;
5. National origin;
6. Disability;
7. Religion;
8. Political affiliation; and
9. Citizenship.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In the introductory paragraph of (a), added “and Workforce Development.”

12:17-20.5 Selection

(a) The highest ranked individuals shall be selected to attend an orientation session where the reemployment service program and the various services available shall be explained.

(b) Selection for participation in reemployment and other services shall be done on a weekly basis.

(c) The number of individuals selected to attend the orientation sessions shall be dependent upon the ability of the service provider to provide reemployment services.

(d) Individuals not selected for the orientation shall be returned to a candidate pool for as long as the selection date equals or is within 35 days of the date of claim.

12:17-20.6 Mandatory participation

(a) Unless exempted under N.J.A.C. 12:17-20.7, claimants scheduled for an orientation session shall attend and claimants referred for services shall participate in the services offered in order to maintain eligibility for unemployment benefits. However, no individual shall involuntarily be required to attend or participate in vocational skills and/or education training.

(b) The eligibility for unemployment benefits of an individual who fails to participate as requested shall be adjudicated under N.J.A.C. 12:17-4.

(c) Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.

12:17-20.7 Exempted individuals

(a) Individuals shall be exempted from reemployment services required under this subchapter if they:

1. Were incorrectly profiled (that is, an error was made on initial claim or in data entry);
2. Have returned or are returning to full-time work;
3. Are receiving similar reemployment services at the time of profiling;

4. Have recently completed similar reemployment services;
5. Are attending or registered to attend training at the time of profiling;
6. Are job-ready for existing job openings; or
7. Have become a member of an approved union hiring hall, have moved and are now filing on an interstate basis, or have received a definite recall date from the former employer.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
Rewrote the section.

12:17-20.8 Appeals

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

12:17-21.1 General provisions

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing same to the Division. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "providing same to the Division" for "providing some to the Division of Employer Accounts" in the first sentence.

12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;

5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or

6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) as amended by the Trade Act of 2002, P.L. 107-210, or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "as amended by the Trade Act of 2002, P.L. 107-210," preceding "or when the claimant leaves work" in 6.

Amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a)2, deleted "or gross misconduct" preceding "connected".

12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information" is not received by the Division or postmarked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received or

postmarked within 21 calendar days after the date upon which the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, “good cause” means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted “and” following “Form BC-3E” in the third sentence; in (b), substituted “Division” for “local claims office” preceding “or postmarked within 10 calendar days” and deleted “by the local claims office” preceding “or postmarked within 21 calendar days”.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), substituted “the Department form entitled, ‘Notice’ for “Form BC-3E, Notice”, “Information,” and” for “Information, and”, “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information,’ ” for “Form BC-3E”; and in (b), substituted “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information’ ” for “Form BC-3E”, and “within 21” for “with 21”.

12:17-21.4 Misrepresentation or false information

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.

2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

12:17-21.5 Determination and appeals

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 22. CLAIMS FOR FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

12:17-22.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Bond” or “bonding” with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). The development of this attachment or bond between child and care giver(s) requires being in one another’s presence.

“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.

“Care giver” means the family member who is providing the required care. This term is used interchangeably with “claimant.”

“Care recipient” means the family member who is receiving care for a serious health condition or the newborn child or newly adopted child with whom the “care giver” is bonding.

“Child” means a biological, adopted, or foster child, step-child or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

As used in this definition, “incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

As used in this definition, “mental or physical impairment” means: 1. any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Civil union” means a civil union as defined in N.J.S.A. 37:1-29.

“Covered individual” or “employee” means any individual who is in employment, as the term “employment” is defined at N.J.S.A. 43:21-19(i)(1) or any individual who has been out of such employment for less than two weeks.

“Director” means the Director of the Division of Temporary Disability Insurance in the Department of Labor and Workforce Development.

“Division” means the Division of Temporary Disability Insurance in the Department of Labor and Workforce Development.

“Domestic partner” means a domestic partner as defined in N.J.S.A. 26:8A-3.

“Family leave” or “family temporary disability leave” means leave taken by a covered individual from work with an employer to participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child’s birth, if the individual or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. “Family leave” does not include any period of time during which a covered individual is paid temporary disability benefits pursuant to N.J.S.A. 43:21-25 et seq. (the New Jersey Temporary Benefits Law), because the individual is unable to perform the duties of the individual’s employment due to the individual’s own disability.

“Family member” means a child, spouse, domestic partner, civil union partner or parent of a covered individual.

“Family temporary disability benefits” or “family leave insurance benefits” means the benefits payable to a covered individual under P.L. 2008, c. 17 in order to compensate for wage loss suffered because of the need of the covered individual to participate in providing care for a family member or to bond with a newborn or newly adopted child.

“Family Temporary Disability Leave Account” means a separate account within the State Disability Benefits Fund into which is deposited all worker contributions collected under N.J.S.A. 43:21-7(d)(1)(G)(ii).

“Health care provider” means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

“Licensed medical practitioner” means a licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse or chiropractor.

“Parent of a covered individual” means a biological parent, foster parent, adoptive parent, or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child.

“Private plan” means a private plan approved by the Division of Temporary Disability Insurance as defined in N.J.S.A. 43:21-32.

“Serious health condition” means an 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.

As used in this definition, “continuing medical treatment or continuing supervision by a health care provider” means:

1. A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two or more times by a health care provider; or
 - ii. Treatment by a health care provider on one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider;
2. Any period of incapacity due to pregnancy, or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
4. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer’s disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

“Stepparent of the covered individual” means the person to whom the covered individual’s biological parent is either currently married or with whom the covered individual’s biological parent is currently sharing a civil union.

“Twelve-month period” means, with respect to an individual who establishes a valid first claim for family leave insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim.

“Week” means a period of seven consecutive days.

12:17-22.2 Notice and proof of family leave

(a) A written notice of family leave on which a claim for family leave insurance benefits during unemployment is based shall, within 30 days after the commencement of the period of family leave for which benefits are claimed, be furnished to the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development by the claimant or an authorized representative. The notice shall state the claimant's full name, address and Social Security Number, as well as the date on which the claimant was unable to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. The filing of Form FL-1 (Proof and claim for family leave insurance benefits) shall constitute notice of family leave.

(b) Proof of family leave on which a claim for benefits under the family leave insurance benefits during unemployment program is based shall be furnished by any claimant who expects to be unable to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. Such proof may also be furnished by the claimant's authorized representative. When requested by the Division, additional certification from a health care provider or licensed medical practitioner shall be filed as proof of continued need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member.

(c) The failure to furnish written notice of or proof of family leave within the 30-day time period required by (a) above shall not invalidate or reduce any claim, if the Division determines that there was good cause for late filing. If a notice or proof is furnished after 30 days and the claimant does not have good cause for failing to submit the notice of proof in a timely manner, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt or postmark of the notice of proof of family leave, subject to the waiting period requirement. For purposes of this subsection, "good cause" means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from filing his or her claim within the prescribed period.

12:17-22.3 Procedures for filing of claims for benefits

(a) All claims and other required documents relating to a claim for family leave insurance benefits during unemploy-

ment may be filed by mail, except in those cases where the claimant is notified by the Division of Temporary Disability Insurance that a personal appearance or examination will be required. Filing by mail shall be deemed complete as of the postmarked date unless the claimant can provide evidence of an earlier date of mailing.

(b) Family leave insurance benefits shall be payable to a claimant residing in another state or in Canada, provided he or she complies with the requirements of the Unemployment Compensation Law and this subchapter.

(c) If an independent medical examination of a care recipient is required, the Division shall authorize such examination to be made by a licensed medical practitioner. The payment of examination fees shall be consistent with those fees established in N.J.A.C. 12:21-3.1(g) concerning family leave insurance benefits examination fees.

(d) If a care recipient refuses to submit to an independent medical examination by a licensed medical practitioner designated by the Division of Temporary Disability Insurance, the claimant shall be disqualified from receiving all benefits for the period of family leave in question, except for benefits already paid.

12:17-22.4 Waiver of registration and reporting requirements

The giving of notice of family leave and the filing of proof of a claim for family leave insurance benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:7-4 concerning registering for work and reporting to the Division of Temporary Disability Insurance for the period covered by the claim.

12:17-22.5 Payment of family leave insurance benefits during unemployment for individuals working for exempt employers

(a) This section provides that weeks and wages earned by an individual employed by an out-of-State employer or by the Federal government, shall be excluded from benefit calculations under the Family Leave Insurance Benefits During Unemployment Program.

(b) Where a claimant's most recent employing unit was not a covered employer, family leave insurance benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f)(2), provided the claimant has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for family leave insurance benefits during unemployment, which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for family leave insurance benefits during unemployment shall be based solely on wages earned

as a covered individual during the base year to establish a valid claim for benefits.

12:17-22.6 Simultaneous unemployment and family leave insurance benefit periods

(a) No period of less than seven days shall be payable on a claim filed for family leave insurance benefits during unemployment under N.J.S.A. 43:21-4(f)(2).

(b) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual, during a portion of such week, a claim for family leave insurance benefits during unemployment may be filed and benefits paid to such an individual, provided that he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the family leave, the claimant must file a claim for family leave insurance benefits in accordance with N.J.A.C. 12:17-22.2; or
2. If the simultaneous benefit period occurs at the end of the family leave, the claimant must assert his or her

ability to work by reporting to the Division during the calendar week that the family leave ends or in the calendar week immediately following.

12:17-22.7 Benefit determination

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

12:17-22.8 Payment of family leave insurance benefits during unemployment

For each claimant who establishes entitlement to family leave insurance benefits during unemployment under N.J.S.A. 43:21-4(f)(2), his or her claim shall be paid from the Family Temporary Disability Leave Account.

12:17-22.9 Reduction of benefits

An employee's maximum family leave insurance benefits entitlement under N.J.S.A. 43:21-3 and 4 as an unemployed claimant for a given 12-month period shall be reduced by the number of days of family leave insurance benefits that have been paid to the employee during that 12-month period under the State plan or a private plan.

2. "Stoppage of work" means a substantial curtailment of work which is due to a labor dispute. Justification for the labor dispute may not be considered. An employer is considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met.

