

STATE OF NEW JERSEY  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT



NEW JERSEY  
UNEMPLOYMENT COMPENSATION LAW  
EXTENDED BENEFITS LAW  
WORKFORCE DEVELOPMENT PARTNERSHIP ACT  
SUPPLEMENTARY LEGISLATION

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# UNEMPLOYMENT COMPENSATION LAW

## 43:21-1. Short title

This chapter shall be known and may be cited as the "unemployment compensation law".

## 43:21-2. Declaration of state public policy

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state requires the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed after qualifying periods of employment.

## 43:21-3. Benefits

(a) Payment of benefits.

All benefits shall be promptly paid from the fund in accordance with such regulations as may be prescribed hereunder.

(b) Weekly benefits for unemployment.

With respect to an individual's benefit year commencing on or after July 1, 1961, such individual, if eligible and unemployed (as defined in subsection (m) of *R.S. 43:21-19*), shall be paid an amount (except as to final payment) equal to his weekly benefit rate less any remuneration, other than remuneration from self-employment paid to an individual who is receiving a self-employment assistance allowance, paid or payable to him for such week in excess of 20% of his weekly benefit rate (fractional part of a dollar omitted) or \$ 5.00, whichever is the greater; provided that such amount shall be computed to the next lower multiple of \$ 1.00 if not already a multiple thereof.

(c) Weekly benefit rate.

(1) With respect to an individual whose benefit year commences after September 30, 1984, his weekly benefit rate under each determination shall be 60% of his average weekly wage, subject to a maximum of  $56 \frac{2}{3}$  % of the Statewide average weekly remuneration paid to workers by employers subject to this chapter (*R.S. 43:21-1 et seq.*), as determined and promulgated by the Commissioner of Labor and Workforce Development; provided, however, that such individual's weekly benefit rate shall be computed to the next lower multiple of \$ 1.00 if not already a multiple thereof.

(2) Dependency benefits.

(A) With respect to an individual whose benefit year commences after September 30, 1984, the individual's weekly benefit rate as determined in paragraph (1) of this subsection (c) will be increased by 7% for the first dependent and 4% each for the next two dependents (up to a maximum of three dependents), computed to the next lower multiple of \$ 1.00 if not already a multiple thereof, except that the maximum weekly benefit rate payable for an individual claiming dependency benefits shall not exceed the maximum amount determined under paragraph (1) of this subsection (c).

(B) For the purposes of this paragraph (2), a dependent is defined as an individual's unemployed spouse or an unemployed unmarried child (including a stepchild or a legally adopted child) under the age of 19 or an unemployed unmarried child, who is attending an educational institution as defined in subsection (y) of *R.S. 43:21-19* on a full-time basis and is under the age of 22. If an individual's spouse is employed during the week the individual files an initial claim for benefits, this paragraph (2) shall not apply. If both spouses establish a claim for benefits in accordance with the provisions of this chapter (*R.S. 43:21-1 et seq.*), only one shall be entitled to dependency benefits as provided in this paragraph (2).

(C) Any determination establishing dependency benefits under this paragraph (2) shall remain fixed for the duration of the individual's benefit year and shall not be increased or decreased unless it is determined by the division that the individual wrongfully claimed dependency benefits as a result of false or fraudulent representation.

(D) Notwithstanding the provisions of any other law, the division shall use every available administrative means to insure that dependency benefits are paid only to individuals who meet the requirements of this paragraph (2). These administrative actions may include, but shall not be limited to, the following:

(i) All married individuals claiming dependents under this paragraph (2) shall be required to provide the social security number of the individual's spouse. If the individual indicates that the spouse is unemployed, the division shall match the social security number of the spouse against available wage records to determine whether earnings were reported on the last quarterly earnings report filed by employers under *R.S.43:21-14*. If earnings were reported, the division shall contact in writing the last employer to determine whether the spouse is currently employed.

(ii) Where a child is claimed as a dependent by an individual under this paragraph (2), the individual shall be required to provide to the division the most recent federal income tax return filed by the individual to assist the division in verifying the claim.

(3) For the purposes of this subsection (c), the "Statewide average weekly remuneration paid to workers by employers" shall be computed and determined by the Commissioner of Labor and Workforce Development on or before September 1 of each year on the basis of one-fifty-second of the total remuneration reported for the preceding calendar year by employers subject to this chapter, divided by the average of the number of workers reported by such employers, and shall be effective as to benefit determinations in the calendar year following such computation and determination.

(d) Maximum total benefits.

(1) (A) (Deleted by amendment, P.L. 2003, c. 107).

(B) (i) With respect to an individual for whom benefits shall be payable for benefit years commencing on or after July 1, 1986, and before July 1, 2003 as provided in this section, the individual shall be entitled to receive a total amount of benefits 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; but the amount of benefits thus resulting under that determination shall be adjusted to the next lower multiple of \$ 1.00 if not already a multiple thereof. With respect to an individual for whom benefits shall be payable for benefit years commencing on or after July 1, 2003 as provided in this section, the individual shall be entitled to receive a total amount of benefits equal to the number of the individual's base weeks with all employers in the base year multiplied by the individual's weekly benefit rate; but the amount of benefits thus resulting under that determination shall be adjusted to the next lower multiple of \$ 1.00 if not already a multiple thereof.

(ii) Except as provided pursuant to paragraph (1) of subsection (c) of *R.S. 43:21-7*, benefits paid to an individual for benefit years commencing on or after July 1, 1986 shall be charged against the accounts of the individual's base year employers in the following manner:



Each week of benefits paid to an eligible individual shall be charged against each base year employer's account in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during the base year.

(iii) (Deleted by amendment, P.L. 1997, c. 255.)

(2) No such individual shall be entitled to receive benefits under this chapter (*R.S. 43:21-1 et seq.*) in excess of 26 times his weekly benefit rate in any benefit year under either of subsections (c) and (f) of *R.S. 43:21-4*. In the event that any individual qualifies for benefits under both of said subsections during any benefit year, the maximum total amount of benefits payable under said subsections combined to such individual during the benefit year shall be one and one-half times the maximum amount of benefits payable under one of said subsections.

(3) (Deleted by amendment, P.L. 1984, c. 24.)

**HISTORY:** Amended L. 1938, c. 396, § 1; 1939, c. 94, § 1; 1940, c. 247, § 1; 1945, c. 72, § 1; 1948, c. 110, § 19; 1950, c. 172, § 1; 1952, c. 187, § 1; 1954, c. 248, § 1; 1955, c. 203, § 1; 1961, c. 43, § 1; 1967, c. 30, § 1, 1974, c. 86, § 1; 1977, c. 307, § 1; 1978, c. 18 § 1; 1984, c. 24, § 1; 1995, c. 394, § 6; 1997, c. 255, § 1; 2003, c. 107, § 2, eff. July 1, 2003; 2004, c. 45, § 1, eff. June 29, 2004.

#### **43:21-4. Benefit eligibility conditions**

An unemployed individual shall be eligible to receive benefits with respect to any week only if:

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided that no such regulation shall conflict with subsection (a) of *R.S.43:21-3*.

(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of *R.S.43:21-6*.

(c) (1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work, except as hereinafter provided in this subsection or in subsection (f) of this section.

(2) The director may modify the requirement of actively seeking work if such modification of this requirement is warranted by economic conditions.

(3) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because the individual is on vacation, without pay, during said week, if said vacation is not the result of the individual's own action as distinguished from any collective action of a collective bargaining agent or other action beyond the individual's control.

(4) (A) Subject to such limitations and conditions as the division may prescribe, an individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible because the individual is attending a training program approved for the individual by the division to enhance the individual's employment opportunities or because the individual failed or refused to accept work while attending such program.

(B) For the purpose of this paragraph (4), any training program shall be regarded as approved by the division for the individual if the program and the individual meet the following requirements:

(i) The training is for a labor demand occupation and is likely to enhance the individual's marketable skills and earning power;

(ii) The training is provided by a competent and reliable private or public entity approved by the Commissioner of Labor and Workforce Development pursuant to the provisions of section 8 of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

(iii) The individual can reasonably be expected to complete the program, either during or after the period of benefits;

(iv) The training does not include on the job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives benefits; and

(v) The individual enrolls in vocational training, remedial education or a combination of both on a full-time basis.

(C) If the requirements of subparagraph (B) of this paragraph (4) are met, the division shall not withhold approval of the training program for the individual for any of the following reasons:

(i) The training includes remedial basic skills education necessary for the individual to successfully complete the vocational component of the training;

(ii) The training is provided in connection with a program under which the individual may obtain a college degree, including a post-graduate degree;

(iii) The length of the training period under the program; or

(iv) The lack of a prior guarantee of employment upon completion of the training.

(D) For the purpose of this paragraph (4), "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, including, but not limited to, an occupation designated as a labor demand occupation by the Center for Occupational Employment Information pursuant to the provisions of subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86).

(5) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance before a court in response to a summons for service on a jury.

(6) An unemployed individual, who is otherwise eligible, shall not be deemed unavailable for work or ineligible solely by reason of the individual's attendance at the funeral of an immediate family member, provided that the duration of the attendance does not extend beyond a two-day period.

For purposes of this paragraph, "immediate family member" includes any of the following individuals: father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, child placed by the Division of Youth and Family Services in the Department of Children and Families, sister or brother of the unemployed individual and any relatives of the unemployed individual residing in the unemployed individual's household.

(7) No individual, who is otherwise eligible, shall be deemed ineligible or unavailable for work with respect to any week because, during that week, the individual fails or refuses to accept work while the individual is participating on a full-time basis in self-employment assistance activities authorized by the division, whether or not the individual is receiving a self-employment allowance during that week.

(8) Any individual who is determined to be likely to exhaust regular benefits and need reemployment services based on information obtained by the worker profiling system shall not be eligible to receive benefits if the individual fails to participate in available reemployment services to which the individual is referred by the division or in similar services, unless the division determines that:

(A) The individual has completed the reemployment services; or

(B) There is justifiable cause for the failure to participate, which shall include participation in employment and training, self-employment assistance activities or other activities authorized by the division to assist reemployment or enhance the marketable skills and earning power of the individual and which shall include any other circumstance indicated pursuant to this section in which an individual is not required to be available for and actively seeking work to receive benefits.

(9) An unemployed individual, who is otherwise eligible, 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 elections on an election day.

(d) With respect to any benefit year commencing before January 1, 2002, the individual has been totally or partially unemployed for a waiting period of one week in the benefit year which includes that week. When benefits become payable with respect to the third consecutive week next following the waiting period, the individual shall be eligible to receive benefits as appropriate with respect to the waiting period. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) If benefits have been paid, or are payable with respect thereto; provided that the requirements of this paragraph shall be waived with respect to any benefits paid or payable for a waiting period as provided in this subsection;

(2) If it has constituted a waiting period week under the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25 et al.*);

(3) Unless the individual fulfills the requirements of subsections (a) and (c) of this section;

(4) If with respect thereto, claimant was disqualified for benefits in accordance with the provisions of subsection (d) of *R.S.43:21-5*.

The waiting period provided by this subsection shall not apply to benefit years commencing on or after January 1, 2002. An individual whose total benefit amount was reduced by the application of the waiting period to a claim which occurred on or after January 1, 2002 and before the effective date of P.L.2002, c.13, shall be permitted to file a claim for the additional benefits attributable to the waiting period in the form and manner prescribed by the division, but not later than the 180th day following the effective date [March 26, 2002] of P.L.2002, c.13 unless the division determines that there is good cause for a later filing.

(e) (1) (Deleted by amendment, P.L.2001, c.17).

(2) (Deleted by amendment, P.L.2008, c.17).

(3) (Deleted by amendment, P.L.2008, c.17).

(4) With respect to benefit years commencing on or after January 7, 2001, except as otherwise provided in paragraph (5) of this subsection, the individual has, during his base year as defined in subsection (c) of *R.S.43:21-19*:

(A) Established at least 20 base weeks as defined in paragraphs (2) and (3) of subsection (t) of *R.S.43:21-19*; or

(B) If the individual has not met the requirements of subparagraph (A) of this paragraph (4), earned remuneration not less than an amount 1,000 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (*C.34:11-56a4*) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$ 100 if not already a multiple thereof.

(5) With respect to benefit years commencing on or after January 7, 2001, notwithstanding the provisions of paragraph (4) of this subsection, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (i) of *R.S.43:21-19*, be eligible to receive benefits if during his base year, as defined in subsection (c) of *R.S.43:21-19*, the individual:

(A) Has established at least 20 base weeks as defined in paragraphs (2) and (3) of subsection (t) of *R.S.43:21-19*; or

(B) Has earned remuneration not less than an amount 1,000 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (*C.34:11-56a4*) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$ 100 if not already a multiple thereof; or

(C) Has performed at least 770 hours of service in the production and harvesting of agricultural crops.

(6) The individual applying for benefits in any successive benefit year has earned at least six times his previous weekly benefit amount and has had four weeks of employment since the beginning of the immediately preceding benefit year. This provision shall be in addition to the earnings requirements specified in paragraph (4) or (5) of this subsection, as applicable.

(f) (1) The individual has suffered any accident or sickness not compensable under the workers' compensation law, *R.S.34:15-1* et seq. and resulting in the individual's total disability to perform any work for remuneration, and would be eligible to receive benefits under this chapter (*R.S.43:21-1* et seq.) (without regard to the maximum amount of benefits payable during any benefit year) except for the inability to work and has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of *R.S.43:21-3(d)*; provided, however, that benefits paid under this subsection (f) shall be computed on the basis of only those base year wages earned by the claimant as a "covered individual," as defined in subsection (b) of section 3 of P.L.1948, c.110 (*C.43:21-27*); provided further that no benefits shall be payable under this subsection to any individual:

(A) For any period during which such individual is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the individual, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge;

(B) (Deleted by amendment, P.L.1980, c.90.)

(C) For any period of disability due to willfully or intentionally self-inflicted injury, or to injuries sustained in the perpetration by the individual of a crime of the first, second or third degree;

(D) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefits law of any other state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply;

(E) For any week with respect to which or part of which the individual has received or is seeking disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25* et al.);

(F) For any period of disability commencing while such individual is a "covered individual," as defined in subsection (b) of section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27).

(2) The individual is taking family temporary disability leave to provide care for a family member with a serious health condition or to be with a child during the first 12 months after the child's birth or placement of the child for adoption with the individual, and the individual would be eligible to receive benefits under *R.S.43:21-1* et seq. (without regard to the maximum amount of benefits payable during any benefit year) except for the individual's unavailability for work while taking the family temporary disability leave, and the individual has furnished notice and proof of claim to the division, in accordance with its rules and regulations, and payment is not precluded by the provisions of *R.S.43:21-3(d)* provided, however, that benefits paid under this subsection (f) shall be computed on the basis of only those base year wages earned by the claimant as a "covered individual," as defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that no benefits shall be payable under this subsection to any individual:

(A) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefits law of any other state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply;

(B) For any week with respect to which or part of which the individual has received or is seeking disability benefits for a disability of the individual under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

(C) For any period of family temporary disability leave commencing while the individual is a "covered individual," as defined in subsection (b) of section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27); or

(D) For any period of family temporary disability leave for a serious health condition of a family member of the claimant during which the family member is not receiving inpatient care in a hospital, hospice, or residential medical care facility and is not subject to continuing medical treatment or continuing supervision by a health care provider, who, when requested by the division, shall certify within the scope of the provider's practice, the serious health condition of the family member, the probable duration thereof, and, where applicable, the medical facts within the provider's knowledge.

(3) Benefit payments under this subsection (f) shall be charged to and paid from the State disability benefits fund established by the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and shall not be charged to any employer account in computing any employer's experience rate for contributions payable under this chapter.

(g) Benefits based on service in employment defined in subparagraphs (B) and (C) of *R.S.43:21-19 (l)(1)* shall be payable in the same amount and on the terms and subject to the same conditions as benefits payable on the basis of other service subject to the "unemployment compensation law"; except that, notwithstanding any other provisions of the "unemployment compensation law":

(1) With respect to service performed after December 31, 1977, in an instructional research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) With respect to weeks of unemployment beginning after September 3, 1982, on the basis of service performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual under this paragraph (2) and the individual was not offered an opportunity to perform these services for the educational institution for the second of any academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause;

(3) With respect to those services described in paragraphs (1) and (2) above, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such period or holiday recess;

(4) With respect to any services described in paragraphs (1) and (2) above, benefits shall not be paid as specified in paragraphs (1), (2), and (3) above to any individual who performed those services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing those services to one or more educational institutions.

(h) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sports seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(i) (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed and was lawfully present for the purpose of performing the services or otherwise was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) (*8 U.S.C. § 1182* (d)(5)) of the Immigration and Nationality Act (*8 U.S.C. § 1101* et seq.)); provided that any modifications of the provisions of section 3304(a)(14) of the Federal Unemployment Tax Act (*28 U.S.C. § 3304* (a)(14)), as provided by Pub.L.94-566, which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under State law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of alien status shall be made except upon a preponderance of the evidence.

(j) Notwithstanding any other provision of this chapter, the director may, to the extent that it may be deemed efficient and economical, provide for consolidated administration by one or more representatives or deputies of claims made pursuant to subsection (f) of this section with those made pursuant to Article III (State plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

**HISTORY:** Amended L. 1940, c. 247, § 2; 1941, c. 114, § 1; 1947, c. 35, § 1; 1948, c. 110, § 20; 1950, c. 172, § 2; 1952, c. 187, § 2; 1957, c. 104, § 1; 1961, c. 43, § 2; 1966, c. 124, § 1; 1967, c. 30, § 2; 1967, c. 30, title amended 1967, c. 286, § 12; 1971, c. 346, § 1; 1974, c. 85, § 1; 1974, c. 86, § 2; 1977, c. 307, § 2; 1979, c. 86, § 18; 1980, c. 90, § 11; 1983, c. 221, § 1; 1984, c. 24, § 2; 1984, c. 216, § 1; 1985, c. 508, § 2; 1987, c. 216, § 1; 1987, c. 391, § 1; 1989, c. 89, § 1; 1989, c. 213, § 1; 1992, c. 46, § 1; 1995, c. 234, § 1; 1995, c. 394, § 7; 2001, c. 17, § 1, eff. Jan. 29, 2001; 2002, c. 13, § 2, eff. Mar. 26, 2002; 2002, c. 94, § 1, eff. Nov. 8, 2002; 2004, c. 130, § 116, eff. Aug. 27, 2004; 2006, c. 47, § 187, eff. July 1, 2006; 2008, c. 17, § 14, eff. May 2, 2008.

#### **43:21-4.1. Worker profiling system; notice to applicant of benefits, services available**

a. There is established a worker profiling system for the purpose of determining which new claimants for regular benefits are likely to exhaust benefits and therefore have the greatest need for reemployment services to make a successful transition to new employment. Information obtained from the profiling system shall be used in making referrals for reemployment services and may be used in making referrals to other services and benefits, but no individual shall be excluded from seeking or receiving reemployment services or other services or benefits because the individual is not among those determined to be likely to exhaust benefits, unless the exclusion is specifically required by federal law. Nor shall an individual be required to participate, as a condition for receiving regular benefits, in any employment and training services because the individual is among those determined to be likely to exhaust benefits, unless that participation by the individual is specifically required by federal law. A characteristic of an individual shall not be used in making a determination regarding whether the individual is likely to exhaust benefits unless it is demonstrated to be an actual indicator of a high likelihood that benefits will be exhausted.

b. The division shall provide each individual who applies for unemployment compensation with an initial interview which includes:

(1) Notice of the benefits and services available pursuant to the provisions of this 1992 amendatory and supplementary act and the provisions of the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c. 43 (C. 34:15D-1 et al.), P.L.1992, c. 47 (C. 43:21-57 et al.) and the "Job Training Partnership Act," Pub.L. 97-300 (29 U.S.C. 1501 et seq.) and of the tuition waivers available pursuant to P.L.1983, c. 469 (C. 18A:64-13.1 et seq.) and P.L.1983, c. 470 (C. 18A:64A-23.1 et seq.); and

(2) A review of the individual's rights and responsibilities with respect to the unemployment compensation, including an explanation of the appeal process and of the worker profiling system and its possible impact on the individual.

**HISTORY:** L. 1992, c. 46, § 2; amended 1995, c. 394, § 8.

#### **43:21-4.2 Notification of availability of earned income tax credit, recipients of unemployment compensation**

The Commissioner of Labor and Workforce Development shall notify in writing any person who received unemployment compensation pursuant to R.S. 43:21-1 et seq. of the availability of the earned income tax credit provided in section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. § 32, and the New Jersey earned income tax credit provided in section 2 of P.L. 2000, c. 80 (C. 54A:4-7). The written notification shall use the statement developed by the State Treasurer pursuant to section 4 of P.L. 2005, c. 210 (C. 52:18-11.3) for this purpose. The notification shall be distributed in a manner deemed by the commissioner to be the most practicable and cost effective, but that will ensure personal notification of each person. The notification shall be distributed between January 1

and February 15 of each calendar year following the calendar year in which the person received the unemployment compensation.

**HISTORY:** L. 2005, c. 210, § 1, eff. Aug. 29, 2005.

#### **43:21-5. Disqualification for benefits**

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract.

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the seven weeks which immediately follow that week, as determined in each case.

For the week in which the individual has been suspended or discharged for severe misconduct connected with the 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 individuals's weekly benefit rate, as determined in each case. Examples of severe misconduct include, but are not necessarily limited to the following: repeated violations of an employer's rule or policy, repeated lateness or absences after a written warning by an employer, falsification of records, physical assault or threats that do not constitute gross misconduct as defined in this section, misuse of benefits, misuse of sick time, abuse of leave, theft of company property, excessive use of intoxicants or drugs on work premises, theft of time, or where the behavior is malicious and deliberate but is not considered gross misconduct as defined in this section.

In the event the discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is subsequently compensated by the employer.

If the discharge was for gross misconduct connected with the work because of the commission of 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.2C:1-1 et seq.*, the individual shall be disqualified in accordance with the disqualification prescribed in subsection (a) of this section and no benefit rights shall accrue to any individual based upon wages from that employer for services rendered prior to the day upon which the individual was discharged.

The director shall insure that any appeal of a determination holding the individual disqualified for gross misconduct in connection with the work shall be expeditiously processed by the appeal tribunal.

(c) If it is found that the individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when it is offered, or to return to the individual's customary self-employment (if any) when so directed by the director. The disqualification shall continue for the week in which the failure occurred and for the three weeks which immediately follow that week, as determined:

(1) In determining whether or not any work is suitable for an individual, 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, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence. In the case of work in the production and harvesting of agricultural crops, the work shall be deemed to be suitable without regard to the distance of the available work from the individual's residence if all costs of transportation are provided to the individual and the terms and conditions of hire are as favorable or more favorable to the individual as the terms and conditions of the individual's base year employment.

(2) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: the position offered is vacant due directly to a strike, lockout, or other labor dispute; the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or, the individual, as a condition of being employed, would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) If it is found that this unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed.

(1) No disqualification under this subsection (d) shall apply if it is shown that:

(a) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that if in any case in which (a) or (b) above applies, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

(2) For any claim for a period of unemployment commencing on or after December 1, 2004, no disqualification under this subsection (d) shall apply if it is shown that the individual has been prevented from working by the employer, even though the individual's recognized or certified majority representative has directed the employees in the individual's collective bargaining unit to work under the preexisting terms and conditions of employment, and the employees had not engaged in a strike immediately before being prevented from working.

(e) For any week with respect to which the individual is receiving or has received remuneration in lieu of notice.

(f) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; provided that if the appropriate agency of the other state or of the United States finally determines that the individual is not entitled to unemployment benefits, this disqualification shall not apply.

