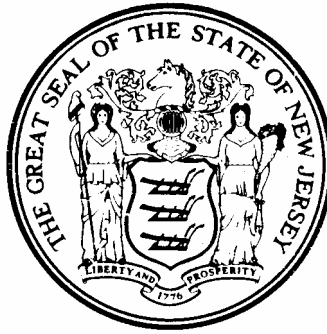


STATE OF NEW JERSEY
DEPARTMENT OF LABOR



NEW JERSEY ADMINISTRATIVE CODE

- N.J.A.C. 12:15 Scope
- N.J.A.C. 12:16 Contributions, Records and Reports
- N.J.A.C. 12:17 Unemployment Benefit Payments
- N.J.A.C. 12:18 Temporary Disability Benefits
- N.J.A.C. 12:19 Definitions Used by Employment Security
and Special Employment Relations
- N.J.A.C. 12:20 Board of Review
- N.J.A.C. 12:23 Workforce Development Partnership Program

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Governor

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Commissioner

*Prepared by:
Bureau of Program Services and Standards
August 2003*

CHAPTER 15

SCOPE

Authority

N.J.S.A. 34:1-20, 34:1A-3(c), 43:21-1 et seq. and 44:8-114.

Source and Effective Date

R.2000 d.280, effective June 12, 2000.
See: 32 N.J.R. 1487(a), 32 N.J.R. 2442(a).

Executive Order No. 66(1978) Expiration Date

Chapter 15, Scope, expires on June 12, 2005.

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: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:15-1.1 Purpose and scope of rules and regulations
- 12:15-1.2 Maximum weekly benefit rates
- 12:15-1.3 Taxable wage base under the Unemployment Compensation Law
- 12:15-1.4 Contribution rate of governmental entities and instrumentalities
- 12:15-1.5 Base week
- 12:15-1.6 Alternative earnings test

SUBCHAPTER 2. DISCLOSURE OF INFORMATION

- 12:15-2.1 Disclosure of information; general prohibition
- 12:15-2.2 Authorized disclosure of information
- 12:15-2.3 Benefit appeal related information
- 12:15-2.4 Unauthorized disclosure of information

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 or disabled.

(b) The unemployment benefits are paid from moneys contributed to a State Unemployment Compensation Fund, and temporary disability benefits from moneys contributed to the State Disability Benefits Fund or from private plans approved by the Department of Labor 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 and temporary disability 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).

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.

Refusal of unemployment claimant to accept work between which there was little difference was not voluntary without good cause. Matter of E.M.P., 93 N.J.A.R.2d (UCC) 34.

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.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being \$450.00 per week.

(c) These maximum benefits shall be effective for the calendar year 2003 on unemployment compensation benefit years and periods of disability commencing on or after January 1, 2003.

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: 5 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.
12:15-1.3 Taxable wage base under the Unemployment Compensation Law
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 \$23,900 during the calendar year 2003.
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.
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".

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 is hereby promulgated as being four-tenths of one percent (0.4 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 2003.

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 "1 ½ 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).
 1 ½ percent changed to 1 ¾ percent.
 Amended by R.1988 d.535, effective November 7, 1988.
 See: 20 N.J.R. 2187(a), 20 N.J.R. 2786(a).
 1 ¾ percent changed to 1 ⅞ 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".

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 is hereby promulgated as being \$103.00 per week for calendar year 2003.

R.1984 d.521, effective November 5, 1984 (operative January 1, 1985).
 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. 4698(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".

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(e)(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 is hereby promulgated as being \$5,200 for unemployment compensation benefit years and periods of disability commencing on or after January 1, 2003.

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(b).

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".

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.

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 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.

12:15-2.3 Benefit appeal related information

Any request for the release of information connected with the proper presentation of an unemployment or temporary disability insurance 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.

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).

CHAPTER 16

CONTRIBUTIONS, RECORDS AND REPORTS

Authority

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

Source and Effective Date

R.2000 d.68, effective January 27, 2000.
See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Executive Order No. 66(1978) Expiration Date

Chapter 16, Contributions, Records and Reports, expires on January 27, 2005.

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 by 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 adopted 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: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

- 12:16-1.1 Ascertainment of worker's Social Security account number
- 12:16-1.2 Reporting of worker's Social Security account number
- 12:16-1.3 Evidence of application for Social Security account number
- 12:16-1.4 Employer to inform worker without Social Security account number
- 12:16-1.5 Employer to inform worker in certain cases

SUBCHAPTER 2. RECORDS

- 12:16-2.1 Payroll records
- 12:16-2.2 Individual worker records
- 12:16-2.3 Records defined
- 12:16-2.4 Records retention

SUBCHAPTER 3. POWER OF ATTORNEY

- 12:16-3.1 Power of attorney: requirements

SUBCHAPTER 4. REMUNERATION

- 12:16-4.1 Remuneration defined
- 12:16-4.2 Sick leave payments
- 12:16-4.3 Fringe benefit payments
- 12:16-4.4 Section 401(k) Plans
- 12:16-4.5 Push payments
- 12:16-4.6 Officer's remuneration
- 12:16-4.7 Back pay, residuals, aliens
- 12:16-4.8 Other remuneration
- 12:16-4.9 Tips and gratuities
- 12:16-4.10 Temporary disability payments
- 12:16-4.11 Personal use of a company vehicle
- 12:16-4.12 Dependent care assistance programs
- 12:16-4.13 Interest on a below-market interest rate loan
- 12:16-4.14 Section 125 cafeteria plans

SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

- 12:16-5.1 Accrual as remuneration earned
- 12:16-5.2 Due dates
- 12:16-5.3 Bases of contribution payments
- 12:16-5.4 First contributions of newly subject employer
- 12:16-5.5 Installment payments
- 12:16-5.6 Voluntary payment of additional contributions
- 12:16-5.7 Payment in guaranteed funds
- 12:16-5.8 Seamen's wages
- 12:16-5.9 Special fringe benefit agent accounts

SUBCHAPTER 6. REIMBURSEMENT OPTION FOR NON-PROFIT ORGANIZATIONS

- 12:16-6.1 Application
- 12:16-6.2 Financial security requirements
- 12:16-6.3 Termination
- 12:16-6.4 Liability

SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS

- 12:16-7.1 Purpose
- 12:16-7.2 Definitions
- 12:16-7.3 Application
- 12:16-7.4 Finance
- 12:16-7.5 Use of surplus funds
- 12:16-7.6 Termination
- 12:16-7.7 Liability
- 12:16-7.8 Penalties

SUBCHAPTER 8. GROUP ACCOUNTS

- 12:16-8.1 Establishment
- 12:16-8.2 Participation
- 12:16-8.3 Termination
- 12:16-8.4 Liability
- 12:16-8.5 Dissolution

SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS

- 12:16-9.1 Workers' contribution-trust fund
- 12:16-9.2 Evidence of amounts withheld furnished workers
- 12:16-9.3 Reporting and paying workers' contributions

SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS

- 12:16-10.1 Excess disability deductions
- 12:16-10.2 Excess unemployment, health care and workforce deductions
- 12:16-10.3 Wage deduction statements
- 12:16-10.4 Refund of excess deductions

12:16-10.5 Assessment for governmental reimbursable employers

SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS

12:16-11.1 Real estate managing agents
12:16-11.2 Limited liability companies

SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS

12:16-12.1 Separate accounts
12:16-12.2 Common paymaster

SUBCHAPTER 13. REPORTS

12:16-13.1 Reports required
12:16-13.2 Force and effect of instructions relating to reports
12:16-13.3 Penalty for failure to file reports
12:16-13.4 Penalty abatement
12:16-13.5 Wages paid reported currently
12:16-13.6 Reporting wages, remuneration and other information
12:16-13.7 Wage reporting
12:16-13.8 Suspension of business
12:16-13.9 Transfer of business
12:16-13.10 Withdrawal to inactive status

SUBCHAPTER 14. ELECTION OF COVERAGE

12:16-14.1 Application for election
12:16-14.2 Date of filing
12:16-14.3 Effective date of election
12:16-14.4 Election subject to approval
12:16-14.5 Effect of election approval

SUBCHAPTER 15. JOINT ACCOUNTS

12:16-15.1 Application for a voluntary joint account
12:16-15.2 Eligibility for a voluntary joint account
12:16-15.3 Effective date; duration of a voluntary joint account
12:16-15.4 Maintenance of a voluntary joint account
12:16-15.5 Modification of a voluntary joint account
12:16-15.6 Dissolution of a voluntary joint account

SUBCHAPTER 16. NOTICE TO WORKERS

12:16-16.1 Unemployment compensation coverage
12:16-16.2 Termination of subject status

SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. TRANSFER OF EMPLOYMENT EXPERIENCE

12:16-18.1 Transfer of predecessor's whole experience
12:16-18.2 Rate following transfer of predecessor's whole experience
12:16-18.3 Transfer of predecessor's experience in part
12:16-18.4 Rate following transfer of predecessor's experience in part

SUBCHAPTER 19. BENEFIT CHARGES

12:16-19.1 Employer's account charged; notice
12:16-19.2 Annual summary statement

SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS

12:16-20.1 Work relief and work training programs: exempt employment

SUBCHAPTER 21. ZIP CODE REPORTING

12:16-21.1 Scope
12:16-21.2 Definitions
12:16-21.3 Reporting requirement

SUBCHAPTER 22. HEARINGS

12:16-22.1 Scope
12:16-22.2 Application
12:16-22.3 Informal conference
12:16-22.4 Formal hearing
12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum
12:16-22.6 Decision

SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

12:16-23.1 Exempt services
12:16-23.2 Evidence of FUTA exemption

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

12:16-24.1 Application and scope
12:16-24.2 Definitions
12:16-24.3 Initial and annual registration
12:16-24.4 Financial security requirements
12:16-24.5 Payroll tax certification
12:16-24.6 Workers' compensation insurance
12:16-24.7 Dissolution of employee leasing agreement
12:16-24.8 Rescission of the registration of an employee leasing company or professional employer organization
12:16-24.9 Dissolution of an employee leasing company or professional employee organization
12:16-24.10 Violations
12:16-24.11 Appeals

SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

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

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

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

12:16-1.2 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 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 status (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).

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 4.14.

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; and
14. Section 125 Cafeteria plans.

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).

12:16-4.2 Sick leave payments

(a) Sick leave payments (also known as continuation pay) made by employers to employees for periods of disability 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 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.

(c) Those types of sick leave payments 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;

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.

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

12:16-4.3 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 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).

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.

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).

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). 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).

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 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).

12:16-4.12 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).

12:16-4.13 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).

12:16-4.14 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).

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.

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 Bases of contribution payments

(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.

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

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

12:16-5.4 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.

(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).

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).

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.J.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 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).

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, the Workforce Development Partnership Fund, and the Health Care Subsidy 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).

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, health care and workforce deductions

(a) 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, exceeds one-tenth of one percent of the taxable wage base for the period beginning January 1, 1998 and ending December 31, 1998, or one and one half-tenth of one percent beginning January 1, 1999 and ending December 31, 1999, or two-tenths of one percent beginning January 1, 2000 and ending December 31, 2002, or four-tenths of one percent beginning January 1, 2003, 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.

(b) 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 Health Care Subsidy Fund exceeds three-tenths of one percent for the period beginning January 1, 1998 and ending December 31, 1998, or two and one half-tenths of one percent for the period beginning January 1, 1999 and ending December 31, 1999, or two-tenths of one percent for the period beginning January 1, 2000 and ending December 31, 2002, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(c) 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 Workforce Development Partnership Fund exceeds one-fortieth of one percent of the taxable wage base for periods beginning January 1, 1998, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

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".

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 Secretary of State of the State of New Jersey. A LLC must have two or more members and may commence operations at any date or time after filing the certificate of formation.

(b) A LLC shall be classified as a partnership unless classified otherwise for Federal income tax purposes, in which case the LLC shall be classified in the same manner as it is classified for Federal income tax purposes.

New Rule, R.1997 d.219, effective May 19, 1997.
See: 29 N.J.R. 834(b), 29 N.J.R. 2463(a).

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.

SUBCHAPTER 13. REPORTS

12:16-13.1 Reports required

Every employer shall file 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 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).

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 post mark date on the envelope in which the report is received by the Controller or his or her designee.

(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).

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) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer shall file a report with the Controller or his or her designee within 30 days after the end of each quarter in a form and manner prescribed by the Controller or his or her designee 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) 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

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) For the calendar quarter commencing July 1, 1984, and each quarter thereafter, each employer other than employers of domestic service workers shall file a report with the Controller or his or her designee within 30 days after the end of each quarter in a form and manner prescribed by the Controller or his or her designee 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 with the Controller or his or her designee 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, 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 magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third-party payroll processors who on a quarterly basis generate and file Form WR-30 "Employer Report of Wages Paid," and Form NJ-927 "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the Controller or his or her designee, if the aggregate number of employees for all clients processed and so reported by the third-party exceeds 100 in any calendar quarter.

4. 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 magnetic media in a form and manner specified by the Controller or his or her designee.

5. 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," and Form NJ-927, "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the Controller or his or her designee, if the aggregate number of all employees for all clients processed and so reported by the third-party exceeds 50 in any calendar quarter.

6. Employer or third-party payroll processors may have the requirements in (c)1 through 5 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the Controller or his or her designee.

7. If an employer or third-party payroll processor fails to comply with the provisions of this subsection, the penalties specified in (b) above shall apply.

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).

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 UC-1; 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).

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).

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 accounts 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).

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 and to

whom an unemployment compensation registration number has not been assigned by the Controller or his or her designee, 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).

12:16-16.2 Termination of subject status

Every employing unit which has ceased to be a subject employer, pursuant to the provisions of N.J.S.A. 43:21-8 of the Unemployment Compensation Law, shall post and maintain notice of such fact on forms supplied by the Controller or his or her designee, in order to inform its workers that they are not in covered employment and are not liable for contributions.

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

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) Unless the predecessor employer was owned or controlled, directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade or business, or assets, or thereafter upon good cause shown, files a written notice protesting the transfer of employment experience of the predecessor employer.

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

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) A predecessor employer and successor in interest 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. 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 and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file form UC-47 within 30 days from the date of mailing thereof.

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.

(b) 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.

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".

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) A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of transfer to the following July 1.

(b) The transfer of a portion of employment experience from a predecessor to a successor in interest will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective 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 "Assignment of contribution rates for interim periods".

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.

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.

"Department" means the New Jersey Department of Labor.

"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.

"Employer" means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

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

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 Division's notice granting the employer 10 days to contact the Division 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 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).

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 Division of Unemployment Insurance/Disability Insurance Financing 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.

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;

3. Determination letter(s) from the Internal Revenue Service; and/or

4. Documentation of responses to the 20 tests required by the Internal Revenue Service to meet its criteria for independence. These tests are enumerated in IRS Revenue Rule 87-41.

(b) The Division 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.

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

Authority

N.J.S.A. 34:8-67 et seq., specifically 34:8-78.

Source and Effective Date

R.2002 d.294, effective September 3, 2002.
See: 34 N.J.R. 1892(a), 34 N.J.R. 3089(a).

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 Labor, pursuant to P.L. 2001, c.260, N.J.S.A. 34:8-67 et seq.

(b) The provisions of this subchapter apply to all employee leasing companies as defined in N.J.A.C. 12:16-24.2.

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.

"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.

"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.

"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.

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 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 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.

12:16-24.4 Financial security requirements

(a) An employee leasing company or professional employer organization shall submit a reviewed financial statement to the Commissioner or his or her designee with the initial registration and also with each annual registration on or before the dates detailed in N.J.A.C. 12:16-24.3(a)3 and (c).

1. Each reviewed financial statement shall incorporate a certification that it was prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of the initial or the annual registration or with a certification by the independent certified public accountant in accordance with generally accepted accounting principles stating that it is the most recent financial statement and that they have reviewed the financial statement within six months prior to the date of the initial or the annual registration and certify that there have been no adverse effects negatively impacting the minimum net worth of \$100,000.

2. Each reviewed financial statement shall demonstrate that the employee leasing company or professional employer organization has a minimum net worth of \$100,000.

(b) An employee leasing company or professional employer organization, which is not in compliance with (a) above, shall file with the Commissioner or his or her designee a security bond or deposit of securities with a current market value of \$75,000 on or before the dates detailed in N.J.A.C. 12:16-24.3(a)2 and 3.

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 profession-

al 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 or deposit of 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 which 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 security bond or deposit of securities which when combined with any unused portion of the prior security bond or securities will equal a current market value of \$75,000. Such additional 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.

12:16-24.5 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 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 days of the mailing of the notice of delinquency in accordance with N.J.S.A. 34:8-71.

12:16-24.6 Workers' compensation insurance

(a) It is the obligation of the employee leasing company to provide workers' compensation insurance for their covered employees. Policies may be issued by any insurance carrier licensed by the State of New Jersey. Policies shall indicate that the employee leasing company is the labor contractor for each client company, by name.

12:16-24.7 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.

12:16-24.8 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.

12:16-24.9 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.

12:16-24.10 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.

12:16-24.11 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.

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.

Source and Effective Date

R.2003 d.276, effective June 13, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Chapter Expiration Date

Chapter 17, Unemployment Benefit Payments, expires on June 13, 2008.

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: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE AND SCOPE

12:17-1.1 Purpose and scope

SUBCHAPTER 2. DEFINITIONS

12:17-2.1 Definitions

SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

12:17-3.1 Instructions to workers at time of separation
12:17-3.2 Request for separation or wage information
12:17-3.3 Finality of benefit determinations
12:17-3.4 Notice of failure to apply for or to accept work
12:17-3.5 Notice of unemployment due to mass separation
12:17-3.6 Notice of unemployment due to labor dispute
12:17-3.7 Notice of temporary separation from work

SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES

12:17-4.1 General reporting requirements
12:17-4.2 Reporting to file an initial or reopened claim
12:17-4.3 Reporting requirements for claiming completed weeks of unemployment benefits, employment services appointments, and other appointments
12:17-4.4 Reporting claim information after leaving reporting status
12:17-4.5 Proof of claimant identification and address
12:17-4.6 Forms prescribed for filing unemployment benefit claims
12:17-4.7 Benefit determination notice
12:17-4.8 Refusal to cooperate with quality control reviews
12:17-4.9 Reporting to claim benefits after one year

SUBCHAPTER 5. MONETARY REQUIREMENTS FOR BENEFIT ELIGIBILITY

12:17-5.1 Basic eligibility requirements
12:17-5.2 Alternative base years
12:17-5.3 Exceptions to the use of alternative base years
12:17-5.4 Use of wages to qualify for benefits
12:17-5.5 Requests for wage information and affidavits
12:17-5.6 Alternative base years for individuals claiming benefits after a period of disability

SUBCHAPTER 6. EMPLOYER RECORDS AND CLAIMS FOR PARTIAL UNEMPLOYMENT BENEFITS

12:17-6.1 Records for employees receiving partial unemployment benefits
12:17-6.2 Evidence of weekly partial unemployment
12:17-6.3 Registration and filing claims

SUBCHAPTER 7. DEPENDENCY BENEFITS

12:17-7.1 Calculation of dependency payment
12:17-7.2 Definition of dependent
12:17-7.3 Claiming dependents
12:17-7.4 Verification and proof of dependency status

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
12:17-8.2 Amount of benefit reduction
12:17-8.3 Lump sum pension reduction
12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions

- 12:17-8.5 Reduction of benefits due to earned income
- 12:17-8.6 Disqualification for benefits for remuneration in lieu of notice
- 12:17-8.7 Severance or separation pay
- 12:17-8.8 Salary continuation through date of termination
- 12:17-8.9 Receipt of residuals
- 12:17-8.10 Vacation and holiday pay
- 12:17-8.11 Sick leave pay
- 12:17-8.12 Pay for work as a board worker for a county board of elections on an election day

SUBCHAPTER 9. CLAIM ADJUDICATION— VOLUNTARILY LEAVING WORK

- 12:17-9.1 Disqualification for voluntarily leaving—general principles
- 12:17-9.2 Voluntarily leaving secondary part-time employment
- 12:17-9.3 Voluntary leaving for health or medical reasons
- 12:17-9.4 Voluntary leaving for health or safety conditions
- 12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge
- 12:17-9.6 Voluntary layoff and/or early retirement incentive policy or program
- 12:17-9.7 Discharge after giving notice of resignation
- 12:17-9.8 Assignment of work under a union contract
- 12:17-9.9 Recall from temporary layoff
- 12:17-9.10 Loss of license needed as a condition of employment
- 12:17-9.11 Job abandonment
- 12:17-9.12 Leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence

SUBCHAPTER 10. CLAIMS ADJUDICATION— MISCONDUCT AND GROSS MISCONDUCT CONNECTED WITH WORK

- 12:17-10.1 Disqualification for misconduct and gross misconduct connected with work—general principles
- 12:17-10.2 Misconduct defined
- 12:17-10.3 Discharge or suspension for unauthorized absence
- 12:17-10.4 Discharge or suspension for tardiness
- 12:17-10.5 Discharge or suspension for falsification of application or other records
- 12:17-10.6 Discharge or suspension for insubordination or violation of an employer's rule
- 12:17-10.7 Discharge or suspension for unsatisfactory work performance
- 12:17-10.8 Discharge or suspension for failure to observe safety standards
- 12:17-10.9 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
- 12:17-11.2 Suitability of work defined
- 12:17-11.3 Establishing bona fide offers of work
- 12:17-11.4 Good cause for refusal of suitable work
- 12:17-11.5 Offers of new work

SUBCHAPTER 12. CLAIMS ADJUDICATION—OTHER BENEFIT ELIGIBILITY ISSUES

- 12:17-12.1 Corporate officers, owners and creditors
- 12:17-12.2 Labor disputes
- 12:17-12.3 Employees on leave of absence
- 12:17-12.4 School employees
- 12:17-12.5 Claimant engaged in a temporary business
- 12:17-12.6 Student disqualification for benefits
- 12:17-12.7 Limiting availability to less than full-time work

SUBCHAPTER 13. PROCEDURES FOR WAGE- BENEFIT CONFLICTS

- 12:17-13.1 Pre-determination notice and fact-finding
- 12:17-13.2 Fact-finding interview
- 12:17-13.3 Claimant's failure to appear

SUBCHAPTER 14. DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT BENEFIT PAYMENTS

- 12:17-14.1 Statutory period for demanding refund
- 12:17-14.2 Waiver of recovery of benefit overpayment
- 12:17-14.3 Requirements for repaying overpaid benefits
- 12:17-14.4 Overpayment of benefits involving two determinations of entitlement

SUBCHAPTER 15. BENEFIT ELIGIBILITY FOR CLAIMANTS EMPLOYED BY TEMPORARY HELP SERVICE FIRMS

- 12:17-15.1 Definitions
- 12:17-15.2 Employment with temporary help service firm under a written agreement
- 12:17-15.3 Employment with temporary help service firm without a written agreement

SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

- 12:17-16.1 Cooperation with other states
- 12:17-16.2 Benefit rights of interstate claimants
- 12:17-16.3 Requirement to register for work
- 12:17-16.4 Reporting requirements for interstate benefit claims
- 12:17-16.5 Role of the agent state in benefit determinations
- 12:17-16.6 Appeals of benefit determinations
- 12:17-16.7 Reciprocal claims with Canada

SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

- 12:17-17.1 Notice and proof of disability
- 12:17-17.2 Procedures for filing of claims for benefits
- 12:17-17.3 Waiver of registration and reporting requirements
- 12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers
- 12:17-17.5 Simultaneous unemployment and disability benefit periods
- 12:17-17.6 Benefit determination

SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM

- 12:17-18.1 Definitions
- 12:17-18.2 Self-employment assistance program
- 12:17-18.3 Eligibility requirements
- 12:17-18.4 Self-employment assistance allowance
- 12:17-18.5 Appeals
- 12:17-18.6 Overpayment of self-employment assistance allowances

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
- 12:17-19.2 Transfer of withheld unemployment benefits
- 12:17-19.3 Other withholdings

SUBCHAPTER 20. WORKER PROFILING AND REEMPLOYMENT SERVICES

- 12:17-20.1 Purpose and scope
- 12:17-20.2 Definitions
- 12:17-20.3 Identifying claimants
- 12:17-20.4 Statistical modeling process
- 12:17-20.5 Selection

- 12:17-20.6 Mandatory participation
- 12:17-20.7 Exempted individuals
- 12:17-20.8 Appeals

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

- 12:17-21.1 General provisions
- 12:17-21.2 Reasons for separation
- 12:17-21.3 Request for separation information
- 12:17-21.4 Misrepresentation or false information
- 12:17-21.5 Determination and appeals

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 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.