(b) A claimant shall be disqualified for benefits if he or she is unemployed due to a work stoppage which occurs because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed. Separate branches of work which are commonly conducted as separate business in separate premises or are conducted in separate departments of the same premises, shall be deemed to be a separate factory, establishment, or other premises. The individual shall be disqualified if:

1. He or she is participating in, financing or directly interested in the labor dispute; and

2. Immediately before the work stoppage began, he or she belongs to a grade or class of workers employed at the premises which are participating in, financing or directly interested in the dispute.

(c) A claimant shall not be disqualified for benefits in accordance with N.J.S.A. 43:21-5(d):

1. If the claimant has been prevented from working by the employer, even though:

i. The individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment; and

ii. The employees had not engaged in a strike immediately before being prevented from working;

2. If the claimant was separated from employment for reasons which occurred prior to the labor dispute, or was laid off due to lack of work without a definite recall date, even if the layoff was caused by a labor dispute at an industry upon which the employer is dependent;

3. From the date the claimant was discharged during the labor dispute, however, this shall not preclude a determination of disqualification under other provisions of the law; or,

4. The employer has permanently closed and ceased operations, has commenced bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Code, has sold the business and its assets or has permanently relocated.

Amended by R.2006 d.43, effective January 17, 2006.

See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

In (a)2, deleted "There is no distinction made with regard to whether the work stoppage is caused by a strike or a lockout."; added (c)1; recodified former (c)1-3 as (c)2-4.

Case Notes

Employer's loss of revenue attributable to a strike, which does not result in a substantial curtailment of work at the place of employment, is not the equivalent of a "stoppage of work" for purposes of N.J.A.C. 12:17-12.2(a)(2) or N.J.S.A. 43:21-5(d), and thus is not a basis for denying unemployment benefits to striking employees. *Lourdes Med. Ctr. v. Board of Review*, 197 N.J. 339, 963 A.2d 289, 2009 N.J. LEXIS 6, Unemployment Ins. Rep. (CCH) P8663, 185 L.R.R.M. (BNA) 2939, 157 Lab. Cas. (CCH) P60748 (2009).

Although a hospital served the public's immediate health needs, was highly regulated, and could not close down without government permission, it was not exempt from N.J.A.C. 12:17-12.2(a)(2) or N.J.S.A. 43:21-5(d). Therefore, striking nurses who were exercising their rights to bargain collectively under N.J. Const. art. I, para. 19 were entitled to unemployment benefits because there had been no "stoppage of work," the hospital having continued in full operation during the strike despite a loss of revenue. *Lourdes Med. Ctr. v. Board of Review*, 197 N.J. 339, 963 A.2d 289, 2009 N.J. LEXIS 6, Unemployment Ins. Rep. (CCH) P8663, 185 L.R.R.M. (BNA) 2939, 157 Lab. Cas. (CCH) P60748 (2009).

Regulation set forth in N.J.A.C. 12:17-12.2(a)2, which provides for an exception to striking workers generally being disqualified from the receipt of unemployment benefits by allowing receipt of such benefits if an employer has not experienced a stoppage of work, with an employer being considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met, is consistent with N.J.S.A. 43:21-5(d) and not ultra vires. The regulation is consistent with long-existing case law interpreting the term "stoppage of work" as referring to the cessation or substantial curtailment of work; the 80-percent rule is not arbitrary and capricious on its face; nor does the regulation violate New Jersey's public policy in favor of state neutrality in labor disputes. *Lourdes Medical Ctr. v. Bd. of Review*, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656 (2007).

Order of the Board of Review, Department of Labor granting striking nurses unemployment benefits upon concluding that the labor dispute disqualification of N.J.S.A. 43:21-5(d) did not apply by virtue of N.J.A.C. 12:17-12.2(a)2 was reversed on appeal since the agency had to consider the revenue implications to the employing hospital as to whether a work stoppage had occurred. *Lourdes Medical Ctr. v. Bd. of Review*, 394 N.J. Super. 446, 927 A.2d 164, 2007 N.J. Super. LEXIS 248, Unemployment Ins. Rep. (CCH) P8656 (2007).

12:17-12.3 Employees on leave of absence

(a) A voluntary and mutually agreed upon leave of absence between an employer and employee connotes a continuity of employment. An individual on an approved leave of absence is not considered unemployed under the Unemployment Compensation Law and any claim for benefits filed during this period shall be invalid except, if the leave of absence is granted in part due to disability or a projected disability of the individual, the validity of any claim filed under N.J.S.A. 43:21-4(f) shall not be effected by the leave of absence while the claimant is disabled from work.

(b) The failure of an employer to grant or extend a personal leave of absence for other than the individual's personal health reasons does not establish good cause attributable to such work for the individual to leave such employment provided the denial was not in violation of Federal or State Laws including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. which would provide for such leave.

(c) Any request for a leave of absence for personal health reasons of an individual must be supported by competent medical certification.

(d) However, if an individual's request for a leave of absence is denied, and he or she takes the leave, any termination of employment shall be reviewed as a voluntary leaving of work issue unless the reason for the leave is related to the individual's personal health, or if the leave is covered by any Federal or State law, including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. regulation or other policy, bargaining contract or contract of hire.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), substituted "However, if" for "If" preceding "an individual's request".

12:17-12.4 School employees

(a) An employee of an educational institution shall be ineligible for benefits for any week that begins during the period between academic years or terms and during vacation periods and holiday recesses, if the employee has reasonable assurance of returning to work in any such capacity, during the succeeding academic year or term or after the vacation period or holiday recesses.

1. The term "reasonable assurance" of returning to work means a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year, term, or remainder of a term. "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

2. Reasonable assurance of recall does not exist when an individual performs full-time services under an annual contract and during the next academic year or term is offered day-to-day substitute work.

3. An employee who is employed for all or part of a term in a day-to-day substitute position has reasonable assurance of recall if he or she is placed on a substitute list for the next academic year or term.

(b) Where reasonable assurance is subsequently given to the individual between school years or terms, any ineligibility under this section begins the first calendar week following the date the individual received reasonable assurance of recall. If such assurance is given on a Sunday, that Sunday would be the first day of ineligibility.

(c) Where reasonable assurance of recall exists, claims involving both school and non-school wage credits shall be processed as follows:

1. Initially a monetary determination shall be made using all covered base year employment wages.

2. If a claimant is determined to be ineligible for benefits and if he or she has sufficient non-school employment and earnings to establish a valid claim, an adjusted monetary determination shall be made solely on the non-school base year employment. Benefits would be payable under this adjusted monetary determination.

3. Benefits claimed and paid for prior to or subsequent to any denial periods shall be paid to eligible claimants at the initial monetary rate determined in (c)1 above.

(d) If a claimant employed in a non-professional capacity is denied benefits, solely because he or she had reasonable assurance of returning to work, the claimant may receive benefits retroactively if the educational institution subsequently does not offer him or her an opportunity to return to work and the following requirements are met:

1. The claimant complied with continued claims reporting requirements provided in N.J.A.C. 12:17-4; and

2. The claimant is otherwise eligible for benefits.

(e) An individual who is employed under a 12-month contract and offered a 10-month contract in the next academic year of term shall not be ineligible under these provisions.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), rewrote the first sentence.

12:17-12.5 Claimant engaged in a temporary business

(a) A claimant who seeks to augment his or her income through a temporary business may be eligible to receive unemployment benefits only if he or she is available for work, actively seeking employment and otherwise meets the eligibility requirements set forth in the Unemployment Compensation Law. "Temporary business" means any work performed by an unemployed person for the purpose of augmenting his or her unemployment benefits while actively seeking employment.

(b) In determining if an individual is available for work and eligible for benefits, the following criteria shall be considered:

1. Income received from the temporary business measured against both the prior salary the individual received and the salary sought in the work search;

2. The hours dedicated to the temporary business versus the efforts expended to seeking work in outside employment on the general labor market;

3. The continued availability of the individual to a broad range of employment appropriate to his or her skills, training and work experience; and

4. The accouterments (that is, furnishings, equipment and other investments) of permanent business established by the claimant.

(c) The fact that substantial income may not have been received during the start-up period of the individual's temporary business is not a determining factor in deciding whether the individual is available for work.

(d) The income received from a temporary, unincorporated business is not considered wages for unemployment benefit and contribution purposes.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), inserted ", unincorporated" following "temporary".

12:17-12.6 Student disqualification for benefits

(a) An individual, who is a student in full-time attendance at, or on vacation from, an educational institution, is disqualified for benefits, unless:

1. The individual is attending a training program approved by the Division to enhance the individual's earning power and/or employability; or

2. During the claimant's base year, the individual, who during periods other than established and customary vacation periods or holiday recesses at the educational institution, has earned in employment sufficient wages while in full or part-time attendance at an educational institution to establish a claim for benefits.

3. For purposes of this section, full-time attendance is defined as:

i. Consisting of not less than 20 hours per week of classroom work and structured assignments for individuals in attendance at an educational institution other than an institution of higher education;

ii. Consisting of not less than 12 credit hours for individuals pursuing a degree at an institution of higher education; or

iii. Consisting of a minimum of nine credit hours for individuals pursuing a post-graduate degree at an institution of higher education.

12:17-12.7 Limiting availability to less than full-time work

(a) No individual, who is otherwise eligible, shall be deemed unavailable for work or ineligible for benefits solely for the reason that the individual is available for, seeks, applies for, or accepts only part-time work, instead of full-time work, if the claim is based on part-time employment and the individual is actively seeking and is willing to accept work under essentially the same conditions as existed in connection with the employment from which the individual became eligible for benefits.

(b) An individual who limits his or her availability to part-time work shall be ineligible for benefits unless the following conditions are met:

1. The individual has worked in part-time work during a substantial portion of the individual's base year. A "substantial portion" of the individual's base year is defined as earning sufficient wage credits in part-time employment to establish a claim for benefits;

2. There is sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and

3. The individual is available for enough weekly hours to be able to earn remuneration equal to at least the individual's weekly benefit amount.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote 2.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added new (a); recodified former (a) as (b) and rewrote the subsection.