(g) (1) For a period of one year from the date of the discovery by the division of the illegal receipt or attempted receipt of benefits contrary to the provisions of this chapter, as the result of any false or fraudulent representation; provided that any disqualification may be appealed in the same manner as any other disqualification imposed hereunder; and provided further that a conviction in the courts of this State arising out of the illegal receipt or attempted receipt of these benefits in any proceeding instituted against the individual under the provisions of this chapter or any other law of this State shall be conclusive upon the appeals tribunal and the board of review.

(2) A disqualification under this subsection shall not preclude the prosecution of any civil, criminal or administrative action or proceeding to enforce other provisions of this chapter for the

assessment and collection of penalties or the refund of any amounts collected as benefits under the provisions of *R.S.43:21-16*, or to enforce any other law, where an individual obtains or attempts to obtain by theft or robbery or false statements or representations any money from any fund created or established under this chapter or any negotiable or nonnegotiable instrument for the payment of money from these funds, or to recover money erroneously or illegally obtained by an individual from any fund created or established under this chapter.

(h) (1) Notwithstanding any other provisions of this chapter (*R.S.43:21-1* et seq.), no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the "Trade Act of 1974," Pub.L.93-618 (*19 U.S.C. § 2296(a)(1)*) nor shall the individual be denied benefits by reason of leaving work to enter this training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this chapter (*R.S.43:21-1* et seq.), or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this subsection (h), the term "suitable" employment means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the "Trade Act of 1974," Pub.L.93-618 (*19 U.S.C. § 2101* et seq.) and wages for this work at not less than 80% of the individual's average weekly wage, as determined for the purposes of the "Trade Act of 1974."

(i) For benefit years commencing after June 30, 1984, for any week in which the individual is a student in full attendance at, or on vacation from, an educational institution, as defined in subsection (y) of *R.S.43:21-19*; except that this subsection shall not apply to any individual attending a training program approved by the division to enhance the individual's employment opportunities, as defined under subsection (c) of *R.S.43:21-4*; nor shall this subsection apply to any individual who, during the individual's base year, earned sufficient wages, as defined under subsection (e) of *R.S.43:21-4*, while attending an educational institution during periods other than established and customary vacation periods or holiday recesses at the educational institution, to establish a claim for benefits. For purposes of this subsection, an individual shall be treated as a full-time student for any period:

(1) During which the individual is enrolled as a full-time student at an educational institution,  
or

(2) Which is between academic years or terms, if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term.

(j) Notwithstanding any other provisions of this chapter (*R.S.43:21-1* et seq.), 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 section 3 of P.L.1991, c.261 (*C.2C:25-19*). No employer's account 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.

For the purposes of this subsection (j), 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 section 3 of P.L.1991, c.261 (*C.2C:25-19*);

(4) Medical documentation of the domestic violence;

(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.

For the purposes of this subsection (j):

"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; and "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 Children and Families and is under contract with the division for the express purpose of providing such services.

(k) Notwithstanding any other provisions of this chapter (*R.S.43:21-1 et seq.*), no otherwise eligible individual shall be denied benefits for any week in which the individual left work voluntarily and without good cause attributable to the work, if the individual left work to accompany his or her spouse who is an active member of the United States Armed Forces, as defined in *N.J.S.38A:1-1(g)*, to a new place of residence outside the State, due to the armed forces member's transfer to a new assignment in a different geographical location outside the State, and the individual moves to the new place of residence not more than nine months after the spouse is transferred, and upon arrival at the new place of residence the individual was in all respects available for suitable work. No employer's account shall be charged for the payment of benefits to an individual who left work under the circumstances contained in this subsection (k), except that this shall not be construed as relieving the State of New Jersey and any other governmental entity or instrumentality or nonprofit organization electing or required to make payments in lieu of contributions from its responsibility to make all benefit payments otherwise required by law and from being charged for those benefits as otherwise required by law.

**HISTORY:** Amended 1939, c. 94, § 2; 1945, c. 73, § 1; 1945, c. 308, § 1; 1950, c. 172, § 3; 1961, c. 43, § 3; 1967, c. 30, § 3; 1967, c. 30, title amended 1967, c. 286, § 12; 1968, c. 1, § 1; 1974, c. 86, § 3; 1980, c. 90, § 12; 1982, c. 144, § 6; 1984, c. 24, § 3; 1985, c. 508, § 3; 1999, c. 391, § 1, eff. Jan. 18, 2000; 2005, c. 103, § 1, eff. Aug. 26, 2005; 2007, c. 162, § 1, eff. Dec. 9, 2007.

#### **43:21-5a. Reduction by pension amount; rollover, certain; no reduction**

The amount of benefits payable to an individual for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week; provided that such reduced weekly benefit rate shall be computed to the next lower multiple of \$ 1.00 if not already a multiple thereof and that any such reduction in the weekly benefit rate shall reduce the maximum total benefits of the individual during the benefit year; provided further that, if the provisions of the federal Unemployment Tax Act permit, the Commissioner of Labor and Workforce Development may prescribe in regulations which are consistent with the federal Unemployment Tax Act any of the following:

a. The requirements of this section shall only apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer as determined under the chapter to which this act is a supplement;

b. The amount of any such reduction shall be determined taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment;

c. An individual shall not have his benefits reduced where there has been a transfer of an eligible rollover distribution from a qualified trust to an eligible retirement plan, as defined in *section 402(c)(8) of the federal Internal Revenue Code of 1986, 26 U.S.C. § 402(c)(8)*, provided that, pursuant to that section, the transfer of payments is made within 60 days of receipt. If, however, any distribution from the qualified trust is made which is subject to federal income tax, then unemployment benefits for which the base year earnings include pay from the employer who paid into the qualified trust shall be reduced by the amount of the distribution if otherwise required by *section 3304(a)(15) of the Internal Revenue Code of 1986, 26 U.S.C. § 3304(a)(15)*.

The amount of benefits payable to an individual who is involuntarily and permanently separated from employment prior to the date at which the individual may retire with full pension rights shall not be reduced pursuant to this section because the individual receives a lump sum payment in lieu of periodic pension, retirement or annuity payments, except that the benefits payable to the individual may be reduced during the week in which the individual receives the lump sum payment.

**HISTORY:** L. 1980, c. 13, § 1; amended 1984, c. 24, § 15; 1993, c. 330, § 1; 2007, c. 34, § 1, eff. Jan. 29, 2007.

#### **43:21-5.2. Agreement with United States Secretary of Labor authorized**

The Division of Employment Security is authorized to enter into an agreement with the United States Secretary of Labor under Title XV of the Social Security Act---- "Unemployment Compensation for Federal Employees" (Public Law 767-83d Congress), whereby the division, as agent of the United States, will in accordance with the provisions of said Title, make payments of compensation to Federal employees as therein defined, and will otherwise co-operate with the Secretary of Labor and with other State agencies in making such payments; provided, however, that all costs and expenses incurred, as well as all moneys required to make payments of such compensation shall be provided by Federal funds and shall not devolve upon the State of New Jersey; and further provided, that subsection (f) of section 43:21-5 of the Revised Statutes shall be inapplicable to any week with respect to which or a part of which a claimant has received or is seeking unemployment benefits under Title XV of the Social Security Act, except that no claimant shall be eligible during any week for benefits in an amount in excess of the amount allowable under *R.S. 43:21-1 et seq.* plus any additional amount permitted under the agreement with the Secretary of Labor, or shall be eligible for weeks of benefits in a benefit year, based on employment under *R.S. 43:21-1 et seq.* plus Federal employment, in excess of the number of weeks allowable under *R.S. 43:21-1 et seq.*

**HISTORY:** L. 1954, c. 259, p. 934, 1.

#### **43:21-6. Claim for benefits**

(a) Filing. Claims for benefits shall be made in accordance with such regulations as the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers and at such places as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed a printed copy of benefit instructions. Both the aforesaid notices and instructions shall be supplied by the division to employers without cost to them.

(b)(1) Procedure for making initial determinations with respect to benefit years commencing on or after January 1, 1953.

A representative or representatives designated by the director of the division and hereafter referred to as a "deputy" shall promptly examine the claim, and shall notify the most recent employing unit and, successively as necessary, each employer in inverse chronological order during the base year. Such notification shall require said employing unit and employer to furnish such information to the deputy as may be necessary to determine the claimant's eligibility and his benefit rights with respect to the employer in question.

In his discretion, the director may appoint special deputies to make initial or subsequent determinations under subsections 4(f) and 5(d) of this chapter.

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

The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination relates, and the ratio of benefits chargeable to the employer's account for benefit years commencing on or after July 1, 1986, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.

Whenever an initial determination is based upon information other than that supplied by an employer because such employer failed to respond to the deputy's request for information, such initial determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to his employer's account because of benefits paid prior to the close of the calendar week following the receipt of his reply. Such initial determination shall be altered 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 reply shall be paid in accordance with such altered initial determination.

The deputy shall issue a separate initial benefit determination with respect to each of the claimant's base year employers, starting with the most recent employer and continuing as necessary in the inverse chronological order of the claimant's last date of employment with each such employer. If an appeal is taken from an initial determination, as hereinafter provided, by any employer other than the first chargeable base year employer or for benefit years commencing on or after July 1, 1986, that employer from whom the individual was most recently separated, then such appeal shall be limited in scope to include only one or more of the following matters:

- (A) The correctness of the benefit payments authorized to be made under the determination;
- (B) Fraud in connection with the claim pursuant to which the initial determination is issued; or
- (C) The refusal of suitable work offered by the chargeable employer filing the appeal;
- (D) Gross misconduct as provided in subsection (b) of *R.S. 43:21-5*.

The amount of benefits payable under an initial determination may be reduced or canceled if necessary to avoid payment of benefits for a number of weeks in excess of the maximum specified in subsection (d) of section *43:21-3* of this Title.

Unless the claimant or any interested party, within seven calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered in benefit amounts or duration as provided in this paragraph. Benefits payable for periods pending an appeal and not in dispute shall be paid as such benefits accrue; provided that insofar as any such appeal is or may be an appeal from a determination to the effect that the claimant is disqualified under the provisions of *R.S. 43:21-5* or any amendments thereof or supplements thereto, benefits pending determination of the appeal shall be withheld only for the period of disqualification as provided for in said section, and notwithstanding such appeal, the benefits otherwise provided by this act shall be paid for the period subsequent to such period of disqualification; and provided, also, that if there are two determinations of entitlement, benefits for

the period covered by such determinations shall be paid regardless of any appeal which may thereafter be taken, but no employer's account shall be charged with benefits so paid, if the decision is finally reversed.

(2) Procedure for making initial determinations in certain cases of concurrent employment, with respect to benefit years commencing on or after January 1, 1953 and prior to benefit years commencing on or after July 1, 1986.

Notwithstanding any other provisions of this Title, if an individual shows to the satisfaction of the deputy that there were at least 13 weeks in his base period in each of which he earned wages from two or more employers totaling \$ 30.00 or more but in each of which there was no single employer from whom he earned as much as \$ 100.00, then such individual's claim shall be determined in accordance with the special provisions of this paragraph. In such case, the deputy shall determine the individual's eligibility for benefits, his average weekly wage, weekly benefit rate and maximum total benefits as if all his base year employers were a single employer. Such determination shall apportion the liability for benefit charges thereunder to the individual's several base year employers so that each employer's maximum liability for charges thereunder bears approximately the same relation to the maximum total benefits allowed as the wages earned by the individual from each employer during the base year bears to his total wages earned from all employers during the base year. Such initial determination shall also specify the individual's last date of employment within the base year with respect to each base year employer, and such employers shall be charged for benefits paid under said initial determination in the inverse chronological order of such last date of employment.

(3) Procedure for making subsequent determinations with respect to benefit years commencing on or after January 1, 1953. The deputy shall make determinations with respect to claims for benefits thereafter in the course of the benefit year, in accordance with any initial determination allowing benefits, and under which benefits have not been exhausted, and each notification of a benefit payment shall be a notification of an affirmative subsequent determination. The allowance of benefits by the deputy on any such determination, or the denial of benefits by the deputy on any such determination, shall be appealable in the same manner and under the same limitations as is provided in the case of initial determinations.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and the determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless within 10 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal tribunals. To hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under section 43:21-16(d) of this chapter (*R.S. 43:21-1 et seq.*), the director with the approval of the Commissioner of Labor shall establish impartial appeal tribunals consisting of a salaried body of examiners under the supervision of a Chief Appeals Examiner, all of whom shall be appointed pursuant to the provisions of Title 11 of the Revised Statutes, Civil Service and other applicable statutes.

(e) Board of review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and from any determination which has been overruled or modified by any appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed benefit claims, and appeals from determinations with respect to (1) claims for benefits and (2) demands for refunds of benefits under section 43:21-16(d) of this chapter (*R.S. 43:21-1 et seq.*) shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the director. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter (*R.S. 43:21-1 et seq.*).

(h) Court review. Any decision of the board of review shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address. The Division of Unemployment and Temporary Disability Insurance and any party to a proceeding before the board of review may secure judicial review of the final decision of the board of review. Any party not joining in the appeal shall be made a defendant; the board of review shall be deemed to be a party to any judicial action involving the review of, or appeal from, any of its decisions, and may be represented in any such judicial action by any qualified attorney, who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or, at the board of review's request, by the Attorney General.

(i) Failure to give notice. The failure of any public officer or employee at any time heretofore or hereafter to give notice of determination or decision required in subsections (b), (c) and (e) of this section, as originally passed or amended, shall not relieve any employer's account of any charge by reason of any benefits paid, unless and until that employer can show to the satisfaction of the director of the division that the said benefits, in whole or in part, would not have been charged or chargeable to his account had such notice been given. Any determination hereunder by the director shall be subject to court review.

**HISTORY:** Amended by L.1945, c. 308, p. 893, 2; L.1950, c. 167, p. 358, 1; L.1951, c. 338, p. 1214, 1; L.1952, c. 187, p. 622, 3; L.1955, c. 203, p. 791, 2; L.1961, c. 43, p. 426, 4; L.1974, c. 86, 4; L.1975, c. 385, 1, eff. March 3, 1976; L.1977, c. 307, 3, eff. Jan. 1, 1978; L.1984, c. 24, 4, eff. Oct. 1, 1984.

#### **43:21-6.1. Child support obligations; withholding from unemployment compensation payments; distribution**

a. An individual filing a new claim for unemployment compensation with an effective date on or after October 1, 1982 shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under paragraph g. If any individual discloses that he or she owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the State or local child support enforcement agency enforcing this obligation that the individual has been determined to be eligible for unemployment compensation.

b. The division shall deduct and withhold from any unemployment compensation to an individual that owes child support obligations as defined under paragraph g.,

(1) the amount specified by the individual to the division to be deducted and withheld under this section, or

(2) the amount (if any) determined pursuant to an agreement submitted to the division under Section 454(20)(B)(i) of the Social Security Act, P.L. 97-35, 42 *U.S.C. 654*, by the State or local child support enforcement agency, or

(3) any amount otherwise required to be so deducted and withheld from unemployment compensation pursuant to legal process (as that term is defined by the Commissioner of Labor in

regulations, which definition shall be identical to the definition of legal process in Section 462(e) of the Social Security Act, P.L. 95-30, Title V, 42 U.S.C. 662) properly served upon the division.

c. Any amount deducted and withheld under paragraph b. shall be paid by the division to the appropriate State or local child support enforcement agency.

d. Any amount deducted and withheld under paragraph b. shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.

e. For purposes of paragraphs a. through d., the term "unemployment compensation" means any compensation payable under the Unemployment Compensation Law (*R.S. 43:21-1 et seq.*) (including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment).

f. This section applies only if appropriate arrangements have been made for reimbursement by the State or local child support enforcement agency for the administrative costs incurred by the division under this section which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

g. The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act, P.L. 97-35, 42 U.S.C. 654, which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

h. The term "State or local child support enforcement agency" as used in these provisions means any agency of a State or a political subdivision thereof operating pursuant to a plan described in paragraph g.

**HISTORY:** L. 1982, c. 144, 7, eff. Sept. 24, 1982.

#### **43:21-7. Contributions**

Contributions. Employers other than governmental entities, whose benefit financing provisions are set forth in section 4 of P.L.1971, c.346 (*C.43:21-7.3*), and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in section 3 of P.L.1971, c.346 (*C.43:21-7.2*), shall pay to the controller for the unemployment compensation fund, contributions as set forth in subsections (a), (b) and (c) hereof, and the provisions of subsections (d) and (e) shall be applicable to all employers, consistent with the provisions of the "unemployment compensation law" and the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25 et al.*).

(a) Payment.

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter (*R.S.43:21-1 et seq.*), with respect to having individuals in his employ during that calendar year, at the rates and on the basis hereinafter set forth. Such contributions shall become due and be paid by each employer to the controller for the fund, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$ 0.005 or more, in which case it shall be increased to \$ 0.01.

(b) Rate of contributions. Each employer shall pay the following contributions:

(1) For the calendar year 1947, and each calendar year thereafter, 2 7/10% of wages paid by him during each such calendar year, except as otherwise prescribed by subsection (c) of this section.

(2) The "wages" of any individual, with respect to any one employer, as the term is used in this subsection (b) and in subsections (c), (d) and (e) of this section 7, shall include the first \$



4,800.00 paid during calendar year 1975, for services performed either within or without this State; provided that no contribution shall be required by this State with respect to services performed in another state if such other state imposes contribution liability with respect thereto. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessors, then, for the purpose of determining whether the successor employer has paid wages with respect to employment equal to the first \$ 4,800.00 paid during calendar year 1975, any wages paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

(3) For calendar years beginning on and after January 1, 1976, the "wages" of any individual, as defined in the preceding paragraph (2) of this subsection (b), shall be established and promulgated by the Commissioner of Labor and Workforce Development on or before September 1 of the preceding year and shall be, 28 times the Statewide average weekly remuneration paid to workers by employers, as determined under *R.S.43:21-3(c)*, raised to the next higher multiple of \$ 100.00 if not already a multiple thereof, provided that if the amount of wages so determined for a calendar year is less than the amount similarly determined for the preceding year, the greater amount will be used; provided, further, that if the amount of such wages so determined does not equal or exceed the amount of wages as defined in subsection (b) of section 3306 of the Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1986 (*26 U.S.C. § 3306(b)*), the wages as determined in this paragraph in any calendar year shall be raised to equal the amount established under the Federal Unemployment Tax Act for that calendar year.

(c) Future rates based on benefit experience.

(1) A separate account for each employer shall be maintained and this shall be credited with all the contributions which he has paid on his own behalf on or before January 31 of any calendar year with respect to employment occurring in the preceding calendar year; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday, an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this chapter (*R.S.43:21-1 et seq.*) shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid with respect to benefit years commencing on and after January 1, 1953, to any individual on or before December 31 of any calendar year with respect to unemployment in such calendar year and in preceding calendar years shall be charged against the account or accounts of the employer or employers in whose employment such individual established base weeks constituting the basis of such benefits, except that, with respect to benefit years commencing after January 4, 1998, an employer's account shall not be charged for benefits paid to a claimant if the claimant's employment by that employer was ended in any way which, pursuant to subsection (a), (b), (c), (f), (g) or (h) of *R.S.43:21-5*, would have disqualified the claimant for benefits if the claimant had applied for benefits at the time when that employment ended. Benefits paid under a given benefit determination shall be charged against the account of the employer to whom such determination relates. When each benefit payment is made, either a copy of the benefit check or other form of notification shall be promptly sent to the employer against whose account the benefits are to be charged. Such copy or notification shall identify the employer against whose account the amount of such payment is being charged, shall show at least the name and social security account number of the claimant and shall specify the period of unemployment to which said check applies.

Each employer shall be furnished an annual summary statement of benefits charged to his account.

(2) Regulations may be prescribed for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several

individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) No employer's rate shall be lower than 5.4% unless assignment of such lower rate is consistent with the conditions applicable to additional credit allowance for such year under *section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. § 3303(a)(1))*, any other provision of this section to the contrary notwithstanding.

(4) Employer Reserve Ratio. (A) Each employer's rate shall be 2 8/10%, except as otherwise provided in the following provisions. No employer's rate for the 12 months commencing July 1 of any calendar year shall be other than 2 8/10%, unless as of the preceding January 31 such employer shall have paid contributions with respect to wages paid in each of the three calendar years immediately preceding such year, in which case such employer's rate for the 12 months commencing July 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be:

(1) 2 5/10%, if such excess equals or exceeds 4%, but less than 5%, of his average annual payroll (as defined in paragraph (2), subsection (a) of *R.S.43:21-19*);

(2) 2 2/10%, if such excess equals or exceeds 5%, but is less than 6%, of his average annual payroll;

(3) 1 9/10%, if such excess equals or exceeds 6%, but is less than 7%, of his average annual payroll;

(4) 1 6/10%, if such excess equals or exceeds 7%, but is less than 8%, of his average annual payroll;

(5) 1 3/10%, if such excess equals or exceeds 8%, but is less than 9%, of his average annual payroll;

(6) 1%, if such excess equals or exceeds 9%, but is less than 10%, of his average annual payroll;

(7) 7/10 of 1%, if such excess equals or exceeds 10%, but is less than 11%, of his average annual payroll;

(8) 4/10 of 1%, if such excess equals or exceeds 11% of his average annual payroll.

(B) If the total of an employer's contributions, paid on his own behalf, for all past periods for the purposes of this paragraph (4), is less than the total benefits charged against his account during the same period, his rate shall be:

(1) 4%, if such excess is less than 10% of his average annual payroll;

(2) 4 3/10%, if such excess equals or exceeds 10%, but is less than 20%, of his average annual payroll;

(3) 4 6/10%, if such excess equals or exceeds 20% of his average annual payroll.

(C) Specially assigned rates.

(i) If no contributions were paid on wages for employment in any calendar year used in determining the average annual payroll of an employer eligible for an assigned rate under this paragraph (4), the employer's rate shall be specially assigned as follows:

if the reserve balance in its account is positive, its assigned rate shall be the highest rate in effect for positive balance accounts for that period, or 5.4%, whichever is higher, and

if the reserve balance in its account is negative, its assigned rate shall be the highest rate in effect for deficit accounts for that period.

(ii) If, following the purchase of a corporation with little or no activity, known as a corporate shell, the resulting employing unit operates a new or different business activity, the employing unit shall be assigned a new employer rate.

(iii) Entities operating under common ownership, management or control, when the operation of the entities is not identifiable, distinguishable and severable, shall be considered a single employer for the purposes of this chapter (*R.S.43:21-1 et seq.*).

(D) The contribution rates prescribed by subparagraphs (A) and (B) of this paragraph (4) shall be increased or decreased in accordance with the provisions of paragraph (5) of this subsection (c) for experience rating periods through June 30, 1986.

(5) (A) Unemployment Trust Fund Reserve Ratio. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 4% but is less than 7% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by 3/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection. If on March 31 of any calendar year the balance of the unemployment trust fund exceeds 2 1/2% but is less than 4% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection.

If on March 31 of any calendar year the balance of the unemployment trust fund is less than 2 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer (1) eligible for a contribution rate calculation based upon benefit experience, shall be increased by (i) 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and (ii) an additional amount equal to 20% of the total rate established herein, provided, however, that the final contribution rate for each employer shall be computed to the nearest multiple of 1/10% if not already a multiple thereof; (2) not eligible for a contribution rate calculation based upon benefit experience, shall be increased by 6/10 of 1% over the contribution rate otherwise established under the provisions of paragraph (4) of this subsection. For the period commencing July 1, 1984 and ending June 30, 1986, the contribution rate for each employer liable to pay contributions under *R.S.43:21-7* shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(B) If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 10% but is less than 12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 3/10 of 1% under the contribution rate otherwise established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 6/10 of 1% if his account for all past periods reflects an excess of contributions paid over total benefits charged of 3% or more of his average annual payroll, otherwise by 3/10 of 1% under the contribution rate otherwise

established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%.