(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.

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.

"Controller" means the Controller of the New Jersey Department of Labor.

"Commissioner" means the Commissioner of the New Jersey Department of Labor.

"Department" means the New Jersey Department of Labor.

"Deputy" means a representative of the Division within the New Jersey Department of Labor 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 responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Division" means the Division within the New Jersey Department of Labor 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.

"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" 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. This amount shall not exceed 26 times the individual's weekly benefit rate.

"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 56½ 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".

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 Form BC-10 (Instructions for Claiming Unemployment Benefits), instructing the worker to report to a Reemployment Call Center by telephone or via the Internet 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.

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 request 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 Form BC-6 (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".

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 unemployment unit of the One-Stop Career Center located nearest the place of employment. 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 Form BC-10 (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 10 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.

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 unemployment unit of the One-Stop Career Center located nearest the place of employment. 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.

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) 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 certification. 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 indicated on the certification. For the purposes of this subsection, 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.

(c) 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 or to mail in the certification, he or she shall be ineligible for benefits unless he or she reports in person, mails in the certification, 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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 on the certification.

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".

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

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.

See: 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.

See: 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. 12:15-1.3 which delineates the maximum weekly benefit rate. If an individual's spouse 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".

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, that is, a person to whom the claimant is legally married; 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.

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 also 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 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 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 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.

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 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, or marriage certificate(s) or certified copies thereof; certified divorce, 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 married claimant declares an unemployed spouse as a dependent, the spouse's Social Security number shall be provided to the appropriate office no later than six weeks from the date of claim for the purpose of ascertaining whether the spouse is, in fact, unemployed.

(c) An individual who is eligible for unemployment compensation benefits and who 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".

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 chargeable employer 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.

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 without penalty to his or her 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.

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".

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 rules of the Division at N.J.A.C. 12:17-4.9. 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.

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 four weeks in employment, which may include employment for the Federal government, and has earned in employment at least six 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 or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

Case Notes

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 four weeks in employment, which may include employment for the Federal government, and he or she has earned in employment six 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.

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.

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).

12:17-9.6 Voluntary layoff and/or early retirement incentive policy or program

(a) Notwithstanding any other provision of this subchapter, when an employer has a written voluntary layoff and/or early retirement incentive policy or program in effect during a reduction-in-force that permits or induces an employee to leave work so that another employee may continue to work, the following applies:

1. The individual who participates in the program will not be subject to disqualification for voluntarily leaving work in accordance with N.J.S.A. 43:21-5(a); and
2. The individual must otherwise meet all of the other eligibility requirements of the Unemployment Compensation Law to be eligible to receive unemployment insurance benefits.

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.

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.

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.

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 AND GROSS MISCONDUCT
CONNECTED WITH WORK**

12:17-10.1 Disqualification for misconduct and gross misconduct connected with 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 which 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 four weeks in employment and has earned at least six 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.

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 Misconduct defined

(a) For an act to constitute misconduct, it must be improper, intentional, connected with one's work, malicious, and within the individual's control, and is either a deliberate violation of the employer's rules or a disregard of standards of behavior which the employer has the right to expect of an employee.

(b) To sustain disqualification under this section, the burden of proof is on the employer to show that the employee's actions constitute 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.

(c) "Connected with the work" means not only misconduct that occurs in the course of employment during working hours, but includes any conduct which occurs after 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.

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".

12:17-10.3 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.

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.

12:17-10.4 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.

12:17-10.5 Discharge or suspension for falsification of application or other records

An individual shall be considered to have committed an act of willful 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.

12:17-10.6 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 as defined in N.J.A.C. 12:17-10.2 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.

12:17-10.7 Discharge or suspension for unsatisfactory work performance

An individual's discharge for failure to meet the employer's standard(s) relating to 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 N.J.A.C. 12:17-10.2, and that the standard(s) was reasonable.

Amended by R.2003 d.276, effective July 7, 2003.
Sec: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
Rewrote the section.

12:17-10.8 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 as defined in N.J.A.C. 12:17-10.2.

Amended by R.2003 d.276, effective July 7, 2003.
Sec: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
Rewrote the section.

12:17-10.9 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.

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.
Sec: 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.

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).

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.

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. There is no distinction made with regard to whether the work stoppage is caused by a strike or a lockout.

(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 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;

2. 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,

3. 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.

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) 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 good cause for such limitation. For the purposes of this subsection, the term "good cause" is defined as substantial circumstances which prevent the individual from accepting full-time employment, including, but not limited to, childcare, eldercare, ill health, need to care for ill or disabled family member, and school attendance;

3. There is sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and

4. 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.

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) The claimant or the claimant's representative may request full waiver of recovery of an overpayment of benefits. Such waiver may be granted by the Director, with the Controller's concurrence providing the claimant did not misrepresent or withhold any material fact in obtaining benefits and the recovery of the overpayment, as determined by the Director, would be patently contrary to principles of equity. A claimant who is overpaid benefits shall be liable to refund the amount overpaid unless a request is made that the Director waive the right to recover the overpayment, and:

1. The overpayment did not occur due to a claimant's willful misrepresentation or nondisclosure to the Division;
- or

2. The claimant is deceased or permanently disabled and no longer able to work.

(b) In determining fault, the Director shall consider the capacity of the particular claimant to recognize the error resulting in the overpayment. The claimant will not be considered at fault if the benefits were retained because of the claimant's reasonable good faith reliance on the Division. A claimant who negligently reports or fails to report information, which results in an overpayment, is at fault and is liable for repayment.

1. A claimant's current receipt of Social Security disability benefits may be deemed evidence of current permanent disability, which may constitute a waiver. 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.

(c) 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).

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

Separate with Signed Agreement	Failure to Contact for Reassignment Voluntary Leaving Issue (N.J.S.A. 43:21-5(a))	Refusal of New Assignment	
		Voluntary Leaving issue if: —within scope of agreement and; —starts within four weeks and; —offered at end of current assignment (N.J.S.A. 43:21-5(a))	Refusal of Suitable Work issue if: —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))	Refusal of Suitable Work issue if: —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 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 Form DS-1 (Proof and Claim for Disability Benefits) accompanied by the certification of the attending licensed physician, 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, 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".

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, 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, 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, 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".

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, to determine their probability of exhausting benefits based on coefficients assigned to non-discriminatory 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.

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.
 Sec: 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.
 Sec: 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 or gross 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.
 Sec: 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.

12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete Form BC-3E, 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 Form BC-3E 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 Form BC-3E 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 with 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".

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.

CHAPTER 18**TEMPORARY DISABILITY BENEFITS****Authority**

N.J.S.A. 43:21-25 et seq.

Source and Effective Date

R.2003 d.214, effective April 28, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Chapter Expiration Date

Chapter 18, Temporary Disability Benefits, expires on April 28, 2008.

Chapter Historical Note

The provisions of Chapter 18, Temporary Disability Benefits, were filed and became effective prior to September 1, 1969. Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1993 d.141. See: 25 N.J.R. 262(a), 25 N.J.R. 1515(c). Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1998 d.157. See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.2003 d.214. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

- 12:18-1.1 Definitions
- 12:18-1.2 Application for exemptions
- 12:18-1.3 Service of papers
- 12:18-1.4 Reimbursement of funds
- 12:18-1.5 Offset by workers' compensation award when temporary disability benefits are payable based on claimant's employment with another employer
- 12:18-1.6 Completion of medical certifications by licensed medical practitioner.

SUBCHAPTER 2. PRIVATE PLANS

- 12:18-2.1 Extent of coverage
- 12:18-2.2 Benefits
- 12:18-2.3 Proof of coverage
- 12:18-2.4 Choice of doctor
- 12:18-2.5 Nonprofit provision
- 12:18-2.6 Appeals
- 12:18-2.7 Review
- 12:18-2.8 Application for approval
- 12:18-2.9 Minimum plan requirements
- 12:18-2.10 Concurrent coverage
- 12:18-2.11 Employee consent
- 12:18-2.12 Evidence of consent
- 12:18-2.13 Certificate of approval; effective date
- 12:18-2.14 Withdrawal of certificate of approval
- 12:18-2.15 Termination on petition by employees
- 12:18-2.16 Eligibility to petition
- 12:18-2.17 Requirements of election
- 12:18-2.18 Retention of election records
- 12:18-2.19 Certification of election results
- 12:18-2.20 Discontinuance
- 12:18-2.21 Responsibility of employer on withdrawal of certificate of approval

- 12:18-2.22 Insurer liability
- 12:18-2.23 Mandatory provision
- 12:18-2.24 Security required
- 12:18-2.25 Security exemption
- 12:18-2.26 Disposition of security upon termination
- 12:18-2.27 Exchange of information
- 12:18-2.28 Notice from employers
- 12:18-2.29 Reports by self-insurers
- 12:18-2.30 Reports by unions and other benefit payers
- 12:18-2.31 Reports by insurance companies
- 12:18-2.32 Reports by employers having two or more plans
- 12:18-2.33 Unemployment disability account deficit
- 12:18-2.34 Assessment of costs of administration
- 12:18-2.35 Assessment of amount of refund of workers' contributions applicable to private plans
- 12:18-2.36 Liability of successor employer
- 12:18-2.37 Continuation of plan on successor employer

SUBCHAPTER 3. STATE PLAN

- 12:18-3.1 Extent of coverage
- 12:18-3.2 Notice and proof of disability
- 12:18-3.3 Filing of claims for benefits
- 12:18-3.4 Reduction of benefits
- 12:18-3.5 Concurrent coverage
- 12:18-3.6 Notice to claimant and employer
- 12:18-3.7 Notice required from employers
- 12:18-3.8 Filing of appeals by claimants or employers
- 12:18-3.9 Rules on appeal
- 12:18-3.10 (Reserved)
- 12:18-3.11 Reduced work week

APPENDIX PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES**SUBCHAPTER 1. GENERAL PROVISIONS****12:18-1.1 Definitions**

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

"Act" means the Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.).

"Base year" with respect to a period of disability means the 52 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced.

"Benefits" means the disability benefits provided by the Temporary Disability Benefits Law.

"Claimant" means an individual who has filed a claim for disability benefits or who has notified the Division or the employer, nominee, designee, trustee, union, association of employees, insurer or organization paying benefits under a private plan that he or she expects to file such a claim.

"Claimant's authorized representative" means an individual who represents or acts in behalf of a claimant who is

incapable of fulfilling the requirements of filing claims for disability benefits, and who is so authorized by a power of attorney or other authorization satisfactory to the Division. Such authorized representative must file with the Division, on a form prescribed by the Director, a duly sworn affidavit that the claimant is incapable of making a claim for disability benefits and that he or she assumes the responsibility of acting in behalf of such claimant in accordance with the Act and this chapter. Such filing must be supported by medical documentation of incapacity by a licensed medical practitioner.

"Commissioner" means the Commissioner of Labor.

"Director" means the Director of the Division of Temporary Disability Insurance in the Department of Labor.

"Disability" or "disabled" means both mental or physical illness and mental or physical injury.

"Division" means the Division of Temporary Disability Insurance in the Department of Labor Program.

"Employee" means a covered individual as defined in N.J.S.A. 43:21-27(b). With respect to any one employer the term shall mean such a covered individual who is in employment, as defined by the Unemployment Compensation Law and Regulations promulgated thereunder, for which he or she is entitled to remuneration from such employer or who has been out of such employment for less than two weeks and has not become employed by another employer, during such period.

"Employer" means a covered employer as defined in N.J.S.A. 43:21-27(a).

"Fund" means the State Disability Benefits Fund, as set forth in N.J.S.A. 43:21-46.

"Insurer" means any insurance company duly authorized to do business in the State of New Jersey, employer acting as a self-insurer, nominee, designee, trustee, union, association of employees or organization which has undertaken to pay benefits under a private plan.

"Licensed medical practitioner" means a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, or chiropractor.

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

"Proof and claim for disability benefits" means the proof of disability and claim for benefits initially filed with respect to a period of disability on a form prescribed by the Director.

"Supplemental proof and claim for disability benefits" means the proof and claim certifying to the continuance of disability on a form prescribed by the Director.

"Week" means a period of seven consecutive days starting with the day of disability.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In "Base year", deleted "commencing on or after January 1, 1953" following "disability", and decreased the base year from 53 consecutive calendar weeks to 52 consecutive calendar weeks; in "Claimant", added "by a licensed medical practitioner" at the end; inserted "Division" and "Licensed medical practitioner"; and in "Private plan", added a reference to N.J.S.A. 43:21-32.

Case Notes

Musicians hired by band were employees rather than independent contractors, and thus band was required to pay unemployment and disability taxes on wages paid to musicians. *Kiely v. Department of Labor*, 96 N.J.A.R.2d (LBR) 5.

12:18-1.2 Application for exemptions

Any employee desiring to secure exemption from the provisions of the Act shall make application therefor on a form and in a manner prescribed by the Director.

12:18-1.3 Service of papers

(a) Any and all written communications issued by the Division may be served personally or by registered or certified mail or by telegram. A copy of the notice may be left at the principal office or place of business in New Jersey of the person required to be served.

(b) Such service shall constitute due notice.

(c) The verification by the individual who served the notice, or the return post office receipt of the registered or certified mail, or telegram receipt shall be proof that notice was served.

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote (a) and (c).

12:18-1.4 Reimbursement of funds

If benefits have been paid in error to a claimant by one program (either the State plan, Disability During Unemployment, or a private plan) for a period of disability and the claimant is correctly entitled to benefits under another program (either the State plan, Disability During Unemployment, or a private plan) for that same period of disability, the Division may arrange for a reimbursement of funds between the two programs. If it is determined that the benefits were received as a result of the claimant's making a false statement knowing it to be false or knowingly failing to disclose a material fact, the individual shall be subject to a fine and repayment of the overpaid amount under the provisions of N.J.S.A. 43:21-55(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote the section.

Case Notes

Earlier determinations of claimant's qualification for unemployment compensation benefits precluded reimbursement action when claimant was subsequently disqualified. In the Matter of P.V.C., 96 N.J.A.R.2d (UCC) 12.

Appeal Tribunal's reference to N.J.A.C. 12:17-10.2 in denying temporary disability benefits and demanding refund of payments made was misplaced, as that rule applies only to unemployment benefits refunds; no comparable provision deals with temporary disability benefits; claimant who was under care of psychologist was not entitled to temporary disability benefits, but was not required to repay benefits received absent an allegation of false statement or representation by claimant. *Ross v. Bd. of Review Dep't of Labor*, 212 N.J.Super. 467, 515 A.2d 794 (App.Div.1984).

12:18-1.5 Offset by workers' compensation award when temporary disability benefits are payable based on claimant's employment with another employer

(a) If a covered individual with more than one employer receives temporary workers' compensation benefits for an injury or illness incurred at one place of employment and that individual files a claim for New Jersey temporary disability benefits as a result of the same injury or illness on the basis of his or her employment with the other employer(s), those benefits are payable under the New Jersey State plan or an approved private plan provided that:

1. The claimant otherwise meets the eligibility criteria for temporary disability benefits in accordance with N.J.S.A. 43:21-25 et seq.;

2. Wages from all covered employers are used to calculate the temporary disability insurance weekly benefit rate as defined in N.J.S.A. 43:21-40 and the maximum benefit amount as defined in N.J.S.A. 43:21-38;

3. The temporary disability insurance weekly benefit rate is reduced by the temporary workers' compensation weekly benefit rate;

4. The claimant receives the temporary disability insurance benefits at the adjusted rate; and

5. Any such reduction in the temporary disability insurance weekly benefit rate shall also reduce the maximum total benefits payable during the period of disability.

(b) In such cases, the most recent covered employer who is not a party in the workers' compensation claim, shall be considered as the last employer under the New Jersey temporary disability benefits law. If the last employer is covered under the New Jersey State plan, benefits shall be paid under the State plan and shall be charged to the account of that employer. If the last employer is covered under an approved private plan, that plan shall be responsible for the payment of benefits.

New Rule, R.2002 d.45, effective February 4, 2002.
See: 33 N.J.R. 3622(a), 34 N.J.R. 770(b).

12:18-1.6 Completion of medical certifications by licensed medical practitioner

No licensed medical practitioner as defined in N.J.A.C. 12:18-1.1 shall charge a patient a fee for services rendered

in completing forms issued by the Division of Temporary Disability Insurance or any private insurance provider requesting medical information associated with the filing of any initial or continued claim for payment of any benefits under the provisions of the New Jersey Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

New Rule, R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

SUBCHAPTER 2. PRIVATE PLANS

12:18-2.1 Extent of coverage

(a) All employees of the employer shall be covered by one or more private plans, without restrictions or exclusions, except that, subject to the approval of the Division, any private plan may exclude employees of a separate unit, craft, organization, plant, department or establishment, or other class or classes of employees. Application for such exclusion shall be submitted on a form and in a manner prescribed by the Director. The Division may not approve the exclusion of a class or classes of employees determined by the age, sex or race of the employees or by the wages paid such employees, if, in the opinion of the Division, such exclusion would result in a substantial selection of risk adverse to the State plan. For the purposes of this regulation, the employees of an employing unit (not a subject employer) performing services for an employer, as defined in N.J.S.A. 43:21-19(g) shall be considered a class of employees which may be excluded.

(b) Employees excluded from a private plan shall be covered under the State plan and the employer shall be liable for the deduction and payment of workers' contributions and employer's contributions, as required by N.J.S.A. 43:21-7.

(c) All proposed private plans shall be submitted for review and approval by the Division. An employer failing to secure the approval of a private plan shall be deemed to be covered under the State plan and the employer shall be liable for the deduction of workers' contributions and payments of workers' and employer's contributions to the Fund as required by N.J.S.A. 43:21-7 until such date as a private plan is effective.

(d) An employee who ceases to be covered by a private plan, whether by termination of the plan, changing employers or for any other reason, shall, if otherwise eligible, become entitled to disability benefits from the Fund.

(e) The responsibility for coverage shall be established by the covered individual's last employer. The application for benefits shall be processed by the insurer, if the employer has an approved private plan and the individual is covered by that plan, or the State plan if the employer has State plan coverage. However, claims coming within the purview of N.J.A.C. 12:18-1.5, 2.10 or 3.5 shall be governed thereby.

Amended by R.2003 d.214, effective May 19, 2003.
See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).
Added (e).