SUBCHAPTER 13. PROCEDURES FOR WAGE-BENEFIT CONFLICTS

12:17-13.1 Pre-determination notice and fact-finding

(a) Where there is evidence that a claimant may have been employed during a period(s) for which he or she received unemployment benefits and/or temporary disability benefits, the Division shall afford the claimant an opportunity for a fact-finding interview before any determination is made with respect to the alleged wage-benefit conflict.

(b) The Division shall mail a pre-determination notice to the claimant's last known address of record, that evidence exists of a possible wage-benefit conflict as soon as possible after the evidence is discovered.

(c) The pre-determination notice shall specify the benefit periods at issue and the employer(s) involved. It shall provide the claimant with the opportunity to rebut or confirm the possible wage-benefit conflict, and offer the claimant an opportunity for a fact-finding interview to review and/or rebut the information.

12:17-13.2 Fact-finding interview

(a) Upon receipt of a claimant's request for a fact-finding interview, the Division will schedule a fact-finding interview before a deputy. The Division shall notify the claimant by mail of the date, time and place of the fact-finding interview.

(b) The claimant may be represented at the fact-finding interview by himself or herself, an attorney or a non-attorney representative at the claimant's expense.

(c) Upon conclusion of the fact-finding interview, the Bureau of Benefit Payment Control shall issue a written determination and may refer the matter to the Attorney General for criminal prosecution.

(d) The written determination shall advise the claimant and other interested parties of appeal rights.

12:17-13.3 Claimant's failure to appear

If the claimant fails to report or to otherwise respond to the pre-determination notice within 10 days, or fails to report for any fact-finding interview subsequently scheduled, the Division shall issue a written determination on the facts available, and mail a copy thereof to the claimant. The written determination shall advise the claimant and other interested parties of appeal rights in accordance with N.J.A.C. 12:20 and 1:12.

SUBCHAPTER 14. DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT BENEFIT PAYMENTS

12:17-14.1 Statutory period for demanding refund

The Division shall issue a demand for refund of unemployment benefits in each case when a determination of overpayment is made. Except in the case of fraud, an individual shall be notified of the demand for refund within four years after benefits were received. Notification is accomplished when the demand of refund is mailed to the claimant's last known address. In case of fraud, the matter may be forwarded to the Attorney General for investigation and criminal prosecution.

12:17-14.2 Waiver of recovery of benefit overpayment

(a) Upon request of the claimant or the claimant's representative, the Director may grant the claimant a full waiver of recovery of an overpayment of benefits only after the Director has determined that the claimant has not misrepresented or withheld any material fact in obtaining benefits and only under the following circumstances:

1. Where the claimant is deceased;
2. Where the claimant is disabled and no longer able to work; or
3. Where the recovery of the overpayment, as determined by the Director with the Controller's concurrence, would be patently contrary to the principles of equity.

(b) For purposes of determining under (a) above whether a claimant is prohibited from receiving a waiver of recovery of an overpayment of benefits because he or she misrepresented or withheld any material fact in obtaining benefits, either the willful or the negligent misrepresentation or withholding of any material fact shall, alone, constitute sufficient grounds for a determination by the Director that the claimant is not eligible to receive a waiver of recovery of an overpayment of benefits.

(c) For purposes of determining under (a)2 above whether a claimant is “disabled and no longer able to work”, a claimant’s current receipt of Social Security disability benefits may be deemed evidence of current permanent disability. The Director may also accept a diagnosis of permanent disability from the claimant’s physician. In addition, the Director has the discretion to require the claimant to submit to an impartial physical examination by a legally-licensed physician at the expense of the State.

(d) For purposes of determining under (a)3 above whether the recovery of the overpayment would be “patently contrary to the principles of equity,” the Director and Controller shall consider whether the terms of a reasonable repayment schedule would result in economic hardship to the claimant.

(e) Any appeal from a denial of a waiver of recovery will be in accordance with N.J.A.C. 1:12, the rules governing unemployment benefit cases.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); added a new (b); recodified former (b) as (c).
Amended by R.2006 d.304, effective August 21, 2006.
See: 38 N.J.R. 1513(a), 38 N.J.R. 3308(a).

Deleted (a) and (b); recodified (c) as (e); and added new (a) through (d).

12:17-14.3 Requirements for repaying overpaid benefits

A payment of benefits for which a waiver of recovery is not granted must be repaid in full. The Division may use any means of collection provided by law to satisfy the debt including, but not limited to, offsets permitted under N.J.S.A. 54A:9-8.1 and 8.2. Any individual with an outstanding overpayment who subsequently becomes entitled to benefits shall have such benefits offset by the debt until the debt is repaid in its entirety. However, for any claimant whose overpayment is determined to be the sole result of the Division’s error, the offset amount shall be limited to 50 percent of the claimant’s weekly benefit rate for each week of benefits subsequently claimed.

12:17-14.4 Overpayment of benefits involving two determinations of entitlement

(a) A determination of entitlement is defined to mean determinations that state that a claimant is both eligible and not disqualified.

(b) If there are two determinations of entitlement, benefits for such period of entitlement shall be paid regardless of the outcome of any appeal which may be taken.

(c) If benefits are paid under (b) above, no claimant shall be required to repay such benefits to the Division and no employer’s account shall be charged with benefits so paid through the completed calendar week prior to the date of the appeal hearing, if the decision is finally reversed.

SUBCHAPTER 15. BENEFIT ELIGIBILITY FOR CLAIMANTS EMPLOYED BY TEMPORARY HELP SERVICE FIRMS

12:17-15.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Continuing employment” means employment offered no later than the next business day following the end of the last assignment, within the scope of a written agreement or, if no written agreement exists, under similar terms and conditions of the last assignment; and with a definite starting date of no more than four weeks from the end date of the last assignment.

“Temporary help service firm” means a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, pays Federal Social Security taxes and State and Federal unemployment insurance taxes and carries workers’ compensation insurance as required by State law. A temporary help service firm is required to comply with the provision of N.J.S.A. 56:8-1 et seq.

“Written agreement” means a signed understanding between a temporary help service firm and the employee which outlines the scope of employment and includes the general type of work to be performed, salary parameters, and acceptable commuting distance for assignments. The agreement shall require that the employee contact the temporary help service firm upon completion of an assignment and state that unemployment benefits may be denied for failure to fulfill this obligation.

12:17-15.2 Employment with temporary help service firm under a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing work, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual’s claim which is based on employment with a temporary help service firm shall be reviewed as a voluntary leaving of work issue if the individual fails to contact the temporary help service firm for reassignment by

the end of the next business day after completion of the last assignment unless a greater time period is specified in the written agreement.

12:17-15.3 Employment with temporary help service firm without a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment

which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing employment, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these

reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual's claim which is based on employment with a temporary help service firm shall be reviewed as an

available for work issue if the individual fails to contact the firm for reassignment by the end of the next business day after completion of the last assignment and there is no written agreement between the temporary help service firm and the individual.

ELIGIBILITY CONDITIONS FOR TEMPORARY HELP SERVICE FIRM CLAIMANTS

	<u>Failure to Contact for Reassignment</u>	<u>Refusal of New Assignment</u>	<u>Refusal of Suitable Work issue if:</u>
Separate with signed Agreement	Voluntary Leaving Issue (N.J.S.A. 43:21-5(a))	Voluntary Leaving issue if: —within scope of agreement and; —starts within four weeks and; —offered at end of assignment (N.J.S.A. 43:21-5(a))	—not within scope of agreement or; —starts in more than four weeks or; —offered after end of the current assignment (N.J.S.A. 43:21-5(c))
Separation without signed Agreement	Availability Issue (N.J.S.A. 43:21-4(c))	Voluntary Leaving issue if: —new job similar in terms and conditions to last assignment and; —starts within four weeks and; —offered at end of current Assignment (N.J.S.A. 43:21-5(a))	—terms and conditions of new job are not similar to last assignment or; —starts in more than four weeks or; —offered after end of current assignment (N.J.S.A. 43:21-5(c))

SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

12:17-16.1 Cooperation with other states

This subchapter shall govern the Division in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

12:17-16.2 Benefit rights of interstate claimants

(a) If a claimant files a claim against any state, which determines that the claimant has available benefit credits in such state, then a claim shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available credits.

(b) For the purpose of this subchapter, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a restriction that prohibits the payment of benefits to an individual employed in a seasonal industry during the off season.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "to an individual" for "to individual" following "the payment of benefits".

12:17-16.3 Requirement to register for work

(a) Each interstate claimant shall be registered for work, through any employment service office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

12:17-16.4 Reporting requirements for interstate benefit claims

(a) Claims for benefits or waiting periods shall be filed by interstate claimants on uniform interstate claim forms or by telephone and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be dated in accordance with the agent state's definition of week of the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent state regulations for intrastate claims in employment service offices, or at an itinerant point, by mail or by telephone.

(c) With respect to claims for weeks of unemployment in which an individual was not working for his or her regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim which is filed late. If a claimant files more than one reporting period late without "good cause" as defined under N.J.A.C. 12:17-4.1(b),

an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to his or her regular employer, the liable state shall accept any claim which is filed within the time period applicable to such claims under the law of the agent state.

12:17-16.5 Role of the agent state in benefit determinations

(a) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

12:17-16.6 Appeals of benefit determinations

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(b) With respect to the time period imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

12:17-16.7 Reciprocal claims with Canada

This subchapter shall apply to claims taken in and for Canada.

SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

12:17-17.1 Notice and proof of disability

(a) A written notice of disability on which a claim for disability benefits during unemployment is based shall, within 30 days after the commencement of the period of disability for which benefits are claimed, be furnished to the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development by the claimant or an authorized representative. The notice shall state the claimant's full name, address and Social Security number, as well as the date on which the claimant was too sick (or disabled) to work. The filing of the Department form entitled, "Proof and Claim for Disability Benefits," accompanied by the certification of the attending licensed physician, advanced practice

nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist as required hereinafter, shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the disability during unemployment program is based shall be furnished by any claimant who expects to be or has been totally unable to perform any work and is under the care of a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. Such proof may also be furnished by the claimant's authorized representative. Additional medical certification shall be filed as proof of continued disability, when requested by the Division.