(C) The "balance" in the unemployment trust fund, as the term is used in subparagraphs (A) and (B) above, shall not include moneys credited to the State's account under section 903 of the Social Security Act, as amended (42 U.S.C. § 1103), during any period in which such moneys are appropriated for the payment of expenses incurred in the administration of the "unemployment compensation law."

(D) Prior to July 1 of each calendar year the controller shall determine the Unemployment Trust Reserve Ratio, which shall be calculated by dividing the balance of the unemployment trust fund as of the prior March 31 by total taxable wages reported to the controller by all employers as of March 31 with respect to their employment during the last calendar year.

(E) (i) (Deleted by amendment, P.L.1997, c.263).

(ii) (Deleted by amendment, P.L.2001, c.152).

(iii) (Deleted by amendment, P.L.2003, c.107).

(iv) (Deleted by amendment, P.L.2004, c.45).

(v) (Deleted by amendment, P.L.2008, c.17).

(vi) With respect to experience rating years beginning on or after July 1, 2004, the new employer rate or the unemployment experience rate of an employer under this section shall be the rate which appears in the column headed by the Unemployment Trust Fund Reserve Ratio as of the applicable calculation date and on the line with the Employer Reserve Ratio, as defined in paragraph 4 of this subsection (R.S.43:21-7(c)(4)), as set forth in the following table:

EXPERIENCE RATING TAX TABLE					
Employer Reserve Ratio <sup>2</sup>	Fund Reserve Ratio <sup>1</sup>				
	1.40% and Over A	1.00% to 1.39% B	0.75% to 0.99% C	0.50% to 0.74% D	0.49% and Under E
Positive Reserve Ratio:					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
Deficit Reserve Ratio:					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4

-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7
-25.00% to -29.99%	3.7	4.8	5.6	6.3	6.8
-30.00% to -34.99%	3.8	4.8	5.7	6.3	6.9
-35.00% and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

<sup>1</sup> Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

<sup>2</sup> Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(F) (i) (Deleted by amendment, P.L.1997, c.263).

(ii) (Deleted by amendment, P.L.2008, c.17).

(iii) With respect to experience rating years beginning on or after July 1, 2004, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 0.50%, the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(G) On or after January 1, 1993, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by 0.1%, except that, during any experience rating year starting before January 1, 1998 in which the fund reserve ratio is equal to or greater than 7.00% or during any experience rating year starting on or after January 1, 1998, in which the fund reserve ratio is equal to or greater than 3.5%, there shall be no decrease pursuant to this subparagraph (G) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under.

(H) On and after January 1, 1998 until December 31, 2000 and on or after January 1, 2002 until June 30, 2006, the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by a factor, as set out below, computed to the nearest multiple of 1/10%, except that, if an employer has a deficit reserve ratio of negative 35.0% or under, the employer's rate of contribution shall not be reduced pursuant to this subparagraph (H) to less than 5.4%:

From January 1, 1998 until December 31, 1998, a factor of 12%;

From January 1, 1999 until December 31, 1999, a factor of 10%;

From January 1, 2000 until December 31, 2000, a factor of 7%;

From January 1, 2002 until March 31, 2002, a factor of 36%;

From April 1, 2002 until June 30, 2002, a factor of 85%;

From July 1, 2002 until June 30, 2003, a factor of 15%;

From July 1, 2003 until June 30, 2004, a factor of 15%;

From July 1, 2004 until June 30, 2005, a factor of 7%;

From July 1, 2005 until December 31, 2005, a factor of 16%; and

From January 1, 2006 until June 30, 2006, a factor of 34%.

The amount of the reduction in the employer contributions stipulated by this subparagraph (H) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraph (G) of this paragraph (5), except that the rate of contribution of an employer who has a

deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this subparagraph (H) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(I) (Deleted by amendment, P.L.2008, c.17).

(J) On or after July 1, 2001, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by 0.0175%, except that, during any experience rating year starting on or after July 1, 2001, in which the fund reserve ratio is equal to or greater than 3.5%, there shall be no decrease pursuant to this subparagraph (J) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under. The amount of the reduction in the employer contributions stipulated by this subparagraph (J) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraphs (G) and (H) of this paragraph (5), except that the rate of contribution of an employer who has a deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this subparagraph (J) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(6) Additional contributions.

Notwithstanding any other provision of law, any employer who has been assigned a contribution rate pursuant to subsection (c) of this section for the year commencing July 1, 1948, and for any year commencing July 1 thereafter, may voluntarily make payment of additional contributions, and upon such payment shall receive a recomputation of the experience rate applicable to such employer, including in the calculation the additional contribution so made, except that, following a transfer as described under *R.S.43:21-7(c)(7)(D)*, neither the predecessor nor successor in interest shall be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year. Any such additional contribution shall be made during the 30-day period following the date of the mailing to the employer of the notice of his contribution rate as prescribed in this section, unless, for good cause, the time for payment has been extended by the controller for not to exceed an additional 60 days; provided that in no event may such payments which are made later than 120 days after the beginning of the year for which such rates are effective be considered in determining the experience rate for the year in which the payment is made. Any employer receiving any extended period of time within which to make such additional payment and failing to make such payment timely shall be, in addition to the required amount of additional payment, liable for a penalty of 5% thereof or \$ 5.00, whichever is greater, not to exceed \$ 50.00. Any adjustment under this subsection shall be made only in the form of credits against accrued or future contributions.

(7) Transfers.

(A) Upon the transfer of the organization, trade or business, or substantially all the assets of an employer to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, the controller shall transfer the employment experience of the predecessor employer to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer, pursuant to regulation, if it is determined that the employment experience of the predecessor employer with respect to the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. The successor in interest may, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate, to the satisfaction of the controller, that the employment experience of the predecessor is not indicative of the future employment experience of the successor.

(B) An employer who transfers part of his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, may jointly make application with such successor in interest for transfer of that portion of the employment experience of the predecessor employer relating to the portion of the organization, trade, assets or

business transferred to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer. The transfer of employment experience may be allowed pursuant to regulation only if it is found that the employment experience of the predecessor employer with respect to the portion of the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. Credit shall be given to the successor in interest only for the years during which contributions were paid by the predecessor employer with respect to that part of the organization, trade, assets or business transferred.

(C) A transfer of the employment experience in whole or in part having become final, the predecessor employer thereafter shall not be entitled to consideration for an adjusted rate based upon his or its experience or the part thereof, as the case may be, which has thus been transferred. A successor in interest to whom employment experience or a part thereof is transferred pursuant to this subsection shall, as of the date of the transfer of the organization, trade, assets or business, or part thereof, immediately become an employer if not theretofore an employer subject to this chapter (*R.S.43:21-1 et seq.*).

(D) If an employer transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience of the successor in interest. The transfer of the employment experience is mandatory and not subject to appeal or protest.

(E) The transfer of part of an employer's employment experience to a successor in interest shall become effective as of the first day of the calendar quarter following the acquisition by the successor in interest. As of the effective date, the successor in interest shall have its employer rate recalculated by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it shall be assigned the new employer rate until the effective date of the transfer of employment experience.

(F) Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(d) Contributions of workers to the unemployment compensation fund and the State disability benefits fund.

(1) (A) For periods after January 1, 1975, each worker shall contribute to the fund 1% of his wages with respect to his employment with an employer, which occurs on and after January 1, 1975, after such employer has satisfied the condition set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer; provided, however, that such contributions shall be at the rate of 1/2 of 1% of wages paid with respect to employment while the worker is in the employ of the State of New Jersey, or any governmental entity or instrumentality which is an employer as defined under *R.S.43:21-19(h)(5)*, or is covered by an approved private plan under the "Temporary Disability Benefits Law" or while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (*C.43:21-37*).

(B) Effective January 1, 1978 there shall be no contributions by workers in the employ of any governmental or nongovernmental employer electing or required to make payments in lieu of contributions unless the employer is covered by the State plan under the "Temporary Disability Benefits Law" (*C.43:21-25 et al.*), and in that case contributions shall be at the rate of 1/2 of 1%, except that commencing July 1, 1986, workers in the employ of any nongovernmental employer electing or required to make payments in lieu of contributions shall be required to make contributions to the fund at the same rate prescribed for workers of other nongovernmental employers.

(C) (i) Notwithstanding the above provisions of this paragraph (1), during the period starting July 1, 1986 and ending December 31, 1992, each worker shall contribute to the fund 1.125% of wages paid with respect to his employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under *R.S.43:21-19(h)(6)*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection *R.S.43:21-19(h)* with respect to becoming an employer. Contributions, however, shall be at the rate of 0.625% while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law" or while the worker is exempt under section 7 of that law, P.L.1948, c.110 (*C.43:21-31*) or any other provision of that law; provided that such contributions shall be at the rate of 0.625% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (*C.43:21-31*) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, the contributions to the fund shall be 0.125%.

(ii) (Deleted by amendment, P.L.1995, c.422.)

(D) Notwithstanding any other provisions of this paragraph (1), during the period starting January 1, 1993 and ending June 30, 1994, each worker shall contribute to the unemployment compensation fund 0.5% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer. No contributions, however, shall be made by the worker while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25 et al.*) or while the worker is exempt under section 7 of P.L.1948, c.110 (*C.43:21-31*) or any other provision of that law; provided that the contributions shall be at the rate of 0.50% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (*C.43:21-31*) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, no contributions shall be made to the fund.

Each worker shall, starting on January 1, 1996 and ending March 31, 1996, contribute to the unemployment compensation fund 0.60% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

Each worker shall, starting on January 1, 1998 and ending December 31, 1998, contribute to the unemployment compensation fund 0.10% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid



with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

Each worker shall, starting on January 1, 1999 until December 31, 1999, contribute to the unemployment compensation fund 0.15% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

Each worker shall, starting on January 1, 2000 until December 31, 2001, contribute to the unemployment compensation fund 0.20% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

Each worker shall, starting on January 1, 2002 until June 30, 2004, contribute to the unemployment compensation fund 0.1825% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or a nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.0825% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

Each worker shall, starting on and after July 1, 2004, contribute to the unemployment compensation fund 0.3825% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of *R.S.43:21-19* with respect to becoming an employer, provided that the contributions shall be at the rate of 0.0825% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

(E) Each employer shall, notwithstanding any provision of law in this State to the contrary, withhold in trust the amount of his workers' contributions from their wages at the time such wages are paid, shall show such deduction on his payroll records, shall furnish such evidence thereof to his workers as the division or controller may prescribe, and shall transmit all such contributions, in addition to his own contributions, to the office of the controller in such manner and at such times as may be prescribed. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he alone shall thereafter be liable for such contributions, and for the purpose of *R.S.43:21-14*, such contributions shall be treated as employer's contributions required from him.

(F) As used in this chapter (*R.S.43:21-1* et seq.), except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.

(G) (i) Each worker shall, starting on July 1, 1994, contribute to the State disability benefits fund an amount equal to 0.50% of wages paid with respect to the worker's employment with a government employer electing or required to pay contributions to the State disability benefits fund or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph (6) of subsection (h) of *R.S.43:21-19*, unless the employer is covered by an approved private disability plan or is exempt from the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-25* et al.) under section 7 of that law (*C.43:21-31*) or any other provision of that law.

(ii) Each worker shall contribute to the State disability benefits fund, in addition to any amount contributed pursuant to subparagraph (i) of this paragraph (1)(G), an amount equal to, during calendar year 2009, 0.09%, and during calendar year 2010 and each subsequent calendar year, 0.12%, of wages paid with respect to the worker's employment with any covered employer, including

a governmental employer which is an employer as defined under *R.S.43:21-19(h)(5)*, unless the employer is covered by an approved private disability plan for benefits during periods of family temporary disability leave. The contributions made pursuant to this subparagraph (ii) to the State disability benefits fund shall be deposited into an account of that fund reserved for the payment of benefits during periods of family temporary disability leave as defined in section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (*C.43:21-27*) and for the administration of those payments and shall not be used for any other purpose. This account shall be known as the "Family Temporary Disability Leave Account." Necessary administrative costs shall include the cost of an outreach program to inform employees of the availability of the benefits and the cost of issuing the reports required or permitted pursuant to section 13 of P.L.2008, c.17 (*C.43:21-39.4*). No monies, other than the funds in the "Family Temporary Disability Leave Account," shall be used for the payment of benefits during periods of family temporary disability leave or for the administration of those payments, with the sole exception that, during calendar years 2008 and 2009, a total amount not exceeding \$ 25 million may be transferred to that account from the revenues received in the State disability benefits fund pursuant to subparagraph (i) of this paragraph (1)(G) and be expended for those payments and their administration, including the administration of the collection of contributions made pursuant to this subparagraph (ii) and any other necessary administrative costs. Any amount transferred to the account pursuant to this subparagraph (ii) shall be repaid during a period beginning not later than January 1, 2011 and ending not later than December 31, 2015. No monies, other than the funds in the "Family Temporary Disability Leave Account," shall be used under any circumstances after December 31, 2009, for the payment of benefits during periods of family temporary disability leave or for the administration of those payments, including for the administration of the collection of contributions made pursuant to this subparagraph (ii).

(2) (A) (Deleted by amendment, P.L.1984, c.24.)

(B) (Deleted by amendment, P.L.1984, c.24.)

(C) (Deleted by amendment, P.L.1994, c.112.)

(D) (Deleted by amendment, P.L.1994, c.112.)

(E) (i) (Deleted by amendment, P.L.1994, c.112.)

(ii) (Deleted by amendment, P.L.1996, c.28.)

(iii) (Deleted by amendment, P.L.1994, c.112.)

(3) If an employee receives wages from more than one employer during any calendar year, and either the sum of his contributions deposited in and credited to the State disability benefits fund plus the amount of his contributions, if any, required towards the costs of benefits under one or more approved private plans under the provisions of section 9 of the "Temporary Disability Benefits Law" (*C.43:21-33*) and deducted from his wages, or the sum of such latter contributions, if the employee is covered during such calendar year only by two or more private plans, exceeds an amount equal to 1/2 of 1% of the "wages" determined in accordance with the provisions of *R.S.43:21-7(b)(3)* during the calendar years beginning on or after January 1, 1976, the employee shall be entitled to a refund of the excess if he makes a claim to the controller within two years after the end of the calendar year in which the wages are received with respect to which the refund is claimed and establishes his right to such refund. Such refund shall be made by the controller from the State disability benefits fund. No interest shall be allowed or paid with respect to any such refund. The controller shall, in accordance with prescribed regulations, determine the portion of the aggregate amount of such refunds made during any calendar year which is applicable to private plans for which deductions were made under section 9 of the "Temporary Disability Benefits Law" (*C.43:21-33*) such determination to be based upon the ratio of the amount of such wages exempt from contributions to such fund, as provided in subparagraph (B) of paragraph (1) of this subsection with respect to coverage under private plans, to the total wages so exempt plus the amount of such wages subject to contributions to the disability benefits fund, as provided in subparagraph (G) of paragraph (1) of this subsection. The controller shall, in accordance with prescribed regulations, prorate the amount so determined among the applicable private plans in the proportion that the wages covered by each plan bear to the total

private plan wages involved in such refunds, and shall assess against and recover from the employer, or the insurer if the insurer has indemnified the employer with respect thereto, the amount so prorated. The provisions of *R.S.43:21-14* with respect to collection of employer contributions shall apply to such assessments. The amount so recovered by the controller shall be paid into the State disability benefits fund.

(4) If an individual does not receive any wages from the employing unit which for the purposes of this chapter (*R.S.43:21-1* et al.) is treated as his employer, or receives his wages from some other employing unit, such employer shall nevertheless be liable for such individual's contributions in the first instance; and after payment thereof such employer may deduct the amount of such contributions from any sums payable by him to such employing unit, or may recover the amount of such contributions from such employing unit, or, in the absence of such an employing unit, from such individual, in a civil action; provided proceedings therefor are instituted within three months after the date on which such contributions are payable. General rules shall be prescribed whereby such an employing unit may recover the amount of such contributions from such individuals in the same manner as if it were the employer.

(5) Every employer who has elected to become an employer subject to this chapter (*R.S.43:21-1* et al.), or to cease to be an employer subject to this chapter (*R.S.43:21-1* et al.), pursuant to the provisions of *R.S.43:21-8*, shall post and maintain printed notices of such election on his premises, of such design, in such numbers, and at such places as the director may determine to be necessary to give notice thereof to persons in his service.

(6) Contributions by workers, payable to the controller as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

(e) Contributions by employers to State disability benefits fund.

(1) Except as hereinafter provided, each employer shall, in addition to the contributions required by subsections (a), (b), and (c) of this section, contribute 1/2 of 1% of the wages paid by such employer to workers with respect to employment unless he is not a covered employer as defined in section 3 of the "Temporary Disability Benefits Law" (*C.43:21-27 (a)*), except that the rate for the State of New Jersey shall be 1/10 of 1% for the calendar year 1980 and for the first six months of 1981. Prior to July 1, 1981 and prior to July 1 each year thereafter, the controller shall review the experience accumulated in the account of the State of New Jersey and establish a rate for the next following fiscal year which, in combination with worker contributions, will produce sufficient revenue to keep the account in balance; except that the rate so established shall not be less than 1/10 of 1%. Such contributions shall become due and be paid by the employer to the controller for the State disability benefits fund as established by law, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$ 0.005 or more, in which case it shall be increased to \$ 0.01.

(2) During the continuance of coverage of a worker by an approved private plan of disability benefits under the "Temporary Disability Benefits Law," the employer shall be exempt from the contributions required by subparagraph (1) above with respect to wages paid to such worker.

(3) (A) The rates of contribution as specified in subparagraph (1) above shall be subject to modification as provided herein with respect to employer contributions due on and after July 1, 1951.

(B) A separate disability benefits account shall be maintained for each employer required to contribute to the State disability benefits fund and such account shall be credited with contributions deposited in and credited to such fund with respect to employment occurring on and after January 1, 1949. Each employer's account shall be credited with all contributions paid on or before January 31 of any calendar year on his own behalf and on behalf of individuals in his service with respect to employment occurring in preceding calendar years; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this act shall be construed to grant any

employer or individuals in his service prior claims or rights to the amounts paid by him to the fund either on his own behalf or on behalf of such individuals. Benefits paid to any covered individual in accordance with Article III C.43:21-37 et seq. of the "Temporary Disability Benefits Law" on or before December 31 of any calendar year with respect to disability in such calendar year and in preceding calendar years shall be charged against the account of the employer by whom such individual was employed at the commencement of such disability or by whom he was last employed, if out of employment.

(C) The controller may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(D) Prior to July 1 of each calendar year, the controller shall make a preliminary determination of the rate of contribution for the 12 months commencing on such July 1 for each employer subject to the contribution requirements of this subsection (e).

(1) Such preliminary rate shall be 1/2 of 1% unless on the preceding January 31 of such year such employer shall have been a covered employer who has paid contributions to the State disability benefits fund with respect to employment in the three calendar years immediately preceding such year.

(2) If the minimum requirements in (1) above have been fulfilled and the credited contributions exceed the benefits charged by more than \$ 500.00, such preliminary rate shall be as follows:

(i) 2/10 of 1% if such excess over \$ 500.00 exceeds 1% but is less than 1 1/4% of his average annual payroll as defined in this chapter (R.S.43:21-1 et al.);

(ii) 15/100 of 1% if such excess over \$ 500.00 equals or exceeds 1 1/4% but is less than 1 1/2% of his average annual payroll;

(iii) 1/10 of 1% if such excess over \$ 500.00 equals or exceeds 1 1/2% of his average annual payroll.

(3) If the minimum requirements in (1) above have been fulfilled and the contributions credited exceed the benefits charged but by not more than \$ 500.00 plus 1% of his average annual payroll, or if the benefits charged exceed the contributions credited but by not more than \$ 500.00, the preliminary rate shall be 1/4 of 1%.

(4) If the minimum requirements in (1) above have been fulfilled and the benefits charged exceed the contributions credited by more than \$ 500.00, such preliminary rate shall be as follows:

(i) 35/100 of 1% if such excess over \$ 500.00 is less than 1/4 of 1% of his average annual payroll;

(ii) 45/100 of 1% if such excess over \$ 500.00 equals or exceeds 1/4 of 1% but is less than 1/2 of 1% of his average annual payroll;

(iii) 55/100 of 1% if such excess over \$ 500.00 equals or exceeds 1/2 of 1% but is less than 3/4 of 1% of his average annual payroll;

(iv) 65/100 of 1% if such excess over \$ 500.00 equals or exceeds 3/4 of 1% but is less than 1% of his average annual payroll;

(v) 75/100 of 1% if such excess over \$ 500.00 equals or exceeds 1% of his average annual payroll.

(5) Determination of the preliminary rate as specified in (2), (3) and (4) above shall be subject, however, to the condition that it shall in no event be decreased by more than 1/10 of 1% of wages or increased by more than 2/10 of 1% of wages from the preliminary rate determined for the preceding year in accordance with (1), (2), (3) or (4), whichever shall have been applicable.

(E) (1) Prior to July 1 of each calendar year the controller shall determine the amount of the State disability benefits fund as of December 31 of the preceding calendar year, increased by the contributions paid thereto during January of the current calendar year with respect to employment occurring in the preceding calendar year. If such amount exceeds the net amount withdrawn from the unemployment trust fund pursuant to section 23 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the amount at the end of such preceding calendar year of the unemployment disability account as defined in section 22 of said law (C.43:21-46), such excess shall be expressed as a percentage of the wages on which contributions were paid to the State disability benefits fund on or before January 31 with respect to employment in the preceding calendar year.

(2) The controller shall then make a final determination of the rates of contribution for the 12 months commencing July 1 of such year for employers whose preliminary rates are determined as provided in (D) hereof, as follows:

(i) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds 1 1/4%, the final employer rates shall be the preliminary rates determined as provided in (D) hereof, except that if the employer's preliminary rate is determined as provided in (D)(2) or (D)(3) hereof, the final employer rate shall be the preliminary employer rate decreased by such percentage of excess taken to the nearest 5/100 of 1%, but in no case shall such final rate be less than 1/10 of 1%.

(ii) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds 3/4 of 1% and is less than 1 1/4 of 1%, the final employer rates shall be the preliminary employer rates.

(iii) If the percentage determined in accordance with paragraph (E)(1) of this subsection is less than 3/4 of 1%, but in excess of 1/4 of 1%, the final employer rates shall be the preliminary employer rates determined as provided in (D) hereof increased by the difference between 3/4 of 1% and such percentage taken to the nearest 5/100 of 1%; provided, however, that no such final rate shall be more than 1/4 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, more than 1/2 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, nor more than 3/4 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof.

(iv) If the amount of the State disability benefits fund determined as provided in paragraph (E)(1) of this subsection is equal to or less than 1/4 of 1%, then the final rate shall be 2/5 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, 7/10 of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, and 1.1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof. Notwithstanding any other provision of law or any determination made by the controller with respect to any 12-month period commencing on July 1, 1970, the final rates for all employers for the period beginning January 1, 1971, shall be as set forth herein.

(F) Notwithstanding any other provisions of this subsection (e), the rate of contribution paid to the State disability benefits fund by each covered employer as defined in paragraph (1) of subsection (a) of section 3 of P.L.1948, c.110 (C.43:21-27), shall be determined as if:

(i) No disability benefits have been paid with respect to periods of family temporary disability leave;

(ii) No worker paid any contributions to the State disability benefits fund pursuant to paragraph (1)(G)(ii) of subsection (d) of this section; and

(iii) No amounts were transferred from the State disability benefits funds to the "Family Temporary Disability Leave Account" pursuant to paragraph (1)(G)(ii) of subsection (d) of this section.