Case Notes

Employer must participate in either state plan or qualified private plan of disability benefits. *O'Boyle v. Prudential Ins. Co. of America*, 241 N.J.Super. 503, 575 A.2d 515 (A.D.1990).

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.

12:18-2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21-3, 4) for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) The benefits provided by a private plan shall be set forth in the plan both as to eligibility requirements and amounts payable.

(d) If application for benefits is made under the State plan or Disability During Unemployment and it is determined that the claim should have been made under a private plan, an employee shall not be deprived of benefits under the private plan for failure to give timely notice and proof of disability provided that:

1. The application to the State plan would have been timely notice to the private plan if it had been then made; and

2. Proof of disability is furnished under such private plan within the period required therein or within 30 days after the employee has notice that the claim should have been made thereunder.

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under the State plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under a private plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his or her authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his or her authorized representative, giving the reason therefor and stating the employee's appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A. Upon the issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

(g) The private plan shall provide for payment of benefits to employees weekly, biweekly, or at such intervals as the employee is customarily paid wages, unless otherwise approved by the Director.

(h) No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the Division. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the Act and this chapter and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with this chapter.

1. The Division shall be given prompt notice of any change to a private plan, which change does not affect nor alter the provisions of the plan, and, therefore, does not require approval under this section.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (f), substituted "appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A" for "rights to a hearing in accordance with the Act" at the end of the first sentence.

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Rewrote (h).

Case Notes

Under no fault insurance law, carrier was entitled to deduct amount equal to benefits collectible under private temporary disability benefit plan, in making income continuation payments. *Puzio v. New Jersey Manufacturers Insurance Co.*, 165 N.J.Super. 585, 398 A.2d 934 (Ct.1979).

12:18-2.3 Proof of coverage

Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered employees either by individual certificates or other direct notification at the time of coverage, or by conspicuous and continuing posting at the place of employment. This notice shall reflect current rates, eligibility requirements, benefit entitlements, and appeal rights to the Division as specified in N.J.A.C. 12:18-2.6. This notice shall be available for inspection at the work site. A copy of the notice shall be submitted annually to the Division.

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Added the second and third sentences.

12:18-2.4 Choice of doctor

(a) An employee covered under a private plan shall have the right to choose his or her own attending licensed medical practitioner, but he or she may be required to submit, not more often than once a week, to an examination by a licensed medical practitioner designated by the employer, insurer or organization paying benefits.

(b) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the employer, insurer or organization paying benefits may only deny benefits to the covered employee during that period so certified where:

1. The employer, insurer or organization paying benefits has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the employer, insurer or organization paying benefits has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of the examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the employer, insurer or organization paying benefits, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The employer, insurer or organization paying benefits has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Substituted references to medical practitioners for references to physicians, dentists, chiropractors, podiatrists, practicing psychologists, and optometrists throughout.

Amended by R.2000 d.327, effective August 7, 2000.

See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).

Designated existing paragraph as (a) and added new (b).

12:18-2.5 Nonprofit provision

No employer, union or association representing employees and no person acting in behalf of any of the foregoing shall so administer or apply the provisions of a private plan as to derive any profit therefrom.

12:18-2.6 Appeals

(a) The appeal procedures for private plan temporary disability cases are found at N.J.A.C. 1:12A and are appended at the end of this chapter.

(b) If an employee covered under a private plan is denied benefits by the insurer for any period of disability or he or she disagrees with a determination of benefits made by the insurer, he or she has the right to appeal the determination or denial.

(c) The appeal or complaint shall be filed with the Division within one year after the beginning of the period for which benefits are claimed. Such appeal or complaint shall be filed, either personally or by mail, by the employee or his or her representative. 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.

(d) Any appeal or complaint by an employee claiming benefits under an approved private plan shall be filed on a form and in a manner prescribed by the Director. The employee must include the reasons for the appeal or complaint and explain why he or she disagrees with the denial of benefits on the form.

(e) Upon receipt of such appeal or complaint, the Division shall conduct an investigation and such informal conferences as it may deem necessary to determine the facts and settle the issues.

(f) Any appeal or complaint shall be deemed filed on the day it is delivered to the office of the Division of Temporary Disability Insurance, Labor Building, PO Box 957, John Fitch Plaza, Trenton, New Jersey 08625-0957, or if mailed, the complaint shall be deemed filed on the postmarked date appearing on the envelope in which the complaint is mailed; provided, postage is prepaid and the envelope is properly addressed.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1994 d.407, effective August 1, 1994.

See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote the section.

12:18-2.7 Review

(a) All approved private plans shall be reviewed by the Division during their continuance to insure compliance with the law and regulations thereunder.

(b) Where a decision to accept or deny a claim is not made within 45 days of filing of claim, the insurer shall notify the Division of such fact giving the reasons therefor.

12:18-2.8 Application for approval

(a) An employer desiring to establish a private plan for the payment of benefits to employees, shall file an application on a form and in a manner prescribed by the Director. In requesting the form, the employer shall inform the Division whether the benefits will be provided by a contract of insurance, or by an agreement between the employer and a union or association representing the employees or by the employer as a self-insurer.

(b) If two or more employers desire to have their private plans insured by a single policy of insurance, either by mutual agreement or by agreement as set forth in (a) above, each shall file an application for approval on a form and in a manner prescribed by the Director, designating a nominee, designee, trustee or one of them as the duly authorized agent for the purposes of this Act.

(c) All documents required by the Division for the completion of the approval process shall be submitted within 90 days of the date the application is received. A new application shall be filed if all such documents are not received within 90 days unless the employer can demonstrate good cause for the delay. For the 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 submitting the documents as required by the Division.

(d) An application submitted for approval of a private plan shall bear the signature of an authorized representative of the insuring organization, if the private plan is to be insured by an admitted insurer or union welfare fund, and:

1. A corporate officer if the employer is a corporation;
2. The owner if the employer is an individual; or
3. A partner if the employer is a partnership.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Added (c).

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Added (d).

12:18-2.9 Minimum plan requirements

(a) Each private plan, in order to secure Division approval, shall provide to the employees covered thereby rights equal at least to those set forth in N.J.S.A. 43:21-37 to 43:21-42 inclusive, by assuring that:

1. The private plan shall cover all employees, except as provided elsewhere in this chapter, for any disability commencing while the plan is in effect.

2. Eligibility requirements for benefits shall be no more restrictive than those requirements for benefits payable under the State plan.

3. Except as provided for in N.J.A.C. 12:18-2.10 (Concurrent coverage) of this chapter, the benefits payable to each employee covered thereunder shall be at least equal, in both weekly amount and duration, to those which would be payable to the employee under the State plan, but for his or her inclusion in the private plan.

(b) An employer may provide temporary disability insurance benefits through a plan established solely for the administration of benefits required pursuant to the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., or through a multi-benefit plan; provided, however, that, if the multi-benefit plan does not comply with all of the provisions of the New Jersey Temporary Disability Benefits Law, the employer shall establish a separate plan, maintained solely for the purpose of complying with the provisions of the law.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1997 d.142, effective March 17, 1997.

See: 29 N.J.R. 90(b), 29 N.J.R. 897(a).

Added (b).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), rewrote 1 and 2.

12:18-2.10 Concurrent coverage

(a) A private plan shall not preclude simultaneous or concurrent coverage by reason of an individual's employment with two or more employers. Such employee shall receive not less than the benefits payable under the State plan both as to benefit amount and duration.

(b) A covered individual is in "concurrent employment" if he or she is in employment with two or more employers during the last calendar day of employment immediately preceding the period of disability. The term "concurrent employers" means the covered employers with whom an employee was employed on the last day of employment.

(c) If an employee is in concurrent employment and only one employer has a private plan, then the employee shall be entitled to receive benefits under that private plan, if otherwise eligible. Such benefits shall not be less than he or she would be eligible to receive under the State plan with respect to all employment, if he or she were covered under the State plan. No benefits shall be payable under the State plan for disability commencing while he or she is covered under such private plan.

(d) If an employee is in concurrent employment with two or more employers and more than one employer has a private plan, the employee shall be entitled to receive benefits under each private plan, if otherwise eligible. Each private plan shall pay not less than the full amount the employee would be eligible to receive if covered under the State plan. When determining the amount to be paid, the private plan may take into account coverage under other private plans and benefits may be apportioned among the plans in the same proportion that the employee earned wages with each employer in the last eight calendar weeks immediately preceding the period of disability. In no event shall the employee receive less than the benefits to which he or she would be entitled under the most favorable plan, both as to weekly amount and duration.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote (b) through (d).

Case Notes

Under no fault insurance law, carrier could deduct amount collectible under a private temporary disability belief plan, in making income continuation benefits policy payments. *Puzio v. New Jersey Manufacturers Insurance Co.*, 165 N.J.Super. 585, 398 A.2d 934 (Cty.Ct.1979).

N.J.A.C. 12:18-2.10(c) upheld as requiring full disability payment from a private plan covering injured employee even though employee also covered by State plan; rule is proper exercise of general rulemaking power and in furtherance of the Temporary Disability Benefits Law to provide for no benefits from State plan where private plan coverage exists; N.J.A.C. 12:18-2.10(d) provides for apportionment of benefits between two or more private plans. *Snedeker v. Bd. of Review, Div. of Employment Security*, 139 N.J.Super. 394, 354 A.2d 331 (App.Div. 1976).

12:18-2.11 Employee consent

If employees are required to contribute to the cost of a private plan, the employer shall submit, in writing, to the employees a brief summary of the provisions of the plan, including the weekly benefit rate, the maximum amount and duration of benefits and the contributions required from the employees with respect to the benefits to be provided thereby. A majority of the employees to be covered must agree by written election (by ballot or otherwise) to the establishment of the plan which shall include the worker's contribution required. Evidence of their consent shall be shown on the application for approval.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.12 Evidence of consent

(a) There shall be submitted on the application for approval a statement showing the total number of eligible employees in employment by the employer and the number of employees who agreed to the plan, together with the individual ballots or documents bearing the employees' signatures of consent. The ballots or documents of consent,

after review by the Division, shall be returned to the employer.

(b) The results of such election shall be posted promptly and the records pertaining thereto shall be maintained by the employer and be available for inspection by Division representatives during the existence of the private plan.

12:18-2.13 Certificate of approval; effective date

(a) The Division shall issue a "Certificate of Approval of Private Plan" which shall constitute evidence of approval of the plan by the Division.

(b) Each such private plan shall be submitted in detail to the Division and shall be approved by the Division to take effect as of the first day of the calendar quarter next following the submission date, or as of an earlier date if requested by the employer and approved by the Division. Grounds for approval of an earlier effective date include but are not limited to, whether the plan:

1. Is the result of an agreement contained in a labor-management contract; or
2. Covers a newly formed subsidiary of an employer with an existing private plan; or
3. Is the result of a succession from an employer with an existing private plan. As provided in N.J.S.A. 43:21-7(c)(7)(A), a successor in interest is an entity that acquires the organization, trade, or business, or substantially all the assets of an employer, whether by merger, consolidation, sale, transfer, descent, or otherwise.

Amended by R.1988 d.98, effective March 7, 1988.
See: 19 N.J.R. 2238(b), 20 N.J.R. 533(b).
Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-2.14 Withdrawal of certificate of approval

(a) A certificate of approval may be withdrawn or revoked upon notice and opportunity for hearing if the Division finds:

1. That there is danger that benefits accrued or to accrue will not be paid; or
2. That the security for such payment is insufficient; or
3. That there has been a failure to comply with the terms and conditions of the plan; or
4. That there has been a failure to pay benefits to eligible claimants promptly; or
5. That in the case of an insured private plan, the insurance company has given notice of the cancellation of the policy of insurance thereunder; or

6. That the employer, his or her duly authorized agent, the union or association representing the employees or any person acting in behalf of any of the foregoing are deriving a profit in instituting or administering the plan; or

7. That the employer, or insurer or any other party responsible for the payment of benefits, as the case may be, has failed to comply with the Act and regulations; or

8. Other good cause.

(b) A certificate of approval may be withdrawn or revoked effective as of the date of the occurrence of the condition, violation, event or omission forming the basis for such withdrawal or revocation, or at any subsequent date which in the judgment of the Director or his or her authorized representative, shall be necessary for the protection of the benefit rights of the employees covered by the plan. The Division shall give the employer, the insurer or organization paying benefits, and all interested parties notice of revocation or withdrawal of the certificate of approval and an opportunity for a hearing.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.15 Termination on petition by employees

Upon receipt by the Division of a petition to terminate a private plan, signed by not less than ten per cent of the employees covered by the private plan, the Division shall order an election, after 30 days' written notice to the employer. No such election shall be required more often than once in any 12 consecutive months. The Division shall, whenever it deems necessary, supervise such election.

12:18-2.16 Eligibility to petition

(a) An employee, to be eligible to sign any petition requesting an election to discontinue a private plan, shall be in the employ of the employer as of the date of the petition, and covered by the plan. The form of the petition requesting an election shall be prescribed by the Director.

(b) An employee, to be eligible to vote in any election to discontinue a private plan, shall be in the employ of the employer as of the date of the election and covered by the plan.

12:18-2.17 Requirements of election

(a) Any election to discontinue a private plan shall be in accordance with this Subchapter. The election shall be by written ballot but the Director may order a secret ballot if the facts so warrant. The ballot shall be so worded as to give each employee voting an opportunity to vote for or against the discontinuance of the private plan. The time and place of the election shall be convenient to employees, and on not less than 30 days' written notice by the employer to the employees. The notice of the election and the results thereof shall be given to the employees affected by one of the following methods:

1. By posting on bulletin boards in the employer's establishment or place of business for a period of not less than 30 days;

2. By mail addressed to each employee;

3. By personal service.

(b) A record of the method used shall be kept by the employer.

12:18-2.18 Retention of election records

The records pertaining to any election to discontinue a private plan shall be retained by the employer and shall be available for inspection by the Division representatives for a one-year period from the date of termination.

12:18-2.19 Certification of election results

A statement shall be submitted forthwith by the employer to the Division showing the total number of employees eligible to vote, and the number of employees who voted for and against termination of the plan.

12:18-2.20 Discontinuance

(a) As provided in the Act, a private plan shall be discontinued when the Division withdraws its approval thereof upon being furnished satisfactory evidence that a majority of the covered employees have made election in writing to discontinue such plan.

(b) An employer may discontinue a private plan upon proper notice to the Division and to the covered employees.

12:18-2.21 Responsibility of employer on withdrawal of certificate of approval

(a) The employer shall be liable for the deduction of workers' contributions and payment of workers' and employer's contributions, as required by N.J.S.A. 43:21-7, with respect to wages paid for employment subsequent to the effective date of withdrawal or revocation of the certificate of approval, unless the Division has approved another private plan to become effective on the day immediately following.

(b) Form DP-22, Notice of Withdrawal of Approval of Private Plan, shall be conspicuously posted for a period of not less than 30 days at or in the employer's factory, establishment or other premises at which the workers, who were covered under the private plan, are employed, as evidence of the termination of that plan.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-2.22 Insurer liability

(a) A policy of insurance providing for the payment of benefits under a private plan shall provide that the insurer shall remain liable for the payment of benefits to any employee covered by the policy and the private plan for any period of disability commencing, during the continuance of the private plan, after the policy became effective and prior to the termination of the policy.

(b) At least 60 days' notice shall be given to the Division by the insurer or the policyholder before termination of the policy becomes effective, except that, if the policy is being terminated by reason of a change of insurer, this requirement may be waived.

(c) If a policy is being terminated for nonpayment of premium, at least 15 days' written notice shall be given to the Division before termination of the policy becomes effective.

12:18-2.23 Mandatory provision

Each contract of insurance providing for the payment of benefits under a private plan shall contain a clause or clauses guaranteeing that the benefits meet the requirements of N.J.A.C. 12:18-2.9, Minimum plan requirements.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-2.24 Security required

(a) The security required by the Division from an employer whose private plan does not provide for the assumption of the liability to pay benefits by an insurer, duly authorized and admitted to do business in this State, shall be in the form of a cash deposit, a bond of an admitted surety insurer conditioned on the payment of obligations under the plan, or bearer bonds issued or guaranteed by the United States of America or issued by this State, the amount to be determined by the Division upon the basis of the size of the payroll, the class or classes of risks contemplated, the financial standing of the employer and any additional factors which the Division may deem proper.

(b) The amount shall not be less than one-half of the contributions which would have been paid by the employees to be covered by the private plan during the previous year, or one-half of the estimated contributions of such employees for the ensuing year, whichever is greater.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-2.25 Security exemption

(a) Exemption from the requirement of N.J.A.C. 12:18-2.24, Security required, shall be granted to any employer who:

1. Is exempt from insuring the employer's workers' compensation liability, as provided by law; or

2. Satisfies the Division as to the employer's financial responsibility to pay the benefits provided by the employer's plan by furnishing a complete, current financial statement and such other proof as may be acceptable to the Division. An annual review of the financial responsibility will be made.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.26 Disposition of security upon termination

(a) The security provided for in this subchapter should be applied by the Division to the payment of any unpaid obligations under the private plan. Upon termination of a private plan, which does not provide for the assumption by an admitted insurer of the liability to pay benefits, or upon withdrawal of approval of such private plan, the Division shall retain the security deposited, for the purpose of securing the payment of the obligations of the private plan. Upon the expiration of all benefit claims outstanding after the lapse of five complete calendar quarters following the effective date of termination or withdrawal of approval, the Division shall make a final assessment of the charges against the employer as provided in the Act and these regulations.

(b) If the amount of such assessment is not paid within 30 days after the date of notice thereof, the Division may collect the amount of the assessment out of the security on deposit, or may call upon the surety insurer for payment. Any security thereafter remaining shall be returned to the employer or the employer's legal representative or assignee, or the surety insurer paying the amount of such assessment shall be discharged of its obligation under the bond.

(c) The Division may make a partial return of the security at an earlier date if it finds that such security is in excess of that required.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-2.27 Exchange of information

(a) If an employee's weekly benefit amount, determined under the benefit provisions of an employer's private plan, with respect to any period of disability, is less than the maximum weekly benefit amount payable under the State plan, and such weekly benefit amount has been computed on a basis different from that provided for covered individuals under the State plan, the weekly benefit amount shall be recomputed in accordance with the provisions of the New Jersey Temporary Disability Benefit Law (N.J.S.A. 43:21-40) as amended.

(b) If such recomputed weekly benefit amount is less than the maximum weekly benefit amount payable under the State plan and the computation of the "average weekly wage" for such recomputation yields a result which is less than the individual's average weekly earnings in employment, with all covered employers, during the base weeks in

such eight calendar weeks, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the weekly wages of the employee earned from all covered employers during the eight base weeks immediately preceding the calendar week in which the employee's disability commenced.

(c) When requesting such information, such payer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;
2. Date on which the disability commenced;
3. The names and addresses of such other employers, from whom the employee alleges to have earned wages immediately preceding his or her disability, as may be necessary to determine all wages earned in the required eight base weeks;
4. The weekly earnings of the employee from the employer during each of the calendar weeks in the 52 calendar weeks immediately preceding the disability, if any.

(d) If the private plan of an employer provides as a condition of eligibility for benefits with respect to a period of disability, that an otherwise eligible employee shall have established at least 20 or a lesser number of base weeks within the 52 calendar weeks preceding the week in which his or her period of disability commenced and the employee has not established such base weeks from his or her employment with the employer, then the insurer which has undertaken to pay the benefits provided by the plan shall request the Division to provide such payer with a statement of the number of base weeks in the employee's base year. When requesting such information, such payer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;
2. Date on which the disability commenced;
3. The names and addresses of such other employers, from whom the employee alleges to have earned wages in the 52 calendar weeks immediately preceding his or her disability, as may be necessary to determine the required number of base weeks; and
4. The number of calendar weeks in the 52 calendar weeks immediately preceding the calendar week in which the period of disability commenced, during which the employee earned not less than the minimum base week requirement as defined in N.J.S.A. 43:21-27(i)(4) from the employer.

(e) If the private plan of an employer provides, with respect to periods of disability commencing on or after January 1, 1968, that the maximum total benefits payable to any eligible employee may be computed as an amount equal to 26 times the weekly benefit rate or $\frac{1}{2}$ of his or her total wages in his or her base year, whichever is lesser, and it appears that such provision will be applicable with respect to any period of disability because wages earned with prior employers in the base year are lacking, then the insurer shall request the Division to provide a statement of the total wages in the employee's base year. When requesting such information, such insurer shall furnish the Division with the following information:

1. Name, address and Social Security number of the employee;
2. Date on which the disability commenced;
3. Names and addresses of other employers in the 52 weeks prior to the week in which the disability occurred;
4. Total amount of wages earned by claimant with the most recent employer.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), deleted "Section 16 of" following "provisions of"; in (d), deleted "commencing on or after January 1, 1953" following "disability" in the first sentence; deleted a former (e); and recodified former (f) as (e).

Amended by R.2001 d.298, effective August 20, 2001.

See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).

Rewrote (d)3 and 4.

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

In (d), rewrote 3 and 4.

12:18-2.28 Notice from employers

Within 10 days after the mailing of a request for information with respect to a period of disability, each employer having a private plan shall furnish the Division with any information requested or known to the employer which may bear upon the eligibility of the claimant.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Substituted "10 days" for "seven days" following "Within", and deleted "commencing on or after January 1, 1953" following "disability".

12:18-2.29 Reports by self-insurers

(a) For the six month periods ending June 30 and December 31 of each calendar year during which a self-insured private plan is in effect, each employer shall, on a form prescribed by the Division, file a statement, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of benefits paid during the six month period;

4. Such other information as the Division may require with respect to the financial ability of the self-insurer to meet the self-insured's obligations under the plan.