(c) The failure to furnish a written notice of or proof of disability within the 30-day time period required by (a) above shall not invalidate or reduce any claim, if the Division determines that there was good cause for late filing. If a notice or proof is furnished after 30 days and the claimant does not have good cause for failing to submit the notice of proof in a timely manner, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt or postmark of the notice of proof of disability, subject to the waiting period requirement. For purposes of this section, "good cause" means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from filing his claim within the prescribed period.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), substituted "proof in a timely manner" for "proof timely manner" following "submit the notice of".

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (a), added "and Workforce Development."

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a) and (b), inserted "advanced practice nurse,"; and in (a), substituted "the Department form entitled, 'Proof' for "Form DS-1 (Proof" and "Benefits,' accompanied" for "Benefits) accompanied".

12:17-17.2 Procedures for filing of claims for benefits

(a) All claims and other required documents relating to a claim for disability benefits during unemployment may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete as of the postmarked date unless the claimant can provide evidence of an earlier date of mailing.

(b) Disability benefits shall be payable to a claimant residing in another state or in Canada, provided he or she complies with the requirements of the Unemployment Compensation Law and this subchapter. In such cases, the attending physician, advanced practice nurse, dentist, chiropractor, podiatrist, practicing psychologist or optometrist shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

(c) If an independent medical examination of a claimant is required, the Division shall authorize such examination to be made by a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. The payment of examination fees shall be consistent with those fees established in N.J.A.C. 12:18-3.1(g) concerning temporary disability examination fees.

(d) If a claimant refuses to submit to an independent medical examination by a licensed physician, advanced practice nurse, dentist, podiatrist, chiropractor, practicing psychologist, or optometrist designated by the Division, he or she shall be disqualified for receiving all benefits for the period of disability in question, except for benefits already paid.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), substituted "designated" for "designed" following "optometrist".

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

Inserted "advanced practice nurse," throughout.

12:17-17.3 Waiver of registration and reporting requirements

The giving of notice of disability and the filing of proof of a claim for disability benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:17-4 concerning registering for work and reporting to the Division for the period covered by the claim.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Substituted "the Division" for "an unemployment claims office" preceding "for the period covered by the claim".

12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers

(a) This section provides that weeks and wages earned by an individual employed by an employer that is not covered under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., out-of-State or by the Federal government, shall be excluded from benefit calculations under the Disability During Unemployment Program.

(b) Where an individual becomes ill or disabled and his or her most recent employing unit was not an employer covered by the Temporary Disability Benefits Law, disability benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f), provided he or she has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for disability benefits during unemployment which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for disability benefits during unemployment shall

be based solely on wages earned as a covered individual during the base year to establish a valid claim for benefits.

12:17-17.5 Simultaneous unemployment and disability benefit periods

(a) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work because of illness or disability during a portion of such week, a claim for disability benefits during unemployment may be filed and benefits paid to such an individual, provided he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the disability, the claimant must file a claim in accordance with N.J.A.C. 12:17-17.1.

2. If the simultaneous benefit period occurs at the end of the disability, the claimant must assert his or her ability to work by reporting to the Division during the calendar week of his or her recovery or in the calendar week immediately following; or

3. If the claimant returns to work during the calendar week of his or her recovery or in the calendar week immediately following.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "Division" for "unemployment office" preceding "during the calendar week" in 2.

12:17-17.6 Benefit determination

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

Recodified from N.J.A.C. 12:17-17.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-17.6, Eligibility for benefits during the waiting period, repealed.

SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM

12:17-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise:

"Full-time basis," with respect to the amount of time spent in participating in self-employment assistance activities and

efforts to establish a business, means a minimum of 35 hours per week.

“Peer group” means a group of not more than 20 participating individuals who provide mutual assistance and support for each other’s efforts to establish businesses and become self-employed entrepreneurs.

“Reemployment services” means job search assistance and job placement services, including counseling, testing, assessment, job search workshops, job clubs, referrals to employers and providing occupational and labor market information.

“Regular benefits” means benefits payable to an individual under the Unemployment Compensation Law, including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 U.S.C. § 85. Regular benefits do not include extended benefits payable under N.J.S.A. 43:21-24.12 et seq. or any other State or Federal program which would provide benefits beyond the duration of regular benefits or additional benefits for training payable pursuant to the Workforce Development Partnership (WDP) Act as provided at N.J.S.A. 43:21-57 et seq.

“Self-employment assistance activities” means activities, approved by the Division, in which an individual participates for the purpose of establishing a business and becoming self-employed.

“Self-employment assistance allowance” means an allowance, payable in lieu of regular benefits from the Unemployment Insurance Trust Fund, to an individual participating in self-employment assistance activities who meets the requirements of N.J.S.A. 43:21-67 et seq.

“Self-employment assistance services” means services provided to an individual, including entrepreneurial training, business counseling and technical assistance, to help the individual to develop a business plan, establish a business and become self-employed.

“Worker profiling system” means the worker profiling system established pursuant to the Unemployment Compensation Law at N.J.S.A. 43:21-4.1 and N.J.A.C. 12:17-20. The system identifies unemployment benefit claimants who are most likely to exhaust benefits, using a computerized series of screens and a statistical model to develop a numerical ranking of claimants.

“Workforce Development Partnership Program” means the program created pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:14D-1 et seq.

12:17-18.2 Self-employment assistance program

(a) The Self-Employment Assistance Program (SEA), established pursuant to N.J.S.A. 43:21-67 et seq. provides for the following:

1. An individual participating in the SEA Program (activities and services which assist an individual in establishing a business and becoming self-employed) may receive an allowance, in lieu of unemployment benefits for which he or she would have qualified;

2. An individual need not actively seek work while he or she is engaged in self-employment activities;

3. Counseling and technical assistance including assistance in developing a business plan; and

4. A training grant for entrepreneurial training and assistance approved by a WDP counselor in an amount not to exceed \$400.00, or, if the grant is for training provided by any public institution of higher education under N.J.S.A. 18A:62-1 which governs public higher education institutions, not to exceed \$1,500.

12:17-18.3 Eligibility requirements

(a) To be eligible for selection to participate in the SEA Program and to receive allowances, an individual shall meet all of the following requirements:

1. Be a dislocated worker who has been determined through the worker profiling system to be likely to exhaust benefits. The Division shall give priority to those individuals who, through the profiling system, have received scores which indicate the highest probability of exhausting unemployment benefits since the maximum number of individuals receiving SEA allowance may not exceed one percent of the number of claimants receiving regular unemployment benefits;

2. Be eligible to receive benefits on his or her unemployment insurance claim;

3. Have a viable business plan approved by a qualified job counselor pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:15D-1;

4. Be willing to work full-time in developing the business;

5. Participate in full-time entrepreneurial training and/or counseling in combination with other business activities as required by the Division; and

6. Have the financial resources needed to start and sustain the business until it becomes self-supporting.

12:17-18.4 Self-employment assistance allowance

(a) SEA allowances are paid to eligible participants “in lieu of” unemployment benefits in an amount equal to the individual’s weekly benefit rate and maximum benefit amount.

(b) Weekly SEA allowances shall not be reduced by any income generated from the individual's business. However, the weekly benefit rate shall be reduced by any earnings from other employment which the individual may have.

(c) The total payment of a combination of unemployment benefits and SEA allowances shall not exceed the maximum benefit amount of the claim for regular unemployment benefits.

(d) Individuals who terminate participation in the SEA Program shall be disqualified for SEA allowances and shall not be reinstated in the program. However, such individuals may be eligible to receive regular unemployment benefits.

(e) Individuals determined eligible for SEA allowances shall not be eligible to receive extended benefits or additional benefits during training pursuant to the Workforce Development Partnership Act. Individuals who temporarily suspend participation in the SEA Program may receive regular benefits with respect to the benefit year if otherwise eligible until the total amount of regular benefits and SEA allowances paid to the individual equals the maximum benefit amount. Such individuals may also be paid extended benefits if otherwise eligible. Whether such individuals shall be eligible to receive benefits under other Federal or State extended benefit programs is subject to the statute providing for such extensions.

12:17-18.5 Appeals

(a) Denials of grants under the SEA Program may be appealed in accordance with N.J.A.C. 12:23-3.7 concerning appeal procedures for the denial of training grants.

(b) Denials of claims for SEA allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

(c) Denials of grants in combination with denials of Self-Employment Assistance allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

12:17-18.6 Overpayment of self-employment assistance allowances

Overpayment of SEA allowances improperly paid for any reason shall be recovered by the Department by offset of future unemployment benefits or in any other manner as provided in N.J.S.A. 43:21-1 et seq.

SUBCHAPTER 19. VOLUNTARY WITHHOLDING OF
FEDERAL INCOME TAX FROM
UNEMPLOYMENT BENEFITS

12:17-19.1 Notice to claimants of voluntary withholding of Federal income tax from unemployment benefits

(a) An individual receiving unemployment benefits shall be notified at the time he or she files a claim for benefits that unemployment benefits are subject to Federal income tax, the requirements pertaining to estimated tax payments and that the individual may elect to have Federal income tax deducted and withheld from his or her unemployment benefit payment at the amount specified in the Internal Revenue Code.

(b) The individual may change a previously elected withholding status once during the benefit year of a claim by written request to the Division.

Amended by R.2001 d.458, effective December 3, 2001.
See: 33 N.J.R. 3303(a), 33 N.J.R. 4128(a).

In (a), substituted "at the" for "in an" following "unemployment benefit payment", and deleted "equal to 15 percent of the payment as" preceding "specified in".

12:17-19.2 Transfer of withheld unemployment benefits

Amounts deducted and withheld from unemployment benefits shall remain in the unemployment fund until transferred to the Federal taxing authority as a payment of income tax. The Commissioner shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax.

12:17-19.3 Other withholdings

(a) Amounts shall be deducted and withheld under this subchapter only after amounts are deducted and withheld for any overpayments of unemployment benefits, child support obligations or any other amounts required to be deducted and withheld under the New Jersey Unemployment Compensation Law or Federal law.

(b) Amounts deducted and withheld for overpayments of unemployment benefits, child support obligations or any other reason are considered paid to the claimant.

SUBCHAPTER 20. WORKER PROFILING AND
REEMPLOYMENT SERVICES

12:17-20.1 Purpose and scope

(a) All new claimants who file for regular unemployment compensation shall be profiled in accordance with Federal requirements set forth at 42 U.S.C. § 503(j), incorporated herein by reference, as amended and supplemented.