**HISTORY:** Amended 1938, c. 58; 1939, c. 289; 1941, c. 388; 1947, c. 35, § 2; 1948, c. 109, § 1; 1950, c. 172, § 4; 1951, c. 249; 1952, c. 187, § 4; 1953, c. 219; 1961, c. 43, § 5; 1967, c. 30, § 4; 1967, c. 30, title amended 1967, c. 286, § 12; 1970, c. 324, § 1; 1971, c. 346, § 2; 1972, c. 172, § 1; 1974, c. 86, § 5; 1977, c. 307, § 4; 1980, c. 18, § 1; 1984, c. 24, § 5; 1992, c. 44, § 10; 1992, c. 160, § 35; 1994, c. 112, § 1; 1995, c. 422, § 1; 1996, c. 28, § 13, eff. May 16, 1996, retroactive to Jan. 1, 1996; 1996, c. 30, § 6, eff. May 16, 1996; 1997, c. 255, § 2, eff. Sept. 17, 1997; 1997, c. 263, § 12, eff. Jan. 1, 1998; 2001, c. 152, § 13, eff. July 13, 2001; 2002, c. 13, § 3, eff. Mar. 26, 2002; 2002, c. 29, § 1, eff. June 30, 2002; 2003, c. 107, § 3, eff. July 1, 2003; 2004, c. 45, § 2, eff. June 29, 2004; 2005, c. 123, § 1, eff. July 2, 2005; 2005, c. 239, § 1, eff. Dec. 15, 2005; 2005, c. 249, § 1, eff. Dec. 21, 2005; 2008, c. 17, § 15, eff. May 2, 2008; 2009, c. 12, § 1, eff. Jan. 27, 2009.

#### **43:21-7a. Definitions**

As used in sections 28 through 34 [*C.43:21-7a* through *C.43:21-7g*] of this act:

"Commissioner" means the Commissioner of Labor or his designee.

"Department" means the Department of Labor.

"Employee" means a person who performs services for remuneration for an employer.

"Employer" means an employer as defined in subsection (h) of *R.S. 43:21-19*.

"Fund" means the "Health Care Subsidy Fund" established pursuant to section 8 of P.L.1992, c.160 (*C.26:2H-18.58*).

"Taxable wages" means wages as determined in accordance with paragraph (3) of subsection (b) of *R.S. 43:21-7*.

"Total wages" means wages as defined in subsection (o) of *R.S. 43:21-19*.

**HISTORY:** L. 1992, c. 160, § 28.

#### **43:21-7b. Contributions to Health Care Subsidy Fund**

a. Beginning January 1, 1993 until December 31, 1995, except as provided pursuant to subsection b. of this section, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.6% of the employee's taxable wages.

Beginning April 1, 1996 through December 31, 1996, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.6% of the employee's taxable wages, except that the total amount contributed to the fund when combined with the employee's contribution made pursuant to *R.S.43:31-7(d)(1)(D)* for the period January 1, 1996 through March 31, 1996, shall not exceed 0.6% of the employee's taxable wages for the 1996 calendar year.

Beginning January 1, 1997 through December 31, 1997, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.5% of the employee's taxable wages.

Beginning on January 1, 1998 until December 31, 1998, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.30% of the employee's taxable wages.

Beginning on January 1, 1999 until December 31, 1999, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.25% of the employee's taxable wages.

Beginning on January 1, 2000 until June 30, 2004, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.20% of the employee's taxable wages.

Also beginning on January 1, 1993 until December 31, 1995 and beginning April 1, 1996 until December 31, 1997, each employer shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to the amount that the employer's contribution to the unemployment compensation fund is decreased pursuant to subparagraph (H) of paragraph (5) of subsection (c) of *R.S.43:21-7*.

Also beginning on January 1, 1998 until December 31, 2000, and beginning on January 1, 2002 and ending June 30, 2006, each employer shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to the amount that the employer's contribution to the unemployment compensation fund is decreased pursuant to subparagraph (H) of paragraph (5) of subsection (c) of *R.S.43:21-7*.

b. If the unemployment compensation fund reserve ratio, as determined pursuant to paragraph (5) of subsection (c) of *R.S.43:21-7*, decreases to a level of less than 4.00% on March 31 of calendar year 1994 or calendar year 1995, the provisions of subsection a. of this section shall cease to be in effect as of July 1 of that calendar year and each employer who would be subject to making the contributions pursuant to subsection a. of this section if that subsection were in effect shall, beginning on July 1 of that calendar year, contribute to the fund an amount equal to 0.62% of the total wages paid by the employer and shall continue to contribute that amount until December 31, 1995.

c. If the total amount of contributions to the fund pursuant to this section during the calendar year 1993 exceeds \$ 600 million, all contributions which exceed \$ 600 million shall be deposited in the unemployment compensation fund. If the total amount of contributions to the fund pursuant to this section during calendar year 1994 or calendar year 1995 exceeds \$ 500 million, all contributions which exceed \$ 500 million shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1996 or 1997 exceeds \$ 330 million, all contributions which exceed \$ 330 million in calendar year 1996 or 1997 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1998 exceeds \$ 288 million, all contributions which exceed \$ 288 million in the calendar year 1998 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1999 exceeds \$ 233.9 million, all contributions which exceed \$ 233.9 million in the calendar year 1999 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 2000 exceeds \$ 178.6 million, all contributions which exceed \$ 178.6 million in the calendar year 2000 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 2001 exceeds \$ 94.9 million, all contributions which exceed \$ 94.9 million in the calendar year 2001 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the period beginning January 1, 2002 and ending June 30, 2002 exceeds \$ 516.5 million, all contributions which exceed \$ 516.5 million in the period beginning January 1, 2002 and ending June 30, 2002 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the fiscal year 2003 or fiscal year 2004 exceeds \$ 325 million, all contributions which exceed \$ 325 million in the fiscal year 2003 or fiscal year 2004 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the fiscal year 2005 exceeds \$ 100 million, all contributions which exceed \$ 100 million in the fiscal year 2005 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the fiscal year 2006 exceeds \$ 350 million, all contributions which exceed \$ 350 million in the fiscal year 2006 shall be deposited in the unemployment compensation fund.



d. All necessary administrative costs related to the collection of contributions pursuant to this section shall be paid from the contributions.

**HISTORY:** L. 1992, c. 160, § 29; amended 1996, c. 28, § 14; 1997, c. 263, § 14; 2002, c. 13, § 4, eff. Mar. 26, 2002; 2002, c. 29, § 2, eff. June 30, 2002; 2003, c. 107, § 4, eff. July 1, 2003; 2004, c. 45, § 3, eff. June 29, 2004; 2005, c. 123, § 2, eff. July 2, 2005.

#### **43:21-7c. Employer obligations**

Notwithstanding the provisions of any other law to the contrary, each employer shall: withhold in trust the amount of all workers' contributions from their wages at the time wages are paid, show the deduction on the payroll records, furnish the evidence thereof and permit any inspection of the records as prescribed by the commissioner, and transmit all workers' contributions and other contributions due from the employer pursuant to this act to the fund in a manner and at the times that the commissioner, in consultation with the Essential Health Services Commission established pursuant to P.L.1992, c.160 (*C.26:2H-18.51* et al.), prescribes. Interest and any expense to the department of recovery may be assessed by the commissioner on payments not made within the prescribed due dates at the same rate as provided for pursuant to paragraph (1) of subsection (a) of *R.S. 43:21-14*. If any employer fails to deduct the contributions of any workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, the employer shall be solely liable for those contributions.

**HISTORY:** L. 1992, c. 160, § 30.

#### **43:21-7d. Failure to make report**

If an employer fails to make any report or permit any inspection required by the commissioner to implement the provisions of this act, an estimate shall be made regarding the liability of the employer from information available and the employer shall be assessed for any amount due, including the amount that was withheld or that should have been withheld from its employees for deposit into the fund. Also, if, after an examination of any report filed, a deficiency is discovered with respect to the taxable wages reported, the employer shall be assessed the amount of any determined deficiency. Additional remedies through the court may be established by the commissioner, including the charging of any expenses incurred by the department in recovering the assessment.

**HISTORY:** L. 1992, c. 160, § 31.

#### **43:21-7e. Entitlement to refund or tax credit**

a. If an employee receives wages from more than one employer during any calendar year, and the sum of the employee's contributions deposited in the fund exceeds an amount equal to 0.6% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of *R.S. 43:21-7* during calendar year 1993, calendar year 1994 or calendar year 1995, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment from the fund without interest.

If an employee receives wages from more than one employer during the calendar year 1996 and the sum of the employee's contributions deposited in the unemployment compensation fund during the period January 1, 1996 through March 31, 1996 and the employee's contributions deposited in the health care subsidy fund during the period April 1, 1996 through December 31, 1996 exceeds an amount equal to 0.6% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of *R.S. 43:21-7* which wages are received during the period January 1, 1996 through December 31, 1996, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment without interest from the unemployment compensation fund or the health care subsidy fund, or both, as appropriate.

If an employee receives wages from more than one employer during the calendar year 1997, and the sum of the employee's contributions deposited in the fund exceeds an amount equal to 0.5% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of *R.S. 43:21-7* during calendar year 1997, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment from the fund without interest.

If an employee receives wages from more than one employer during the calendar year 1998, 1999, 2000 or 2001 and the sum of the employee's contributions deposited in the unemployment compensation fund and the employee's contributions deposited in the health care subsidy fund during the calendar year 1998, 1999, 2000 or 2001 exceeds an amount equal to 0.4% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of *R.S. 43:21-7* which wages are received during the respective calendar year, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment without interest from the unemployment compensation fund or the health care subsidy fund, or both, as appropriate.

If an employee receives wages from more than one employer during the calendar year 2002 or any subsequent calendar year, and the sum of the employee's contributions deposited in the unemployment compensation fund and the employee's contributions deposited in the health care subsidy fund during the calendar year 2002 or the subsequent year exceeds an amount equal to 0.3825% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of *R.S. 43:21-7* which wages are received during the respective calendar year, the employee shall be entitled to a refund of the excess if a claim establishing the employee's right to the refund is made within two years after the end of the respective calendar year in which the wages are received and are the subject of the claim. The commissioner shall refund any overpayment without interest from the unemployment compensation fund or the health care subsidy fund, or both, as appropriate.

b. Any employee who is a taxpayer and entitled, pursuant to the provisions of subsection a. of this section, to a refund of contributions deducted during a tax year from his wages shall, in lieu of the refund, be entitled to a credit in the full amount thereof against the tax otherwise due on his New Jersey gross income for that tax year if he submits his claim for the credit and accompanies that claim with evidence of his right to the credit in the manner provided by regulation by the Director of the Division of Taxation. In any case in which the amount, or any portion thereof, of any credit allowed hereunder results in or increases an excess of income tax payment over income tax liability, the amount of the new or increased excess shall be considered an overpayment and shall be refunded to the taxpayer in the manner provided by subsection (a) of *N.J.S. 54A:9-7*.

**HISTORY:** L. 1992, c. 160, § 32; amended 1996, c. 28, § 15; 1997, c. 263, § 15; 2002, c. 13, § 5, eff. Mar. 26, 2002.

#### **43:21-7f. Schedule of fines**

A schedule of fines, with no fine exceeding \$ 1,000 for a single offense, shall be established by the commissioner for any of the following actions or omissions with respect to the collection of contributions or the use of moneys disbursed from the fund:

- a. A false statement or misrepresentation made knowingly;
- b. Failure to disclose a material fact;
- c. Attempt to defraud;
- d. Willful failure or refusal to: withhold or transfer any contribution or other payment; furnish any report or information; or produce or permit the inspection or copying of records as required pursuant to this act; and

e. Willful violation of any provision of this act or any rule or regulation promulgated pursuant to this act.

The fines shall be recoverable in a civil action by the commissioner in the name of the State of New Jersey. In addition to penalties established for any person, employing unit, employer or entity, each shall be liable for each offense upon conviction before any court of competent jurisdiction at the discretion of the court. All fines shall be payable to the commissioner for deposit in the fund.

**HISTORY:** L. 1992, c. 160, § 33.

#### **43:21-7g. Rules, regulations**

The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) promulgate rules and regulations necessary to implement the provisions of this act, including any requirements regarding the keeping and reporting of records and any sanctions against false statement, misrepresentation, willful violations or fraud.

**HISTORY:** L. 1992, c. 160, § 34.

#### **43:21-7.2. Nonprofit organizations**

(a) Notwithstanding any other provisions of the Unemployment Compensation Law, for payments of contributions by employers, benefits paid to individuals in the employ of nonprofit organizations, as described in *section 501(c)(3) of the Internal Revenue Code* and which are exempt from income tax under *section 501(a) of the Internal Revenue Code*, shall be financed in accordance with the following provisions:

(1) Any nonprofit organization which is, or becomes, subject to the Unemployment Compensation Law on or after January 1, 1972, shall pay contributions under the provisions of *R.S. 43:21-7*, unless it elects in accordance with this paragraph to pay to the unemployment fund an amount equal to the amount of regular benefits and 1/2 of the extended benefits paid that are attributable to base year service in the employ of such nonprofit organization during the effective period of such election;

(2) Any nonprofit organization which is, or becomes, subject to the Unemployment Compensation Law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided it files a written notice of its election within the 120-day period immediately following such date or within a like period immediately following the enactment of this act, whichever occurs later;

(3) Any nonprofit organization which becomes subject to the Unemployment Compensation Law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which such subjectivity begins, by filing a written notice of its election not later than 120 days immediately following the date of such subjectivity or not later than 30 days from the date such organization is notified of its subjectivity, whichever is later;

(4) Any nonprofit organization which makes an election in accordance with paragraph (2) or paragraph (3) shall be liable for payments in lieu of contributions on benefits paid that are attributable to base year service in the employ of such organization during the effective period of the election. Any nonprofit organization may file a written notice terminating its election not later than February 1 of any year with respect to which the termination is to become effective;

(5) Any nonprofit organization which has been paying contributions under the Unemployment Compensation Law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing not later than February 1 of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization during that calendar year or the next calendar year;

(6) For good cause the period within which a notice of election or a notice of termination must be filed may be extended and a retroactive election may be permitted;

(7) If an election for payments in lieu of contributions is terminated by a nonprofit organization or canceled, the nonprofit organization shall remain liable for payments in lieu of contributions with respect to all benefits paid, based on base year wages earned in the employ of such nonprofit organization during the effective period of the election;

(8) In accordance with such regulations as may be prescribed, such nonprofit organization shall be notified of any determination which may be made of the effective date and the termination date of any such election and such determination shall be subject to reconsideration, appeal and review; and

(9) As of the effective date of the termination of an election to make payments in lieu of contributions, a nonprofit organization shall become liable to pay unemployment insurance contributions on taxable wages paid to its employees subsequent to the termination. Its contribution rate beginning with the first July 1 in the period following the termination of an election shall be assigned in accordance with the provisions of *R.S. 43:21-7*, except that:

(A) The benefit charges to its account which are attributable to base year services in the employ of such nonprofit organization during the effective period of its election to make payments in lieu of contributions shall not be included in the total benefit charges to its account in the calculation of its reserve balance for determining its rate under *R.S. 43:21-7(c)*;

(B) Its average annual payroll shall be determined without inclusion of any of the wages paid in any calendar year during which its election to make payments in lieu of contributions was effective for any part of the calendar year;

(C) The period during which the election to make payments in lieu of contributions was effective shall not be included in calculating the period of eligibility for modification of its rate under *R.S. 43:21-7(c)(3)*;

(D) For the period from the date of the termination of its election to the July 1 following termination, the nonprofit organization shall be assigned a rate of 1% for contributions under the Unemployment Compensation Law.

(b) Reimbursement payments. At the end of each calendar month, or at the end of any other period as determined by the controller, the controller shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus 1/2 of the amount of any extended benefits paid during such month or other prescribed period that are attributable to base year service of individuals in the employ of such organization during the effective period of the election, and the provisions of the Unemployment Compensation Law (*R.S. 43:21-1 et seq.*), and the amendments and supplements thereto, shall be applicable with respect to the payment of claims for benefits and the charging thereof; provided, however, that no employer who elects to make payments in lieu of contributions shall be relieved of any charges for benefits paid to his workers by reason of *R.S. 43:21-6(b)(1)*, *R.S. 43:21-7(c)(1)*, or section 6 of chapter 324 of the Laws of 1970 (*C. 43:21-24.12*, Extended Benefits Law).

(c) Payment of any bill rendered under subsection (b) above shall be made not later than 30 days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subsection (e).

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) The amount of any payment required under subsection (b) from any nonprofit organization, as specified in any bill from the controller, shall be conclusive on the organization, unless, not later than 15 days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the controller, setting forth the grounds for such application. The controller shall promptly review and reconsider the amount specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization, unless, not later than 15 days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the controller, setting forth the grounds for the appeal. Proceedings on appeal to the controller from the amount of a bill rendered under this subsection or a redemption of such amount shall be in accordance with the rules and regulations of the controller.

(f) Any organization failing to file a timely report or to make a timely payment of the amount in lieu of contributions due hereunder shall be subject to the same interest, penalties, remedies and methods of enforcement that apply to contributions and reports due under the provisions of the Unemployment Compensation Law.

(g) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this section, the controller may terminate such organization's election to make payments in lieu of contributions as of the January 1 immediately following, and such termination shall be effective for at least two calendar years and until all payments due the division have been satisfied.

(h) Provision for bond or other security. In the discretion of the controller, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to execute and file with the controller a surety bond approved by the controller or it may elect instead to deposit with the controller money or securities approved by the controller. The amount of the bond or deposit shall be determined by the controller and shall not exceed the amount derived by multiplying the organization's taxable wages for the preceding calendar year, or the organization's estimated taxable wages for the ensuing year, whichever is the greater, by the maximum unemployment insurance contribution rate in effect at the beginning of the calendar year for which the bond or deposit is required; provided, however, that any organization which is a self-insurer and is exempt from insuring workers' compensation liability under the Workers' Compensation Law shall, so long as such exemption remains in effect, be exempt from the surety bond and security deposit requirements of this subsection; and any other organization which shall satisfy the controller as to its financial ability to meet the cost of benefits provided under the Unemployment Compensation Law and the Temporary Disability Benefits Law may, upon application, be exempted from such requirements by written order of the controller, which order shall be revocable at any time.

(1) Bond. The amount of any bond deposited under this subsection shall require adjustments as the controller deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within 30 days after notice of the required adjustment was mailed or otherwise delivered to it. Failure of any organization covered by such bond to pay the full amount of payment in lieu of contributions when due, together with any applicable interest and penalties, shall render the surety liable on said bond, to the extent of said bond as though the surety was such organization.

(2) Deposit of money or securities. Any deposit of money or securities in accordance with this subsection shall be retained by the controller in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The controller may deduct from any money deposited under this subsection by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties. The controller shall require the organization within 30 days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The controller may at any time review the adequacy of the deposit made by any organization. If, as a result of such review, the controller determines that an adjustment is necessary, it shall require the organization to make an

additional deposit within 30 days of written notice of the controller's determination or shall return to it such portion as the controller no longer considers necessary, as deemed appropriate. Disposition of income from securities held in escrow shall be governed by applicable State law.

(3) Authority to terminate elections. If any nonprofit organization fails to file a bond or make a deposit, or to increase or make whole the amount of a precisely made bond or deposit, as provided under this subsection, the controller 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, provided the controller may extend for good cause the applicable filing, deposit or adjustment period by not more than 90 days.

(i) Group accounts. Two or more employers that have become liable for payments in lieu of contributions may file a joint application for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to services in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this subsection. Upon approval of the application, a group account shall be established for such employers, effective as of the beginning of the calendar quarter in which the application is received or the next calendar quarter, as appropriate, and the group's representative shall be notified of the effective date of the account. Such account shall remain in effect for not less than two calendar years and thereafter until terminated or upon application by the group. Regulations may be prescribed as necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subsection, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subsection by members of the group, and the time and manner of such payments.

**HISTORY:** L. 1971, c. 346, 3. Amended by L. 1977, c. 307, 5, eff. Jan. 1, 1978; L. 1984, c. 24, 6, eff. Oct. 1, 1984.

### **43:21-7.3. Governmental entities**

(a) Notwithstanding any other provisions of the "unemployment compensation law" for the payment of contributions, benefits paid to individuals based upon wages earned in the employ of any governmental entity or instrumentality which is an employer defined under *R.S. 43:21-19(h)(5)* shall, to the extent that such benefits are chargeable to the account of such governmental entity or instrumentality in accordance with the provisions of *R.S.43:21-1* et seq., be financed by payments in lieu of contributions.

(b) Any governmental entity or instrumentality may, as an alternative to financing benefits by payments in lieu of contributions, elect to pay contributions beginning with the date on which its subjectivity begins by filing written notice of its election with the department no later than 120 days after such subjectivity begins, provided that such election shall be effective for at least two full calendar years; or it may elect to pay contributions for a period of not less than two calendar years beginning January 1 of any year if written notice of such election is filed with the department not later than February 1 of such year; provided, further, that such governmental entity or instrumentality shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned in the employ of such entity or instrumentality in the period during which it financed its benefits by payments in lieu of contributions.

(c) Any governmental entity or instrumentality may terminate its election to pay contributions as of January 1 of any year by filing written notice not later than February 1 of any year with respect to which termination is to become effective. It may not revert to a contributions method of financing for at least two full calendar years after such termination.

(d) Any governmental entity or instrumentality electing the option for contributions financing shall report and pay contributions in accordance with the provisions of *R.S. 43:21-7* except that, notwithstanding the provisions of that section, the contribution rate for such governmental entity or instrumentality shall be 1% for the entire calendar year 1978 and the contribution rate for any

subsequent calendar years shall be the rate established for governmental entities or instrumentalities under subsection (e) of this section.

(e) On or before September 1 of each year, the Commissioner of Labor shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and, on the basis of that experience, establish the contribution rate for the next following calendar year which can be expected to yield sufficient revenue in combination with worker contributions to equal or exceed the projected costs for that calendar year.

(f) Any covered governmental entity or instrumentality electing to pay contributions shall each year appropriate, out of its general funds, moneys to pay the projected costs of benefits at the rate determined under subsection (e) of this section. These funds shall be held in a trust fund maintained by the governmental entity for this purpose. Any surplus remaining in this trust fund may be retained in reserve for payment of benefit costs for subsequent years either by contributions or payments in lieu of contributions.

(g) Any governmental entity or instrumentality electing to finance benefit costs with payments in lieu of contributions shall pay into the fund an amount equal to all benefit costs for which it is liable pursuant to the provisions of the "unemployment compensation law." Each subject governmental entity or instrumentality shall require payments from its workers in the same manner and amount as prescribed under *R.S. 43:21-7(d)* for governmental entities and instrumentalities financing their benefit costs with contributions. No such payment shall be used for a purpose other than to meet the benefits liability of such governmental entity or instrumentality. In addition, each subject governmental entity or instrumentality shall appropriate out of its general funds sufficient moneys which, in addition to any worker payments it requires, are necessary to pay its annual benefit costs estimated on the basis of its past benefit cost experience; provided that for its first year of coverage, its benefit costs shall be deemed to require an appropriation equal to 1% of the projected total of its taxable wages for the year. These appropriated moneys and worker payments shall be held in a trust fund maintained by the governmental entity or instrumentality for this purpose. Any surplus remaining in this trust fund shall be retained in reserve for payment of benefit costs in subsequent years. If a governmental entity or instrumentality requires its workers to make payments as authorized herein, such workers shall not be subject to the contributions required in *R.S. 43:21-7(d)*.

(h) Notwithstanding the provisions of the above subsection (g), commencing July 1, 1986 worker contributions to the unemployment trust fund with respect to wages paid by any governmental entity or instrumentality electing or required to make payments in lieu of contributions, including the State of New Jersey, shall be made in accordance with the provisions of *R.S. 43:21-7(d)(1)(C)* or *R.S. 43:21-7(d)(1)(D)*, as applicable, and, in addition, each governmental entity or instrumentality electing or required to make payments in lieu of contributions shall, except during the period starting January 1, 1993 and ending December 31, 1995 and the period starting April 1, 1996 and ending December 31, 1998, require payments from its workers at the following rates of wages paid, which amounts are to be held in the trust fund maintained by the governmental entity or instrumentality for payment of benefit costs: for the calendar year 1999, 0.05%; for each calendar year from 2000 to 2002, and the period from January 1, 2003 to June 30, 2004, 0.10%; and each fiscal year thereafter, 0.30%.