(b) On or before the 30th day following the close of each calendar year during which a self-insured private plan is in effect, the employer shall, on a form prescribed by the Division, file a report showing:

1. The amount of funds available at the beginning of that year for payment of disability benefits;

2. The amount contributed by workers during that year;

3. The amount contributed by the employer during that year;

4. The amount of disability benefits paid during that year;

5. Direct cost of administration of plan during that year; and

6. The number of employees covered by the plan as of December 31.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), rewrote the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 6.

12:18-2.30 Reports by unions and other benefit payers

(a) For the six month periods ending June 30 and December 31 of each calendar year, each union, association of employees, nominee, trustee or organization which has assumed the liability to pay the disability benefits required under one or more private plans (which benefits are not guaranteed by a contract of insurance of an insurer duly authorized and admitted to do business in this State) shall, on a form prescribed by the Division, file a statement, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of benefits paid during the six month period;

4. Such other information as the Division may require with respect to the financial ability of the union, associa-

tion or employees, nominee, trustee or organization to meet their obligations under the plan.

(b) On or before the 30th day following the close of each calendar year, each union, association of employees, nominee, trustee or organization which has assumed the liability to pay the disability benefits required under one or more private plans (which benefits are not guaranteed by a contract of insurance of an insurer duly authorized and admitted to do business in this State) shall, on a form prescribed by the Division, file a report showing:

1. The amount of funds available at the beginning of that year for payment of disability benefits;

2. The amount of contributions for such disability benefits made during that year by the employer or employers whose private plan or plans provide for the payment of such disability benefits out of such funds;

3. The amount, if any, of contributions made, during that year, for such disability benefits, by workers covered under such private plan or plans;

4. The amount of such disability benefits paid, during that year, to workers covered under such private plan or plans;

5. Direct costs of administration, during that year, of such private plan or plans, expended from such funds; and

6. The number of employees covered by the plan as of December 31.

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), substituted "For the six month periods ending June 30 and December 31 of each calendar year," for "On or before the 30th day following the close of each calendar quarter" at the beginning and inserted ", on or before the 30th day following the end of the respective six month period," following "statement" in the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 6.

12:18-2.31 Reports by insurance companies

(a) For the six month periods ending June 30 and December 31 of each calendar year, each insurance company which has assumed the liability to pay the disability benefits required under one or more private plans shall, on a form prescribed by the Division, file a report, on or before the 30th day following the end of the respective six month period, showing:

1. The number of claims received during the six month period;

2. The number of claims accepted during the six month period;

3. The amount of disability benefits paid during the six month period;

(b) On or before the 30th day of June following the close of each calendar year, each insurance company which has assumed the liability to pay the disability benefits required under one or more private plans shall, on a form prescribed by the Division, file a report showing:

1. Premiums earned during that year with respect to such private plans;
2. Dividends to holders of policies providing the benefits of such private plans;
3. Benefit losses incurred under such private plans;
4. Expenses incurred with respect to such private plans; and
5. The number of employees covered by each plan as of December 31.

Amended by R.1998 d.157, effective April 6, 1998.
Sec: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), substituted "For the six month periods ending June 30 and December 31 of each calendar year," for "On or before the 30th day following the close of each calendar quarter" at the beginning and inserted ", on or before the 30th day following the end of the respective six month period," following "report" in the introductory paragraph, and substituted references to the six month period for references to the quarter in 1 through 3; and in (b), added 5.

12:18-2.32 Reports by employers having two or more plans

On or before the 30th day following the close of each calendar half-year, each employer having two or more approved private plans in effect during such calendar half-year or any portion thereof shall, on a form prescribed by the Division, file a report showing the amount of taxable wages paid during such calendar half-year to employees while covered under each such private plan.

12:18-2.33 Unemployment disability account deficit

(a) The term "unemployment disability account deficit" means any negative balance between the credits and debits of the account as determined by the Act.

(b) If the accumulated deficit at the end of any calendar year after interest and other earnings have been credited in accordance with the Act exceeds \$200,000, such deficit shall be assessed and shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.34 Assessment of costs of administration

Any assessment under the provisions of N.J.S.A. 43:21-48 shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.35 Assessment of amount of refund of workers' contributions applicable to private plans

(a) The portion of the aggregate amount of refunds to workers during any calendar year pursuant to N.J.S.A. 43:21-7(d)(3) to be assessed against private plans shall be determined by multiplying the aggregate amount of such refunds by the ratio of taxable wages involved in such refunds and paid by employers to employees covered under private plans to the total taxable wages involved in such refunds and paid by all employers.

(b) Such amount shall be prorated among the applicable private plans in the proportion that the wages covered by each plan bears to the total private plan wages in such refunds.

(c) The amount so prorated to a private plan shall be assessed against the employer, or the insurer if the insurer has indemnified the employer with respect thereto, and shall be collected under the provisions of N.J.S.A. 43:21-14 except that interest shall not accrue on such assessment until 30 days after the date of notice of such assessment.

(d) The amounts so recovered by the Division shall be paid into the State Disability Benefits Fund. (See N.J.A.C. 12:16-15, Application for workers' refunds.)

12:18-2.36 Liability of successor employer

Any employer who acquires the organization, trade, assets or business, in whole or in part, whether by merger, consolidation, sale, transfer, descent or otherwise, from an employer liable for any assessment made under N.J.S.A. 43:21-7(d)(3), N.J.S.A. 43:21-46 and N.J.S.A. 43:21-48 shall likewise be liable for such assessment.

12:18-2.37 Continuation of plan on successor employer

(a) If there is a change in the employer and the successor employer assumes the obligations and liability of the predecessor under the plan, the plan shall be transferred to the successor, if:

1. The workers to be covered by the plan immediately after the succession are not required to contribute to the cost of the plan; or
2. The class or classes of workers covered by the plan immediately prior to the succession constitute a majority of the workers in the same class or classes employed by the successor immediately after the succession; or
3. A majority of the workers in the class or classes covered by the plan in the employ of the successor immediately after the succession give their written consent to the plan; or

4. The plan is limited to the separate unit, plant, department or establishment operated by the predecessor and the provisions of paragraphs 1, 2 or 3 of this Section are met with respect to such separate unit, plant, department or establishment.

SUBCHAPTER 3. STATE PLAN

12:18-3.1 Extent of coverage

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to the disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21-4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21-4) would have been timely noticed to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-4).

(f) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the claimant

may only be denied benefits during that period so certified where:

1. The Division has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the Commissioner of Labor or his or her designee has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the Commissioner of Labor or his or her designee, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The Division has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed medical practitioner. Upon submission of a written report of the examination to the Department of Labor, a basic, normative fee customarily charged by a physician in a given specialty for each such examination, shall be paid to the examining medical practitioner, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in the customary or "fair market" fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the customary fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting the diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

(h) The responsibility for coverage shall be established by the covered individual's last employer. The application for benefits shall be processed by the insurer, if the employer has an approved private plan and the individual is covered by that plan, or the State plan if the employer has State plan coverage. However, claims coming within the purview of N.J.A.C. 12:18-1.5, 2.10 or 3.5 shall be governed thereby.

As amended, R.1974 d.284, effective October 17, 1974.

See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (d) and (e), deleted references to N.J.S.A. 43:21-3 throughout; and in (f) and (g), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, public health nurses, and optometrists throughout.

Amended by R.2000 d.327, effective August 7, 2000.

See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).

Rewrote (f).

Amended by R.2003 d.214, effective May 19, 2003.

See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Rewrote (g); added (h).

12:18-3.2 Notice and proof of disability

(a) Within 30 days after the commencement of a period of disability, a written notice of disability, on which a claim for State plan benefits is based, shall be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state the claimant's full name, address and valid social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the State plan is based shall be furnished by any claimant who expects to be or has been totally unable to perform the duties of his or her employment for a period of eight or more consecutive days and is under the care of a licensed medical practitioner. A claimant's authorized representative may furnish the proof of disability and file a claim for benefits on behalf of the claimant. The proof and claim accompanied by a certification of the attending licensed medical practitioner, shall be furnished to the Division, on Form DS-1 (Proof and Claim for Disability Benefits) not later than 30 days after the commencement of the period of disability for which benefits are claimed. A continued claim form on which the claimant must provide additional medical information in order to continue receiving benefits shall be filed as proof of continued disability when requested by the Division.

(c) A "period of disability" is payable from the first day of disability if the claimant receives medical care by a licensed medical practitioner within 10 days of the first day of disability. If the claimant fails to furnish such proof, benefits shall be payable from the first day of medical care.

(d) The failure to furnish a written notice or proof of disability within the time or manner required by the Act and this Subchapter shall not invalidate or reduce any claim, if it shall be shown to the satisfaction of the Division not to have been reasonably possible to furnish notice or proof and that such notice or proof was furnished as soon as reasonably possible. If such notice or proof is not furnished, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt of the notice or proof of disability.

(e) The Division shall require each claimant to have a valid Social Security Number when filing a claim for benefits. The claimant, upon request of the Division, shall provide proper identification, including proof of a valid Social Security Number, verification of the Social Security Number if there is a discrepancy, and documentation showing his or her legal name and address.

1. If unable to present proof of a valid Social Security Number, proper verification, or other appropriate documentation, the individual shall be determined ineligible for benefits until such time that he or she is able to present the required identification.

2. Any person who refuses or fails to cooperate with the Division in any effort to verify the validity of a Social Security Number, may be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1997 d.143, effective March 17, 1997.

See: 29 N.J.R. 91(a), 29 N.J.R. 898(a).

Added (d).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote (a) and (b); inserted a new (c); recodified former (c) as (d), and rewrote the last sentence; and recodified former (d) as (e).

12:18-3.3 Filing of claims for benefits

(a) All claims and other required documents relating thereto 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 based on the postmark date, or in its absence, the date received by the Division.

(b) Disability benefits shall be payable to any claimant while outside of this State, provided he or she complies with the Act and this Subchapter. In such case, the attending medical practitioner shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), rewrote the second sentence; and in (b), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, and optometrists throughout.

12:18-3.4 Reduction of benefits

(a) The amount of benefits otherwise payable to a claimant under the State plan for any week of disability, or part thereof, shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his or her most recent employing unit contributed on his or her behalf. If such latter benefits are being paid on a monthly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/30 of such monthly amount, multiplied by seven, and the amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate. If such latter benefits are being paid on a weekly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/7 of the weekly amount multiplied by the number of days of disability during that week and that amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate.

(b) The amount of benefits payable to a claimant under the State plan for any week of disability, or part thereof, shall not be reduced by the amount of benefits payable under any program as mentioned above, unless one or more payments thereunder have been received by the claimant prior to the date on which the check in payment of benefits under the State plan is issued.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.5 Concurrent coverage

(a) A covered individual is deemed to be in "concurrent employment" if he or she is in employment with two or

more employers the last calendar day of employment preceding the commencement of a period of disability. The term "concurrent employers" means the covered employers with whom the individual was employed on such last day of employment.

(b) The concurrent employers contributing to the State Disability Benefits Fund on behalf of a covered individual in concurrent employment shall be deemed to be his or her "most recent covered employer" for the purpose of computing his or her average weekly wage as defined in the Temporary Disability Benefits Law (N.J.S.A. 43:21-27(j)). An individual shall have his or her weekly benefit amount under the State plan computed on the basis of his or her total wages with all such employers during the base weeks in the eight calendar weeks immediately preceding the calendar week in which the disability commenced.

(c) State plan benefits paid to a covered individual in concurrent employment shall be charged to the accounts of the individual's concurrent employers in the same proportion that the individual earned wages from his or her concurrent employers during the 52 calendar weeks immediately preceding the week in which the disability commenced.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote the section.

12:18-3.6 Notice to claimant and employer

(a) A claimant shall be given written notice of any decision on his or her claim and of the reason for any denial of his or her claim.

(b) If the "Employer's Statement" on Form DS-1 has not been completed by an employer or his or her representative, a request for information shall be mailed or delivered to the employer or employers by whom the claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks.

(c) A copy of the decision of eligibility of the claimant stating his or her weekly benefit rate and the probable duration for which benefits will be paid, shall be mailed or delivered to the employer or employers by whom such claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks. A notice of each payment of benefits shall be given to such employer or employers.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.7 Notice required from employers

(a) Within 10 days after the mailing of a request for information with respect to a period of disability, an employer shall furnish the Division with any information requested or known to him or her which may bear upon the eligibility of the claimant.

(b) If any employer or employing unit fails to respond to the request for information within 10 days after the mailing of such request, the Division shall rely entirely on information from other sources, including an affidavit completed by the claimant to the best of his or her knowledge and belief with respect to his or her wages and time worked. If it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant except in the event of fraud.

(c) Any employer failing to respond to a request for information within the prescribed time period shall be subject to the penalties provided under N.J.S.A. 43:21-55(b).

(d) The employer, within two working days after receipt of the decision of eligibility, shall furnish the Division with any information known to him or her bearing upon the eligibility of the claimant or duration of payments to be made.

(e) If after receipt of a decision of eligibility an employer acquires information which may render the claimant ineligible for benefits or reduce the rate or amount of benefits, such employer shall immediately forward the information to the Division.

(f) Whenever a decision of eligibility with respect to a period of disability is based upon information other than that supplied by an employer because such employer failed to respond to a request for information, such decision of eligibility and any subsequent determination thereunder shall be incontestable by the non-complying employer, as to any charges to his or her employer's account under N.J.S.A. 43:21-7(e) for benefits paid prior to the close of the calendar week following the receipt of his or her reply. Such decision of eligibility shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks or parts thereof occurring subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered decision of eligibility.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), substituted "10 days" for "seven days" following "Within", and deleted "commencing on or after January 1, 1953" following "disability"; rewrote (b); inserted a new (c); recodified former (c) and (d) as (d) and (e); and recodified former (e) as (f), and deleted "commencing after December 31, 1952" following "disability".

12:18-3.8 Filing of appeals by claimants or employers

Unless the claimant or the employer, within seven calendar days after the delivery of a determination or notification thereof, or within 10 calendar days after such notification was mailed to his or her last-known address, files an appeal from such determination, it shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered as provided in N.J.A.C. 12:18-3.7.

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Amended by R.1998 d.157, effective April 6, 1998.
 See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-3.9 Rules on appeal

The rules of the Board of Review shall govern appeals in disability benefit cases under the State plan. See appeal rules at N.J.A.C. 12:20.

Amended by R.1994 d.241, effective May 16, 1994.
 See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
 Amended by R.1998 d.157, effective April 6, 1998.
 See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Substituted a reference to N.J.A.C. 12:20 for a reference to N.J.A.C. 12:20-4 at the end.

12:18-3.10 (Reserved)

12:18-3.11 Reduced work week

(a) Benefits shall be compensable under N.J.S.A. 43:21-29 for any period of disability "resulting in the individual's total inability to perform the duties of employment." Benefits shall also be compensable at a fractional part of the week as provided in N.J.S.A. 43:21-40 in such cases where the claimant was in employment with a full-time employer and a part-time employer immediately preceding the period of disability if the claimant is unable to perform the duties of his or her regular full-time employment, but he or she is able to perform totally different duties with his or her part-time employer.

(b) Benefits shall not be compensable in situations where the individual returns to work for the full-time employer on a reduced work schedule since the individual is no longer totally unable to perform the duties of his or her employment.

New Rule, R.1998 d.157, effective April 6, 1998.
 See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

APPENDIX

CHAPTER 12A

PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g), 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 17, and 43:21-25 et seq.

Source and Effective Date

R.1999 d.291, effective July 29, 1999.
 See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12A, Private Plan Temporary Disability Insurance Cases, expires on July 29, 2004.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

1:12A-9.2 Notice of formal hearing

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

1:12A-11.2 Witness fees

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

1:12A-14.2 Dismissal of complaint

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

1:12A-15.2 Correction of determination

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

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

"Act" means the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

Any claimant or employer may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A-9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized representatives, insurer or organization paying benefits, and all other 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.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-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 to testify 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 paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(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 paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and

impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which

1:12A-15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.

CHAPTER 19

DEFINITIONS USED BY EMPLOYMENT SECURITY
AGENCY AND SPECIAL EMPLOYMENT
RELATIONSHIPS

Authority

N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-1
et seq., specifically 43:21-11.

Source and Effective Date

R.2000 d.259, effective May 26, 2000.
See: 32 N.J.R. 1143(a), 32 N.J.R. 2244(a).

Executive Order No. 66(1978) Expiration Date

Chapter 19, Definitions Used by Employment Security Agency and
Special Employment Relationships, expires on May 26, 2005.

Chapter Historical Note

Chapter 19, General Rules, became effective prior to September 1,
1969.

Chapter 19, General Rules, was repealed by R.1985 d.147, effective
April 1, 1985. See: 16 N.J.R. 2488(b), 17 N.J.R. 820(b).

Chapter 19, Definitions Used by Employment Security Agency and
Special Employment Relationships, was adopted as new rules by R.1995
d.318, effective May 26, 1995. See: 27 N.J.R. 1518(a), 27 N.J.R.
2408(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Definitions
Used by Employment Security Agency and Special Employment Rela-
tionships, was readopted as R.2000 d.259, effective May 26, 2000. See:
Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:19-1.1 Purpose
- 12:19-1.2 Definitions
- 12:19-1.3 Partnerships
- 12:19-1.4 Special employers

SUBCHAPTER 1. GENERAL PROVISIONS

12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions
to be used throughout N.J.A.C. 12:16 through 12:19, and to
provide examples illustrating the definitions and, in some
instances, exceptions to the definitions.

Amended by R.1995 d.318, effective June 19, 1995.
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).
Corrected a citation.

12:19-1.2 Definitions

The following words and terms, when used throughout
N.J.A.C. 12:16 through 12:19, shall have the following mean-
ings unless the context clearly indicates otherwise:

"Agricultural labor" means the following activities:

1. Service performed on a farm in connection with
cultivation of the soil; raising or harvesting any agricul-
tural or horticultural product; raising, feeding, caring for,
and managing livestock, bees, poultry or fur-bearing ani-
mals; handling, packaging, or processing any agricultural
or horticultural commodity in its unmanufactured state;
repair and maintenance of equipment or real property
used in the agricultural activity; and transport of agricul-
tural or horticultural supplies or products if not in the
usual course of a trucking business;

2. Service performed in a greenhouse or nursery if
over 50 percent of the gross sales volume is attributable to
products raised in the greenhouse or nursery; and

3. Service performed by a cooperative of which the
producer of the agricultural product is a member if the
service performed is incidental and necessary to the deliv-
ery of the product to market in a finished state.

Agricultural labor does not include:

1. Service performed at a racetrack;
2. Service in the breeding, care, or boarding of domes-
ticated animals of a kind normally found in a home, such
as dogs and cats;
3. Service in a retail enterprise selling the product of
an agricultural enterprise if the retail enterprise is not
located on or contiguous to the site of production; or
4. Service in a retail enterprise located on or contigu-
ous to the site of production if greater than 50 percent of
the gross sales volume of the retail enterprise is attribut-
able to items not produced at that site.

"Base of operations" means the place or fixed center of
more or less permanent nature from which the employee
starts work and customarily returns to in order to accom-
plish any of the following:

1. Receive instructions from the employer;
2. Receive instructions from customers or other per-
sons;
3. Replenish stocks and materials;
4. Repair equipment; or
5. Perform any other functions necessary to the exer-
cise of a particular trade or business.

Examples: An individual reports to a New Jersey site daily to stock his or her repair truck and receive assignments for that day. The individual performs services both in New Jersey and other states. This individual must be reported by the employer to New Jersey as his or her base of operations is in New Jersey and some services are performed in New Jersey.

A salesperson, who is a New Jersey resident, works out of his or her home for a non-New Jersey entity. The entity does not provide office space for the salesperson. The salesperson receives his or her calls, correspondence, and communication from the employer at home. The salesperson sells in a variety of states and does not perform 90 percent or more of his or her services in any state. This salesperson must be reported by the employer to New Jersey as the base of operations is his or her home, which is in New Jersey, and some services are performed in New Jersey.

"Controller" means the Controller of the Department of Labor.

"Domestic service" means service of a personal nature performed outside of a business enterprise for a household-er. Domestic service is normally performed in a private residence, but may be performed in other settings such as a nursing home, or a yacht. A domestic service would include, but not be limited to, the following occupations: maids, butlers, cooks, valets, gardeners, chauffeurs, personal secretaries, baby-sitters, and nurses' aides.

"Employing unit" means an entity which has in its employ one or more individuals performing services for it within New Jersey, and includes:

1. The State of New Jersey; its instrumentalities or political subdivisions or any instrumentality of New Jersey and one or more other states or political subdivisions; individual proprietorships; partnerships; associations; trusts; estates; limited liability companies; joint stock companies; domestic or foreign insurance companies and corporations; receivers; trustees in bankruptcy and their successors; and legal representatives of deceased persons.

"Employment" means any service performed by an individual for remuneration unless specifically excluded by statute or regulation.

"Good cause" means, as used in N.J.S.A. 43:21-7(c)(7)(A) and N.J.A.C. 12:16-18.1(b), any situation over which the employer did not have control and which was so compelling that it would prevent the employer from acting in a timely manner. Good cause does not include: negligence, including that of an agent such as an accountant or attorney; or a mistake of law or fact.