(b) Profiling is a system that:

1. Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
2. Refers identified claimants early in the claims series to reemployment services;
3. Collects follow-up information relative to the services provided to such claimants and the employment outcome for such claimants; and
4. Meets other such requirements as the U.S. Secretary of Labor determines are appropriate.

12:17-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Early in the claims series" means no later than the fifth week from the date of claim.

"New claimant" means any individual who files an initial or additional claim for benefits, and receives a first payment early in the claims series.

"Reemployment services" means job search assistance and job placement services, such as counseling, occupational testing, providing occupational and labor market information, assessment, job search workshops, job clubs, referrals to employers, entrepreneurial training, business counseling, and other similar services, and does not mean vocational skills and/or education training.

“Regular compensation” means compensation payable under any state unemployment compensation law, other than extended compensation and additional compensation. This includes Unemployment Compensation for Ex-service members (UCX), Unemployment Compensation for Federal Employees (UCFE) and Combined Wage Claims (CWC).

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In “Reemployment services”, deleted “and” following “testing,” “skills” following “information,” and “and” following “clubs”.

12:17-20.3 Identifying claimants

(a) All claimants receiving full first payments within 35 days after the date of their claim will be placed in a potential profiling pool. The following individuals will be screened out of the pool:

1. Claimants who receive first payments that are for partial unemployment;
2. Claimants with a definite recall date or in a seasonal industry with a strong likelihood of recall;
3. Claimants who seek work through an approved union hiring hall; and
4. Claimants who have an interstate claim. (Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.)

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote the section.

12:17-20.4 Statistical modeling process

(a) Claimants who are not excluded by the factors specified in N.J.A.C. 12:17-20.3 shall be passed through a statistical modeling process developed by the Division of Program Planning, Analysis and Evaluation within the New Jersey Department of Labor and Workforce Development, to determine their probability of exhausting benefits based on coefficients assigned to nondiscriminatory variables, which shall include industry and/or occupation and may include, but are not limited to, the following:

1. Education;
2. Job tenure; and
3. Local area unemployment rate.

(b) Identified individuals shall be assigned a profiling score and ranked in order of probability of benefit exhaustion on a daily basis.

(c) The following characteristics shall not be used in the profiling system:

1. Age;
2. Race or ethnic group;

3. Gender;
4. Color;
5. National origin;
6. Disability;
7. Religion;
8. Political affiliation; and
9. Citizenship.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In the introductory paragraph of (a), added “and Workforce Development.”

12:17-20.5 Selection

(a) The highest ranked individuals shall be selected to attend an orientation session where the reemployment service program and the various services available shall be explained.

(b) Selection for participation in reemployment and other services shall be done on a weekly basis.

(c) The number of individuals selected to attend the orientation sessions shall be dependent upon the ability of the service provider to provide reemployment services.

(d) Individuals not selected for the orientation shall be returned to a candidate pool for as long as the selection date equals or is within 35 days of the date of claim.

12:17-20.6 Mandatory participation

(a) Unless exempted under N.J.A.C. 12:17-20.7, claimants scheduled for an orientation session shall attend and claimants referred for services shall participate in the services offered in order to maintain eligibility for unemployment benefits. However, no individual shall involuntarily be required to attend or participate in vocational skills and/or education training.

(b) The eligibility for unemployment benefits of an individual who fails to participate as requested shall be adjudicated under N.J.A.C. 12:17-4.

(c) Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.

12:17-20.7 Exempted individuals

(a) Individuals shall be exempted from reemployment services required under this subchapter if they:

1. Were incorrectly profiled (that is, an error was made on initial claim or in data entry);
2. Have returned or are returning to full-time work;
3. Are receiving similar reemployment services at the time of profiling;

4. Have recently completed similar reemployment services;
5. Are attending or registered to attend training at the time of profiling;
6. Are job-ready for existing job openings; or
7. Have become a member of an approved union hiring hall, have moved and are now filing on an interstate basis, or have received a definite recall date from the former employer.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
Rewrote the section.

12:17-20.8 Appeals

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

12:17-21.1 General provisions

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing same to the Division. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "providing same to the Division" for "providing same to the Division of Employer Accounts" in the first sentence.

12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;

5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or

6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) as amended by the Trade Act of 2002, P.L. 107-210, or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "as amended by the Trade Act of 2002, P.L. 107-210," preceding "or when the claimant leaves work" in 6.

Amended by R.2015 d.079, effective May 18, 2015.

See: 46 N.J.R. 1796(a), 47 N.J.R. 1009(a).

In (a)2, deleted "or gross misconduct" preceding "connected".

12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information" is not received by the Division or postmarked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received or

postmarked within 21 calendar days after the date upon which the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, “good cause” means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted “and” following “Form BC-3E” in the third sentence; in (b), substituted “Division” for “local claims office” preceding “or postmarked within 10 calendar days” and deleted “by the local claims office” preceding “or postmarked within 21 calendar days”.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), substituted “the Department form entitled, ‘Notice’ for “Form BC-3E, Notice”, “Information,” and” for “Information, and”, “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information,’ ” for “Form BC-3E”; and in (b), substituted “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information’ ” for “Form BC-3E”, and “within 21” for “with 21”.

12:17-21.4 Misrepresentation or false information

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.

2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

12:17-21.5 Determination and appeals

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

SUBCHAPTER 22. CLAIMS FOR FAMILY LEAVE INSURANCE BENEFITS DURING UNEMPLOYMENT

12:17-22.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Bond” or “bonding” with a newborn child or newly adopted child means to develop a psychological and emotional attachment between a child and his or her primary care giver(s). The development of this attachment or bond between child and care giver(s) requires being in one another’s presence.

“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.

“Care giver” means the family member who is providing the required care. This term is used interchangeably with “claimant.”

“Care recipient” means the family member who is receiving care for a serious health condition or the newborn child or newly adopted child with whom the “care giver” is bonding.

“Child” means a biological, adopted, or foster child, step-child or legal ward of a covered individual, child of a domestic partner of the covered individual, or child of a civil union partner of the covered individual, who is less than 19 years of age or is 19 years of age or older but incapable of self-care because of mental or physical impairment.

As used in this definition, “incapable of self-care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

As used in this definition, “mental or physical impairment” means: 1. any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or 2. any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Civil union” means a civil union as defined in N.J.S.A. 37:1-29.

“Covered individual” or “employee” means any individual who is in employment, as the term “employment” is defined at N.J.S.A. 43:21-19(i)(1) or any individual who has been out of such employment for less than two weeks.

“Director” means the Director of the Division of Temporary Disability Insurance in the Department of Labor and Workforce Development.

“Division” means the Division of Temporary Disability Insurance in the Department of Labor and Workforce Development.

“Domestic partner” means a domestic partner as defined in N.J.S.A. 26:8A-3.

“Family leave” or “family temporary disability leave” means leave taken by a covered individual from work with an employer to participate in the providing of care for a family member of the individual made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child’s birth, if the individual or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. “Family leave” does not include any period of time during which a covered individual is paid temporary disability benefits pursuant to N.J.S.A. 43:21-25 et seq. (the New Jersey Temporary Benefits Law), because the individual is unable to perform the duties of the individual’s employment due to the individual’s own disability.

“Family member” means a child, spouse, domestic partner, civil union partner or parent of a covered individual.

“Family temporary disability benefits” or “family leave insurance benefits” means the benefits payable to a covered individual under P.L. 2008, c. 17 in order to compensate for wage loss suffered because of the need of the covered individual to participate in providing care for a family member or to bond with a newborn or newly adopted child.

“Family Temporary Disability Leave Account” means a separate account within the State Disability Benefits Fund into which is deposited all worker contributions collected under N.J.S.A. 43:21-7(d)(1)(G)(ii).

“Health care provider” means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

“Licensed medical practitioner” means a licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse or chiropractor.

“Parent of a covered individual” means a biological parent, foster parent, adoptive parent, or stepparent of the covered individual or a person who was a legal guardian of the covered individual when the covered individual was a child.

“Private plan” means a private plan approved by the Division of Temporary Disability Insurance as defined in N.J.S.A. 43:21-32.

“Serious health condition” means an 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.

As used in this definition, “continuing medical treatment or continuing supervision by a health care provider” means:

1. A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two or more times by a health care provider; or
 - ii. Treatment by a health care provider on one occasion, which results in a regimen of continuing treatment under the supervision of a health care provider;
2. Any period of incapacity due to pregnancy, or for prenatal care;
3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
4. A period of incapacity, which is permanent or long-term, due to a condition for which treatment may not be effective (such as Alzheimer’s disease, a severe stroke or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by a health care provider; or
5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).

“Stepparent of the covered individual” means the person to whom the covered individual’s biological parent is either currently married or with whom the covered individual’s biological parent is currently sharing a civil union.

“Twelve-month period” means, with respect to an individual who establishes a valid first claim for family leave insurance benefits, the 365 consecutive days that begin with the first day that the individual establishes the claim.

“Week” means a period of seven consecutive days.

12:17-22.2 Notice and proof of family leave

(a) A written notice of family leave on which a claim for family leave insurance benefits during unemployment is based shall, within 30 days after the commencement of the period of family leave for which benefits are claimed, be furnished to the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development by the claimant or an authorized representative. The notice shall state the claimant's full name, address and Social Security Number, as well as the date on which the claimant was unable to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. The filing of Form FL-1 (Proof and claim for family leave insurance benefits) shall constitute notice of family leave.

(b) Proof of family leave on which a claim for benefits under the family leave insurance benefits during unemployment program is based shall be furnished by any claimant who expects to be unable to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. Such proof may also be furnished by the claimant's authorized representative. When requested by the Division, additional certification from a health care provider or licensed medical practitioner shall be filed as proof of continued need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member.

(c) The failure to furnish written notice of or proof of family leave within the 30-day time period required by (a) above shall not invalidate or reduce any claim, if the Division determines that there was good cause for late filing. If a notice or proof is furnished after 30 days and the claimant does not have good cause for failing to submit the notice of proof in a timely manner, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt or postmark of the notice of proof of family leave, subject to the waiting period requirement. For purposes of this subsection, "good cause" means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from filing his or her claim within the prescribed period.