**HISTORY:** L. 1971, c. 346, § 4; amended 1977, c. 307, § 6; 1984, c. 24, § 17; 1992, c. 205; 1996, c. 28, § 16; 1996, c. 30, § 7; 1997, c. 263, § 13; 2002, c. 13, § 6, eff. Mar. 26, 2002; 2003, c. 107, § 5, eff. July 1, 2003.

#### **43:21-7.4. Application of exemptions from taxation to contributions**

No exemption from taxation granted under any other law of the State shall be construed to apply to the payment of contributions under the Unemployment Compensation Law and Temporary Disability Benefits Law.

**HISTORY:** L. 1971, c. 346, 5.

**43:21-7.5. Contribution rate calculated upon benefit experience; increase if low balance in unemployment trust fund**

Notwithstanding any provisions of *R.S. 43:21-7(c)(5)(A)* to the contrary, if the balance in the unemployment trust fund on March 31, 1972 is less than 7% of the total taxable wages reported to the division in respect to employment during the calendar year 1971, the contribution rate to become effective on July 1, 1972 for each employer eligible for a contribution rate calculated upon benefit experience, shall be increased 3/10 of 1% over the contribution rate otherwise established under paragraphs (3) or (4) of *R.S. 43:21-7(c)*; provided, however, that if the balance in the unemployment trust fund on December 1, 1972 is less than 2 1/2 % of the total taxable wages reported to the division in respect to employment during calendar year 1971, the contribution rates, which would take effect on July 1, 1973 if the balance in the fund on March 31, 1973 were less than 2 1/2 % of the total taxable wages reported during calendar year 1972, pursuant to *R.S. 43:21-7(c)(5)(A)*, shall take effect January 1, 1973.

**HISTORY:** L. 1971, c. 346, 6. Amended by L. 1972, c. 172, 2, eff. Nov. 29, 1972.

**43:21-7.6. Inapplicability of expenditure limitations of Public School Education Act of 1975**

Notwithstanding the provisions of P.L.1975, c. 212 (*C. 18A:7A-3* and *18A:7A-25*) or rules and regulations promulgated pursuant thereto, any increase in expenditure required as a result of this act shall not be subject to the expenditure limitations imposed pursuant to P.L.1975, c. 212 (*C. 18A:7A-3* and *18A:7A-25*).

**HISTORY:** L. 1977, c. 307, 10, eff. Jan. 1, 1978.

**43:21-7.7. Reduced new employer contribution rate**

a. Notwithstanding any other provisions of the "unemployment compensation law," *R.S. 43:21-1* et seq., for the payment of contributions, an employer who transfers all or an approved part of its operations from another state to this State may qualify for a reduced new employer contribution rate until the employer establishes eligibility based on benefit experience within the State as provided in subsection (c) of *R.S. 43:21-7*. A reduced new employer contribution rate of not less than 1.0% of taxable wages as defined in *R.S. 43:21-7(b)(3)* may be assigned for those operations, or any part thereof, as approved by the department, if the employer:

(1) As of January 31 immediately preceding the fiscal year within which that transfer occurs, has paid wages subject to the Federal Unemployment Tax Act, *26 U.S.C. 3301* et seq., for not less than 28 consecutive completed calendar quarters;

(2) Has acquired in the other state an employer reserve ratio of not less than 11% or an equivalent cumulative positive reserve balance experience with unemployment insurance contributions and benefits;

(3) Demonstrates to the satisfaction of the department that the employer reserve ratio acquired in the other state or equivalent cumulative reserve balance experience with unemployment insurance contributions and benefits acquired in the other state may be considered indicative of future employment experience in this State; and

(4) Certifies to the satisfaction of the department that at least 50 full-time jobs will be established at the New Jersey location within 180 days of the transfer of operations.

For the purposes of this subsection, "employer reserve ratio" means total employer contributions minus total benefits charged to the employer's account as a percentage of the employer's average annual payroll as defined in paragraph (2) of subsection (a) of *R.S. 43:21-19*.



b. An employer shall, within 30 days of the transfer of operations to this State, apply to the department in a form and manner prescribed for determination of eligibility for a reduced new employer contribution rate. The department shall review the application and, if the employer qualifies, assign a reduced new employer contribution rate as set forth in the following table:

Fund Reserve Ratio	10.0% and Over	7.00% to 9.99	4.00% to 6.99%	2.50% to 3.99%	0.00% to 2.49%	Less than 0.00%
Reduced New Employer Rate:	1.0	1.0	1.0	1.1	1.2	1.3

For the purposes of this subsection, "fund reserve ratio" means the unemployment trust fund balance as of March 31 as a percentage of the total taxable wages reported as of that date with respect to the prior calendar year. The employer may, within 30 days of receipt of notice of determination of such a rate, withdraw the request.

c. An employer applying for determination of a contribution rate pursuant to this section shall certify to the department that information with respect to wages, contributions and benefits in connection with the transferred operation, and any other information, as the department deems necessary. The employer shall furnish to the department, at those times and in the manner prescribed, that information with respect to those benefits paid after the transfer, and before each succeeding computation date, which were based on wages applicable to the transferred operations and paid in another state.

**HISTORY:** L. 1992, c. 202, § 1.

#### **43:21-8. Period, election, and termination of employer's coverage**

(a) Any employing unit which is or becomes an employer subject to this chapter (*R.S. 43:21-1 et seq.*) within any calendar year shall be subject to this chapter (*R.S. 43:21-1 et seq.*) during the whole of such calendar year.

(b) Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this chapter (*R.S. 43:21-1 et seq.*) only as of January 1 of any calendar year, if

(1) The employing unit files with the division prior to February 1 of such year, a written application for termination of coverage, and the division finds that the employing unit did not pay wages in the amount of \$ 1,000.00 or more within the preceding calendar year for employment subject to this chapter (*R.S. 43:21-1 et seq.*) or

(2) The division finds that during the 2 calendar years preceding such January 1, there was no day on which such employing unit employed one or more individuals in employment subject to this chapter (*R.S. 43:21-1 et seq.*).

For the purpose of this subsection, the employing units mentioned in section *43:21-19(h)(2)*, (3) or (4) of the Revised Statutes shall be treated as a single employing unit.

(c)(1) An employing unit, not otherwise subject to this chapter (*R.S. 43:21-1 et seq.*), which files with the division its written election to become an employer subject hereto for not less than 2 calendar years shall become an employer subject hereto, to the same extent as all other employers, as of the date of filing of such election or as of an earlier date if approved by the division, and shall cease to be subject to this chapter (*R.S. 43:21-1 et seq.*) as of January 1 of any calendar year subsequent to such period of election, only, if, prior to February 1, of such calendar year, such employing unit has filed with the division a written notice to that effect and it meets the conditions for termination of coverage set forth in subsection (b) hereof.

(2) If an employing unit for which services are performed that do not constitute employment as defined in this chapter (*R.S. 43:21-1 et seq.*) files with the division its written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter (*R.S. 43:21-1 et seq.*) for not less than 2 calendar years such services shall be deemed to constitute employment subject to this chapter (*R.S. 43:21-1 et seq.*) as of the date of the filing of such election, or as of an earlier date if approved by the division, and shall cease to be subject to this chapter (*R.S. 43:21-1 et seq.*) as of January 1 of any calendar year subsequent to such period of election, only, if, (A) prior to February 1 of such calendar year, such employing unit has filed with the division a written notice to that effect, or (B) the division finds that during the 2 calendar years preceding such January 1, there was no day on which such services were performed for the employing unit.

**HISTORY:** Amended by L. 1945, c. 73, p. 367, 2; L. 1953, c. 220, p. 1673, 1; L. 1961, c. 43, p. 450, 6; L. 1967, c. 30, 5; L. 1971, c. 346, 7; L. 1977, c. 307, 7, eff. Dec. 30, 1977.

#### **43:21-9. Unemployment compensation fund**

(a) Establishment and control. There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an unemployment compensation fund, which shall be administered by the Department of Labor exclusively for the purpose of this chapter (*R.S. 43:21-1 et seq.*). This fund shall consist of: (1) all contributions and payments in lieu of contributions collected under this chapter (*R.S. 43:21-1 et seq.*); (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings on such property or securities; (5) all moneys credited to this State's account in the unemployment trust fund pursuant to section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended; and (6) all moneys received for the fund from any other source. All moneys in this fund shall be mingled and undivided.

(b) Accounts and deposits. The Treasurer of the State of New Jersey shall be ex officio the treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department and shall issue his warrants upon it in accordance with such regulations as the department shall prescribe. He shall maintain within the fund three separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the department, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to subsection (f) of section 43:21-14 of this Title may be paid from the clearing account upon warrants issued by the treasurer under the direction of the controller. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act (*42 U.S.C. 1104*), as amended, any provisions of law in this State relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the controller, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the controller and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

(c) Withdrawals from the unemployment trust fund.

(1) Benefit payments. Moneys requisitioned from this State's account in the unemployment trust fund shall be used solely for the payment of benefits and in accordance with regulations prescribed by the division, except that money credited to this State's account pursuant to section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended, may be used for the payment of expenses for the administration of this chapter (*R.S. 43:21-1 et seq.*), as provided in paragraph (2) of this subsection. The controller shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the

payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and the payment of benefits shall be made solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations of other formal release by State officers of money in their custody. All warrants for the payment of benefits shall be issued by and bear only the signature of the Commissioner of Labor or his duly authorized agent for that purpose. All warrants for the payment of refunds shall be issued by the treasurer and bear the signature of the treasurer and the countersignature of the commissioner or his duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be deposited with the Secretary of the Treasury of the United States of America, to the credit to this State's account in the unemployment trust fund, as provided in subsection (b) of this section.

(2) Administrative use. Moneys credited to the account of this State by the Secretary of the Treasury of the United States in the unemployment trust fund pursuant to section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended, may be requisitioned and used for the payment of expenses for the administration of the Unemployment Compensation Law (*R.S. 43:21-1 et seq.*), pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the moneys are requisitioned after the enactment of an appropriation law which:

(A) specifies the purposes for which such moneys are appropriated and the amounts appropriated therefor;

(B) limits the period within which such moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(C) limits the moneys which may be obligated during a 12-month period beginning on July 1 and ending on the next June 30 to a sum which does not exceed the amount by which the aggregate of the moneys credited to the account of this State pursuant to section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended, during the same 12-month period and the 34 preceding 12-month periods, exceeds the aggregate of moneys obligated for the payment of expenses incurred for the administration of this chapter (*R.S. 43:21-1 et seq.*) and the moneys paid out for benefits, which is charged against the moneys credited to the account of this State during such 35 12-month periods.

Moneys credited to this State's account in the unemployment trust fund under section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended, which are obligated for the payment of expenses for the administration of this chapter (*R.S. 43:21-1 et seq.*) or paid out for benefits, shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no moneys obligated for the payment of expenses for the administration of this chapter (*R.S. 43:21-1 et seq.*) during a 12-month period specified herein may be charged against any amount credited during such a 12-month period earlier than the thirty-fourth preceding such period.

Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and upon requisition shall be deposited in the unemployment compensation administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment compensation fund. If such money will not be expended, it shall be returned promptly to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund. The controller shall maintain a separate record of the credits, appropriation, obligation and expenditure of the money credited to the account of this State in the unemployment trust fund pursuant to section 903 of the Social Security Act (*42 U.S.C. 1103*), as amended.

(d) Management of funds upon discontinuance of unemployment trust fund. The provisions of subsections (a), (b) and (c) to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with

this State's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this State shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit and release such moneys, properties or securities in a manner approved by the department, in accordance with the provisions of this chapter; provided that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America and of the State of New Jersey; and provided, further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the department.

**HISTORY:** Amended by L.1939, c. 94, p. 191, 3; L.1948, c. 79, p. 453, 1; L.1955, c. 67, p. 225, 1; L.1955, c. 258, p. 944, 1; L.1960, c. 28, p. 91, 2; L.1966, c. 173, 1, eff. June 18, 1966; L.1971, c. 346, 8; L.1973, c. 362, 1, eff. Jan. 2, 1974; L.1984, c. 24, 7, eff. Oct. 1, 1984.

#### **43:21-9.1. Cancellation of record of checks not presented for payment within 6 years**

The State Treasurer, as treasurer and custodian of the unemployment compensation and State disability benefits funds, is hereby authorized and directed to cancel of record and to refuse to honor checks issued against any of the accounts established within the unemployment compensation and State disability benefits funds which have not been presented for payment within 6 years from the date of issuance. Upon such cancellation, moneys held on deposit for the payment of the checks shall be credited to the accounts against which said checks were drawn.

**HISTORY:** L. 1966, c. 24, 1, eff. April 21, 1966.

#### **43:21-10. Unemployment compensation commission**

(a) Organization. There is hereby created a commission to be known as the Unemployment Compensation Commission of New Jersey. It shall consist of seven members who shall be appointed by the Governor, with confirmation by the Senate, not more than four of whom shall be of the same political affiliation. Each member shall be reimbursed for his traveling and other expenses actually and necessarily incurred by him in the performance of his duties, and, in addition, shall receive a per diem allowance of twenty-five dollars (\$ 25.00) for each day, or part thereof, spent in the rendition of service to or for the commission under this act; provided, however, that no member shall in any case receive per diem compensation as such member in an amount in excess of three thousand five hundred dollars (\$ 3,500.00) for any one fiscal year. The payment heretofore of any such per diem allowance to any member of the commission for services performed under this chapter during the period from April twentieth, one thousand nine hundred and forty-five, to October seventh, one thousand nine hundred and forty-seven, is hereby approved, ratified and confirmed; and the payment hereafter of any such per diem allowance to any member of the commission for services performed under this chapter, since September first, one thousand nine hundred and forty-seven, and for which no such per diem allowance was paid, is hereby authorized. No person may be appointed who is an officer or committee member of any political party organization. First appointees to the commission shall serve as designated by the Governor at the time of appointment, as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years. At the expiration of initial terms, appointments shall be made for a term of seven years in each case. Any vacancies created by death, resignation or removal shall be filled by appointment for the unexpired portion of the term so vacated.

The Governor may, at any time after a fair public hearing, remove any member of the commission for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(b) Executive director. The commission shall appoint an executive director who shall be the chief executive and approval officer of the commission and its official agent for all purposes, and who shall hold office at its pleasure. He shall give his full time to the duties of his office, shall be paid a

suitable salary to be fixed by the commission and shall have general charge and supervision of the work of all departments of the commission as well as any subdivisions thereof.

It shall be the duty of the executive director to administer this chapter with the advice of the commission; and to that end, the executive director shall have the following duties and powers:

(1) To formulate necessary rules and regulations, subject to approval by the commission.

(2) To appoint and fix the compensation of members of the staff, subject to approval by the commission and subject to the provisions of subsection (d) of section eleven of this chapter.

(3) To make such expenditures as are necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission, to make requisitions for any funds provided by the Federal Government for administration of this chapter, and he is hereby authorized to draw vouchers on the administration fund for the purpose of administering this chapter.

(4) To draw vouchers upon the unemployment compensation fund and the appropriate accounts therein for the payment of benefits.

(5) To delegate to other persons any of the powers conferred upon him by this chapter, so far as is reasonably necessary.

(c) Divisions. The executive director shall establish such administrative divisions as may be necessary to carry out the purposes of this chapter, subject to approval of the commission. Among such divisions shall be New Jersey State Employment Service Division, established pursuant to section 43:27-12 of this Title. The New Jersey State Employment Service shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commission may find such separation to be impracticable.

(d) Board of review. The executive director shall appoint, subject to the provisions of Title 11, Civil Service, from civil service eligible lists, subject to approval of the commission, a board of review, consisting of three members whose duties shall be to act as a final appeals board in cases of benefit disputes, including appeals from determinations with respect to demands by the deputy for refunds of benefits under section 43:27-16(d) of this chapter and to whom shall be delegated the duty of supervising the work of local appeal tribunals to be organized as provided for elsewhere in this chapter. No member of the board of review shall participate in any case in which he is an interested party.

(e) Powers and duties. The commission shall have the following specific powers and duties:

(1) To designate its chairman.

(2) To study the operation of this chapter and from time to time prepare recommendations to the Governor and Legislature with respect to any improvements which might be desirable.

(3) To make rules and regulations governing its own procedure.

(4) To advise the executive director and other members of the commission staff with particular respect to policies and procedures.

(f) Quorum. Any four commissioners shall constitute a quorum. No vacancies shall impair the right of the remaining commissioners to exercise all of the powers of the commissioner.

**HISTORY:** Amended by L. 1940, c. 252, p. 955, 1; L. 1945, c. 308, p. 897, 3; L. 1948, c. 184, p. 930, 1.

### **43:21-11. Administration**

(a) Duties and powers of the Department of Labor and Workforce Development. The department shall have power and authority to adopt, amend, or rescind such rules and regulations, require such reports, make such investigations, and take such other action as it deems necessary or suitable or to administer this chapter; provided that the Commissioner of Labor and Workforce Development may delegate such power and authority, subject to his ultimate supervision and control. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the department shall prescribe. The department shall determine its own organization and methods of procedure, in accordance with the provisions of this chapter. Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(b) Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the department. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the department and shall become effective in the manner and at the time prescribed by the department.

(c) Publication. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general rules, its annual reports to the Governor, and any other material the department deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel. Subject to other provisions of this chapter, the department is authorized to appoint (subject to the provisions of Title 11, Civil Service), fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under *R.S. 43:21-1* et seq. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission, in accordance with the provisions of Title 11, Civil Service, except that any attorney, now or hereafter in office or position of legal assistant for the department, shall be placed in the exempt class of the civil service and thereafter shall not be subject to removal except for cause and then only in accordance with the provisions of Title 11, Civil Service; provided, however, that nothing herein shall be construed to apply to any attorney designated as special counsel in accordance with the provisions of sections *43:21-6*, subsection (h), and *43:21-17*. The division shall not employ or pay any person who is an officer or committee member of any political party organization. The commissioner may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks hereunder.

(e) Employment Security Council. There shall be within the department an Employment Security Council, as established and constituted under the Department of Labor and Industry Act of 1948 (P.L.1948, c. 446; *C. 34:1A-1* et seq.).

(f) Employment stabilization. The department, with the advice and aid of the Employment Security Council, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the State in every other way that may be feasible, and to these ends to carry on and publish the records of investigations and research studies.

(g) Records and reports. Each employing unit shall keep true and accurate employment records, containing such information as may be prescribed. Such records shall be open to inspection and be subject to being copied by the director of the division and the controller or their authorized

representatives at any reasonable time. The department may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which are deemed necessary for the effective administration of this chapter. Under such rules and regulations as may be adopted by the department, reports relative to wages and separation from employment may be required from any employer or employing unit at the time such employer or employing unit suspends business operations in this State, or from any employer or employing unit which fails to cooperate in submitting promptly the wage and employment data which may be required under paragraph (2) of subsection (b) of section 43:21-6 of this Title. If the nature of such suspension is temporary or in the nature of a transfer, then the employer or employing unit may be excused from furnishing such a termination report upon assurances that proper arrangements have been made to supply any information which may be required under paragraph (2) of subsection (b) of section 43:21-6 of this Title. The department may require from any employer or employing unit reports relative to wages and separation in such manner and at such time as may be necessary for the effective administration of this chapter.

All records, reports and other information obtained from employers and employees under this chapter, except to the extent necessary for the proper administration of this chapter, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, and shall not be subject to subpoena or admissible in evidence in any civil action or proceeding other than one arising under this chapter, but any claimant at a hearing before an appeal tribunal, the division or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any officer or employee of the department who violates any provision of this section shall be liable to a fine of \$ 200.00, to be recovered in a civil action in the name of the division, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund.

(h) Oaths and witnesses. In the discharge of the duties imposed by this chapter, the controller, the appeal tribunal and any duly authorized representative or member of the division, the director or any deputy director thereof or member of the board of review shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Witnesses subpoenaed pursuant to this section shall in the discretion of the department be allowed fees at a rate to be fixed by it. Such fees shall be deemed a part of the expense of administering this chapter.

(i) Subpenas. In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department or its duly authorized representative, or the board of review, shall have jurisdiction to issue to such person an order requiring such person to appear before the board of review or a member thereof, the department or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the division or of the board of review shall be punished by a fine of not more than \$ 200.00 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the department or the board of review or in obedience to the subpoena of a member of the department or the board of review or a member thereof, or any duly authorized representative thereof in any cause or proceeding before the department, the board of review or a member thereof, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled,

after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal cooperation. In the administration of this chapter the department shall cooperate to the fullest extent, consistent with the provisions of this chapter, with the United States Department of Labor to secure to this State and its citizens all advantages available under the provisions of the Social Security Act (42 U.S.C. s. 301 et seq.), as amended, the Federal Unemployment Tax Act (26 U.S.C. s. 3301 et seq.), as amended, and the Wagner-Peyser Act (29 U.S.C. s. 49 et seq.), as amended; shall make such reports, in such form and containing such information as the United States Secretary of Labor may from time to time require; and shall comply with such provisions as the United States Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States Secretary of Labor governing the expenditure of such sums as may be allotted and paid to this State under any of such federal acts.

Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The department is authorized to make such investigations and exercise such of the other powers provided herein with respect to the administration of this chapter and to transmit such information and make available such services and facilities to the agency charged with the administration of any State or federal unemployment insurance or public employment service law as it deems necessary or appropriate to facilitate the administration of such law and to accept and utilize information, services and facilities made available to this State by such agency.

The department shall adopt regulations prescribed by the United States Secretary of Labor to address state unemployment tax avoidance and to insure that the transfer or acquisition of a business is not done for the specific purpose of avoiding higher contribution rates.

(l) The controller shall establish procedures to identify employers who engage in the transfer or acquisition of a business, trade or organization for the purposes of achieving an unemployment tax rate unrelated to employment experience.

**HISTORY:** Amended 1939, c. 94, p. 195, 4; 1940, c. 252, p. 957, 2; 1952, c. 187, p. 650, 5; 1961, c. 43, p. 451, 7; 1984, c. 24, 8, eff. Oct. 1, 1984; 2005, c. 239, § 2, eff. Dec. 15, 2005.

#### **43:21-11.1. Administration; agricultural workers**

The Department of Labor shall take any actions as the commissioner deems necessary to improve the administration of the unemployment compensation program as it concerns agricultural workers. The actions shall include, but not be limited to, the following:

a. Strengthening the enforcement of the provisions of subsections (a) and (c) of *R.S. 43:21-5* concerning the disqualification of applicants for benefits as the provisions apply to agricultural workers;

b. Making bilingual forms available for all Spanish speaking agricultural workers applying for or receiving benefits; and

c. Implementing procedures to accelerate the processing of the unemployment compensation claims of agricultural workers, including workers who live outside of the State.

**HISTORY:** L. 1985, c. 508, 9, eff. Jan. 21, 1986.



### **43:21-11.2. Notice posting; penalties for violation**

a. An employer or contracting agent of an employer who employs any employee covered by subparagraph (l) of paragraph (1) of subsection (i) of *R.S. 43:21-19* shall post, in a conspicuous location or locations accessible to all employees, a notice which shall contain in English and Spanish the following or a substantially similar statement prescribed by the Commissioner of Labor: "Attention Farm Laborer: Any individual seeking unemployment benefits on the basis of the production and harvesting of agricultural crops is required under law to accept an offer of continuing suitable work with his current employer following the completion of the contract of hire if no other suitable work is offered. Failure to accept work under these conditions may result in a denial of benefits until the worker is employed for four weeks and earns six times his weekly benefit rate. If you have any questions about eligibility under the New Jersey 'unemployment compensation law,' you may contact the New Jersey Department of Labor."

b. An employer who fails to post a notice as required under subsection a. of this act shall be issued by the Department of Labor a written warning for the first violation of subsection a. of this section, and shall be fined up to \$ 25.00 for the second violation and up to \$ 100.00 for the third violation and each subsequent violation of subsection a. of this section. A penalty imposed by the commissioner pursuant to this act shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (*C.52:14B-8*) and subject to review in the Superior Court of the State of New Jersey.

c. The Department of Labor shall provide to each employer covered by this section a copy or copies of the notice prescribed by subsection a. of this section.