"Home to home salesperson" means an individual who sells door to door in a residential area, and does not mean an individual who sells on a lead basis or an individual who sells to a business clientele.

"Merchandise" means tangible personal property which would normally be found and used in a personal residence. Merchandise does not include:

1. Capital improvements such as siding or roofing, storm windows or doors, replacement windows or doors, or concrete sidewalks, steps, or driveways; or
2. Memberships in clubs, organizations or associations.

"Motor vehicle weighing 18,000 pounds or more" means, for purposes of N.J.S.A. 43:21-19(i)7(X), the aggregate weight of the gross unloaded weight of the truck or tractor and the gross unloaded weight of an attached trailer, if the normal use of the truck or tractor would require the use of that trailer.

"New Jersey service," as defined in N.J.S.A. 43:21-19(i)(2), means the performance of meaningful and substantial duties of a position for which an employee was hired which is:

1. Localized in New Jersey;
2. Not localized in any other state and which is partially performed in New Jersey, and the employee's base of operations is in New Jersey;
3. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform service in any state in which the employer has a base of operations, but the place from which the employer exercises general direction and control is in New Jersey; or
4. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform any services in a state in which the employer has a base of operations or place of direction and control, but the employee's residence is in New Jersey.

"Place from which service is directed and controlled" means the place from which the employer's basic authority and general control emanates. This is not necessarily the place at which a supervisor directly supervises the performance of services under general instructions from the place of direction and control.

Example: A consultant performs services in a variety of states. The consultant does not have a base of operations and reports directly to the job site, where he or she receives communication and directions from his or her employer. The employer's headquarters, from which the consultant receives general direction and control, are in New Jersey. Less than 90 percent of the services are performed in any one state. This individual must be reported by the employer to New Jersey since there is no specified base of operations, the place from which he or she is directed and controlled is in New Jersey, and some services are performed in New Jersey.

"Real estate broker" means a person or entity that:

1. Lists for sale, sells, exchanges, buys or rents, or offers to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein; or
2. Collects or attempts to collect rent for the use of real estate; or
3. Negotiates or offers to negotiate a loan secured or to be secured by a mortgage or other encumbrance; or
4. Conducts a public or private competitive sale of lands or any interest in lands; or
5. Sells lots or parcels of real estate on behalf of the owners of such real estate; and
6. Is licensed by the New Jersey Real Estate Commission.

"Real estate salesperson" means an individual who:

1. Is employed by and operates under the supervision of a licensed real estate broker; or
2. Sells or offers to sell, or buys or offers to buy or negotiate the purchase, sale or exchange of real estate; or
3. Solicits for prospective purchasers or lessees of real estate; or
4. Sells or offers to sell lots or other parcels of real estate; and
5. Is licensed by the New Jersey Real Estate Commission.

"Residence" means the principal place of abode for an individual as determined for a particular calendar year.

Example: A management consultant, who is a resident of New Jersey, performs consulting work for an entity in a variety of states, including New Jersey, at varying job sites. Less than 90 percent of his or her services are performed in any one state. The management consultant has no base of operations since he or she receives instruction from the employer at varying job sites. He or she performs no consulting services in the state from which direction and control is provided. This individual must be reported by the employer to New Jersey although there is no base of operations in New Jersey; this individual does not perform services in the state from which direction and control is provided, but this individual does live in New Jersey and has provided some services in New Jersey.

"Wholly commissioned" means an individual who receives a draw against commission where:

1. Any excess of draw over commission earned in an individual's draw account is not forgiven upon separation from service, whether voluntary or not; and
2. A settlement of the draw account must be made at least once in each calendar year with a repayment to the

employing unit by the commissioned individual if the draw exceeds commissions earned.

Amended by R.1995 d.318, effective June 19, 1995.
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).
Neutralized gender.

12:19-1.3 Partnerships

(a) A separate registration number and experience rating shall be assigned to each partnership that is composed of identical partners with identical interests, if all of the following conditions are met:

1. Each separate partnership joins in such a request to the Controller or the Controller's designee or the Controller or the Controller's designee determines that individual reporting is appropriate;
2. A separate written partnership agreement exists for each partnership;
3. The accounting records for each partnership are separately maintained; and
4. There is no commingling of the employment of the two or more partnerships.

Amended by R.1995 d.318, effective June 19, 1995.
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).

In (a) substituted "that is" for "of a group of two or more partnerships"; and extended (a)1 to the Controller's designee.

12:19-1.4 Special employers

(a) The following situations outline special employment relationships which exist for tax purposes:

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:
 - i. The agreement between the farmer and the crew leader complies with all Federal and State laws and regulations, including the payment of applicable employment taxes and minimum wage;
 - ii. The crew leader has completed and submitted Department of Labor Form UC-1CL, "Status Report of Crew Leader Employing Unit"; and
 - iii. The crew leader has met all the requirements of the Federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 et seq., and the New Jersey Crew Leader Registration Act, N.J.S.A. 34:8A-7 et seq.
2. The entity for whom the services of the crew are performed shall be considered the employer of both the crew leader and the crew if the registration of the crew leader under the Federal Migrant and Seasonal Agricultural Worker Protection Act and the New Jersey Crew Leader Registration Act is revoked. The entity will be considered the employer from the first day on which services were performed following revocation.

(b) For purposes of N.J.S.A. 34:8-24 et seq., an employment agency is not an "employer," but maintaining a license as an employment agency in no way precludes the Commissioner of Labor from determining that the employment agency is an "employer" for purposes of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

1. Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the Department of Labor for a determination as to their status under N.J.S.A. 43:21-1 et seq.

Amended by R.1995 d.318, effective June 19, 1995.

See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).

In (a)1.ii renamed the form; renumbered (a)3 as (b) and (a)3.i as (b)1; and in (b)1 substituted "Department of Labor" for "Controller's Chief Auditor".

CHAPTER 20 BOARD OF REVIEW

Authority

N.J.S.A. 34:1A-3(e), 43:21-6(d) to (f), 43:21-10 and 43:21-17.

Source and Effective Date

R.1999 d.250, effective July 12, 1999.
See: 31 N.J.R. 1475(a), 31 N.J.R. 2221(a).

Executive Order No. 66(1978) Expiration Date

Chapter 20, Board of Review, expires on July 12, 2004.

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: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

- 12:20-1.1 Membership
- 12:20-1.2 Officers
- 12:20-1.3 Duties
- 12:20-1.4 Quorum

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

- 12:20-2.1 Membership
- 12:20-2.2 Duties
- 12:20-2.3 through 12:20-2.5 (Reserved)

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

- 12:20-3.1 Presentation of appealed claims
- 12:20-3.2 Appeal process
- 12:20-3.3 through 12:20-3.4 (Reserved)

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW

- 12:20-4.1 Presentation of appeals
- 12:20-4.2 Appeal process
- 12:20-4.3 Temporary appointment of Board of Review
- 12:20-4.4 through 12:20-4.7 (Reserved)

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

- 12:20-5.1 Inspection of decisions
- 12:20-5.2 through 12:20-5.4 (Reserved)

SUBCHAPTER 6. (RESERVED)

APPENDIX. UNEMPLOYMENT BENEFIT AND STATE PLAN TEMPORARY DISABILITY CASES

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 Department of Personnel 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).

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 Department of Personnel 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).

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, 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 which 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 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 notification 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).

12:20-3.2 Appeal process

The appeal procedures for cases before the Appeal Tribunals are now to be found at N.J.A.C. 1:12 and are also appended to the end of this chapter.

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).

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 ten calendar days after the date of notification or mailing of the decision which is being appealed.

(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 authorized to accept appeals.

(d) A party appealing from a decision of an appeal tribunal shall 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".

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 affirmance 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 and are also appended to the end of this chapter.

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).

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 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 AND STATE PLAN TEMPORARY DISABILITY CASES

Authority

N.J.S.A. 52:14F-5(e), (f), and (g), 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 17, and 43:21-25 et seq.

Source and Effective Date

R.1999 d.291, effective July 29, 1999.

See: 31 N.J.R. 1550(a), 31 N.J.R. 2603(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12, Unemployment Benefit and State Plan Temporary Disability Cases, expires on July 29, 2004.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

1:12-9.2 Notice of telephone hearing

1:12-9.3 Adjournments

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

1:12-11.2 Witness fees

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

1:12-14.2 Conduct of hearing

1:12-14.3 Appeals hearing

1:12-14.4 Failure to appear

1:12-14.5 Scheduling of telephone hearings

1:12-14.6 Conduct of telephone hearing

1:12-14.7 Disqualification of members of appeal tribunals

1:12-14.8 Hearing appeals on own motion

1:12-14.9 Case transfer on own motion

SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

1:12-15.2 Stipulations

SUBCHAPTERS 16 AND 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

1:12-18.2 Decisions of Board of Review

1:12-18.3 Correction of determination

1:12-18.4 Reopening Board of Review decisions

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases and State plan temporary disability 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 pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability cases heard by hearing officers of the Department of Labor 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 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 claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) Any party may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17 provided that such representation shall be at the party's expense.

(b) In any unemployment benefits proceeding and on any State plan temporary disability claim proceeding on an appeal before an appeal tribunal or the Board of Review, all fees for persons representing claimants shall be approved by the Board of Review after it receives submission of an authorization form.

(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 the division, 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 Notice of telephone hearing

(a) The notice of telephone hearing shall at least contain the following:

1. That the parties have a right to object to a telephone hearing; and
2. Written instructions as to how the telephone hearing shall be conducted.

1:12-9.3 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.

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefits and State plan temporary disability claims, 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.

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 telephone hearings

(a) A telephone hearing which means a hearing at which all parties, witnesses, representatives and attorneys appear via telephone may be conducted at the initiation of the Board of Review or the appeal tribunal or upon the request of any party with the consent of the Board of Review or appeal tribunal. Telephone hearings shall be subject to the rules governing hearings and appeals in this chapter, as well as the rules governing telephone hearings.

(b) The Board of Review or appeal tribunal, in its discretion, may initiate or schedule a telephone hearing.

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 administrative convenience of the Board of Review or appeal tribunal.

(c) Any party to an appeal may request a telephone hearing by contacting, immediately upon receipt of the notice of the scheduled in-person hearing, the Board of Review or appeal tribunal 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) 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.

(e) 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 in writing and received by the Board of Review or appeal tribunal reasonably in advance of the time scheduled for a telephone hearing; and

2. Set forth the reasons supporting the objections.

(f) 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 at least any of the following:

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;

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.

(g) If the Board of Review or appeal tribunal accepts a party's objections to a telephone hearing, an in-person hearing shall be scheduled by the Board of Review or appeal tribunal.

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, transfer any case pending before an appeal tribunal to another 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 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 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 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. 2524(a).

CHAPTER 21

INTERGOVERNMENTAL ARRANGEMENTS

Chapter Expiration Date

Chapter 21, Intergovernmental Arrangements, expires on July 1, 2006.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

12:21-1.1 Statutory authority for intergovernmental arrangements

SUBCHAPTER 1. GENERAL PROVISIONS

12:21-1.1 Statutory authority for intergovernmental arrangements

N.J.S.A. 43:21-21 permits the Commissioner of Labor and Industry to enter into and cooperate in reciprocal arrangements in proper cases with appropriate agencies of other states, the District of Columbia, Puerto Rico, the Virgin Islands, the United States and foreign governments, for purposes consistent with employment security programs.

CHAPTER 22

MAXIMUM WEEKLY BENEFIT RATES

Chapter Expiration Date

Chapter 22, Maximum Weekly Benefit Rates, expires on July 1, 2006.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

12:22-1.1 Promulgation of rates

Commissioner of Labor and Industry, pursuant to N.J.S.A. 43:21-3(c)(2), promulgated the maximum weekly benefit rate for benefit years or periods of disability commencing in such calendar years, as follows:

1. 1968 ————— \$62.00;
2. 1969 ————— \$65.00;
3. 1970 ————— \$69.00;
4. 1971 ————— \$72.00

As amended, R.1970, d.98, eff. January 1, 1971.
See: 2 N.J.R. 75(b).

SUBCHAPTER 1. GENERAL PROVISIONS

12:22-1.1 Promulgation of rates

With respect to benefit years or periods of disability commencing in calendar years after December 31, 1967, the

CHAPTER 23 WORKFORCE DEVELOPMENT PARTNERSHIP PROGRAM

Authority

N.J.S.A. 34:15D-1 et seq.

Source and Effective Date

R.1999 d.138, effective April 1, 1999.
See: 31 N.J.R. 588(b), 31 N.J.R. 1199(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Workforce Development Partnership Program, expires on April 1, 2004.

Chapter Historical Note

Chapter 23, Workforce Development Partnership Program, became effective April 4, 1994 with Subchapters 3, 4 and 5. Subchapter 3, Individual Training Grants, was adopted as R.1994 d.166; Subchapter 4, Approved Training under the Workforce Development Partnership Act, was adopted as R.1994 d.167; and Subchapter 5, Additional Unemployment Benefits during Training, was adopted as R.1994 d.168. See: 25 N.J.R. 884(a), 26 N.J.R. 1512(a); 25 N.J.R. 886(a), 26 N.J.R. 1514(a); 25 N.J.R. 887(a), 26 N.J.R. 1515(a).

Subchapter 6, Employment and Training Grants for Services to Disadvantaged Workers, was adopted as R.1994 d.190, effective April 18, 1994. See: 25 N.J.R. 1054(a), 26 N.J.R. 1663(a).

Subchapter 1, Definitions, and Subchapter 2, Customized Training Services; Purpose, Eligibility and Scope, were adopted as R.1994 d.489, effective September 19, 1994. See: 26 N.J.R. 2770(a), 26 N.J.R. 3867(b). Subchapter 7, Occupational Safety and Health Training Services, was adopted as R.1994 d.490, effective September 19, 1994. See: 26 N.J.R. 2774(a), 26 N.J.R. 3870(a).

Subchapter 8, Reporting Requirements for Assessment of Employment and Training Programs, was adopted as R.1995 d.286, effective June 5, 1995. See: 27 N.J.R. 1131(a), 27 N.J.R. 2236(a).

Subchapter 9, Tuition Policies for Unemployed Persons: Job Training Program, was adopted as R.1998 d.368, effective July 20, 1998. See: 30 N.J.R. 1750(a), 30 N.J.R. 2631(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Workforce Development Partnership Program, was readopted as R.1999 d.138, effective April 1, 1999. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DEFINITIONS

12:23-1.1 Definitions

SUBCHAPTER 2. CUSTOMIZED TRAINING SERVICES; PURPOSE, ELIGIBILITY AND SCOPE

12:23-2.1 Purpose
12:23-2.2 Eligibility and scope
12:23-2.3 Application for Customized Training Assistance
12:23-2.4 Conditions and standards of eligibility for customized training assistance
12:23-2.5 Review and evaluation of customized training applications
12:23-2.6 Where to obtain and send an application
12:23-2.7 Disclosure of information
12:23-2.8 Refunds and fines

SUBCHAPTER 3. INDIVIDUAL TRAINING GRANTS

12:23-3.1 Eligibility
12:23-3.2 Grant payments
12:23-3.3 Approval of training grants
12:23-3.4 Amount of individual training grants
12:23-3.5 Other funding sources
12:23-3.6 Request for reconsideration of grant denials
12:23-3.7 Refunds
12:23-3.8 Approved training costs

SUBCHAPTER 4. APPROVED TRAINING UNDER THE WORKFORCE DEVELOPMENT PARTNERSHIP ACT

12:23-4.1 Approved training
12:23-4.2 Full-time training
12:23-4.3 Active search for work
12:23-4.4 Acceptance of temporary work
12:23-4.5 Courses of study at institution of higher education
12:23-4.6 (Reserved)

SUBCHAPTER 5. ADDITIONAL UNEMPLOYMENT BENEFITS DURING TRAINING

12:23-5.1 Eligibility requirements
12:23-5.2 Claims for additional unemployment benefits during training
12:23-5.3 Work search waiver
12:23-5.4 Refusal of suitable work
12:23-5.5 Intent to enter training
12:23-5.6 Claim options
12:23-5.7 Overpayments
12:23-5.8 Appeals

SUBCHAPTER 6. EMPLOYMENT AND TRAINING GRANTS FOR SERVICES TO DISADVANTAGED WORKERS

12:23-6.1 Purpose and scope
12:23-6.2 Employment and training grants to serve disadvantaged workers
12:23-6.3 Innovative demonstration project funds
12:23-6.4 Eligibility for services
12:23-6.5 Eligibility of service providers
12:23-6.6 Limitation on administrative costs
12:23-6.7 Monitoring and oversight
12:23-6.8 Evaluation of employment and training services
12:23-6.9 through 12:23-6.13 (Reserved)

SUBCHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH TRAINING SERVICES

12:23-7.1 Purpose
12:23-7.2 Scope
12:23-7.3 Occupational safety and health training grants to serve qualified displaced, disadvantaged and employed workers
12:23-7.4 Application process
12:23-7.5 Review and evaluation of applications
12:23-7.6 Assessment of need and delivery of services
12:23-7.7 Allocation of funds
12:23-7.8 Eligibility for services
12:23-7.9 Eligibility of service providers
12:23-7.10 Limitation on administrative costs
12:23-7.11 Monitoring and oversight
12:23-7.12 Evaluation of occupational safety and health training
12:23-7.13 (Reserved)

SUBCHAPTER 8. TUITION POLICIES FOR UNEMPLOYED PERSONS: JOB TRAINING PROGRAM

12:23-8.1 Purpose and scope
12:23-8.2 Proof of program eligibility

- 12:23-8.3 Eligibility for financial aid
- 12:23-8.4 Eligible coursework
- 12:23-8.5 Employment during semester
- 12:23-8.6 Application of general institution rules
- 12:23-8.7 Inclusion of program in college enrollment count
- 12:23-8.8 Financial obligation of eligible individual

SUBCHAPTER 9. SUPPLEMENTAL WORKFORCE FUND FOR BASIC SKILLS

- 12:23-9.1 Purpose
- 12:23-9.2 Basic skills programs to be included in State and Local Plans
- 12:23-9.3 Funding
- 12:23-9.4 Counseling, assessment and employability development planning
- 12:23-9.5 Coordination and consultation requirements
- 12:23-9.6 Basic skills funds are to supplement existing resources
- 12:23-9.7 Monitoring and oversight
- 12:23-9.8 Limitations on administrative costs for service providers
- 12:23-9.9 Prohibition on use of funds

SUBCHAPTER 10. RECORDS, REPORTS, AND PERFORMANCE

- 12:23-10.1 Purpose
- 12:23-10.2 Scope
- 12:23-10.3 Reporting requirements
- 12:23-10.4 Disclosure of information
- 12:23-10.5 Performance standards and evaluation

SUBCHAPTER 1. DEFINITIONS

12:23-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.).

"Administrative cost" means any costs incurred by the Department to administer the program, including any cost required to collect information and conduct evaluations of service providers and surveys of occupations pursuant to N.J.S.A. 34:15D-1 et al. to the extent that funding is not available from Federal or other sources.

"Application fee" means the charge assessed by an institution of higher education to process a student application for admission to the institution.

"Apprenticeship Policy Committee" means the New Jersey Apprenticeship Policy Committee established by an agreement between the Bureau of Apprenticeship and Training in the United States Department of Labor, the State Department of Labor, and the State Department of Education and consisting of a representative of the Departments of Education and Labor, the Director of Region II of the Bureau of Apprenticeship and Training in the United States Department of Labor, and a representative of the New Jersey State AFL-CIO.

"Approved training" means training that is occupational, remedial or a combination of the two that meets the requirements stated in N.J.A.C. 12:23-3.3.

"Basic skills training" means basic mathematics, reading comprehension, basic computer literacy, English proficiency and work-readiness skills, and shall be regarded as a form of remedial education. In addition to remedial education, basic skills can also include communication, interpersonal and decision-making skills.

"Commissioner" means the Commissioner of Labor or the Commissioner's designees.

"Customized training services" means services that are provided by the Office of Customized Training or through arrangements made or coordinated by the Office of Customized Training.

"Department" means the New Jersey Department of Labor.

"Eligible individual" means a qualified displaced worker or a qualified employed worker. For remedial education, eligible individuals also include qualified disadvantaged workers, qualified individuals with disabilities, individuals with learning disabilities, and individuals seeking to enter apprenticeship training.

"Eligible training provider list" means a list of all training providers who meet the requirements established by the State Employment and Training Commission.

"Employability Development Plan" (EDP) means a written signed agreement between a qualified job counselor and a participant in which an occupational goal, course of training or educational and other related activities in the Workforce Development Partnership Program are specified based on an assessment of the individual. The EDP may include occupational training, remedial education, or a combination of both.

"Employer" or "business" means any employer subject to the provisions of N.J.S.A. 43:21-1 et seq.

"Employment and training services" means:

1. Counseling;
2. Occupational training;
3. Remedial education; or
4. Occupational safety and health training.

"English as a Second Language" means training designed for persons with limited English language skills to prepare them in the acquisition of understanding, speaking, reading and writing the English language and skills necessary to function effectively in an English speaking environment, in order to enter other basic skills and remediation programs, and to obtain or retain suitable employment. Persons with limited English language skills are those whose primary language is other than English and who have been assessed to be in need of instruction in English as a second language. An adult's primary language is the language most relied upon by the adult for communication or the language most spoken by the adult in his or her home and work environment.

"Fund" means the Workforce Development Partnership Fund.

"General fee" means the charges assessed by an institution of higher education on all students to provide general support for teaching and learning, such as library fees or technology fees, and those fees assessed by an institution on all students to support purposes or functions not directly related to teaching and learning, such as recreation centers, student organizations, career placement services, and athletic activities.