12:17-22.3 Procedures for filing of claims for benefits

(a) All claims and other required documents relating to a claim for family leave insurance benefits during unemploy-

ment may be filed by mail, except in those cases where the claimant is notified by the Division of Temporary Disability Insurance that a personal appearance or examination will be required. Filing by mail shall be deemed complete as of the postmarked date unless the claimant can provide evidence of an earlier date of mailing.

(b) Family leave insurance benefits shall be payable to a claimant residing in another state or in Canada, provided he or she complies with the requirements of the Unemployment Compensation Law and this subchapter.

(c) If an independent medical examination of a care recipient is required, the Division shall authorize such examination to be made by a licensed medical practitioner. The payment of examination fees shall be consistent with those fees established in N.J.A.C. 12:21-3.1(g) concerning family leave insurance benefits examination fees.

(d) If a care recipient refuses to submit to an independent medical examination by a licensed medical practitioner designated by the Division of Temporary Disability Insurance, the claimant shall be disqualified from receiving all benefits for the period of family leave in question, except for benefits already paid.

12:17-22.4 Waiver of registration and reporting requirements

The giving of notice of family leave and the filing of proof of a claim for family leave insurance benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:7-4 concerning registering for work and reporting to the Division of Temporary Disability Insurance for the period covered by the claim.

12:17-22.5 Payment of family leave insurance benefits during unemployment for individuals working for exempt employers

(a) This section provides that weeks and wages earned by an individual employed by an out-of-State employer or by the Federal government, shall be excluded from benefit calculations under the Family Leave Insurance Benefits During Unemployment Program.

(b) Where a claimant's most recent employing unit was not a covered employer, family leave insurance benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f)(2), provided the claimant has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for family leave insurance benefits during unemployment, which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for family leave insurance benefits during unemployment shall be based solely on wages earned

as a covered individual during the base year to establish a valid claim for benefits.

12:17-22.6 Simultaneous unemployment and family leave insurance benefit periods

(a) No period of less than seven days shall be payable on a claim filed for family leave insurance benefits during unemployment under N.J.S.A. 43:21-4(f)(2).

(b) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work due to the need to participate in the providing of care for a family member of the claimant made necessary by a serious health condition of the family member or to be with a child during the first 12 months after the child's birth, if the claimant or the domestic partner or civil union partner of the claimant, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual, during a portion of such week, a claim for family leave insurance benefits during unemployment may be filed and benefits paid to such an individual, provided that he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the family leave, the claimant must file a claim for family leave insurance benefits in accordance with N.J.A.C. 12:17-22.2; or
2. If the simultaneous benefit period occurs at the end of the family leave, the claimant must assert his or her

ability to work by reporting to the Division during the calendar week that the family leave ends or in the calendar week immediately following.

12:17-22.7 Benefit determination

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

12:17-22.8 Payment of family leave insurance benefits during unemployment

For each claimant who establishes entitlement to family leave insurance benefits during unemployment under N.J.S.A. 43:21-4(f)(2), his or her claim shall be paid from the Family Temporary Disability Leave Account.

12:17-22.9 Reduction of benefits

An employee's maximum family leave insurance benefits entitlement under N.J.S.A. 43:21-3 and 4 as an unemployed claimant for a given 12-month period shall be reduced by the number of days of family leave insurance benefits that have been paid to the employee during that 12-month period under the State plan or a private plan.

CHAPTER 20
BOARD OF REVIEW

Authority

N.J.S.A. 34:1A-3(e); 43:21-6(d), (e), and (f); 43:21-10; and 43:21-17.

Source and Effective Date

R.2017 d.140, effective May 25, 2017.
See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

Chapter Expiration Date

Chapter 20, Board of Review, expires on May 25, 2024.

Chapter Historical Note

Chapter 20, Board of Review, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1989 d.473. See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Subchapter 6, Telephone Hearings, was adopted as R.1989 d.474, effective September 5, 1989. See: 21 N.J.R. 1644(a), 21 N.J.R. 2798(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1994 d.408, effective July 18, 1994. See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a). Subchapter 6, Telephone Hearings, was repealed by R.1994 d.408, effective August 1, 1994. See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Appendix, Unemployment Benefit and State Plan Temporary Disability Cases, was adopted as R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive Order No. 66(1978), Chapter 20, Board of Review, was readopted as R.1999 d.250, effective July 12, 1999. See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Chapter 20, Board of Review, was readopted as R.2004 d.324, effective July 23, 2004. See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

Chapter 20, Board of Review, was readopted as R.2010 d.044, effective January 14, 2010. See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 20, Board of Review, was scheduled to expire on January 14, 2017. See: 43 N.J.R. 1203(a).

Chapter 20, Board of Review, was readopted as R.2017 d.140, effective May 25, 2017. As a part of R.2017 d.140, the chapter Appendix was repealed, effective July 17, 2017. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Civil Service Commission eligible lists.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.
Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Amended by R.2017 d.140, effective July 17, 2017.
See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

Substituted "Civil Service Commission" for "Department of Personnel".

12:20-1.2 Officers

(a) The Board of Review shall elect one of its members as chairperson and one as vice-chairperson to serve at the pleasure of the Board.

(b) The Board of Review may appoint a secretary to serve at the pleasure of the Board.

Amended by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-1.3 Duties

(a) It shall be the duty of the members of the Board of Review to act as a final appeals board in hearing and deciding cases of benefit disputes, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. 43:21-16(d) of the Unemployment Compensation

Law, to determine all matters of policy in the Board of Review, to supervise the work of appeal tribunals, and to issue rules and regulations governing the conduct of hearings and the presentation of appeals to the appeal tribunals and to the Board of Review.

(b) The chairperson of the Board of Review shall convene and preside at all meetings of the Board of Review.

(c) The vice-chairperson shall perform the duties of the chairperson during any period of the latter's absence or incapacity.

(d) The executive secretary of the Board of Review shall keep a record of proceedings at meetings of the Board of Review and shall prepare minutes to record all actions of the Board at each meeting. Said minutes shall be presented to the Board of Review for approval at its next meeting.

(e) The executive secretary may, with the consent of the Board of Review, issue subpoenas and shall sign all orders and other official documents issued in the name of the Board of Review and shall certify its decisions. The executive secretary shall maintain the permanent file of the approved minutes of Board of Review meetings and shall be charged with the supervision of all administrative work of the Board of Review.

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review, Div. of Unemployment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-1.4 Quorum

A quorum of the Board of Review shall consist of two members of the Board. No decision, determination, opinion or other official duty shall be rendered or taken by the Board of Review except with the approval of a majority thereof.

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

12:20-2.1 Membership

Appeal tribunals shall consist of a single member who shall be a salaried examiner appointed by the Director subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Civil Service Commission lists.

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Deletion of (b) to conform to recent legislation.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Amended by R.2017 d.140, effective July 17, 2017.

See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

Substituted "Civil Service Commission" for "Department of Personnel".

12:20-2.2 Duties

It shall be the duty of the appeal tribunals to hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. 43:21-16(d) of the Unemployment Compensation Law of New Jersey and determinations with respect to requests by employers for relief from benefit charges pursuant to N.J.A.C. 12:17-21.

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Added "and determinations with respect to requests by employers for relief from benefit charges pursuant to N.J.A.C. 12:17-21" at the end.

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review, Div. of Unemployment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-2.3 (Reserved)

Recodified by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Text on chairman at N.J.A.C. 12:20-2.3 repealed and replaced with text from N.J.A.C. 12:20-2.5, on disqualification of members of appeal tribunals and changes made to conform to recent legislation.

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Disqualification of members of appeal tribunals."

12:20-2.4 (Reserved)

Repealed by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

12:20-2.5 (Reserved)

Recodified by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

12:20-3.1 Presentation of appealed claims

(a) Any written statement, including a facsimile, electronic mail or other electronic transmission, filed within the time for

appeals allowed by law, which sets forth the fact that a party to a determination made by the division is aggrieved thereby or dissatisfied therewith, shall be deemed to be an appeal.

(b) Every appeal shall set forth the reasons alleged for disputing the determination or decision appealed from. The appellant shall not be required to use technical forms or language in setting forth the said reasons.

(c) In computing any period of time, the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday.

(d) The date on which an appeal is filed is the date of the postmark, or in the event the postmark is missing, the date of receipt by an office or employee of the Department of Labor and Workforce Development authorized to accept appeals.

(e) In cases involving a large number of claimants, a blanket notice of appeal may be filed on behalf of, or with respect to, such claimants, listing their full names and social security numbers, and the date of filing of such notice will be accepted as the date of filing of the individual appeals thereunder, provided, however, no case will be scheduled for hearing until an individual appeal has been filed with the appeal tribunal. Following the filing of the blanket appeal, a reasonable time will be allowed for preparation of the individual appeals.

(f) Upon the scheduling of a hearing on an appeal, notices of hearing shall be mailed to the claimant and to the parties interested in the determination which is being appealed at least five days before the date of the hearings, specifying the place and time of the hearing.

(g) Notice of appeal filed in the local office shall be transmitted immediately to the appeal tribunal. If, after an appeal has been filed, it is found that the matter may be adjusted to the satisfaction of the parties without further hearing, a request for dismissal of the appeal will be entertained and acted upon by the tribunal to which the case is referred.

(h) An appeal shall be considered on its merits if it is filed within seven calendar days after delivery of the initial determination or within 10 calendar days after such notification was mailed to the appellant's last known address, with the exception of an appeal filed pursuant to N.J.S.A. 43:21-55.1, which shall be considered on its merits if it is filed within 20 calendar days after delivery of the initial determination or within 24 calendar days after such notification was mailed to the appellant's last known address. Delivery of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

In (d), substituted a reference to the Department of Labor for a reference to the Division of Employment Security; in (e), deleted "on the prescribed appeal form" following "appeal" in the first sentence; and rewrote (h).

Amended by R.2004 d.324, effective August 16, 2004.

See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

In (a), inserted "electric mail or other electronic transmission," following "facsimile".

Amended by R.2010 d.044, effective February 16, 2010.

See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

In (d), inserted "and Workforce Development".

Amended by R.2017 d.140, effective July 17, 2017.