**HISTORY:** L. 1989, c. 29, § 1.

### **43:21-11.3. Returns for domestic service filed on calendar year basis; exceptions**

a. Notwithstanding the provisions of subsection (a) of *R.S. 43:21-14* and subparagraph (E) of paragraph (1) of subsection (d) of *R.S. 43:21-7* to the contrary, except for an employer also liable for making or withholding contributions with respect to remuneration for services rendered other than for domestic service, returns reporting employer and employee contributions with respect to domestic service shall be filed on a calendar year basis. Such a return shall be filed on or before January 31 following the close of the calendar year, and the amount of contributions shall be paid over to the Director of the Division of Revenue in the Department of the Treasury at that time.

b. Notwithstanding the provisions of *R.S. 43:21-16* or any other law to the contrary, the contributions due pursuant to subsection a. of this section shall be treated as taxes due pursuant to *N.J.S. 54A:1-1* et seq., subject to the provisions of section 1 of P.L. 1999, c. 94 (*C. 54A:9-17.2*).

c. The Commissioner of the Department of Labor, in consultation with Director of the Division of Revenue in the Department of the Treasury, shall prescribe such regulations as the commissioner deems necessary to carry out the purpose of allowing employers to convert from a quarterly system of payments and filing to annual filing, and to simplify employer filing by allowing the combination of unemployment compensation, disability benefits and gross income tax remittance for reporting and payment purposes for employees providing domestic services.

d. Notwithstanding the provisions of subsection a. of this section, an employer subject to the provisions of this section shall, within 10 days of the separation from employment of an employee in domestic service whose contributions are treated as taxes pursuant to the provisions of this section, report to the Commissioner of the Department of Labor, on a form determined by the commissioner, wage information for all completed calendar quarters of employment not previously reported and such other separation information as may be required to properly process an unemployment compensation claim.

e. For the purposes of this section, "domestic service" means domestic service as an employee in a private home of the employer, such as service as a babysitter, nanny, health aide, private nurse, maid, caretaker, yard worker or similar domestic employee.

**HISTORY:** L. 1999, c. 94, § 2, eff. May 3, 1999.

#### **43:21-11.4. Establishment of system of annual filings**

a. The Commissioner of Labor shall establish a system of annual filings to meet the alternative system requirements of paragraph (3) of subsection (a) of *42 U.S.C. § 1320b-7* on or before the 30th day after enactment of P.L. 1999, c. 94 (*C. 54A:9-17.2 et al.*), and shall seek waiver from the United States Secretary of Labor in conformance with paragraph (3) of subsection (a) of *42 U.S.C. § 1320b-7*.

b. Notwithstanding any other provisions of this act to the contrary, the powers of the commissioner pursuant to the provisions of subsection (g) of *R.S. 43:21-11* to require quarterly reports of wages paid are reserved to the commissioner, to be exercised after compliance with subsection a. of this section if necessary to maintain a State income and eligibility verification system in compliance with the requirements of paragraph (3) of subsection (a) of *42 U.S.C. § 1320b-7*.

**HISTORY:** L. 1999, c. 94, § 3, eff. May 3, 1999.

#### **43:21-12. Employment service**

(a) State employment service. The employment bureau of the New Jersey Department of Labor and its present personnel, including those employed by the New Jersey national re-employment service, is hereby transferred to the commission as a division thereof, which shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An act to provide for the establishment of a national employment system and for co-operation with the States in the promotion of such system, and for other purposes," approved June sixth, one thousand nine hundred and thirty-three (*48 Stat. 113; U.S.C. Title 29, sec. 49(c)*), as amended. The said division shall be administered by a full-time salaried director, who shall be charged with the duty, subject to the supervision of the commission and the executive director, to co-operate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State, in conformity with section four of said act, and this State will observe and comply with the requirements thereof. The New Jersey State Employment Service Division is hereby designated and constituted the agency of this State for the purpose of said act. The executive director, with the approval of the commission, is empowered to appoint, subject to the provisions of Title 11, Civil Service, the director, other officers, and employees, subject to the provisions aforesaid, of the New Jersey State Employment Service on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission and in accordance with regulations prescribed by the director of the United States Employment Service; provided, however, that present employees having civil service status shall retain full rights as provided in Title 11, Civil Service. The commission may co-operate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance, and use of free employment service facilities.

(b) Financing. All moneys received by this State under the said Act of Congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the New Jersey State Employment Service to be expended as provided by this section and by said Act of Congress. For the purpose of establishing and maintaining free public employment offices, commission is authorized to enter into agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this

State, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account.

**HISTORY:** Amended by L. 1939, c. 94, p. 201, 5.

**43:21-12.1. (Deleted)**

**43:21-12.2. (Deleted)**

**43:21-12.3. Civil service, pension and other rights of employees not affected during period of service to Federal government**

No civil service, pension or other rights, including rights to promotion and to increase in remuneration, of any individual whose services were made available to the Federal government under the act to which this act is supplementary, shall be impaired or prejudiced during the period in which any such individual shall have rendered services to the Federal government thereunder, but shall be preserved and shall remain intact as of the date of induction into and transfer to said Federal service; and in the event any such individual shall have been promoted, or shall have received any increase in remuneration, while in such Federal service, such individual, when remitted to State service, shall retain and enjoy such rights so accruing to him while in the Federal service; provided, the New Jersey Civil Service Commission shall find, upon an examination and survey of the law and procedures applied and used in determined and setting up such advance in position and remuneration, that the individual would have been entitled under State law and procedures to acquire, hold and enjoy such advance in position and remuneration against all other individuals interested or concerned.

**HISTORY:** L. 1943, c. 171, p. 491, 1.

**43:21-12.4. Commission may arrange with federal agencies for jobs for veterans; expenses**

The Unemployment Compensation Commission is authorized to enter into arrangements or agreements with any administrator, agent, agency, board or body designated and established under any law or laws of the United States providing for the placement in jobs of honorably discharged veterans of World War II and for the payment to such veterans of benefits or readjustment allowances covering periods of unemployment, whereby the personnel, records and facilities of the commission shall be employed, under the direction and control of the commission, for implementing and carrying into effect such Federal law, or laws; provided, however, that all costs and expenses incurred as well as all funds to make payments of such benefits and readjustment allowances shall be provided by Federal grant, and not devolve upon the State of New Jersey.

**HISTORY:** L. 1944, c. 232, p. 788, 1.

**43:21-12.4a. Agreement with United States Secretary of Labor regarding payment of unemployment compensation to veterans**

The Division of Employment Security is authorized to enter into an agreement with the United States Secretary of Labor under Title IV of the Veterans' Readjustment Assistance Act of one thousand nine hundred and fifty-two (Public Law 550, 82nd Congress, *66 Stat. 663*), entitled "Unemployment Compensation for Veterans of Service On and After June 27, 1950," whereby the division, as agent of the United States, will, in accordance with the provisions of said Title, make payments of unemployment compensation to veterans as therein defined, and will otherwise co-operate with the Secretary of Labor and with other State agencies in making such payments; provided, however, that all costs and expenses incurred, as well as all funds to make payments of such unemployment compensation shall be provided by Federal funds and shall not devolve upon the State of New Jersey; and further provided, that subsection (f) of section *43:21-5* of the Revised Statutes shall be inapplicable with respect to such benefits so paid.

**HISTORY:** L. 1953, c. 217, p. 1640, 1.

#### **43:21-12.4b. Actions taken by Division of Employment Security ratified**

All acts and actions heretofore taken by the Division of Employment Security or any of its representatives in co-operating with the Federal authorities in the payment of such benefits are approved, ratified and confirmed.

**HISTORY:** L. 1953, c. 217, p. 1640, 2.

#### **43:21-12.5. Civil service employees of Employment Service Division remitted to state service; survey of personnel, duties and compensation**

The permanent civil service employees of the Employment Service Division whose services were made available to the Federal Government under the act to which this act is supplementary, who have been remitted to State service, shall be the subject of a survey by the Civil Service Commission which shall make a study of such personnel, their present duties and compensation for the purpose of arriving at such adjustments of salary, civil service and other classifications and duties as may be requisite in order to effectuate as nearly as may be an equalization of compensation for the performance of similar duties and the payment of salaries commensurate with the work performed.

**HISTORY:** L. 1948, c. 68, p. 416, 1.

#### **43:21-12.6. Adjustments of compensation**

Adjustments of compensation after the allocation of positions under the new compensation plan resulting from the above classification survey shall be made as follows: The compensation of each employee then receiving a rate per year within the range prescribed for the class in which his position falls shall be increased to the next higher increment rate as funds shall be available; the compensation of each employee then receiving less than the minimum rate per year for the class in which his position falls shall be increased in rate per year to the minimum for the class as funds shall be available. Any employee found to be then receiving more than the maximum rate per year for the class in which his position falls shall be reduced to the maximum rate of such class.

**HISTORY:** L. 1948, c. 68, p. 416, 2.

#### **43:21-12.7. Administration by Civil Service Commission**

This act shall be administered by the Civil Service Commission in accordance with the provisions of section 11:5-1 of the Revised Statutes.

**HISTORY:** L. 1948, c. 68, p. 417, 3.

#### **43:21-12.8. Reconversion unemployment benefits for seamen; arrangements with federal officials**

The Unemployment Compensation Commission is authorized to enter into arrangements or agreements with the Federal Security Administrator or with any administrator, agent, agency, board or body designated and established in and by Section 306 of the Act of Congress entitled "An act to amend the Social Security Act and the Internal Revenue Code, and for other purposes," being designated as Public Law 719, 79th Congress, approved August 10, 1946, providing for the payment of reconversion unemployment benefits for seamen, whereby the personnel, records and facilities of the commission shall be employed, under the direction and control of the commission, for implementing and carrying into effect said Section 306 of such Federal law, and whereby the New Jersey wage credits of any claimant during his base year may be supplemented by the wage credits accruing during the same base year to such claimant under the said Federal Act for the purpose of making a single payment of benefits to such claimant with respect to any compensable week upon the basis of the wage credits so combined; provided, however, that all costs and expenses incurred, as well as all funds to make payments of such reconversion unemployment benefits for seamen, shall be provided by Federal grant and not devolve upon the State of New Jersey; and further provided, that any arrangement or agreement so entered into shall provide that where New Jersey wage credits are

insufficient in themselves to support benefit payments to any claimant under the New Jersey Unemployment Compensation Law, and are taped out with Federal credits, no benefits paid against the New Jersey wage credits so used will be paid out of the New Jersey benefit fund or be charged against the account of any New Jersey employer; and further provided, that subsection (f) of section 43:21-5 of the Revised Statutes shall be inapplicable with respect to such benefits so paid.

All acts and action heretofore taken by the Unemployment Compensation Commission or any of its representatives in cooperating with the Federal authorities in the payment of such benefits are approved, ratified and confirmed.

**HISTORY:** L. 1948, c. 182, p. 926, 1.

### **43:21-13. Unemployment compensation administration fund**

(a) Administration fund. There is hereby created in the State treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Division of Employment Security of the Department of Labor and Industry of the State of New Jersey. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this chapter (*R.S. 43:21-1 et seq.*), except that moneys requisitioned and deposited therein pursuant to paragraph 43:21-9(c)(2) of this Title shall remain part of the unemployment compensation fund and shall be used only in accordance with said paragraph. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, or from any other source (excepting moneys provided for in subsection (g) of section 43:21-14 and subsections (a), (b), (c) and (e) of section 43:21-16) for the administration of this chapter (*R.S. 43:21-1 et seq.*); all moneys received from the United States of America, or any agency thereof, or from any other State, or agency thereof, as compensation for services or facilities supplied thereto; all moneys received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Unemployment Compensation Administration Fund, or by reason of damage to property, equipment or supplies purchased from moneys in such fund; and all proceeds realized from the sale or disposition of any such property, equipment or supplies which may no longer be necessary for the proper administration of this chapter (*R.S. 43:21-1 et seq.*). All moneys in this fund received from the United States of America, or any agency thereof, under Title III of the Social Security Act (*42 U.S.C. 501 et seq.*), as amended or the Wagner-Peyser Act, as amended, shall be expended solely for the purposes, and in the amounts, found necessary by the Secretary of Labor of the United States for the proper and efficient administration of this chapter (*R.S. 43:21-1 et seq.*). All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements provided by law for other special funds in the State treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the Division of Employment Security of the Department of Labor and Industry of the State of New Jersey for expenditure consistent with this chapter (*R.S. 43:21-1 et seq.*). The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund in an amount to be fixed by the Division of Employment Security of the Department of Labor and Industry of the State of New Jersey and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 43:21-9 of this chapter (*R.S. 43:21-1 et seq.*) shall be paid from the moneys in the Unemployment Compensation Administration Fund.

(b) Reimbursement of fund. If any moneys in the Unemployment Compensation Administration Fund paid to this State under Title III of the Social Security Act, as amended, or the Wagner-Peyser Act, as amended, are found by the Secretary of Labor of the United States, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor of the United States for the proper administration of this chapter (*R.S. 43:21-1 et seq.*), it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Unemployment Compensation Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor of the United States, the Division of Employment Security of the Department of Labor and Industry of the

State of New Jersey shall promptly report the amount required for such replacement to the Governor, and the Governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount.

**HISTORY:** Amended by L. 1939, c. 94, p. 202, 6; L. 1941, c. 225, p. 641, 1; L. 1948, c. 79, p. 457, 2; L. 1950, c. 225, p. 559, 1; L. 1960, c. 28, p. 96, 3.

#### **43:21-14. Periodic contribution reports**

(a) (1) In addition to such reports as may be required under the provisions of subsection (g) of *R.S.43:21-11*, every employer shall file with the controller periodic contribution reports on such forms and at such times as the controller shall prescribe, to disclose the employer's liability for contributions under the provisions of this chapter (*R.S.43:21-1 et seq.*), and at the time of filing each contribution report shall pay the contributions required by this chapter (*R.S.43:21-1 et seq.*), for the period covered by such report. The controller may require that such reports shall be under oath of the employer. Any employer who shall fail to file any report, required by the controller, on or before the last day for the filing thereof shall pay a penalty of \$ 10.00 for each day of delinquency until and including the fifth day following such last day and for any period of delinquency after such fifth day, a penalty of \$ 10.00 a day or 25% of the amount of the contributions due and payable by the employer for the period covered by the report, whichever is the lesser; if there be no liability for contributions for the period covered by any contribution report or in the case of any report other than a contribution report, the employer or employing unit shall pay a penalty of \$ 10.00 a day for each day of delinquency in filing or \$ 50.00, whichever is the lesser; provided, however, that when it is shown to the satisfaction of the controller that the failure to file any such report was not the result of fraud or an intentional disregard of this chapter (*R.S.43:21-1 et seq.*), or the regulations promulgated hereunder, the controller, in his discretion, may remit or abate any unpaid penalties heretofore or hereafter imposed under this section. On or before October 1 of each year, the controller shall submit to the Commissioner of Labor and Workforce Development a report covering the 12-month period ending on the preceding June 30, and showing the names and addresses of all employers for whom the controller remitted or abated any penalties, or ratified any remission or abatement of penalties, and the amount of such penalties with respect to each employer. Any employer who shall fail to pay the contributions due for any period, on or before the date they are required by the controller to be paid, shall pay interest on the amount thereof from such date until the date of payment thereof, at the rate of 1% a month through June 30, 1981 and at the rate of 1 1/4% a month after June 30, 1981. Upon the written request of any employer or employing unit, filed with the controller on or before the due date of any report or contribution payment, the controller, for good cause shown, may grant, in writing, an extension of time for the filing of such report or the paying of such contribution, with interest at the applicable rate; provided no such extension shall exceed 30 days and that no such extension shall postpone payment of any contribution for any period beyond the day preceding the last day for filing tax returns under Title IX of the federal Social Security Act for the year in which said period occurs.

(2) (A) For the calendar quarter commencing July 1, 1984 and each successive quarter thereafter, each employer shall file a report with the controller within 30 days after the end of each quarter in a form and manner prescribed by the controller, listing the name, social security number and wages paid to each employee and the number of base weeks (as defined in subsection (t) of *R.S.43:21-19*) worked by the employee during the calendar quarter. (B) Any employer who fails without reasonable cause to comply with the reporting requirements of this paragraph (2) shall be liable for a penalty in the following amount for each employee with respect to whom the employer is required to file a report but who is not included in the report or for whom the required information is not accurately reported for each employee required to be included, whether or not the employee is included:

(i) For the first failure for one quarter in any eight consecutive quarters, \$ 5.00 for each employee;

(ii) For the second failure for any quarter in any eight consecutive quarters, \$ 10.00 for each employee; and

(iii) For the third failure for 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.

(C) Information reported by employers as requested by this paragraph (2) shall be used by the Department of Labor and Workforce Development for the purpose of determining eligibility for benefits of individuals in accordance with the provisions of *R.S.43:21-1* et seq. Notwithstanding the provisions of subsection (g) of *R.S.43:21-11*, the Department of Labor and Workforce Development is hereby authorized to provide the Department of Human Services and the Higher Education Assistance Authority with information reported by employers as required by this paragraph (2). For each fiscal year, the Director of the Division of Budget and Accounting of the Department of the Treasury shall charge the appropriate account of the Department of Human Services and the Higher Education Assistance Authority in amounts sufficient to reimburse the Department of Labor and Workforce Development for the cost of providing information under this subparagraph (C).

(D) For the purpose of administering the provisions of this paragraph (2), all appropriations, files, books, papers, records, equipment and other property, and employees currently assigned to the Division of Taxation for the implementation of the "Wage Reporting Act," P.L.1980, c.48 (*C.54: 1-55* et seq.), shall be transferred to the Department of Labor and Workforce Development as of September 1, 1984 in accordance with the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (*C.52: 14D-1* et seq.).

(b) The contributions, penalties, and interest due from any employer under the provisions of this chapter (*R.S.43:21-1* et seq.), from the time they shall be due, shall be a personal debt of the employer to the State of New Jersey, recoverable in any court of competent jurisdiction in a civil action in the name of the State of New Jersey; provided, however, that except in the event of fraud, no employer shall be liable for contributions or penalties unless contribution reports have been filed or assessments have been made in accordance with subsection (c) or (d) of this section before four years have elapsed from the last day of the calendar year with respect to which any contributions become payable under this chapter (*R.S.43:21-1* et seq.), nor shall any employer be required to pay interest on any such contribution unless contribution reports were filed or assessments made within such four-year period; provided further that if such contribution reports were filed or assessments made within the four-year period, no civil action shall be instituted, nor shall any certificate be issued to the Clerk of the Superior Court under subsection (e) of this section, except in the event of fraud, after six years have elapsed from the last day of the calendar year with respect to which any contributions become payable under this chapter (*R.S.43:21-1* et seq.), or July 1, 1958, whichever is later. Payments received from an employer on account of any debt incurred under the provisions of this chapter (*R.S.43:21-1* et seq.) may be applied by the controller on account of the contribution liability of the employer and then to interest and penalties, and any balance remaining shall be recoverable by the controller from the employer. Upon application therefor, the controller shall furnish interested persons and entities certificates of indebtedness covering employers, employing units and others for contributions, penalties and interest, for each of which certificates the controller shall charge and collect a fee of \$ 2.00 per name; no such certificate to be issued, however, for a fee of less than \$ 10.00. All fees so collected shall be paid into the unemployment compensation administration fund.

(c) If any employer shall fail to make any report as required by the rules and regulations of the division pursuant to the provisions of this chapter (*R.S.43:21-1* et seq.), the controller may make an estimate of the liability of such employer from any information it may obtain, and, according to such estimate so made, assess such employer for the contributions, penalties, and interest due the State from him, give notice of such assessment to the employer, and make demand upon him for payment.

(d) After a report is filed under the provisions of this chapter (*R.S.43:21-1* et seq.) and the rules and regulations thereof, the controller shall cause the report to be examined and shall make such further audit and investigation as it may deem necessary, and if therefrom there shall be determined that there is a deficiency with respect to the payment of the contributions due from such employer, the controller shall assess the additional contributions, penalties, and interest due the State from such employer, give notice of such assessment to the employer, and make demand upon him for payment.

(e) As an additional remedy, the controller may issue to the Clerk of the Superior Court of New Jersey a certificate stating the amount of the employer's indebtedness under this chapter (*R.S.43:21-1 et seq.*) and describing the liability, and thereupon the clerk shall immediately enter upon his record of docketed judgments such certificate or an abstract thereof and duly index the same. Any such certificate or abstract, heretofore or hereafter docketed, from the time of docketing shall have the same force and effect as a judgment obtained in the Superior Court of New Jersey, and the controller shall have all the remedies and may take all the proceedings for the collection thereof which may be had or taken upon the recovery of such a judgment in a civil action upon contract in said court. Such debt, from the time of docketing thereof, shall be a lien on and bind the lands, tenements and hereditaments of the debtor.

The Clerk of the Superior Court shall be entitled to receive for docketing such certificate, \$ 0.50, and for a certified transcript of such docket, \$ 0.50. If the amount set forth in said certificate as a debt shall be modified or reversed upon review, as hereinafter provided, the Clerk of the Superior Court shall, when an order of modification or reversal is filed, enter in the margin of the docket opposite the entry of the judgment, the word "modified" or "reversed," as the case may be, and the date of such modification or reversal.

The employer, or any other party having an interest in the property upon which the debt is a lien, may deposit the amount claimed in the certificate with the Clerk of the Superior Court of New Jersey, together with an additional 10% of the amount thereof, or \$ 100.00, whichever amount is the greater, to cover interest and the costs of court, or in lieu of depositing the amount in cash, may give a bond to the State of New Jersey in double the amount claimed in the certificate, and file the same with the Clerk of the Superior Court. Said bond shall have such surety and shall be approved in the manner required by the Rules Governing the Courts of the State of New Jersey.

After the deposit of said money or the filing of said bond, the employer, or any other party having an interest in the said property, may, after exhausting all administrative remedies, secure judicial review of the legality or validity of the indebtedness or the amount thereof, and the said deposit of cash shall be as security for, and the bond shall be conditioned to prosecute, the judicial review with effect.

Upon the deposit of said money or the filing of the said bond with the Clerk of the Superior Court, all proceedings on such judgment shall be stayed until the final determination of the cause, and the moneys so deposited shall be subject to the lien of the indebtedness and costs and interest thereon, and the lands, tenements, and hereditaments of said debtor shall forthwith be discharged from the lien of the State of New Jersey and no execution shall issue against the same by virtue of said judgment.

Notwithstanding the provisions of subsections (a) through (c) of this section, the Department of Labor and Workforce Development may, with the concurrence of the State Treasurer, when all reasonable efforts to collect amounts owed have been exhausted, or to avoid litigation, reduce any liability for contributions, penalties and interest, provided no portion of those amounts represents contributions made by an employee pursuant to subsection (d) of *R.S.43:21-7*.

(f) If, not later than two years after the calendar year in which any moneys were erroneously paid to or collected by the controller, whether such payments were voluntarily or involuntarily made or made under mistake of law or of fact, an employer, employing unit, or employee who has paid such moneys shall make application for an adjustment thereof, the said moneys shall, upon order of the controller, be either credited or refunded, without interest, from the appropriate fund. For like cause and within the same period, credit or refund may be so made on the initiative of the controller.