"Identifiable job skills" means a specific ability which provides for a reasonable opportunity for employment in an occupation.

"Labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers as determined by the New Jersey Occupational Information Coordinating Committee (NJOICC) or as recommended by the local Workforce Investment Board (WIB) and approved by the Director of NJOICC based on documented local labor market data and projected labor market conditions.

"Local Workforce Investment Area" means the geographic area approved by the Governor with the assistance of the State Employment and Training Commission for all workforce activities.

"Local Workforce Investment Board" means the board approved and certified by the Governor with the assistance of the State Employment and Training Commission.

"New Jersey Occupational Information Coordinating Committee (NJOICC)" is the interagency consortium responsible for developing, managing, and overseeing a State-wide comprehensive occupational labor market supply and demand system to meet the common information needs for the planning for, and the operation of, all public training and job placement programs.

"Occupational license" means a license, registration or certificate which, when issued by an authorized entity of government, enables an individual to work within a recognized occupation in the State of New Jersey.

"Occupational safety and health training" means training or education that is designed to assist in the recognition and prevention of potential workplace health and safety hazards.

"Occupational training" means training or education that is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

"Office of Customized Training" means the Office established in the Department of Labor pursuant to N.J.S.A. 34:15D-5.

"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 comprehensive workforce investment services.

"One-Stop Career Center System" means that system within which all workforce investment and related programs function as if they were a single entity and as approved by the State Employment and Training Commission in the Local Strategic Five Year Unified Workforce Investment Plan.

"Program" means the Workforce Development Partnership Program.

"Qualifying agency" means any agency of State government, including, but not limited to, the Departments of Education, Human Services, Labor, and Law and Public Safety, and the Commission on Higher Education, that oversees the operation of, or collects and/or disseminates information from any qualifying school, or issues an occupational license.

"Qualified individual with a disability" means any individual assessed by the Division of Vocational Rehabilitation Services or the Commission for the Blind and Visually Impaired as disabled or an individual with learning disabilities.

"Qualified disadvantaged worker" means a worker who is not a qualified displaced worker or a qualified employed worker, but who otherwise meets the following criteria:

1. Is unemployed;
2. Is working part-time and actively seeking full-time work or is working full-time but is earning wages substantially below the median salary for others in the labor force with similar qualifications and experience; or
3. Is certified by the Department of Human Services as:
 - i. Currently receiving public assistance;
 - ii. Having been recently removed from the public assistance rolls because of gross income exceeding the grant standard for assistance; or
 - iii. Being eligible for public assistance but is not receiving assistance because of a failure to apply for it.

"Qualified displaced worker" means a worker who:

1. Is unemployed, and:

i. Is currently receiving unemployment benefits pursuant to N.J.S.A. 43:21-1 et seq. or any Federal or State unemployment benefit extension; or

ii. Has exhausted eligibility for benefits or extended benefits during the preceding 52 weeks; or

2. Meets the criteria set by the Workforce Investment Act of 1998, P. L. 105-220 (29 U.S.C. §§ 1651 et. seq.) to be regarded as a "dislocated worker" under that Act.

"Qualified employed worker" means a worker who is employed by an employer participating in a customized training program, or other employed worker who is in need of remedial education.

"Qualified job counselor" means an individual who is engaged in employment counseling and who meets the following standards established by the Commissioner:

1. A qualified job counselor must have a bachelor's degree including or supplemented by:

i. Fifteen college semester hours in vocational guidance or other courses directly related to vocational counseling preparation;

ii. One year of related professional counseling experience; and

iii. Knowledge of State and Federal education laws, employment and training laws, wage and hour laws, and temporary disability and unemployment insurance laws.

2. Substitution of experience for education is allowed, provided the 15 college credits have been successfully completed. Master's degrees in psychology, education, social work, vocational rehabilitation counseling, and personnel administration may be substituted for the one year of experience.

3. The job counselor must be an employee of the Department or an employee of an organization or agency designated by the Commissioner to deliver Workforce Development Partnership Program services.

"Registration fee" means the charge an institution of higher education assesses each term on all students when a student registers for approved courses.

"Remedial education" means any literacy or other basic skills training or education that may not be directly related to a particular occupation but is needed to facilitate success in occupational training or work performance, including training or education in basic mathematics, communication skills, decision-making skills, interpersonal skills, basic computer literacy, English proficiency, and work-readiness skills. This will enable the participant to acquire the necessary skills to attain a minimum level of proficiency needed to attain at least the level of self-sufficiency.

"Self-sufficiency" means the amount of income necessary for an individual to adequately meet his/her basic needs without public assistance. Self-sufficiency standards will be issued by the State Employment and Training Commission for each Workforce Investment Area.

"Service provider" means a provider of employment and training services including, but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization. A service provider under this chapter must be located in New Jersey.

"State Employment and Training Commission" (SETC) means the agency of State government, which is in but not of the Department of Labor, designated to develop and assist in the implementation of a State employment and training policy.

"Student outcome information" means information pertaining to individual enrollment and participation in any remedial or occupationally specific education and/or training program designed to provide entry level occupational skills or provide supplemental education and/or training in a recognized occupation. This information shall include any relevant data items as specified by the SETC or the NJOICC, including, but not limited to, participant's social security number, demographic characteristics, date of enrollment, date of completion, date of termination, date of application for a license, licensing examination result, and date of issuance of a license.

"Supplemental Workforce Fund for Basic Skills" means the fund established pursuant to section 1 of P.L. 2001 c.152, effective July 13, 2001.

"Total revenue dedicated to the program during any one fiscal year" means all monies received for the funding during any fiscal year including monies withdrawn from the State disability benefits fund pursuant to N.J.S.A. 34:15D-14, reduced by any repayment made during that fiscal year from the fund to the State disability benefits fund pursuant to that section, but does not include any monies allocated to the Supplemental Workforce Fund for Basic Skills pursuant to subsection b. of section 9 of P.L. 1992, c.43 (N.J.S.A. 34:15D-9).

"Training grant" means a grant provided to fund occupational training and any needed remedial education for an eligible individual.

"Training provider" means a provider of education or training services that is approved by a State or Federal agency authorized to approve such entities and meets the requirements of the State Employment and Training Commission and is listed on the Eligible Training Provider List. Such providers may include, but are not limited to, a private or public school or institution of higher education, a business, a labor organization, or a community-based organization. Training providers under this chapter must be located in New Jersey.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Amended "Administrative cost", "Employability development plan", "Labor demand occupation", "Office", "Qualified job counselor", "Total revenue dedicated to the program during any one fiscal year", and "Training grant".

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote the section.

SUBCHAPTER 2. CUSTOMIZED TRAINING SERVICES; PURPOSE, ELIGIBILITY AND SCOPE

12:23-2.1 Purpose

The purpose of this subchapter is to establish procedures concerning the application and approval process for customized training services under the Workforce Development Partnership (WDP) Program.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Inserted "(WDP)" following "Partnership".

12:23-2.2 Eligibility and scope

(a) The following shall be eligible for customized training services:

1. An individual employer who seeks customized training services to create, upgrade, or retain jobs in a labor demand occupation;

2. An individual employer who seeks customized training services to upgrade or retain jobs in an occupation which is not a labor demand occupation, if the Commissioner determines that the services are necessary to prevent the likely loss of jobs with a negative impact on currently employed workers, or that the services are being provided to employees at a facility which is being relocated into New Jersey;

3. An employer organization, labor organization, or community-based organization seeking customized training services to provide training in labor demand occupations in a particular industry; or

4. A consortium made up of one or more educational or training institutions and one or more eligible individual employers or labor, employer, or community-based organizations which seek customized training services to provide training in labor demand occupations in a particular industry.

(b) The following shall apply for remedial training under the customized training part of the Supplemental Workforce Fund for Basic Skills:

1. Individual employers, employer organizations, labor organizations, community-based organizations, educational institutions or consortia who seek "Supplemental Workforce Funds for Basic Skills" are eligible for customized training services for basic skills training for eligible individuals in need of remedial education as provided in N.J.A.C. 12:23-3.3(b).

(c) Basic skills training can also include communication skills, interpersonal skills, and decision-making skills in addition to remedial education.

(d) Basic skills training can be funded, through a Customized Training Application as described in N.J.A.C. 12:23-2.3.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Added (b), (c), and (d).

12:23-2.3 Application for Customized Training Assistance

(a) It is the intent of the Workforce Development Partnership Program to link customized training services directly to the demands of the workplace by providing high quality training and education through active participation by New Jersey's business, labor communities and local Workforce Investment Boards (WIBs). The approval of applications and execution of contracts for the delivery of customized training services will be accomplished in accordance with this intent.

(b) Each applicant seeking customized training services shall submit an application for customized training to the Commissioner in a format approved by the Commissioner. The completed application shall include the applicant's (or if applicable, applicants') name, address, basic descriptive information concerning the applicant, and specific details concerning training needs and requirements. In addition, each employer will submit a business needs plan and a human resources plan. The business needs plan shall include:

1. Justification of the need for the training services and/or funding from the Office of Customized Training, including financial and other information sufficient to demonstrate to the satisfaction of the Commissioner that the applicant will be unable to provide the training service or will provide significantly less of the service if the requested funding is not provided by the Office of Customized Training;

2. A comprehensive long-term human resource development plan which:

- i. Extends significantly beyond the period of time in which the services are funded by the Office of Customized Training; and
 - ii. Significantly enhances the productivity and competitiveness of the employer's operations located in the State and the employment security of workers employed by the employer in the State;
3. Evidence, if the training sought is for an occupation which is not a labor demand occupation, that the customized training services are needed to prevent job loss caused by obsolete skills, technological change, or national or global competition or that the services are being provided to employees at a facility which is being relocated into New Jersey;
4. Evidence that basic skills funding for the remedial training being sought is necessary to enable an individual to develop necessary skills to attain minimally the level of self-sufficiency, or the training is needed to enable the individual to succeed in occupational training, or the training is needed by the individual for career advancement;
5. Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services. This does not preclude training in areas of need such as total quality management and remedial education to upgrade workplace literacy; and
6. Any additional information from a specific applicant which the Commissioner deems appropriate.
- (c) Non-employer applicants will not be required to submit a business plan but will submit justification of the need for the training services and funding from the Office of Customized Training as noted in (b)1 above and the evidence and information specified in (b)4 through 6 above.
- (d) For those applicants who are members of a consortium application, an overall justification for the need for training shall be provided by the lead member/organization identifying why the training is critical to this industry.
- (e) Employers filing a single application shall submit complete financial statements including notes thereto along with their auditor's/accountant's report and any footnotes thereto for the three most recently completed fiscal years. If there is no report by the employer's accountant or auditor, then the basis used to prepare the financial statements shall be disclosed. If an employer has been in business less than three years, financial statements for one or two completed years as appropriate shall be included. If an employer has been in business less than one year, business plan projections of revenues, expenses and cash flows and any notes thereto shall be submitted.

(f) Employers who are members of a consortium shall submit a "Summary Financial Information" statement for their most recently completed two years of financial activity, or if the employer has been in business less than two years, a statement based on one year's activity, or if the employer has been in business less than one year, a projection of financial summary information is required.

(g) The New Jersey Occupational Information Coordinating Committee (NJOICC) shall determine or clarify the labor demand status of an occupation which is contained in an application for customized training services upon request by the Office of Customized Training. The NJOICC shall collect, review and analyze worker supply and demand data and other relevant information; evaluate this information in the context of current and projected local, State, and/or regional labor market conditions; and provide a determination of the current and projected labor demand status of the occupation in question. In making this determination, the NJOICC may consider any relevant information provided by the Office of Customized Training and the applicant for customized training services. The determination made by NJOICC shall be utilized by the Department in its review and evaluation of applications for customized training services.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Inserted new (e) and (f); and recodified existing (e) as (g).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (b), added a new 4 and recodified former 4 and 5 as 5 and 6; in (c), inserted "through 6" following "(b)4"; rewrote (e).

12:23-2.4 Conditions and standards of eligibility for customized training assistance

(a) All occupational training provided shall be training which is likely to enhance substantially the individual's marketable skills and earning power, and shall be training for a labor demand occupation, except for customized training provided to the present employees of a business which the Commissioner deems to be in need of the training to prevent job loss caused by obsolete skills, technological change, or national or global competition, or customized training provided to employees at a facility which is being relocated into New Jersey.

(b) Funds available under the program shall not be used for activities that induce, encourage, or assist any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers, or replacement of laid off workers by trainees, or any relocation of operations outside of the State, resulting in a loss of employment at previous workplaces located in the State.

(c) No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

(d) Each employer that receives customized training services shall contribute a minimum of 40 percent of the total cost of the customized training services, except that the Commissioner shall set a higher or lower minimum contribution by an applicant, if warranted by the size and economic resources of the applicant or other factors deemed appropriate by the Commissioner. Examples of contributions to the costs of services include items such as a portion of trainee wages, training material, direct funds and training personnel. Non-employer applicants may be required to contribute to the cost of customized training services at an amount determined by the Commissioner and/or otherwise demonstrate a commitment to training programs through identification of prior programs, staffing or other measures as determined by the Commissioner. However, applications of non-employers would not be rejected on the basis of an inability to make contributions.

(e) Each employer receiving customized training services shall hire or retain in permanent employment for a period of not less than six months each worker who successfully completes the training and education provided through the customized training program. Failure to adhere to this requirement may result in the employer's having to refund grant dollars allocated to train these workers. The employer shall be entitled to select those workers who will participate in the customized training, except that if any collective bargaining unit represents an employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The Commissioner shall withhold a minimum of 10 percent of the Award as final payment for customized training services contingent upon the hiring and retention of the workers completing the training program. The final payment amount will be stipulated in the contract for customized training services executed between the approved applicant for customized training services and the Department.

(f) The Department requires that if the company receiving financial assistance for customized training services relocates out of State within three years following the ending date of the customized training contract, the company must return all monies provided to the company by the State for customized training services.

(g) Any employer seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

(h) Any employer receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

In (d), substituted "a portion of the trainee wages" for "training facilities"; and in (e), added requirement to retain trainees for not less than 6 months, inserted the second sentence, and set the minimum amount withheld by the Commissioner as 10 percent of the Award. Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), substituted "occupational" for "vocational" following "All"; in (e) and (f), deleted "of Labor" wherever it appeared.

12:23-2.5 Review and evaluation of customized training applications

(a) In accordance with N.J.S.A. 34:15D-1 et seq., the factors that will be required in reviewing and evaluating and approving or disapproving applications for training services will at least include the following:

1. The number of jobs that the training will create, retain or upgrade;
2. How much the training will increase marketable skills and earning power of the participants;
3. How important the training is to the applicant's ability to either remain in business or to supply a trained workforce for occupations that are in demand;
4. What percentage of the individuals trained will receive training for work primarily in the direct production of goods and services;
5. How much the long-term Human Resources Development Plan will enhance the productivity and competitiveness of the employer's operations in the State and the employment security of workers employed by the employer in the State; and
6. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and earning power.

(b) All applications will be reviewed and evaluated, with notice of approval or disapproval issued by the Department.

(c) No application will be funded unless approved by the Commissioner.

(d) All approved applicants will be required to submit information on training results as required by the Commissioner. These results may include, but are not limited to, the individual demographics of the participants, data on post training skills and wages, the impact of the training investment on company performance.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy and to establish appropriate application review and approval methods consistent with those conditions.

(f) Upon approval of the application, a contract for customized training services containing the terms and condi-

tions of the application will be executed between the applicant and the Department. A copy of the mandatory contract provisions is available from the Department upon request.

(g) The grantee/contractor agrees to make available to the Department all records and documents necessary to monitor and evaluate their performance under the terms and conditions of the Customized Training contract. The grantee/contractor shall also agree to adhere to reporting, accounting and auditing requirements of OMB Circular A-133, Audits of States, Local Governments and Non-profit Organizations, and NJ Treasury OMB Circular Letter 98-07 applicable to for-profit and not-for-profit organizations as stipulated in the customized training contract, which are adopted herein by reference.

(h) The grantee/contractor shall agree to list any new job openings with the local One-Stop Career Center.

(i) All costs related to the independent audit and written reports by the accountant/auditor are the responsibility of the grantee. These costs cannot be included as part of the grant award.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Deleted (a)6; recodified (a)7 as (a)6; and added (g) through (m).

Amended by R.1998 d.403, effective August 3, 1998.

See: 30 N.J.R. 1749(a), 30 N.J.R. 2927(b).

In (g), added a second sentence; deleted former (h) through (l); and recodified former (m) as (h).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (b), (c), (d), and (f), deleted "of Labor" wherever it appeared; rewrote (h); added (i).

12:23-2.6 Where to obtain and send an application

(a) Customized training applications may be obtained from the Department of Labor, Office of Customized Training.

(b) Assistance in completing an application is available from the Office of Customized Training.

(c) Completed applications should be forwarded to:

Division of Business Services, Office of Customized Training
New Jersey Department of Labor
PO Box 933
Trenton, New Jersey 08625-0933

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (c), inserted ", Office of Customized Training" following "Services".

12:23-2.7 Disclosure of information

(a) Disclosure of information obtained from applicants in the course of administering customized training services under the Workforce Development Partnership (WDP) Program shall be authorized unless the information requested is non-public information as defined below:

1. Public information includes the name and location of applicants and approved applicants for customized training services as well as the number of trainees, type of training, grant amount and grant time period.

2. Non-public information includes all records concerning financial or proprietary information submitted by applicants or potential applicants for customized training services and by applicants approved for services.

(b) The Department may deny access to any correspondence, documents or other information where non-disclosure is necessary to protect the public interest.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), inserted "(WDP)" following "Partnership"; in (b), deleted "of Labor" following "Department".

12:23-2.8 Refunds and fines

(a) The Department has the authority to recover all customized training grants improperly paid for any reason, in accordance with N.J.S.A. 34:15D-19.

(b) A \$500.00 fine shall be imposed for each incident where the grant recipient fails to comply with the provisions set forth in the customized training contract. This includes the failure to file reports as directed including, but not limited to, the closeout report, impact analysis report and auditing report. Penalties for the failure to comply with WDP contribution requirements are found at N.J.A.C. 12:16.

(c) A \$1,000 fine shall be imposed for each incident involving a false statement or misrepresentation made knowingly, failure to disclose a material fact or any attempt to otherwise defraud, or the willful violation of any section of the New Jersey Employment and Workforce Development Act and/or regulations governing this program.

New Rule, R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

SUBCHAPTER 3. INDIVIDUAL TRAINING GRANTS

12:23-3.1 Eligibility

(a) Individual training grants may be approved for qualified displaced workers, who receive employment counseling by approved job counselors resulting in an Employability Development Plan.

(b) In order to be eligible for an individual training grant as a displaced worker under the Workforce Development Partnership Program, an individual must be permanently separated from his or her employment, or laid off and unlikely to return to similar employment due to a substantial reduction in work opportunities in the individual's job classification.

(c) An individual seeking training or other services under the Workforce Development Partnership Program must make an application for such services at a One-Stop Career Center System office designated by the Department.

(d) An individual who has qualified for a training grant shall enter the training program identified in the Employability Development Plan as soon as possible.

1. The Employability Development Plan and grant award shall become null and void if the individual, without good cause, delays or postpones enrollment in the available training program as outlined in the plan.

2. A training grant award shall not be awarded to an individual who, after giving notice of an interest in training, fails to comply with the Department representative's directions to participate in reemployment services, counseling or other prescribed activities which aid the representative in evaluating the individual's need for training.

3. "Good cause" means any situation over which the individual did not have control and/or which was so compelling as to prevent the individual from participating.

(e) A WDP training grant shall not be awarded to individuals who self-enroll in training or an educational program prior to the development and approval of a plan by a qualified job counselor except if the individual was previously enrolled in such training or educational program prior to layoff or termination and upon becoming unemployed obtains counseling from a qualified job counselor.

(f) A WDP training grant may be awarded for eligible individuals under the Supplemental Workforce Fund for Basic Skills providing the requirements set forth in N.J.A.C. 12:23-9.4 are met and an Employability Development Plan is developed.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

In (a), added reference to ISSS plans; and added (d) through (f).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote (a); in (b), inserted "as a displaced worker" following "grant"; rewrote (c); deleted (d); recodified former (e) as (d) and rewrote it; recodified former (f) as (e) and substituted "a" for "an Individual Service Strategy Summary" prior to "plan"; added a new (f).

12:23-3.2 Grant payments

Payment of individual training grants will be issued on behalf of the individual directly to the training service provider. In no case will direct payments be made to the individual awarded the training grant.

12:23-3.3 Approval of training grants

(a) Training grants for occupational training will be approved only if:

1. The training is for a labor demand occupation, either listed by the New Jersey Occupational Information Coordinating Committee (NJOICC) or as recommended by the local Workforce Investment Board (WIB) and approved by the Director of NJOICC based on documented local labor market data and conditions, and projected labor market conditions.