See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

In (c), inserted a comma following "time", inserted a comma following "Sunday" twice, and substituted "that" for "which"; and in (h), deleted "notification of" following "Delivery of".

12:20-3.2 Appeal process

The appeal procedures for cases before the appeal tribunals can be found at N.J.A.C. 1:12.

Amended by R.1984 d.516, effective November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

(a): added "or representatives".

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Stylistic revisions.

Amended by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Originally 12:20-3.2 was "Conduct of hearings."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Amended by R.2017 d.140, effective July 17, 2017.

See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

Rewrote the section.

Case Notes

Claimant receiving full unemployment benefits while employed part-time must refund entire amount of benefits paid; Appeal Tribunal and Board of Review may have appellate authority to review or adjudicate only claim disputes and not the imposition of fines; remand to Appellate Division to consider propriety of fine imposed. *Malady v. Bd. of Review, Div. of Unemployment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:20-3.3 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revisions to conform to recent legislation.

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Adjournment of hearings."

12:20-3.4 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revised to conform to recent legislation.

Repealed by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Decisions of appeal tribunals."

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW**Cross References**

Disability benefits cases under the state plan, appeals, rules of Board of review govern, see N.J.A.C. 12:18-3.9.

12:20-4.1 Presentation of appeals

(a) Notice of appeal shall be filed within 10 calendar days after the date of notification or mailing of the decision which is being appealed. Any written statement, including a facsimile, electronic mail or other electronic transmission, filed within the time for appeals allowed by law, which sets forth the fact that a party to a decision made by an appeal tribunal is aggrieved thereby or dissatisfied therewith, shall be deemed to be an appeal. A copy of the Appeal Tribunal decision being appealed shall be included whenever possible.

(b) In computing any period of time the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(c) The date on which an appeal is filed is the date of the postmark, or in the event that the postmark is missing, the date of receipt by an office or employee of the Department of Labor and Workforce Development authorized to accept appeals.

(d) A party appealing from a decision of an appeal tribunal may also file at the office where the claim was filed or with the Board of Review a notice of appeal to the Board of Review, or at an office or with an employee authorized to accept such appeals, setting forth the information required thereby.

(e) Notice of appeal filed at an office authorized to accept such appeals shall be transmitted immediately to the Executive Secretary of the Board of Review. If, after an appeal has been filed, it is found that the matter may be adjusted to the satisfaction of the parties without further hearing, a request for dismissal of the appeal will be entertained and acted upon by the Board of Review.

(f) Receipt by any party of notice of hearing on an appeal shall be deemed to constitute notice that an appeal has been filed. Any party, other than the appellant, shall be supplied with a copy of the appeal if request is made therefor before the date of the scheduled hearing.

(g) An appeal shall be considered on its merits if it is filed within 10 days of notification or mailing. Notification of a decision means actual receipt of a decision by the claimant or any interested party to the appeal.

(h) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

Amended by R.1989 d.473, effective September 5, 1989.

See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Revised to conform to recent legislation.

Recodified from 12:20-4.3 by R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Originally 12:20-4.1 was "Conduct of hearings."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

In (c), substituted a reference to the Department of Labor for a reference to the Division of Employment Security; in (d), deleted "in triplicate" following "file", and inserted "or at an office or with an employee authorized to accept such appeals," following "Review"; and in (e), substituted "at an office authorized to accept such appeals" for "in the local office" following "filed".

Amended by R.2004 d.324, effective August 16, 2004.

See: 36 N.J.R. 2297(a), 36 N.J.R. 3883(a).

Rewrote (a); in (d), substituted "may also" for "shall" following "tribunal".

Amended by R.2010 d.044, effective February 16, 2010.

See: 41 N.J.R. 3196(a), 42 N.J.R. 588(b).

In (c), inserted "and Workforce Development".

Case Notes

If review of Appeal Tribunal's decision regarding unemployment compensation was not initiated within ten-day period, Tribunal decision became final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Appeal from Appeal Tribunal's affirmation of one of three determinations by Deputy Director did not confer jurisdiction upon Board of Review to review Tribunal's reversal of another determination by Deputy Director. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Board of Review has ten-days to review decision of Appeal Tribunal. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

12:20-4.2 Appeal process

The appeal procedures for cases before the Board of Review are found at N.J.A.C. 1:12.

New Rule, R.1994 d.408, effective August 1, 1994.

See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Original 12:20-4.2 was "Adjournment."

Amended by R.1999 d.250, effective August 2, 1999.

See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Amended by R.2017 d.140, effective July 17, 2017.

See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).

Deleted "and are also appended to the end of this chapter" following the N.J.A.C. reference.

12:20-4.6 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Hearing appeals on cases removed from appeal tribunal to Board of Review."

12:20-4.7 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Decisions of Board of Review."

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

12:20-5.1 Inspection of decisions

Copies of all decisions of the appeal tribunals and the Board of Review shall be kept on file at the offices of the Board of Review and of the appeal tribunals at Trenton. Such decisions shall be open for inspection but without in any manner revealing the names of any of the parties or witnesses involved.

Recodified from 12:20-5.5 by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-5.2 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Witness fees."

12:20-5.3 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Orders for supplying information from division records."

12:20-5.4 (Reserved)

Amended by R.1978 d.116, effective March 31, 1978.
See: 10 N.J.R. 117(a), 10 N.J.R. 202(a).
Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).

Representation provisions changed.

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

Section was "Representation."

SUBCHAPTER 6. (RESERVED)

APPENDIX

CHAPTER 12

UNEMPLOYMENT BENEFIT, STATE PLAN TEM- PORARY DISABILITY AND STATE PLAN FAMILY LEAVE INSURANCE CASES

Authority

N.J.S.A. 34:1A-3(e), 43:21-6(d) through (f), 43:21-10, 43:21-17, 43:21-25 et seq., and 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2011 d.204, effective July 8, 2011.
See: 42 N.J.R. 2170(a), 43 N.J.R. 1861(a).

Chapter Expiration Date

Chapter 12, Unemployment Benefit, State Plan Temporary Disability and State Plan Family Leave Insurance Cases, expires on July 8, 2018.

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SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases, State plan temporary disability hearings, and State plan family leave insurance hearings, under N.J.S.A. 43:21-50(b), heard by the Board of Review or the appeal tribunals of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability and private plan family leave insurance cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Appeal tribunal” means the entity which conducts hearings and renders decisions concerning employer and employee appeals of decisions for unemployment, State plan temporary disability and State plan family leave insurance benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

“Appellate body” means either the appeal tribunal, Board of Review or hearing officer which is conducting the proceeding.

“Board of Review” means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability and State plan family leave insurance claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) A party may represent himself or herself or may be represented by an attorney or a non-lawyer representative pursuant to R.1:21-1(f)(11). Representation by an attorney shall be at the party’s expense. Representation by a non-lawyer representative shall comply with N.J.A.C. 1:1-5.4.

(b) In any unemployment benefits proceeding and in any State plan temporary disability and State plan family leave insurance claim proceeding of an appeal before an appeal tribunal or the Board of Review, all fees for attorneys representing claimants shall be approved by the Board of Review after it receives submission of an authorization form and a copy of the applicable decision.

(c) The amount of fees approved for persons representing claimants shall be discretionary with the Board of Review. In determining the amount of fees, the Board of Review shall at least consider the following factors:

1. The amount of time spent on the case;
2. The complexity of the case;
3. The services performed as noted on the authorization form or any other documentation to the Board of Review; and
4. The results achieved (that is, favorable or unfavorable).

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance, or the rules of the Board of Review.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

Written notices of the time and place of any hearing shall be mailed to the parties in interest at least five days before the date of hearing but a shorter notice may be given if not prejudicial to the parties.

1:12-9.2 Adjournments

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) Requests for adjournment of hearings scheduled before the appeal tribunal shall be made to the appeal tribunal which shall use its best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(c) Applications and requests for adjournment of hearings scheduled before the Board of Review shall be made at least 24 hours before the date of the scheduled hearing and shall be granted at the discretion of the Board of Review.

(d) All parties to an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

1:12-9.3 (Reserved)

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefit appeals and State plan temporary disability or State plan family leave insurance claim appeals, requests for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be addressed to the Board of Review.

(b) A request for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be in writing and shall clearly state the nature of the information required and the reason therefor.

(c) Orders for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance may be issued in any proceeding to the extent necessary for the proper presentation of the case.

(d) In all cases where an application to supply a party or his or her representative with information from the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance is granted, the party shall be furnished with a copy of such information.

(e) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining information from the Board of Review.

(f) Following an appeal to the Appellate Division and upon direction of the Attorney General's office, the transcript of any proceeding which has been sound recorded shall be provided to all parties by the Board. Any request by an employer shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the Board or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the Board. The Board shall bill the employer for any amount due for the preparation of the transcript and any hard copies or shall reimburse the employer for any overpayment.

(g) To obtain a copy of a sound recording of any proceeding, the requesting party must file a request with the executive secretary of the Board. Such a request is subject to

approval by the Board. The requesting party shall notify all other parties of such a request. The request shall be accompanied by a reasonable payment of costs in the amount of \$15.00 for the initial copy of the sound recording and \$10.00 for any subsequent copy.

(h) No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review.

(i) No disclosure of information, obtained at any time from, and identifiable to, specific workers, employers or other persons for the proper administration of an appeal, shall be made directly or indirectly except as authorized by the Board of Review in accordance with N.J.A.C. 12:15-2.

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

1:12-11.2 Witness fees

(a) Witness fees at the rate of \$1.00 for each day of attendance upon a hearing in response to a subpoena ad testificandum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

(b) Witness fees at the rate of \$2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon the presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

Case Notes

Review of Appeal Tribunal's decision on unemployment compensation must be completed within ten days or decision becomes final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Appeal to Board of Review from Appeal Tribunal's affirmance of one of three determinations by Deputy Director did not confer jurisdiction upon Board to review Tribunal's reversal. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

Review of Appeal Tribunal decision regarding unemployment compensation must occur within ten days or decision becomes final. *Von Ouhl v. Board of Review*, 254 N.J.Super. 147, 603 A.2d 114 (A.D.1992), certification denied 130 N.J. 10, 611 A.2d 649.