(g) All interest and penalties collected pursuant to this section shall be paid into a special fund to be known as the unemployment compensation auxiliary fund; all moneys in this special fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury, and shall be expended, under legislative appropriation, for the purpose of aiding in defraying the cost of the administration of this chapter (*R.S.43:21-1 et seq.*); for the repayment of any interest bearing advances made from the federal unemployment account pursuant to the provisions of section 1202(b)



of the Social Security Act, 42 U.S.C. § 1322; and for essential and necessary expenditures in connection with programs designed to stimulate employment, as determined by the Commissioner of Labor and Workforce Development, except that any moneys in this special fund shall be first applied to aiding in the defraying of necessary costs of the administration of this chapter (*R.S.43:21-1* et seq.) as determined by the Commissioner of Labor and Workforce Development. The Treasurer of the State shall be ex officio the treasurer and custodian of this special fund and, subject to legislative appropriation, shall administer the fund in accordance with the directions of the controller. Any balances in this fund shall not lapse at any time, but shall be continuously available, subject to legislative appropriation, to the controller for expenditure. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation auxiliary fund, in an amount to be fixed by the division, the premiums for such bond to be paid from the moneys in the said special fund.

(h) All disputes under *R.S.43:21-1* et seq. unless specifically indicated otherwise, shall be resolved in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1* et seq.).

**HISTORY:** Amended 1938, c. 59; 1939, c. 309; 1940, c. 97; 1944, c. 80; 1945, c. 307; 1948, c. 79, § 3; 1952, c. 187, § 6; 1952, c. 337; 1953, c. 380; 1955, c. 65; 1957, c. 207; 1974, c. 194; 1981, c. 556, § 1; 1984, c. 24, § 9; 1986, c. 191; 1995, c. 234, § 2; 1997, c. 255, § 3; 2003, c. 117, § 20, eff. July 1, 2003; 2005, c. 239, § 3, eff. Dec. 15, 2005.

#### **43:21-14a. (Expired)**

#### **43:21-14b. (Expired)**

#### **43:21-14.1. Refund of contributions; claim**

Any employee who is paid wages by two or more employers aggregating more than the amount of "wages" determined in accordance with the provisions of *R.S. 43:21-7(b)(3)* shall be entitled to a refund of the amount of contributions deducted from such wages and paid to the Division of Employment Security in excess of the contribution which is determined pursuant to *R.S. 43:21-7(d)(1)(D)* required on the amount of "wages" determined in accordance with the provisions of *R.S. 43:21-7(b)(3)* except that no such refund shall be made unless the employee makes a claim, establishing his right thereto, within two years after the calendar year in which the wages are paid with respect to which refund of contribution is claimed. No interest shall be allowed or paid with respect to any such refund.

**HISTORY:** L. 1944, c. 81, § 1; amended 1947, c. 35, § 3; 1967, c. 30, § 6; 1971, c. 346, § 9; 1974, c. 86, § 6; 1996, c. 28, § 17; 1996, c. 30, § 8.

#### **43:21-14.2. Termination of lien for contributions for certain years**

The lien provided for by paragraph (b) of section *43:21-14* of the Revised Statutes as originally enacted, upon the property of any subject employer for contributions, penalties and interest due from such employer during the period from December twenty-second, one thousand nine hundred and thirty-six, to June eighteenth, one thousand nine hundred and forty, shall terminate one year from the effective date of this act and any property affected thereby shall thereupon be discharged of said lien unless prior to such termination date a judgment or a certificate of indebtedness, each including therein the amount of such contributions, penalties and interest, shall have been entered or docketed against such employer in the office of the Superior Court clerk pursuant to the provisions of the chapter to which this act is a supplement.

**HISTORY:** L. 1950, c. 170, p. 367, 1.

**43:21-14.3. Unemployment compensation interest repayment fund; deposits, administration and disbursement; special assessment against employers; exceptions**

a. The Unemployment Compensation Interest Repayment Fund is established in the Department of Labor and shall be used solely for the purpose of paying interest due on any advances made from the federal unemployment account under Title XII of the Social Security Act (42 U.S.C. 1321 et seq.). All moneys deposited in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury.

b. On or before June 30 of each year the Commissioner of Labor shall review the status of any interest bearing advances made from the federal unemployment account to determine the interest amount (if any) to be repaid to the United States Treasury by September 30 of that calendar year, pursuant to the provisions of section 1202(b) of the Social Security Act, 42 U.S.C. 1322. If it is determined that interest shall be paid to the United States Treasury, the Commissioner of Labor shall first determine whether there are sufficient moneys in the unemployment compensation auxiliary fund, as established in subsection (g) of R.S. 43:21-14, to repay the entire interest amount due on September 30 of that calendar year. If it is determined that there are sufficient moneys in the unemployment compensation auxiliary fund to repay the entire amount, no special assessment on employers shall be made. If, however, it is determined that there are insufficient moneys in the unemployment compensation auxiliary fund to repay the entire interest amount due on September 30 of that calendar year, a special assessment shall be made against all employers, except governmental entities or instrumentalities defined as employers under R.S. 43:21-19(h)(5) and nonprofit organizations defined as employers under R.S. 43:21-19(h)(6).

c. In the event that it shall be necessary to make a special assessment, the commissioner shall establish the ratio of the amount of interest determined under subsection b. of this section to 95% of the total employer contributions payable for unemployment insurance on taxable wages paid during the preceding calendar year by all employers subject to this interest assessment. This ratio shall be calculated to five significant figures and rounded upward to the next highest ten thousandth. The assessment against each employer shall be in an amount equal to its unemployment contributions payable on the total taxable wages it paid during the preceding calendar year multiplied by the ratio established herein but in no event shall any assessment be less than \$ 5.00. This special assessment shall be mailed by the controller to all affected employers on or before July 31 and shall be due 30 days from that date. This assessment shall be collectible by the controller in the same manner as provided for employer contributions under chapter 21 of Title 43 of the Revised Statutes.

d. All moneys received by the controller under this special assessment shall be deposited in the Unemployment Compensation Interest Repayment Fund. After all known interest charges have been paid, any remaining moneys in the fund may be transferred to the unemployment compensation auxiliary fund at the discretion of the Commissioner of Labor.

**HISTORY:** L. 1984, c. 24, 16, eff. Oct. 1, 1984.

**43:21-15. Waiver of rights void**

(a) Waiver of rights void. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars (\$ 100.00) nor more than one thousand dollars (\$ 1,000.00) or be imprisoned for not more than six months, or both.

(b) Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the division or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the board of review or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars (\$ 50.00) nor more than five hundred dollars (\$ 500.00), or imprisoned for not more than six months, or both.

(c) No assignment of benefits; exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void.

(d) Notwithstanding the provisions of subsection (c) of this section:

(1) an individual filing a new claim for unemployment compensation on or after January 1, 1997 shall, at the time of filing that claim, be advised in writing that:

(A) unemployment compensation is subject to federal income tax;

(B) requirements exist pertaining to estimated tax payments;

(C) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Internal Revenue Code;

(D) the individual shall be permitted to change a previously elected withholding status.

(2) amounts deducted and withheld from unemployment compensation pursuant to this subsection (d) shall remain in the unemployment compensation fund until transferred to the federal taxing authority as a payment of income tax;

(3) 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;

(4) amounts shall be deducted and withheld pursuant to this subsection only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp over issuances or any other amounts required to be deducted and withheld under federal law.

**HISTORY:** Amended 1996, c. 149.

#### **43:21-16. Unemployment compensation offenses and penalties**

(a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase or attempts to obtain or increase any benefit or other payment under this chapter (*R.S.43:21-1 et seq.*), or under an employment security law of any other state or of the federal government, either for himself or for any other person, shall be liable to a fine of \$ 20.00 for each offense, or 25% of the amount fraudulently obtained, whichever is greater, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of *R.S.43:21-14*, said fine when recovered to be paid to the

unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (*R.S.43:21-1 et seq.*).

(b) (1) An employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter (*R.S.43:21-1 et seq.*), or under an employment security law of any other state or of the federal government, or who willfully fails or refuses to furnish any reports required hereunder (except for such reports as may be required under subsection (b) of *R.S.43:21-6*) or to produce or permit the inspection or copying of records, as required hereunder, shall be liable to a fine of \$ 100.00, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of *R.S.43:21-14*, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Any penalties imposed by this paragraph shall be in addition to those otherwise prescribed in this chapter (*R.S.43:21-1 et seq.*).

(2) Any employing unit or any officer or agent of an employing unit or any other person who fails to submit any report required under subsection (b) of *R.S.43:21-6* shall be subject to a penalty of \$ 25.00 for the first report not submitted within 10 days after the mailing of a request for such report, and an additional \$ 25.00 penalty may be assessed for the next 10-day period, which may elapse after the end of the initial 10-day period and before the report is filed; provided that when such report or reports are not filed within the prescribed time but it is shown to the satisfaction of the director that the failure was due to a reasonable cause, no such penalty shall be imposed. Any penalties imposed by this paragraph shall be recovered as provided in subsection (e) of *R.S.43:21-14*, and when recovered shall be paid to the unemployment compensation auxiliary fund for the use of said fund.

(3) Any employing unit, officer or agent of the employing unit, or any other person, determined by the controller to have knowingly violated, or attempted to violate, or advised another person to violate the transfer of employment experience provisions found at *R.S. 43:21-7 (c)(7)*, or who otherwise knowingly attempts to obtain a lower rate of contributions by failing to disclose material information, or by making a false statement, or by a misrepresentation of fact, shall be subject to a fine of \$ 5,000 or 25% of the contributions under-reported or attempted to be under-reported, whichever is greater, to be recovered as provided in subsection (e) of *R.S. 43:21-14*, and when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(c) Any person who shall willfully violate any provision of this chapter (*R.S.43:21-1 et seq.*) or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter (*R.S.43:21-1 et seq.*), and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of \$ 50.00, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of *R.S.43:21-14*, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each day such violation continues shall be deemed to be a separate offense.

(d)(1) When it is determined by a representative or representatives designated by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey that any person, whether (i) by reason of the nondisclosure or misrepresentation by him or by another of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter (*R.S.43:21-1 et seq.*) while any conditions for the

receipt of benefits imposed by this chapter (*R.S.43:21-1 et seq.*) were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits, such person, unless the director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full. The sum shall be deducted from any future benefits payable to the individual under this chapter (*R.S.43:21-1 et seq.*) or shall be paid by the individual to the division for the unemployment compensation fund, and such sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; provided, however, that, except in the event of fraud, no person shall be liable for any such refunds or deductions against future benefits unless so notified before four years have elapsed from the time the benefits in question were paid. Such person shall be promptly notified of the determination and the reasons therefor. Unless such person, within seven calendar days after the delivery of such determination, or within 10 calendar days after such notification was mailed to his last-known address, files an appeal from such determination, such determination shall be final.

(2) Interstate and cross-offset of state and federal unemployment benefits. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby:

(A) Overpayments of unemployment benefits as determined under subsection (d) of *R.S.43:21-16* shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of another state shall be recovered by offset from unemployment benefits otherwise payable under *R.S.43:21-1 et seq.*; and

(B) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under *R.S.43:21-1 et seq.*, or any federal program administered by this State, or under the unemployment compensation law of another state or any federal unemployment benefit or allowance program administered by another state under an agreement with the United States Secretary of Labor, if the other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, and if the United States agrees, as provided in the reciprocal agreement with this State entered into under subsection (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits as determined under subsection (d) of *R.S.43:21-16* and overpayments as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset from benefits or allowances otherwise payable under a federal program administered by this State or another state under an agreement with the United States Secretary of Labor.

(e) (1) Any employing unit, or any officer or agent of an employing unit, which officer or agent is directly or indirectly responsible for collecting, truthfully accounting for, remitting when payable any contribution, or filing or causing to be filed any report or statement required by this chapter, or employer, or person failing to remit, when payable, any employer contributions, or worker contributions (if withheld or deducted), or the amount of such worker contributions (if not withheld or deducted), or filing or causing to be filed with the controller or the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey, any false or fraudulent report or statement, and any person who aids or abets an employing unit, employer, or any person in the preparation or filing of any false or fraudulent report or statement with intent to defraud the State of New Jersey or an employment security agency of any other state or of the federal government, or with intent to evade the payment of any contributions, interest or penalties, or any part thereof, which shall be due under the provisions of this chapter (*R.S.43:21-1 et seq.*), shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed \$ 1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (*R.S.43:21-1 et seq.*).

(2) Any employing unit, officer or agent of the employing unit, or any other person, who knowingly violates, or attempts to violate, or advise another person to violate the transfer of employment experience provisions found at *R.S.43:21-7 (c)(7)* shall be, upon conviction before any Superior Court or municipal court, guilty of a crime of the fourth degree. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(f) Any employing unit or any officer or agent of an employing unit or any other person who aids and abets any person to obtain any sum of benefits under this chapter to which he is not entitled, or a larger amount as benefits than that to which he is justly entitled, shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed \$ 1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (*R.S.43:21-1 et seq.*).

(g) There shall be created in the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey an investigative staff for the purpose of investigating violations referred to in this section and enforcing the provisions thereof.

(h) An employing unit 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 paragraph (1) of subsection (c) of *R.S.43:21-7*, shall be liable to a fine of \$ 1,000, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of *R.S.43:21-14*. The fine when recovered shall be paid to the unemployment compensation auxiliary fund for the use of the fund. 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. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in *R.S.43:21-1 et seq.*

**HISTORY:** Amended 1945, c. 308, § 4; 1948, c. 79, § 4; 1950, c. 167, § 2; 1950, c. 225, § 2; 1951, c. 210; 1952, c. 187, § 7; 1961, c. 43, § 8; 1984, c. 24, § 10; 1985, c. 476; 1991, c. 357; 1997, c. 255, § 4; 2005, c. 239, § 4, eff. Dec. 15, 2005.

#### **43:21-17. Representation in court or administrative proceeding**

(a) In any civil action to enforce the provisions of this chapter, the Commissioner of Labor and the State may be represented by any qualified attorney, who is a regular salaried employee of the Department of Labor or is designated by it for this purpose, or, at the commissioner's request, by the Attorney General.

(b) In any administrative proceeding before the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, the board of review or the appeal tribunal, the claimant or the employer may appear pro se or employ an attorney or a nonattorney to represent him.

**HISTORY:** Amended by L. 1984, c. 24, 11, eff. Oct. 1, 1984.

#### **43:21-18. Nonliability of state**

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state, the commission nor any representative thereof shall be liable for any amount in excess of such sums.

#### **43:21-19. Definitions**

As used in this chapter (*R.S. 43:21-1 et seq.*), unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid during a calendar year (regardless of when earned) by an employer for employment.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher, except that any year or years throughout which an employer has had no "annual payroll" because of military service shall be deleted from the reckoning; the "average annual payroll" in such case is to be determined on the basis of the prior three or five calendar years in each of which the employer had an "annual payroll" in the operation of his business, if the employer resumes his business within 12 months after separation, discharge or release from such service, under conditions other than dishonorable, and makes application to have his "average annual payroll" determined on the basis of such deletion within 12 months after he resumes his business; provided, however, that "average annual payroll" solely for the purposes of paragraph (3) of subsection (e) of *R.S. 43:21-7* means the average of the annual payrolls of any employer on which he paid contributions to the State disability benefits fund for the last three or five preceding calendar years, whichever average is higher; provided further that only those wages be included on which employer contributions have been paid on or before January 31 (or the next succeeding day if such January 31 is a Saturday or Sunday) immediately preceding the beginning of the 12-month period for which the employer's contribution rate is computed.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter (*R.S. 43:21-1 et seq.*), with respect to his unemployment.

(c) (1) "Base year" with respect to benefit years commencing on or after July 1, 1986, shall mean the first four of the last five completed calendar quarters immediately preceding an individual's benefit year.

With respect to a benefit year commencing on or after July 1, 1995, if an individual does not have sufficient qualifying weeks or wages in his base year to qualify for benefits, the individual shall have the option of designating that his base year shall be the "alternative base year," which means the last four completed calendar quarters immediately preceding the individual's benefit year; except that, with respect to a benefit year commencing on or after October 1, 1995, if the individual also does not have sufficient qualifying weeks or wages in the last four completed calendar quarters immediately preceding his benefit year to qualify for benefits, "alternative base year" means the last three completed calendar quarters immediately preceding his benefit year and, of the calendar quarter in which the benefit year commences, the portion of the quarter which occurs before the commencing of the benefit year.

The division shall inform the individual of his options under this section as amended by P.L. 1995, c. 234. If information regarding weeks and wages for the calendar quarter or quarters immediately preceding the benefit year is not available to the division from the regular quarterly reports of wage information and the division is not able to obtain the information using other means pursuant to State or federal law, the division may base the determination of eligibility for benefits on the affidavit of an individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of benefits based on an alternative base year shall be adjusted when the quarterly report of wage information from the employer is received if that information causes a change in the determination.

(2) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C.43:21-25 et seq.*), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period defined as a period of disability by section 3 of the "Temporary Disability Benefits Law," P.L. 1948, c. 110 (*C.43:21-27*). An individual who files a claim under the provisions of this paragraph (2) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of *R.S. 43:21-5*.

(3) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the workers' compensation law (chapter 15 of Title 34 of the Revised Statutes), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the period of disability was not longer than two years, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and if the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period from the time at which the individual becomes unable to work because of the compensable disability until the time that the individual becomes able to resume work and continue work on a permanent basis. An individual who files a claim under the provisions of this paragraph (3) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of *R.S. 43:21-5*.

(d) "Benefit year" with respect to any individual means the 364 consecutive calendar days beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with subsection (a) of *R.S. 43:21-6* shall be deemed to be a "valid claim" for the purpose of this subsection if (1) he is unemployed for the week in which, or as of which, he files a claim for benefits; and (2) he has fulfilled the conditions imposed by subsection (e) of *R.S. 43:21-4*.

(e) (1) "Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, and any transaction or exercise of authority by the director of the division thereunder, or under this chapter (*R.S. 43:21-1 et seq.*), shall be deemed to be performed by the division.

(2) "Controller" means the Office of the Assistant Commissioner for Finance and Controller of the Department of Labor, established by the 1982 Reorganization Plan of the Department of Labor.

(f) "Contributions" means the money payments to the State Unemployment Compensation Fund, required by *R.S. 43:21-7*. "Payments in lieu of contributions" means the money payments to the State Unemployment Compensation Fund by employers electing or required to make payments in lieu of contributions, as provided in section 3 or section 4 of P.L. 1971, c. 346 (*C. 43:21-7.2* or *43:21-7.3*).

(g) "Employing unit" means the State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any individual or type of organization, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter (*R.S. 43:21-1 et seq.*). Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter (*R.S. 43:21-1 et seq.*), whether such individual was hired or paid directly by such employing unit or by such agent or employee; provided the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$ 1,000.00 or more;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets thereof, of another which, at the time of such acquisition, was an employer subject to this chapter (*R.S. 43:21-1 et seq.*);



(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit or interest, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit for which service in employment as defined in *R.S. 43:21-19 (i) (1) (B) (i)* is performed after December 31, 1971; and as defined in *R.S. 43:21-19 (i) (1) (B) (ii)* is performed after December 31, 1977;

(6) Any employing unit for which service in employment as defined in *R.S. 43:21-19 (i) (1) (c)* is performed after December 31, 1971 and which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$ 1,000.00 or more;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection (h) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of the "unemployment compensation law" for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter (*R.S. 43:21-1 et seq.*);

(8) (Deleted by amendment; P.L. 1977, c. 307.)

(9) (Deleted by amendment; P.L. 1977, c. 307.)

(10) (Deleted by amendment; P.L. 1977, c. 307.)

(11) Any employing unit subject to the provisions of the Federal Unemployment Tax Act within either the current or the preceding calendar year, except for employment hereinafter excluded under paragraph (7) of subsection (i) of this section;

(12) Any employing unit for which agricultural labor in employment as defined in *R.S. 43:21-19 (i) (1) (I)* is performed after December 31, 1977;

(13) Any employing unit for which domestic service in employment as defined in *R.S. 43:21-19 (i) (1) (J)* is performed after December 31, 1977;

(14) Any employing unit which having become an employer under the "unemployment compensation law" (*R.S. 43:21-1 et seq.*), has not under *R.S. 43:21-8* ceased to be an employer; or for the effective period of its election pursuant to *R.S. 43:21-8*, any other employing unit which has elected to become fully subject to this chapter (*R.S. 43:21-1 et seq.*).

(i) (1) "Employment" means:

(A) Any service performed prior to January 1, 1972, which was employment as defined in the "unemployment compensation law" (*R.S. 43:21-1 et seq.*) prior to such date, and, subject to the other provisions of this subsection, service performed on or after January 1, 1972, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(B) (i) Service performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities or in the employ of this State and one or more other states or their instrumentalities for a hospital or institution of higher education located in this State, if such service is not excluded from "employment" under paragraph (D) below.

(ii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of the foregoing and one or more other states or political subdivisions, if such service is not excluded from "employment" under paragraph (D) below.

(C) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, which is excluded from "employment" as defined in the Federal Unemployment Tax Act, solely by reason of section 3306 (c)(8) of that act, if such service is not excluded from "employment" under paragraph (D) below.

(D) For the purposes of paragraphs (B) and (C), the term "employment" does not apply to services performed

(i) In the employ of (i) a church or convention or association of churches, or (II) an organization, or school which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education, and after December 31, 1977, in the employ of a governmental entity referred to in *R.S. 43:21-19 (i) (1) (B)*, if such service is performed by an individual in the exercise of duties

(aa) as an elected official;

(bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(cc) as a member of the State National Guard or Air National Guard;

(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(ee) in a position which, under or pursuant to the laws of this State, is designated as a major nontenured policy making or advisory position, or a policy making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market;

(v) By an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program assisted in whole or in part by any federal agency or an agency of a state or political subdivision thereof; or

(vi) Prior to January 1, 1978, for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term "employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands, after December 31, 1971) and prior to January 1 of the year following the year in which the U.S. Secretary of Labor approves the unemployment compensation law of the

Virgin Islands, under *section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C. s. 3304 (a))* in the employ of an American employer (other than the service which is deemed employment under the provisions of *R.S. 43:21-19 (i) (2)* or (5) or the parallel provisions of another state's unemployment compensation law), if

(i) The American employer's principal place of business in the United States is located in this State; or

(ii) The American employer has no place of business in the United States, but (i) the American employer is an individual who is a resident of this State; or (II) the American employer is a corporation which is organized under the laws of this State; or (III) the American employer is a partnership or trust and the number of partners or trustees who are residents of this State is greater than the number who are residents of another state; or

(iii) None of the criteria of divisions (i) and (ii) of this subparagraph (E) is met but the American employer has elected to become an employer subject to the "unemployment compensation law" (*R.S. 43:21-1 et seq.*) in this State, or the American employer having failed to elect to become an employer in any state, the individual has filed a claim for benefits, based on such service, under the law of this State;

(iv) An "American employer," for the purposes of this subparagraph (E), means (I) an individual who is a resident of the United States; or (II) a partnership, if two-thirds or more of the partners are residents of the United States; or (III) a trust, if all the trustees are residents of the United States; or (IV) a corporation organized under the laws of the United States or of any state.

(F) Notwithstanding *R.S. 43:21-19 (i) (2)*, all service performed after January 1, 1972 by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this State.

(G) Notwithstanding any other provision of this subsection, service in this State with respect to which the taxes required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the "unemployment compensation law" (*R.S. 43:21-1 et seq.*).

(H) The term "United States" when used in a geographical sense in subsection *R.S. 43:21-19 (i)* includes the states, the District of Columbia, the Commonwealth of Puerto Rico and, effective on the day after the day on which the U.S. Secretary of Labor approves for the first time under *section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C. s. 3304 (a))* an unemployment compensation law submitted to the Secretary by the Virgin Islands for such approval, the Virgin Islands.