2. The training will substantially enhance the worker's marketable skills and/or earning power; training grants shall not be approved for individuals already possessing identifiable marketable skills in a labor demand occupation, unless those skills need to be upgraded in order for the individual to reach a level of self-sufficiency;

3. The training services are provided in New Jersey by an eligible training provider;

4. It is determined by the individual assessment, evaluation and counseling that the individual is expected to successfully complete the training as indicated in the Employability Development Plan;

5. The training is occupational, remedial, or a combination thereof; and

6. Sufficient funding exists in accordance with the Act.

(b) Training grants for remedial education will be approved only if:

1. The education is needed to enable the individual to develop the skills necessary to attain at least the level of self-sufficiency;

2. The education is needed to enable the individual to succeed in occupational training; or

3. The education is needed by the individual to advance in the individual's career.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Substantially amended (a)1 and (a)2; deleted (a)1i through (a)1v; and in (a)3, amended N.J.S.A. references.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), inserted "for occupational training" following "grants" in the introductory paragraph, deleted "is in a labor demand occupation which" in 2, substituted "an eligible" for "a" following "by" and deleted the N.J.S.A. and N.J.A.C. references in 3, and substituted "occupational" for "vocational" following "training is" in 5; and added (b).

12:23-3.4 Amount of individual training grants

(a) The maximum training grant is \$4,000 per worker. This single \$4,000 grant may be allocated over more than one year from the start of training to support long-term training as identified in the Employability Development Plan.

(b) The amount for remedial education training grants shall not exceed \$2,000, except with the permission of the Director of the Division of Employment and Training. The counselor will determine the need for, source, and amount of a grant for such remedial education.

(c) The maximum grant amount per individual for a WDP individual training grant or a combination Self-Employment Assistance and Entrepreneurial (SEA) grant as defined in N.J.A.C. 12:17-18.41 and WDP individual training grant shall not exceed the limits imposed during the fiscal year in which the individual applied for the grant. If the grant limit is raised in subsequent years, it is not retroactive.

(d) The Commissioner has the right to annually adjust the amounts available for both occupational and remedial training based on the cost of the services and the availability of other sources of funding to provide these services.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Added (b); and recodified existing (b) as (c).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), deleted "fiscal" prior to "year", inserted "from the start of training" following "year" and deleted the third sentence; added a new (b); recodified former (b) as (c) and added an N.J.A.C. reference; recodified former (c) as (d) and substituted "occupational" for "vocational" following "both".

12:23-3.5 Other funding sources

(a) The program shall provide individual training grants only if funding from Federal or other sources is not available. Displaced workers potentially eligible for individual training grants shall be required to apply for all Federal, State and other sources of financial aid or assistance.

(b) Service providers shall apply all financial aid awards for tuition, fees and supplies first against those costs before using WDP funds. The service provider shall notify the Department of any and all such awards immediately after having received notice of such award from the awarding agency.

1. All eligible participants are to be made aware of their rights and obligation to apply for financial aid.

2. PELL grants, other tuition assistance or other student aid must be used first for the cost of tuition and fees. WDP funds may be used to supplement these awards.

3. An individual who is potentially eligible for a PELL and/or any other grant but whose grant award cannot be estimated will be eligible for the full amount of the individual training grant allowed under this subchapter provided the Department is reimbursed by the service provider when the other such grant is received.

4. If an individual's eligibility for a PELL or other grant has not been determined at the time of enrollment, but the individual becomes eligible after a Workforce Development Partnership grant payment has been made, the amount of the WDP grant must be recalculated. The amount of the PELL or other grant(s) and the WDP grant will be combined. If the total of the combined grants exceeds the total cost of the training, the difference between the total of the combined grants and the training cost must be reimbursed by the training provider to the Department.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

In (a), deleted the fourth sentence regarding JTPA Title III monies.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a) deleted the third sentence; in (b)4 deleted "(WDP)" following "Partnership" in the first sentence.

12:23-3.6 Request for reconsideration of grant denials

(a) If an individual is denied a training grant under the Workforce Development Partnership Program, he or she may file a request for reconsideration of the denial. A review of all appropriate facts regarding the denial of the training grant will be conducted within the Department in the following sequence:

1. Workforce New Jersey Manager in the local One-Stop Career Center System;

2. Chief, Division of Employment and Training, Workforce New Jersey; and

3. Director of Division of Employment and Training, Workforce New Jersey.

(b) A request to the next level of authority for reconsideration must be made within 10 calendar days of the date the denial is issued. The Director's decision will be final.

(c) Appeals of grant denials which have the potential to impact eligibility for additional benefits during training (ABT) will be appealed to the Appeal Tribunal and the Board of Review in accordance with New Jersey Unemployment Insurance Law and Rules at N.J.S.A. 43:21-6 and N.J.A.C. 1:12A and 12:20.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

In (b), substituted "10 calendar days" for "14 calendar days"; and added (c).

Amended by R.1999 d.138, effective May 3, 1999.

See: 31 N.J.R. 588(b), 31 N.J.R. 1199(a).

In (a), substituted "administrative director" for "Office Manager" at the end of 1, and deleted "—Careers" at the end of 3.

Recodified from N.J.A.C. 12:23-3.7 and amended by R.2002 d. 193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-3.6, Coordination with the Job Training Partnership Act, repealed. Rewrote (a)1 and 2; in (c), substituted "grant denials" for "denial of grants" following "Appeals of", and inserted "New Jersey Unemployment Insurance Law and Rules at" following "in accordance with".

12:23-3.7 Refunds

The Department has the authority to recover all training grants improperly paid as a result of false or fraudulent representations.

Recodified from N.J.A.C. 12:23-3.8 and amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-3.7, Request for consideration of grant denials, recodified to 12:23-3.6.

12:23-3.8 Approved training costs

(a) Training grant monies shall be applied only to training-related costs.

(b) WDP grant monies shall be expended only on books, supplies and/or equipment which have been specifically identified by the institution as a requirement for successfully completing a course or training program.

(c) Application fees and other fees, which are assessed on all tuition-paying students, may be paid under the WDP grant program. These acceptable fees related to a training program include library fees, lab fees, computer lab fees, and test fees.

(d) Charges (such as room and board and parking fees) that are not assessed on all students are not eligible training-related fees and shall not be paid under the WDP grant program. Fees that are dedicated to self-sustaining funds separate from the fund for academic programs shall not be paid under the grant program and are the responsibility of the trainee (student).

(e) The individual shall be responsible for paying the difference in training costs when the individual selects a training program with a training vendor that is more expensive than a comparable (that is, of the same content and quality) training program offered by another training vendor or local community college.

1. The trainee shall be responsible for the difference in training costs if the trainee elects to attend as a non-county resident without good cause when the local county college offers a training program equal in quality and content. As used in this subsection, "good cause" includes those factors, such as travel distance, which the job counselor determines shall help the individual satisfactorily complete the approved employability plan.

2. A WDP grant shall cover the full tuition costs for out-of-county residents, up to the maximum limits, if the qualified job counselor determines that the training program is substantially better in quality and content.

3. Training may be approved for an out-of-county college when there is a delay in course start dates of more than four weeks.

New Rule, R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Recodified from N.J.A.C. 12:23-3.9 and amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-3.8, Refunds, recodified to 12:23-3.7. Rewrote (a); in (c) deleted "such as library fees," following "fees," in the first sentence, substituted "These" for "Other" prior to "acceptable", and inserted "library fees," prior to "lab fees" in the second sentence; in (d) substituted "Charges" for "Those charges," at the beginning of the paragraph, and substituted "that" for "which" throughout.

SUBCHAPTER 4. APPROVED TRAINING UNDER THE WORKFORCE DEVELOPMENT PARTNERSHIP ACT

12:23-4.1 Approved training

(a) Approved training under the Act can include occupational training or remedial training, or it can include a combination of the two. In all cases, the training must be with an approved training provider located in the State.

1. Occupational training will be approved only if:

- i. It is for a labor demand occupation as defined at N.J.S.A. 34:15D-3 and likely to enhance the individual's marketable skills and earning power;

- ii. The training is provided by an approved training provider;

- iii. The individual may reasonably be expected to complete the training;

- iv. It does not include on the job training or training for which an individual receives wages except as permitted in this chapter; and

- v. It is occupational, remedial, or a combination of both, in nature.

2. Remedial training will be approved only if:

- i. The training is solely for remedial education, which includes basic skills; or

- ii. The eligible individual under the law has identifiable occupational skills but the training services are needed to enable the individual to develop skills necessary to attain at least the level of self-sufficiency.

(b) If the conditions in (a) above are met, approval will not be denied for the following reasons:

1. The training is for remedial education;

2. The training includes remedial education needed by the individual to succeed in the occupational component of the training;

3. The training is part of a college degree program which will enhance the individual's marketable skills and/or earning power;

4. The length of the training program; or

5. The lack of a prior guarantee of employment upon completion of the program.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Rewrote (a)1; and in (a)2, amended N.J.S.A. references.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote the section.

12:23-4.2 Full-time training

(a) Training will be considered full-time only if:

1. It consists of not less than 20 hours per week of classroom work and structured assignments for individuals in training provided by a service provider other than an institution of higher education;

2. It consists of not less than 12 credit hours by individuals pursuing a degree at an institution of higher education;

3. It consists of a minimum of nine credit hours for individuals pursuing a post-graduate degree at an institution of higher education; or

4. It consists of 15 hours of classroom instruction plus five hours of homework for remedial training.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Added (a)4.

12:23-4.3 Active search for work

(a) The following apply to individuals receiving unemployment insurance benefits:

1. An individual in approved training must meet the requirements of N.J.S.A. 43:21-4(c), except that he or she will not be required to actively seek work. If there is an interruption in the training of more than four calendar weeks, the work search waiver does not apply.

2. A work search waiver may be granted to an individual who is enrolled in an approved training program which will commence within four weeks.

3. Work search waivers will be granted only to individuals in full-time training.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Inserted a new (a); recodified former (a) as 1 and rewrote the first sentence; recodified former (b) and (c) as 2 and 3.

12:23-4.4 Acceptance of temporary work

(a) An individual who is working in temporary employment shall not be subject to disqualification for voluntarily leaving work under N.J.S.A. 43:21-5(a) if such individual leaves work to begin approved training.

(b) An individual who is in an approved training program and accepts employment during a scheduled break in the training shall not be subject to disqualification for voluntarily leaving work under N.J.S.A. 43:21-5(a) or failing to apply for or accept suitable work under N.J.S.A. 43:21-5(c) if such individual leaves work to return to the approved training program.

12:23-4.5 Courses of study at institution of higher education

Courses of study at institutions of higher education will be approved only if the majority of the credit hours during a semester are in a field of study which will lead to a degree that is specific to a labor demand occupation.

12:23-4.6 (Reserved)

Repealed by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Section was "Remedial and basic skills courses".

SUBCHAPTER 5. ADDITIONAL UNEMPLOYMENT BENEFITS DURING TRAINING

12:23-5.1 Eligibility requirements

(a) An individual will be eligible for additional unemployment benefits during training only if the individual:

1. Has exhausted all entitlement to unemployment insurance compensation and any State or Federally funded extension;

2. Is permanently separated from employment and is unlikely to return to such employment due to a substantial reduction in work opportunities in the individual's job classification at his or her former worksite;

3. Meets the criteria listed in N.J.S.A. 43:21-4(c)(4)(A) and (B) and complies with the requirements set forth in this chapter at N.J.A.C. 12:23-5.5 for approved training;

4. Is in a full-time training program which has been approved through an Employability Development Plan; and

5. Enrolls in the approved training program within one year of the date of his or her most recent unemployment claim.

(b) No additional benefits shall be payable to an individual who self-enrolls in a training program without the prior approval of a qualified counselor unless the individual was previously enrolled in such training prior to lay-off and, upon becoming unemployed, obtains counseling from a qualified job counselor.

(c) No additional benefits shall be paid pursuant to the provisions of this subchapter for any week during which the individual receives training allowances or stipends pursuant to the provisions of any Federal law or any other state law. As used in this subchapter, "training allowances or stipends" means discretionary, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs, such as the costs of tuition, books and supplies.

(d) No additional benefits shall be paid to an individual during a break between training sessions of more than four weeks.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Deleted (a)4; recodified (a)5 and (a)6 as (a)4 and (a)5, and inserted new (a)6; inserted new (b); recodified existing (b) as (c); and added (d).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), deleted 3, recodified former 4 as 3 and inserted "in this chapter" following "set forth" and amended N.J.A.C. reference, recodified former 5 as 4 and rewrote it, and recodified former 6 as 5.

12:23-5.2 Claims for additional unemployment benefits during training

(a) Initial claims for additional unemployment benefits during training may be dated no earlier than the Sunday of the calendar week in which the training commences.

(b) Weekly claims for additional benefits during training must be authorized by the Department based on a claimant reporting and claiming such benefits as directed by the Division of Unemployment Insurance Operations. Individuals who fail to comply with this section may be denied additional unemployment benefits.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (b), rewrote the first sentence.

12:23-5.3 Work search waiver

An individual receiving additional unemployment benefits during training must meet the requirements of N.J.S.A. 43:21-4(c), with the exception that the individual does not have to actively seek work.

12:23-5.4 Refusal of suitable work

An individual who refuses an offer of work because of attendance at training while receiving additional unemployment benefits shall not be disqualified under N.J.S.A. 43:21-5(c).

12:23-5.5 Intent to enter training

(a) An individual filing a new initial unemployment claim must notify the Department of his or her intention to enter training not later than 60 days after the date of the individual's permanent separation from employment, not later than 30 days after the Department provides notice to the individ-

ual of the benefits and services available under the WDP Program, or not later than 30 days after the Employability Development Plan is developed, whichever is last.

(b) For purposes of this section, intention to enter training means that the individual agrees to enter counseling within the time limitations set forth in (a) above, whether or not the counseling occurs within these time limitations, and upon receiving counseling agrees to enter the training program identified in the Employability Development Plan. Individuals who agree to enter counseling within the stated time limits but choose not to pursue the identified training will not be granted an extension of those time limits.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote (a), and in (b), deleted "or ISSS" at the end of the first sentence.

12:23-5.6 Claim options

An individual in an approved training program who has reached the benefit year ending date and who has sufficient earnings and employment for a new claim for benefits will have an option to file a new claim for benefits or continue receiving additional unemployment benefits during training.

Recodified from N.J.A.C. 12:23-5.8 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-5.6, Certification of attendance by training service providers, repealed.

12:23-5.7 Overpayments

Overpayment of additional unemployment benefits during training improperly paid for any reason shall be recovered by the Department in accordance with N.J.S.A. 43:21-16.

Amended by R.1994 d.409, effective August 1, 1994.

See: 26 N.J.R. 2198(a), 26 N.J.R. 3180(a).

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Recodified from N.J.A.C. 12:23-5.9 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-5.7, Reserved, repealed.

12:23-5.8 Appeals

Denials of claims for additional unemployment benefits during training may be appealed to the Appeal Tribunal and the Board of Review in accordance with N.J.S.A. 43:21-6 and N.J.A.C. 1:12A and 12:20.

Amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Recodified from N.J.A.C. 12:23-5.10 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Case Notes

Claimant was ineligible for additional unemployment benefits during weeks of full attendance in training for computer program. Matter of E.J.C., 95 N.J.A.R.2d (UCC) 11.

SUBCHAPTER 6. EMPLOYMENT AND TRAINING GRANTS FOR SERVICES TO DISADVANTAGED WORKERS

12:23-6.1 Purpose and scope

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under N.J.S.A. 34:15D-4 to provide employment and training services for qualified disadvantaged workers under the Workforce Development Partnership Program.

Amended by R.1997 d.465, effective November 3, 1997.
See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).
Amended N.J.S.A. references.

12:23-6.2 Employment and training grants to serve disadvantaged workers

(a) Funds reserved for employment and training services to qualified disadvantaged workers will be administered through the Department of Human Services with the authorization of the Commissioner of Labor for the administration of employment and training services. Services delivered under this subchapter shall be consistent with the Strategic Five-Year Unified State Plan for New Jersey's Workforce Investment System.

(b) Funds available for employment and training services to qualified disadvantaged workers under this subchapter shall not be used for activities which induce, encourage or assist any displacement of currently employed workers by trainees, including partial displacement by such means as reduced hours of currently employed workers; replacement of laid off workers by trainees; or relocation of operations resulting in a loss of employment at a previous workplace located in the State.

(c) Pursuant to N.J.S.A. 34:15D-4(e), not less than six percent of the total resources dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. The Commissioner is authorized to provide training grants to the extent that funding for these services is not available from Federal or other sources.

Recodified from N.J.A.C. 12:23-6.3 and amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Rewrote (a); deleted (a)1 and (a)2; and added (c). Section was "Scope".

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), added a second sentence.

12:23-6.3 Innovative demonstration project funds

(a) A service provider of employment and training services may seek funds for innovative demonstration projects and services. An innovative demonstration project is an alternative plan to develop skills for disadvantaged individuals that will result in employability in a labor demand occupation by using techniques that may include other than the traditional classroom and on the job training methods.

1. Innovative demonstration projects can include remedial education for young adults between the ages of 16 and 21 and family literacy projects. Such education can include any basic skills training or education needed to facilitate success in occupational training or work performance.

(b) In reviewing applications, the Commissioner, in consultation with the Department of Human Services, will give priority to those innovative demonstration projects which are designed to serve the Welfare population, individuals with disabilities, and those who marginally exceed the eligibility for Federal programs such as Workforce Investment Act (WIA) and the Welfare Reform Program.

(c) The factors that will be considered in reviewing and evaluating applications for funds for innovative demonstration projects are:

1. The number of eligible individuals to be served;
2. The population to be served;
3. Whether the services are likely to substantially enhance participants' marketable skills;
4. The degree to which the services are related to training for a labor demand occupation;
5. The organizational capability of the applicant to provide the proposed services;
6. The previous effectiveness of the efforts of the applicant in providing similar services;
7. The costs of the proposed services; and
8. The potential for the proposed program activities to be replicated throughout the State or to have a positive impact beyond the program ending date.

(d) Applications will be reviewed and evaluated by a panel consisting of representatives from the Departments of Labor, Education and Human Services. The review panel will:

1. Serve as an objective, independent source of comments and recommendations concerning the merit of applications for consideration by the Department; and
2. Ensure that proposals will be as effective as possible through coordination and use of the resources of participating departments.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy. Such modification shall be through the rulemaking process.

(f) Funds awarded under this section will be limited to recipients as defined at N.J.S.A. 34:15D-3.

(g) No application for innovative demonstration projects will be funded unless approved by the Commissioner of Labor.

(h) Instructions for the competitive application process for funds available under this section shall be obtained by writing to:

Director, Division of Employment and Training
New Jersey Department of Labor
PO Box 055
Trenton, New Jersey 08625-0055

Recodified from N.J.A.C. 12:23-6.5 and amended by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.3, "Employment and training grants to serve disadvantaged workers", recodified to N.J.A.C. 12:23-6.2.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Added (a)1; in (b), substituted "individuals with disabilities" for "the disabled" following "population," and substituted "Workforce Investment Act (WIA)" for "JTPA, Youth Corps" following "such as"; in (f) deleted "prospective" prior to "recipients"; and in (h) substituted "Employment and Training" for "Workforce New Jersey".

12:23-6.4 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified disadvantaged workers as defined at N.J.S.A. 34:15D-1 to 11.

Recodified from N.J.A.C. 12:23-6.7 by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.4, "Service delivery area funds", repealed.

12:23-6.5 Eligibility of service providers

No employment and training services shall be obtained from a service provider unless that provider is located in New Jersey and the provider is approved pursuant to the procedures established by the State Employment and Training Commission and appears on the Eligible Training Provider List.

Recodified from N.J.A.C. 12:23-6.8 by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.5, "Innovative demonstration project funds", recodified to N.J.A.C. 12:23-6.3.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote the section.

12:23-6.6 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative expenses.

Recodified from N.J.A.C. 12:23-6.9 by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.6, "Allocation of funds", repealed.

12:23-6.7 Monitoring and oversight

The Department of Labor or its designee will monitor the overall effectiveness of the employment and training services provided under this subchapter to assess the programmatic, management and financial performance of the grantee. The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

New Rule, R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.7, "Eligibility of services", recodified to N.J.A.C. 12:23-6.4.

12:23-6.8 Evaluation of employment and training services

(a) The results of employment and training services provided under this subchapter shall be evaluated based upon the following criteria:

1. The effectiveness of the training and services in terms of increasing employability, the effect on earnings after training and the career opportunities provided in relation to the individual served;
2. The achievement of a minimum job placement goal of 70 percent; and
3. The degree to which the training or services are related to a labor demand occupation as defined by NJOICC or as recommended by the local Workforce Investment Board (WIB) and approved by the Director of NJOICC based on local labor market conditions or project labor market conditions.

(b) The results of the innovative demonstration projects funded under this subchapter shall be evaluated based upon criteria negotiated at the time the funds were awarded.

New Rule, R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Former N.J.A.C. 12:23-6.8, "Eligibility of service providers", recodified to N.J.A.C. 12:23-6.5.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), deleted "by Service Delivery Areas" following "services provided".

12:23-6.9 (Reserved)

Repealed by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Section was "Records and reports".

12:23-6.10 (Reserved)

Repealed by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Section was "Monitoring and oversight".

12:23-6.11 (Reserved)

Repealed by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Section was "Evaluation of employment and training services".

12:23-6.12 (Reserved)

Repealed by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Section was "Records and reports".

12:23-6.13 (Reserved)

Repealed by R.1997 d.465, effective November 3, 1997.

See: 29 N.J.R. 3233(a), 29 N.J.R. 4690(a).

Section was "Expiration date".

SUBCHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH TRAINING SERVICES

Amended by R.2002 d.193, effective June 17, 2002.
 See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).
 Rewrote the section.

12:23-7.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under N.J.S.A. 34:15D-4(e) to provide occupational safety and health training services under the Workforce Development Partnership Program.