12:20-4.3 Temporary appointment to Board of Review

The Executive Secretary to the Board of Review shall serve in the place of any member of the Board who is temporarily absent or unavailable.

New Rule, R.1986 d.312, effective August 4, 1986.
See: 18 N.J.R. 544(b), 18 N.J.R. 1611(a).
Recodified 12:20-4.8 by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).

12:20-4.4 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Hearing of appeals."

12:20-4.5 (Reserved)

Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).
Remand provisions added at (a).
Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Hearing appeals on own motion."

12:20-4.6 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Hearing appeals on cases removed from appeal tribunal to Board of Review."

12:20-4.7 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Decisions of Board of Review."

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES**12:20-5.1 Inspection of decisions**

Copies of all decisions of the appeal tribunals and the Board of Review shall be kept on file at the offices of the Board of Review and of the appeal tribunals at Trenton. Such decisions shall be open for inspection but not in any manner revealing the names of any of the parties or witnesses involved.

Recodified from 12:20-5.5 by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Amended by R.2017 d.140, effective July 17, 2017.
See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).
Substituted "not" for "without".

12:20-5.2 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Witness fees."

12:20-5.3 (Reserved)

Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Orders for supplying information from division records."

12:20-5.4 (Reserved)

Amended by R.1978 d.116, effective March 31, 1978.
See: 10 N.J.R. 117(a), 10 N.J.R. 202(a).
Amended by R.1989 d.473, effective September 5, 1989.
See: 21 N.J.R. 1496(a), 21 N.J.R. 2797(a).
Representation provisions changed.
Repealed by R.1994 d.408, effective August 1, 1994.
See: 26 N.J.R. 2196(a), 26 N.J.R. 3179(a).
Section was "Representation."

SUBCHAPTER 6. (RESERVED)**APPENDIX****(RESERVED)**

Repealed by R.2017 d.140, effective July 17, 2017.
See: 49 N.J.R. 320(a), 49 N.J.R. 2285(a).
Appendix was "Chapter 12 - Unemployment Benefit, State Plan Temporary Disability and State Plan Family Leave Insurance Cases".

1:12-14.2 Conduct of hearing

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the parties' rights.

(b) The appellate body shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the appellate body shall give every assistance that does not interfere with the impartial discharge of its official duties. The appellate body may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded.

(c) The appellate body may take such additional evidence as it deems necessary; provided, that in case such further evidence is taken, the parties shall be given proper notice of the time and place of such further hearing.

(d) The appellate body, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey or the rules and regulations of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance.

1:12-14.3 Appeals hearings

(a) All appeals to the Board of Review may be heard upon the evidence in the record made before the appeal tribunal, or the Board of Review may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Board of Review of the time and place such evidence will be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeal tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to the direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the appeal tribunal and such

additional evidence and such oral argument as the Board of Review may permit before it.

(d) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of additional evidence and a decision or may remand for a new decision only.

1:12-14.4 Failure to appear

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.

1:12-14.5 Scheduling of hearings

(a) Hearings before the Board of Review or Appeal Tribunal may be conducted in-person or by telephone. A telephone hearing, which means a hearing at which any party, witness, representative or attorney appears via telephone, may be initiated by the Board of Review or the Appeal Tribunal or upon the request of any party with the consent of the Board of Review or the Appeal Tribunal. Both in-person and telephone hearings shall be subject to the rules governing hearings and appeals in this chapter.

(b) The Board of Review or Appeal Tribunal will schedule telephone hearings:

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board of Review or Appeal Tribunal will conduct the hearing;
2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason;
3. For good cause shown on a case-by-case basis; or
4. For the administrative expedience of the Board of Review or Appeal Tribunal.

(c) Any party to an appeal may request a telephone hearing by immediately contacting the Board of Review or Appeal Tribunal upon receipt of the notice of the scheduled in-person hearing with reasons for the request to have a telephone hearing. Prior to the hearing, the requesting party shall provide written notice to all other interested parties of the request for the telephone hearing.

(d) Any party may object to a telephone hearing. Objections shall be made immediately upon receipt of the notice or request for a telephone hearing and shall:

1. Be received by the Board of Review or Appeal Tribunal in advance of the hearing; and
2. Set forth the reasons supporting the objections.

(e) The Board of Review or Appeal Tribunal may deny a party's objection to a telephone hearing if the Board of Review or Appeal Tribunal determines:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;
2. That a party or witness is more than 50 miles away from the hearing site;
3. That a person is unable to appear in person because of physical, medical or other compelling reason; or
4. That good cause exists to order a telephone hearing notwithstanding the party's objection.

(f) The Board of Review or Appeal Tribunal may deny a party's objection to an in-person hearing when good cause exists to order an in-person hearing notwithstanding the party's objection.

(g) If the Board of Review or Appeal Tribunal accepts a party's objections, an appropriate hearing, either in-person or by telephone, shall be scheduled by the Board of Review or Appeal Tribunal.

(h) The Board of Review or Appeal Tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

1:12-14.6 Conduct of telephone hearing

(a) The Board of Review or appeal tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 1:12-18.4 before any reopening of the hearing shall be granted.

(c) The Board of Review or appeal tribunal shall permit the parties, attorneys or other representatives a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(d) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board of Review or appeal tribunal and all other interested parties immediately upon receipt of notice of the scheduled telephone hearing. Also, the requesting party shall provide timely notice of this request to offer evidence to all other interested parties.

1. Any evidence not submitted as required in this subsection may be admitted at the discretion of the Board of Review or the appeal tribunal provided that such evidence is submitted to the Board of Review or appeal tribunal and all other parties within 24 hours of the telephone hearing.

2. The other parties shall have 24 hours from the time of receipt of the evidence to properly respond to its admission and use.

3. Upon review of the evidence, the Board of Review or the appeal tribunal shall determine if the telephone hearing shall be continued.

(e) When the Board of Review or the appeal tribunal determines that a crucial document exists which is essential to the determination of the appeal, it shall make every effort to provide such document to the parties prior to the scheduled telephone hearing. If the document cannot be provided prior to the telephone hearing, the hearing may be postponed. If a document is disputed during the hearing, a continuance shall be granted to allow all parties an opportunity to review the document in question.

1:12-14.7 Disqualification of members of appeal tribunals

(a) No member of an appeal tribunal shall participate in the hearing of any appeal in which the member has an interest.

(b) Challenges to the interest of any member of an appeal tribunal may be heard and decided by the chief appeals examiner of the appeal tribunal, or, in the chief appeals examiner's discretion, referred to the Board of Review.

1:12-14.8 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may remove such decision to itself and may either decide the case on the record below or may remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after five days' prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed for the conduct of hearings before the Board of Review.

1:12-14.9 Case transfer on own motion

The Board of Review may, on its own motion, remove to itself or transfer to another Appeal Tribunal any case pending before an appeal tribunal for hearing and decision.

SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

(a) All exhibits admitted into evidence shall be properly identified, appropriately marked and retained as part of the record.

(b) Hearsay evidence shall be admissible and accorded whatever weight the examiner deems relevant, appropriate, and reasonable under the circumstances. Notwithstanding the admissibility of hearsay evidence, the decision as rendered must be supported by sufficiently substantial and legally competent evidence to provide assurance of reliability and to avoid the fact or appearance of arbitrariness.

1:12-15.2 Stipulations

The parties to an appeal, with the consent of the appellate body, may stipulate in writing the facts involved. The appellate body may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

SUBCHAPTERS 16 AND 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability or State plan family leave insurance claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed from, the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.

2. The second section shall be a recital of the facts upon which the decision is based and shall be entitled "Findings of Fact." It shall include among all the pertinent facts the date the claim was filed.

3. The third section shall be entitled "Opinion" and shall contain the reasons for the decision.

4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. Each decision shall also indicate the date of hearing and mailing.

(c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the executive secretary of the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand.

1:12-18.2 Decisions of Board of Review

(a) Following the conclusion of proceedings on an appeal, the Board of Review shall forthwith announce its decision with respect to the appeal. The decision shall be in writing and signed by at least a majority of the Board of Review. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its opinion and decision. A quorum of the Board of Review must be present when any decision is voted.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability or State plan family leave insurance claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

1:12-18.3 Correction of determination

On application duly made or on its own motion, the appellate body may revise a determination of facts and the order, for the purpose of correcting clerical or typographical errors.

1:12-18.4 Reopening Appeal Tribunal decisions

(a) In the absence of jurisdiction by the Board of Review, a party to a benefit claim may file a request for reopening of an Appeal Tribunal decision if:

1. The party's appeal to the Board of Review was dismissed as late without good cause;

2. The party did not appear at the Appeal Tribunal hearing for good cause shown;

3. The party is seeking to amend the Appeal Tribunal decision due to a mistake in law or computation thereby affecting the legal conclusion of the Appeal Tribunal; or

4. The party has new or additional evidence.

(b) Such request shall be submitted as promptly as possible, shall not act as a stay of proceedings in the case, and shall not suspend the payment of benefits. Additional time for such request may be granted where fraud, newly discovered evidence, or other good cause is shown.

(c) The Appeal Tribunal shall notify all interested parties of the request for reopening. The parties shall have 10 days to submit written arguments. After reviewing the matter, the Appeal Tribunal will schedule a hearing, issue an amended decision, or deny the request in an order explaining the reasons. All interested parties will be notified by the Appeal Tribunal of any subsequent decision or order which shall contain appeal rights to the Board of Review.

1:12-18.5 Reopening Board of Review decisions

(a) A party to a benefit claim may file a request for reopening of a Board of Review decision within 10 days after the day of mailing of such decision. The requesting party shall notify all other parties of such a request for reopening. Such request shall not act as a stay of proceedings in the case

and shall not suspend the payment of benefits. Failure of the Board of Review to act upon a request for reopening within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud, newly discovered evidence, or other good cause is shown.

(b) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.

Administrative change.
See: 31 N.J.R. 2624(a).
Administrative correction.
See: 40 N.J.R. 2477(a).
Administrative change.
See: 43 N.J.R. 1881(a).

Cross Reference

For full chapter history of and section annotations to text incorporated as N.J.A.C. 12:20 Appendix, see N.J.A.C. 1:12.