12:23-7.2 Scope

This subchapter establishes the allocation of funds reserved under the Workforce Development Partnership Program for occupational safety and health training services to qualified displaced, disadvantaged and employed workers as defined in this chapter and who are participating in training or education which is designed to assist in the recognition and prevention of potential workplace and associated health and safety hazards. It sets forth the application, review and administrative process for awarding grants and the administration of this program under this subchapter to prospective recipients, including organizations such as labor organizations, consortia, corporations, agencies, or other entities. This subchapter is not applicable to individual grants.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Substituted "in this chapter" for "N.J.A.C. 12:23-1", inserted "workplace and associated" following "potential", and deleted "related to an occupation which is the subject of vocational training" prior to "safety hazards".

12:23-7.3 Occupational safety and health training grants to serve qualified displaced, disadvantaged and employed workers

A portion of funds reserved for occupational safety and health training services to qualified displaced, disadvantaged, and employed workers will be awarded through an application process for prospective recipients in accordance with this subchapter.

Amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Substituted "this subchapter" for "N.J.A.C. 12:23-7.4 and 7.5".

12:23-7.4 Application process

Each applicant seeking funding to provide occupational safety and health training services to eligible individuals shall submit an application to the Commissioner. The completed application shall include the applicant's name and address, basic descriptive information, specific details documenting the need for and exact nature of the proposed occupational safety and health training services to be delivered, its relationship to individuals involved in an occupational training experience if it exists, the anticipated number of individuals or target group to be served and cost of services, and any other information concerning a specific applicant which the Commissioner deems necessary to fully evaluate the application.

12:23-7.5 Review and evaluation of applications

(a) Occupational safety and health training under the Workforce Development Partnership Program means training or education which is designed to assist in the recognition and prevention of potential occupational health and safety hazards. The factors that will be considered in reviewing and evaluating applications for funds are:

1. The number of individuals who will benefit from the safety and health training services;
2. The target industry and/or occupation and subject matter for training services;
3. The degree of hazard faced within the target industry and/or occupation as demonstrated by accident and injury documentation, exposure information, and other data illustrating hazards;
4. The need for services as demonstrated by the seriousness of the problem and lack or scarcity of alternative resources;
5. The extent to which the services are likely to enhance participants' marketable skills;
6. The organizational capability of the prospective recipient to provide the proposed services;
7. The previous effectiveness of efforts of the prospective recipient in providing similar services;
8. The cost of the proposed services; and
9. The potential for the proposed services to be replicated throughout the State or to have a positive impact beyond the ending date of the proposed services.

(b) Applications will be reviewed and evaluated by the Department of Labor and in consultation with specialized services which may be provided by the Department on a cost basis.

(c) The Commissioner retains the authority to modify application review factors based on changing workplace occupational safety and health training needs and establish appropriate application review and approval methods consistent with those circumstances. Such modification shall be through the rulemaking process.

(d) No application will be funded unless approved by the Commissioner of Labor.

(e) Funds awarded under this section will be limited to prospective recipients and to approved service and/or training providers.

(f) Upon approval of an application, a contract for occupational safety and health training services will be executed between the approved applicant and the Department. A copy of mandatory contract provisions is available from the Department of Labor upon request.

(g) The Commissioner or his or her designee will identify target industries and/or occupations, provide information and assistance to prospective recipients and employment and training staff, review and evaluate applications, execute, monitor, and evaluate contracts for training services, and provide technical support for contracted activities.

(h) Instructions for the application process for funds available under this section shall be obtained by writing to:

Director, Division of Business Services
New Jersey Department of Labor
PO Box 933
Trenton, New Jersey 08625-0933

Amended by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), inserted "occupational" following "potential", and deleted "related to an occupation which is the subject of vocational training" in the introductory paragraph, deleted 5 and recodified former 6 through 10 as 5 through 9; in (e) deleted an N.J.A.C. reference; in (h) rewrote the address.

12:23-7.6 Assessment of need and delivery of services

(a) The Commissioner or his or her designee, within the Department of Labor, will review all customized training applications to determine if there is a need for occupational safety and health training services related to the industry and/or occupation which is the subject of occupational training.

(b) The Commissioner or his or her designee, within the Department of Labor, will review and approve the use of vendors selected by the customized training applicant to provide occupational safety and health training services, review course content and training material to determine its appropriateness, and ascertain the reasonableness of costs charged by vendors.

Amended by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), substituted "occupational" for "vocational" prior to "training"; in (b), deleted "and relationship to the occupational training" following "appropriateness".

12:23-7.7 Allocation of funds

(a) Pursuant to section 4(e) of the Act, not less than three percent of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training. The Commissioner is authorized to provide services to the extent that funding for these services is not available from federal or other sources.

(b) From the amounts reserved for occupational safety and health training for qualified displaced, disadvantaged

and employed workers under N.J.S.A. 34:15D-4(e), monies may be allocated upon approval of the Commissioner to providers of employment and training services designed to assist in the recognition and prevention of potential occupational health and safety hazards.

(c) The Commissioner retains the authority to change the scope of this funding based on changing workplace occupational safety and health training needs.

Amended by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).
Rewrote (b).

12:23-7.8 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified displaced, disadvantaged, or employed workers.

Amended by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).
Deleted N.J.A.C. reference.

12:23-7.9 Eligibility of service providers

Occupational safety and health training services must be obtained from a training provider located in the State of New Jersey and listed on the Eligible Training Provider List.

Amended by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).
Rewrote the section.

12:23-7.10 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative costs.

12:23-7.11 Monitoring and oversight

The Commissioner or his or her designee, within the Department of Labor, will monitor the overall effectiveness of the occupational safety and health training services provided under this subchapter to assess the programmatic, management, and financial performance of the grantee(s). The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

12:23-7.12 Evaluation of occupational safety and health training

The results of occupational safety and health training services provided under this subchapter shall be evaluated based upon criteria negotiated at the time the funds are awarded.

12:23-7.13 (Reserved)

Repealed by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).
Section was "Records and reports".

SUBCHAPTER 8. TUITION POLICIES FOR UNEMPLOYED PERSONS: JOB TRAINING PROGRAM

Authority

N.J.S.A. 34:15D-1 et seq.

Source and Effective Date

R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Subchapter Historical Note

Subchapter 8, Reporting Requirements for Assessment of Employment and Training Programs, was repealed and Subchapter 9, Tuition Policies for Unemployed Persons: Job Training Program, was recodified as Subchapter 8, Tuition Policies for Unemployed Persons: Job Training Program. See: Source and Effective date. See, also, section annotations.

12:23-8.1 Purpose and scope

(a) The purpose of this subchapter is to establish rules and procedures to govern the tuition waiver program established by N.J.S.A. 18A:64-13.1 et seq. or 18A:64A-23.1.

(b) The purpose of the tuition waiver program is to enable certain unemployed individuals to enroll, without payment of tuition, in any job training course which shall provide them with an identifiable job skill and shall assist them in gaining reemployment or any course of instruction which is part of a training program approved pursuant to N.J.S.A. 43:21-4(c)4, or any course of instruction which is part of the education and training described in the Employability Development Plan developed for such individuals pursuant to N.J.S.A. 34:15D-1 et seq.

(c) The rules apply to job training eligible individuals and to public higher education institutions in New Jersey.

Recodified from N.J.A.C. 12:23-9.1 by R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-8.2 Proof of program eligibility

(a) Eligible individuals seeking to enroll under the job training program shall submit to the public institution of higher education documentation from the One-Stop Career System verifying their past presence in the labor market for at least two years and their unemployed status or receipt of a layoff notice as proof of eligibility or an Employability Development Plan from the One-Stop Career System. The Employability Development Plan may include course work under the tuition waiver process and/or under the grant provisions of the Workforce Development Partnership program. Said proof of eligibility shall be dated no earlier than 30 days prior to the college's course registration day for eligible individuals for the semester in which the job training course is taken.

(b) If deemed necessary, an institution may allow an individual to register for courses pending receipt of One-Stop Career System verification.

(c) Eligible individuals may seek to enroll in any New Jersey public institution of higher education regardless of their county of residence. However, charge-backs shall not apply for unemployed persons. Eligible individuals who wish to attend a county college must first apply to the county college within their county of residence.

Recodified from N.J.A.C. 12:23-9.3 and amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Rewrote (a); and in (b) substituted "One-Stop Career System" for "Department of Labor" prior to "verification."

12:23-8.3 Eligibility for financial aid

(a) Each eligible individual seeking to enroll in credit courses under this program is responsible for filing a financial aid application and providing the institution with all information necessary to determine possible financial aid eligibility.

(b) In determining eligibility for financial aid, the institution shall consider both State and Federal sources of aid including grants, scholarships and any other sources of financial aid available to the institution's general student population.

(c) Each institution shall apply consistent standards, including participants in this program, in determining eligibility for financial aid.

(d) Any eligible individual receiving financial aid which is not sufficient to pay the full amount of tuition at the institution shall be entitled to have the remaining amount of tuition not covered by financial aid waived by the institution.

Recodified from N.J.A.C. 12:23-9.4 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-8.4 Eligible coursework

(a) Each institution shall ordinarily make all of its course offerings eligible under this program. However, a given course or program shall focus on an identifiable job skill or prerequisite skills for the specific job skill or shall be indicated in the individual's Employability Development Plan approved by the One-Stop Career System staff.

(b) An individual's eligibility for a given course or program shall be dependent on possession of appropriate prerequisite skills as determined by each institution. The institution may designate basic skills and other prerequisite courses as eligible offerings under this program.

(c) Customized courses that are underwritten by specific employers for the benefit of their respective employees may be exempted from eligibility under this program. Such courses are designed to meet the needs of the employees of a specific employer, the employer is responsible for partially subsidizing the cost of the training, and the training is directly related to the employer's operation.

(d) Only those courses in which enrollment space is available and tuition paying students constitute the minimum number required for the course shall be open to eligible individuals under this program.

(e) Institutions may designate separate registration periods for eligible individuals seeking to enroll in the program, ordinarily after the registration period for tuition paying students is completed.

Recodified from N.J.A.C. 12:23-9.5 and amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (a), substituted "One-Stop Career System staff" for "Division" at the end.

12:23-8.5 Employment during semester

Any individual participating in the program who obtains employment subsequent to the commencement of the semester shall be permitted to complete the semester in progress as a participant in the program.

Recodified from N.J.A.C. 12:23-9.6 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-8.6 Application of general institution rules

When not inconsistent with applicable statutes or this subchapter, students participating under this program shall be governed by those procedures and rules applicable to each institution's regularly enrolled student population, including rules regarding academic progress and standards for the admission of students into specific degree programs at the undergraduate or graduate level.

Recodified from N.J.A.C. 12:23-9.7 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-8.7 Inclusion of program in college enrollment count

All enrollments in credit bearing courses through this program may be included in the college's official enrollment count.

Recodified from N.J.A.C. 12:23-9.8 by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-8.8 Financial obligation of eligible individual

(a) Institutions may charge individuals seeking to enroll in the program a registration fee not to exceed \$20.00 per academic term.

(b) Individuals seeking to enroll in the program shall be responsible for the cost of equipment, materials, textbooks and laboratory or equipment usage fees required for a specific course or program, as well as fees which are dedicated to self-sustaining funds, such as parking charges, room and board, and other optional user fees.

(c) Institutions shall not charge individuals seeking to enroll in the program general fees as defined in this subchapter.

(d) Institutions shall not charge individuals seeking to enroll in a county college outside their county of residence a nonresident differential credit fee provided the individual complies with the requirements of this subchapter.

(e) The institution shall apply training grant funds pursuant to N.J.S.A. 34:15D-1 et seq., the 1992 New Jersey Employment and Workforce Development Act (P.L. 1992, c.43), or financial aid, other than loans, to the total tuition and fees for the applicable academic term. The institution shall waive any remaining balance, less the charges allowable under (a) and (b) above.

Recodified from N.J.A.C. 12:23-9.9 and amended by R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

In (c) and (d) deleted N.J.A.C. references.

SUBCHAPTER 9. SUPPLEMENTAL WORKFORCE FUND FOR BASIC SKILLS

Authority

N.J.S.A. 34:15D-1 et seq.

Source and Effective Date

R.2002 d.193, effective June 17, 2002.
See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Subchapter Historical Note

Subchapter 9, Tuition Policies for Unemployed Persons: Job Training Program, was recodified as Subchapter 8, Tuition Policies for Unemployed Persons: Job Training Program and Subchapter 9, Supplemental Workforce Fund for Basic Skills, was adopted as new rules by R.2002 d.193, effective June 17, 2002. See: Source and Effective date. See, also, section annotations.

12:23-9.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved pursuant to section 1 of P.L. 2001, c.152 to enable eligible individuals who are lacking in basic skills to acquire the basic skills necessary to enhance

their employability and competitiveness in the workplace, to enable individuals to prepare for further training, and to provide employers with workers who possess basic literacy and work-readiness skills necessary to effectively carry out employment requirements.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.1, Purpose and scope, recodified to N.J.A.C. 12:23-8.1.

12:23-9.2 Basic skills programs to be included in State and Local Plans

Basic skills programs established under this subchapter shall be consistent with the Strategic Five-Year Unified State Plan for New Jersey's Workforce Investment System. Grants to Workforce Investment Boards for basic skills training shall be consistent with, and included in, the Local Strategic Five-Year Workforce Investment Plan as required by the State Employment and Training Commission. The comprehensive local plan shall include all components included in this subchapter as well as other adult literacy funds. The Plan will be used as the basis for allocation of funds for local basic skills programs.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.2, Definitions, repealed.

12:23-9.3 Funding

(a) All moneys received by the Supplemental Workforce Fund for Basic Skills pursuant to section 1 of P.L. 2001, c.152 shall be allocated by the Commissioner, and deposited in an account to be reserved for the following purposes:

1. To support basic skills training delivered at the basic skills resource centers located in the One-Stop Career Center System. The recipient of the funds provided under this subsection shall be the Department.

- i. One-Stop Career Center staff funded under (a)1 above must be merit system employees;

2. To provide grants to eligible individuals in Local Workforce Investment Areas for basic skills training consistent with Employability Development Plans.

- i. Funds shall be awarded through competitive grants to Workforce Investment Boards in accordance with planning guidelines established by the State Employment and Training Commission.

- ii. The recipient of the funds is responsible for the funds received.

- iii. The political jurisdiction(s) of the chief elected official(s) in the Local Workforce Investment Area is liable for any misuse of the funds provided to the Workforce Investment Board;

3. To provide grants to consortia including one or more of the following: eligible individual employers, employer organizations, labor organizations, community-based organizations or educational institutions to provide basic skills training to eligible individuals including those seeking to enter apprenticeship training; and

4. To be used, at the discretion of the Commissioner, for any purposes indicated in this subchapter and any administrative costs incurred by the Department of Labor in connection with the fund.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.3, Proof of program eligibility, recodified to N.J.A.C. 12:23-8.2.

12:23-9.4 Counseling, assessment and employability development planning

(a) Basic skills training shall be provided consistent with the Employability Development Plans developed with the individual.

1. For customized training purposes, the assessment may be conducted by the employer or training provider.

(b) Basic skills training shall be provided to an eligible individual only if the qualified job counselor who evaluates the individual determines that the individual can reasonably be expected to successfully complete the training and education identified in such Employability Development Plan.

(c) An assessment shall be provided to applicants to identify barriers to functioning on the job in a satisfactory manner. Where barriers are identified, the qualified job counselor shall consult with other One-Stop partners to determine whether the individual would benefit from their services.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.4, Eligibility for financial aid, recodified to N.J.A.C. 12:23-8.3.

12:23-9.5 Coordination and consultation requirements

(a) In carrying out programs under this subchapter, Workforce Investment Boards and recipients shall coordinate and consult with State and local agencies and organizations that provide services to eligible individuals who are deficient in basic skills for the following purposes:

1. The recruitment of individuals who need basic skills training to become employable;

2. Identifying those eligible individuals who need remedial education to enable those individuals to develop skills necessary to attain at least the level of self-sufficiency;

3. Sharing the costs of training and services to be provided; and

4. Developing a plan of service for the Supplemental Workforce Fund for Basic Skills which provides for the full utilization of available resources.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.5, Eligible coursework, recodified to N.J.A.C. 12:23-8.4.

12:23-9.6 Basic skills funds are to supplement existing resources

Funds provided under this subchapter shall only be used for activities that are in addition to those activities that would otherwise be available in the absence of the funds provided under this subchapter.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.6, Employment during semester, recodified to N.J.A.C. 12:23-8.5.

12:23-9.7 Monitoring and oversight

(a) The Department of Labor will monitor the overall effectiveness of the basic skills training provided under this subchapter to assess the programmatic, management and financial performance of recipients and grantees. The Department will consider the past performance of a recipient or grantee in evaluating application(s) for funding in subsequent years.

(b) The Workforce Investment Board will monitor the effectiveness of the basic skills training provided under N.J.A.C. 12:23-9.3(b) to assess programmatic, management and financial performance of grants awarded by the Commissioner. The Workforce Investment Board will consider the past performance of a recipient or grantee in evaluating application(s) for funding in subsequent years.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.7, Application of general institution rules, recodified to N.J.A.C. 12:23-8.6.

12:23-9.8 Limitations on administrative costs for service providers

Not more than 10 percent of the monies received by any service provider pursuant to this subchapter shall be expended on the costs of administration. Such costs of administration do not include the costs of the direct provision of training.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.8, Inclusion of program in college enrollment count, recodified to N.J.A.C. 12:23-8.7.

12:23-9.9 Prohibition on use of funds

Supplemental Workforce Funds for Basic Skills shall not be spent on construction or purchase of facilities.

New Rule, R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

Former N.J.A.C. 12:23-9.9, Financial obligation of eligible individual, recodified to N.J.A.C. 12:23-8.8.

SUBCHAPTER 10. RECORDS, REPORTS, AND PERFORMANCE

Authority

N.J.S.A. 34:15-1 et seq.

Source and Effective Date

R.2002 d.193, effective June 17, 2002.

See: 34 N.J.R. 448(a), 34 N.J.R. 2036(a).

12:23-10.1 Purpose

(a) The purpose of this subchapter is to set forth rules for collection of information on student enrollment, outcome, licensing, and credentialing that includes the use of the individual Social Security number. This information will be used for:

1. Developing the labor demand list for the Workforce Development Partnership Program and other employment and training programs;
2. Establishing standards for training and job placement;
3. Evaluating the effectiveness of programs and services under the State's workforce investment system; and
4. For other purposes as determined by the Commissioner.

12:23-10.2 Scope

This subchapter shall apply to approved training or service providers and qualified agencies which oversee education and training at an approved training provider or issue an occupational license or credential.

12:23-10.3 Reporting requirements

(a) Each provider shall maintain appropriate records and reports and make any records available upon request for monitoring or inspection by the Commissioner including:

1. A record for each student enrolled, including the student's name, Social Security number, address upon enrollment, and other information as required by the State Employment and Training Commission and/or the NJOICC;
2. A record of all direct, administrative and overhead expenses of the grantee related to the provision of employment and training services funded under this chapter, including matching costs;
3. Financial reports as may be required by the Commissioner;
4. Reports of the enrollments and outcomes in occupational training and basic skills programs that provide information pursuant to the performance requirements of this chapter; and

5. Any other information deemed appropriate by the Commissioner for a specific grantee or service provider.

(b) Individual student outcome information is required for all eligible individuals covered by this Act.

1. A qualifying agency or an approved training or service provider shall report student outcome and licensing information, including Social Security numbers, to the State Employment and Training Commission through the New Jersey Occupational Information Coordinating Committee.

2. Any entity that reports student outcome or licensing information to a qualifying agency or an approved training or service provider shall request that its students or licensees voluntarily provide their Social Security numbers. Such request shall state that:

i. The disclosure of the Social Security number is voluntary;

ii. The Social Security numbers will be used by the NJOICC and SETC to prepare a labor demand list, to establish standards for training and job placement, and to evaluate the effectiveness of programs and services under the State's workforce investment system, and for other purposes as determined by the Commissioner; and

iii. The NJOICC and SETC are authorized to access the files and records of other State agencies which administer or fund employment and training programs by N.J.S.A. 34:15C-6(h) and may request the voluntary disclosure of Social Security numbers through the Commissioner of Labor's authority under N.J.S.A. 34:15B-40 and 34:15D-8, provided such request is made in accordance with the Privacy Act, 5 U.S.C. § 552(a)(note)(b).

3. The information required by this subsection shall be provided on a schedule to be determined and published by the NJOICC and the SETC.

12:23-10.4 Disclosure of information

(a) Information collected by the NJOICC from qualifying agencies or from approved training or service providers will only be utilized for authorized governmental purposes. The NJOICC will only use aggregate statistical summaries of individual data in assessing or evaluating any program.

(b) The SETC and NJOICC will not publish or otherwise release information which could identify any person.

(c) The SETC and NJOICC will deny access to any correspondence, documents or data information where non-disclosure is necessary to protect the public interest.

12:23-10.5 Performance standards and evaluation

(a) Performance standards shall be established for all training programs including basic skills training programs. Performance standards shall be established in accordance with the Strategic Five-Year Unified State Plan for New Jersey's Workforce Investment System.

(b) The State Employment and Training Commission shall review and evaluate the operations of programs supported by the New Jersey Employment and Workforce Development Act, with special consideration to how these programs assist in the implementation of the goals of the Strategic Five-Year Unified State Plan for New Jersey's Workforce Investment System, and shall consult with the Commissioner of Labor regarding its findings.