(I) (i) Service performed after December 31, 1977 in agricultural labor in a calendar year for an entity which is an employer as defined in the "unemployment compensation law," (*R.S. 43:21-1 et seq.*) as of January 1 of such year; or for an employing unit which

(aa) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$ 20,000.00 or more for individuals employed in agricultural labor, or

(bb) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time.

(ii) for the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other entity shall be treated as an employee of such crew leader

(aa) if such crew leader holds a certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470 (29 U.S.C. s. 1801 et seq.), or P.L. 1971, c. 192 (C.34:8A-7 et seq.); or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(bb) if such individual is not an employee of such other person for whom services were performed.

(iii) For the purposes of subparagraph (I) (i) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor or any other entity and who is not treated as an employee of such crew leader under (I) (ii)

(aa) such other entity and not the crew leader shall be treated as the employer of such individual; and

(bb) such other entity shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other entity) for the service in agricultural labor performed for such other entity.

(iv) For the purpose of subparagraph (I)(ii), the term "crew leader" means an individual who

(aa) furnishes individuals to perform service in agricultural labor for any other entity;

(bb) pays (either on his own behalf or on behalf of such other entity) the individuals so furnished by him for the service in agricultural labor performed by them; and

(cc) has not entered into a written agreement with such other entity under which such individual is designated as an employee of such other entity.

(J) Domestic service after December 31, 1977 performed in the private home of an employing unit which paid cash remuneration of \$ 1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this State if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S. 43:21-1 et seq.) if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter (R.S. 43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the entire service of such individual shall be deemed to be employment subject to this chapter (R.S. 43:21-1 et seq.).

(5) Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (*R.S. 43:21-1 et seq.*) unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) Provided that such services are also exempt under the Federal Unemployment Tax Act, as amended, or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by the Federal Unemployment Tax Act, as amended, the term "employment" shall not include:

(A) Agricultural labor performed prior to January 1, 1978; and after December 31, 1977, only if performed in a calendar year for an entity which is not an employer as defined in the "unemployment compensation law," (*R.S. 43:21-1 et seq.*) as of January 1 of such calendar year; or unless performed for an employing unit which

(i) during a calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$ 20,000.00 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time;

(B) Domestic service in a private home performed prior to January 1, 1978; and after December 31, 1977, unless performed in the private home of an employing unit which paid cash remuneration of \$ 1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year;

(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(D) Service performed prior to January 1, 1978, in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions, except as provided in *R.S. 43:21-19 (i) (1) (B)* above, and service in the employ of the South Jersey Port Corporation or its successors;

(E) Service performed in the employ of any other state or its political subdivisions or of an instrumentality of any other state or states or their political subdivisions to the extent that such instrumentality is with respect to such service exempt under the Constitution of the United States from the tax imposed under the Federal Unemployment Tax Act, as amended, except as provided in *R.S. 43:21-19 (i) (1) (B)* above;

(F) Service performed in the employ of the United States Government or of any instrumentality of the United States except under the Constitution of the United States from the contributions imposed by the "unemployment compensation law," except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Secretary of Labor of the United States under *section 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C. s. 3304)*, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in *R.S. 43:21-14 (f)* with respect to contributions erroneously paid to or collected by the division;

(G) Services performed in the employ of fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(H) Services performed as a member of the board of directors, a board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or of the United States, where such services do not constitute the principal employment of the individual;

(I) Service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(J) Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;

(K) Services performed by real estate salesmen or brokers who are compensated wholly on a commission basis;

(L) Services performed in the employ of any veterans' organization chartered by Act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, inures to the benefit of any private shareholder or individual;

(M) Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band," entertainer, vaudeville artist, actor, actress, singer or other entertainer;

(N) Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$ 1,000.00 in a calendar year;

(O) Services performed in the sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;

(P) Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds

that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (*22 U.S.C. s. 288 et seq.*);

(S) Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to *R.S. 43:21-21* during the effective period of such election;

(T) Service performed in the employ of a school, college, or university if such service is performed (i) by a student enrolled at such school, college, or university on a full-time basis in an educational program or completing such educational program leading to a degree at any of the severally recognized levels, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance;

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school approved pursuant to the laws of this State;

(W) Services performed after the effective date of this amendatory act by agents of mutual benefit associations if the compensation to such agents for such services is wholly on a commission basis;

(X) Services performed by operators of motor vehicles weighing 18,000 pounds or more, licensed for commercial use and used for the highway movement of motor freight, who own their equipment or who lease or finance the purchase of their equipment through an entity which is not owned or controlled directly or indirectly by the entity for which the services were performed and who were compensated by receiving a percentage of the gross revenue generated by the transportation move or by a schedule of payment based on the distance and weight of the transportation move;

(Y) Services performed by a certified shorthand reporter certified pursuant to P.L. 1940, c.175 (*C.45:15B-1 et seq.*), provided to a third party by the reporter who is referred to the third party pursuant to an agreement with another certified shorthand reporter or shorthand reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement;

(Z) Services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, who acts as an independent contractor, is paid on a commission basis, sets his own work schedule and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities.

(8) If one-half or more of the services in any pay period performed by an individual for an employing unit constitutes employment, all the services of such individual shall be deemed to be employment; but if more than one-half of the service in any pay period performed by an individual for an employing unit does not constitute employment, then none of the service of such individual shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment for service is ordinarily made by an employing unit to individuals in its employ.

(9) Services performed by the owner of a limousine franchise (franchisee) shall not be deemed to be employment subject to the "unemployment compensation law," *R.S. 43:21-1 et seq.*, with regard to the franchisor if:

(A) The limousine franchisee is incorporated;

(B) The franchisee is subject to regulation by the Interstate Commerce Commission;

(C) The limousine franchise exists pursuant to a written franchise arrangement between the franchisee and the franchisor as defined by section 3 of P.L. 1971, c. 356 (*C.56:10-3*); and

(D) The franchisee registers with the Department of Labor and receives an employer registration number.

(j) "Employment 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.

(k) (Deleted by amendment, P.L. 1984, c. 24.)

(l) "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands and Puerto Rico.

(m) "Unemployment."

(1) An individual shall be deemed "unemployed" for any week during which:

(A) The individual is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% 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; or

(B) The individual is eligible for and receiving a self-employment assistance allowance pursuant to the requirements of P.L. 1995, c. 394 (*C.43:21-67 et al.*).

(2) The term "remuneration" with respect to any individual for benefit years commencing on or after July 1, 1961, and as used in this subsection, shall include only that part of the same which in any week exceeds 20% of his weekly benefit rate (fractional parts of a dollar omitted) or \$ 5.00, whichever is the larger, and shall not include any moneys paid to an individual by a county board of elections for work as a board worker on an election day.

(3) An individual's week of unemployment shall be deemed to commence only after the individual has filed a claim at an unemployment insurance claims office, except as the division may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter (*R.S. 43:21-1 et seq.*), from which administrative expenses under this chapter (*R.S. 43:21-1 et seq.*) shall be paid.



(o) "Wages" means remuneration paid by employers for employment. If a worker receives gratuities regularly in the course of his employment from other than his employer, his "wages" shall also include the gratuities so received, if reported in writing to his employer in accordance with regulations of the division, and if not so reported, his "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 his employer, whichever is the higher.

(p) "Remuneration" means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash.

(q) "Week" means for benefit years commencing on or after October 1, 1984, the calendar week ending at midnight Saturday, or as the division may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30, or December 31.

(s) "Investment company" means any company as defined in subsection a. of section 1 of P.L. 1938, c. 322 (*C.17:16A-1*).

(t) (1) (Deleted by amendment, P.L. 2001, c. 17).

(2) "Base week," commencing on or after January 1, 1996 and before January 1 2001, means:

(A) Any calendar week during which the individual earned in employment from an employer remuneration not less than an amount which is 20% of the Statewide average weekly remuneration defined in subsection (c) of *R.S. 43:21-3* which amount shall be adjusted to the next higher multiple of \$ 1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (A) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this subparagraph (A) during that week; or

(B) If the individual does not establish in his base year 20 or more base weeks as defined in subparagraph (A) of this paragraph (2), any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L. 1966, c. 113 (*C.34:11-56a4*) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$ 1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this subparagraph (B) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration not less than the amount defined in this subparagraph (B) during that week.

(3) "Base week," commencing on or after January 1, 2001, means any calendar week during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L. 1966, c. 113 (*C.34:11-56a4*) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$ 1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph (3) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (3) during that week.

(u) "Average weekly wage" means the amount derived by dividing an individual's total wages received during his base year base weeks (as defined in subsection (t) of this section) from that most recent base year employer with whom he has established at least 20 base weeks, by the number of base weeks in which such wages were earned. In the event that such claimant had no employer in his

base year with whom he had established at least 20 base weeks, then such individual's average weekly wage shall be computed as if all of his base week wages were received from one employer and as if all his base weeks of employment had been performed in the employ of one employer.

For the purpose of computing the average weekly wage, the monetary alternative in subparagraph (B) of paragraph (2) of subsection (e) of *R.S. 43:21-4* shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.

(v) "Initial determination" means, subject to the provisions of *R.S. 43:21-6(b)(2)* and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year. For benefit years commencing prior to July 1, 1986, subject to the provisions of *R.S. 43:21-3(d)(3)*, if an individual has been in employment in his base year with more than one employer, no benefits shall be paid to that individual under any successive initial determination until his benefit rights have been exhausted under the next preceding initial determination.

(w) "Last date of employment" means the last calendar day in the base year of an individual on which he performed services in employment for a given employer.

(x) "Most recent base year employer" means that employer with whom the individual most recently, in point of time, performed service in employment in the base year.

(y) (1) "Educational institution" means any public or other nonprofit institution (including an institution of higher education):

(A) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(B) Which is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the State to approve, license or issue a permit for the operation of a school; and

(C) Which offers courses of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(2) "Institution of higher education" means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Is legally authorized in this State to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

(z) "Hospital" means an institution which has been licensed, certified or approved under the law of this State as a hospital.

**HISTORY:** Amended 1938, c. 312, § 1; 1938, c. 314, § 1; 1939, c. 94, § 6A; 1940, c. 247, § 3; 1941, c. 374; 1941, c. 385; 1942, c. 2; 1945, c. 73, § 3; 1946, c. 37; 1946, c. 278, § 1; 1947, c. 35, § 4; 1948, c. 318; 1950, c. 304, § 1; 1951, c. 212; 1952, c. 187, § 8; 1953, c. 218; 1955, c. 203, § 3; 1956, c. 65; 1961, c. 43, § 9; 1962, c. 49, § 1; 1963, c. 66; 1964, c. 111; 1967, c. 30, § 7, 1967, c. 30, title amended 1967, c. 286, § 12; 1968, c. 360, § 1; 1968, c. 366, § 1; 1968, c. 469, § 1; 1970, c. 279; 1971, c. 24; 1971, c. 346, § 10; 1973, c. 94; 1974, c. 86, § 7; 1977, c. 307, § 8; 1979, c. 379; 1984, c. 24, § 12; 1984, c. 216, § 2; 1985, c. 378; 1985, c. 389; 1989, c. 265; 1991, c. 486, § 1; 1993, c. 312; 1994, c. 112, § 2; 1995, c. 234, § 3; 1995, c. 394, § 9; 2001, c. 17, § 2, eff. Jan. 29, 2001; 2002, c. 94, § 2, eff. Nov. 8, 2002.

#### **43:21-19.2. Effective date and application of Act**

This act shall take effect and become operative immediately, and shall apply to all benefits payable with respect to benefit years beginning on or after said date, and any benefits accruing to any individual on or after said date with respect to benefit years beginning before said date, shall not be recomputed under this act as to the total amount or weekly rate thereof, and shall be paid for either total or partial unemployment, in accordance with subsection (b) of section 43:21-3 of this chapter, without the necessity of serving any additional waiting period.

**HISTORY:** L. 1940, c. 247, p. 951, 4. Amended by L. 1941, c. 114, p. 258, 2.

#### **43:21-19.3. Provisions dealing with exclusion of certain agents retroactive**

Notwithstanding the provisions of this act as to its effective date in other respects, subsection (i)(7)(J) of section 43:21-19, dealing with exclusion of certain insurance agents and agents of investment companies, is to be retroactively applicable from and after, and effective as of, December twenty-third, one thousand nine hundred and forty-one.

**HISTORY:** L. 1950, c. 304, p. 1039, 2.

#### **43:21-19.4. Gratuities or tips; remuneration in lieu of**

Whenever payments are made to workers pursuant to an agreement entered into by their employer providing for a service charge measured by

(a) a percentage of the amount received by the employer for the furnishing of hotel, restaurant or catering facilities or services,

(b) the number of persons receiving such facilities or services, or

(c) the number of workers providing such services or facilities

for the distribution among the workers in lieu of customary gratuities or tips from the persons who are to use or to receive the said facilities or services, the said payments to workers, when made, shall be deemed to be remuneration paid by the employer to the workers for all the purposes of the unemployment compensation law (*R.S. 43:21-1 et seq.*) as amended and supplemented.

**HISTORY:** L. 1966, c. 116, 1, eff. Jan. 1, 1967.

#### **43:21-19.6. South Jersey Port Commission considered employer**

With respect to service performed in the employ of the South Jersey Port Commission which is not excluded from the definition of "employment" by the provisions of Revised Statutes 43:21-19(i)(7)(D), as amended, the employing authority, the South Jersey Port Commission or its

successors, shall be considered as an employer, as defined by Revised Statutes 43:21-19(h), and shall make all payments and perform all acts, with regard to employees performing such service, as may be required by the provisions of Title 43 of any other employer.

**HISTORY:** L. 1968, c. 360, 2, eff. Jan. 1, 1969.

#### **43:21-20.1. Individuals employed part time; eligibility for benefits**

Notwithstanding any other provision of *R.S. 43:21-1* et seq. to the contrary, no individual, who is otherwise eligible, shall be deemed unavailable for work or ineligible for benefits solely for the reason that the individual is available for, seeks, applies for, or accepts only part-time work, instead of full-time work, if the claim is based on part-time employment and the individual is actively seeking and is willing to accept work under essentially the same conditions as existed in connection with the employment from which the individual became eligible for benefits.

**HISTORY:** L. 1952, c. 282, § 1; amended 2003, c. 107, § 6, eff. July 1, 2003.

#### **43:21-20.2. Effective date**

This act shall take effect July first, one thousand nine hundred and fifty-two.

**HISTORY:** L. 1952, c. 282, p. 968, 2.

#### **43:21-21. Reciprocal benefit arrangements**

(a) The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states or the Federal Government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any loss to the fund.

(b) The commissioner is authorized to enter into arrangements with the appropriate agencies of other states or of the Federal Government, or both, (1) whereby remuneration, upon the basis of which an individual may become entitled to benefits under the Unemployment Compensation Law of another state or of the Federal Government, shall be deemed to be wages for the purposes of this chapter (*R.S. 43:21-1* et seq.), and (2) whereby wages, on the basis of which an individual may become entitled to benefits under this chapter (*R.S. 43:21-1* et seq.) shall be deemed to be remuneration on the basis of which benefits are payable under the Unemployment Compensation Law of another state or of the Federal Government. No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such portion of benefits paid under this chapter (*R.S. 43:21-1* et seq.) on the basis of such remuneration, and provision for reimbursement from the fund for that portion of benefits paid under such other law on the basis of such wages, as the commissioner finds will be fair and reasonable as to all affected interests. Subsection (f) of *43:21-5* of this chapter (*R.S. 43:21-1* et seq.) shall be inapplicable to an individual who files a claim for benefits under any such arrangement. The commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Unemployment Compensation Law of New Jersey with his wages in employment covered under the Unemployment Compensation Laws of other states which are approved by the United States Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (1) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State Unemployment Compensation Laws, and (2) avoiding the duplicate use of wages and employment by reason of such combining. Reimbursements paid from the fund pursuant to such arrangements shall be deemed to be benefits for the purposes of this chapter (*R.S. 43:21-1* et seq.). The commissioner is hereby authorized to make to other state or Federal agencies, and to receive from such other state or Federal agencies, reimbursements from or to the fund in accordance with arrangements pursuant to this section.

(c) The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states covering services on vessels engaged in interstate or foreign commerce whereby such services performed for a single employer, under any contract of hire, partly within and partly without this State, shall be deemed to be performed in their entirety either within or without this State.

(d) The commissioner is authorized to enter into reciprocal arrangements with the appropriate and duly authorized agency of any other state or of the United States whereby (i) moneys due the commissioner for contributions, interest and penalties and paid to such agency shall be deemed to have been paid into the unemployment compensation fund of this State as of the date of payment to such agency and (ii) vice versa; provided, that such arrangements contain provisions for the reciprocal transfers of such moneys.

(e) The commissioner is authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part of such individual's services is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business; provided, there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's Unemployment Compensation Law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

(f) To the extent permissible under the laws, treaties and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter (*R.S. 43:21-1 et seq.*), and facilities and services provided under the Employment Security Law of any foreign government may be utilized for the taking of claims and payment of benefits under the Employment Security Law of this State or under a similar law of such foreign government.

**HISTORY:** Amended by L. 1939, c. 94, p. 212, 7; L. 1945, c. 73, p. 376, 4; L. 1945, c. 308, p. 902, 6; L. 1949, c. 213, p. 690, 1; L. 1952, c. 189, p. 683, 1; L. 1960, c. 90, p. 573, 1; L. 1966, c. 122, 1, eff. June 17, 1966; L. 1971, c. 346, 12.

#### **43:21-22. Saving clause**

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

#### **43:21-23. Separability of provisions**

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **43:21-24.1. Sale of surplus, obsolete or unsuitable property; disposition of proceeds**

At the request of the Director of the Division of Employment Security, the Director of the Division of Purchase and Property may sell, either at public or private sale, or otherwise dispose of, property purchased or acquired with funds or grants of the United States of America or any agency or department thereof which have been or shall be deposited in the Unemployment Compensation

Administration Fund, if the Director of the Division of Employment Security deems such property surplus, obsolete or no longer suitable for the purposes for which it was intended. The proceeds of any sale of surplus, obsolete or unsuitable property heretofore or hereafter made shall be deposited in the Unemployment Compensation Administration Fund.

**HISTORY:** L. 1955, c. 56, p. 195, 1.

**43:21-24.2. Contracts for payments under federal Temporary Unemployment Compensation Act of 1958**

The Commissioner of Labor and Industry is hereby authorized to enter into an agreement with the Secretary of Labor of the United States on behalf of the United States, pursuant to the Act of Congress of June 4, 1958, being the "Temporary Unemployment Compensation Act of 1958," under and by which the Division of Employment Security in the Department of Labor and Industry will make, as agent of the United States, payments of temporary unemployment compensation to individuals who have, after October 1, 1957, exhausted all rights under any unemployment compensation law of this State and who have no rights to unemployment compensation, with respect to any week of unemployment which begins after the date on which such agreement is entered into, on the basis provided in said Act of Congress, and otherwise to co-operate with the Secretary of Labor of the United States and with other State agencies in making payments of temporary unemployment compensation under said Act of Congress aforesaid; provided, however, that no provision for repayment or restoration to the Treasury of the United States of any amounts required to be so repaid or restored pursuant to said Act of Congress or any agreement entered into pursuant thereto and pursuant to this act, shall be, constitute or create any debt, obligation or liability of the State of New Jersey, or constitute the lending of its credit, to insure or otherwise secure any such repayment or restoration.

**HISTORY:** L. 1958, c. 72, p. 508, 1.

**43:21-24.3. Benefit payments not chargeable to employers' accounts**

Temporary unemployment compensation benefit payments pursuant to an agreement entered into hereunder shall not be charged to any employer's account.

**HISTORY:** L. 1958, c. 72, p. 509, 2.

**43:21-24.4. Agreements with United States**

The Director of the Division of Employment Security on behalf of the division is authorized to enter into agreements with the Secretary of Labor of the United States on behalf of the United States under which the division

(a) will make, as agent of the United States, payments of unemployment compensation to individuals who may be eligible therefor under any law of the United States, and will otherwise cooperate with the Secretary of Labor of the United States and with agencies of other states in making payments of unemployment compensation under any such laws; provided, however, that all costs incurred, all expenses paid and all such compensation benefits paid shall be paid or reimbursed by the United States and shall not devolve upon the State of New Jersey; or

(b) will receive reimbursement from the United States for unemployment compensation paid pursuant to any law of this State or of the United States; and the division shall perform such agreements.

**HISTORY:** L. 1961, c. 6, p. 20, 1.

## NEW JERSEY EXTENDED BENEFIT LAW

### 43:21-24.11. Definitions

For the purposes of the extended benefit program and as used in this act, unless the context clearly requires otherwise:

a. "Extended benefit period" means a period which

(1) Begins with the third week after a week for which there is a state "on" indicator; and

(2) Ends with either of the following weeks, whichever occurs later:

(a) The third week after the first week for which there is a state "off" indicator; or

(b) The thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this State; and provided further, that no extended benefit period may become effective in this State prior to the effective date of this act.

b. (Deleted by amendment.)

c. (Deleted by amendment.)

d. There is a "state 'on' indicator" for this State for a week if:

(1) The division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of the respective week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the "unemployment compensation law" (*R.S.43:21-1 et seq.*):

(a) Equaled or exceeded 120% of the average of these rates for the corresponding 13-week period during each of the preceding 2 calendar years, and, for weeks beginning after September 25, 1982, equaled or exceeded 5%; or

(b) With respect to benefits for weeks of unemployment beginning after September 25, 1982, equaled or exceeded 6%; or

(2) With respect to any week of unemployment beginning after December 27, 2003, the average seasonally adjusted rate of total unemployment in the State, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published:

(a) Equals or exceeds 6.5%; and

(b) Equals or exceeds 110% of the average seasonally adjusted rate of total unemployment in the State during either or both of the corresponding three-month periods ending in the two preceding calendar years.

e. There is a "state 'off' indicator" for this State for a week if:

(1) The division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of the respective week and the immediately preceding 12 weeks, paragraph (1) of subsection d. was not satisfied; and

(2) With respect to any week of unemployment beginning after December 27, 2003, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published, paragraph (2) of subsection d. was not satisfied.

f. "Rate of insured unemployment," for purposes of subsections d. and e. means the percentage derived by dividing

(1) The average weekly number of individuals filing claims for regular benefits in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the United States Secretary of Labor, by

(2) The average monthly covered employment for the specified period.

g. "Regular benefits" means benefits payable to an individual under the "unemployment compensation law" (*R.S.43:21-1 et seq.*) or under any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to *5 U.S.C. § 8501 et seq.*) other than extended benefits.

h. "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to *5 U.S.C. § 8501 et seq.*) payable to an individual under the provisions of this act for weeks of unemployment in his eligibility period.

i. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended benefit period, any weeks thereafter which begin in the period.

j. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(1) Has received prior to the week, all of the regular benefits that were available to him under the "unemployment compensation law" (*R.S. 43:21-1 et seq.*) or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under *5 U.S.C. § 8501 et seq.*) in his current benefit year that includes such week, provided, that for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(2) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week; and

(3) (a) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(b) has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of Canada; but if he is seeking these benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an exhaustee if the other provisions of this definition are met.

k. "State law" means the unemployment insurance law of any state approved by the United States Secretary of Labor under *section 3304 of the Internal Revenue Code of 1986, 26 U.S.C. § 3304.*

l. "High unemployment period" means any period beginning after December 27, 2003 during which the average seasonally adjusted rate of total unemployment in the State, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published:

(1) Equals or exceeds 8%; and



(2) Equals or exceeds 110% of the average seasonally adjusted rate of total unemployment in the State during either or both of the corresponding three-month periods ending in the two preceding calendar years.

**HISTORY:** L. 1970, c. 324, § 5; amended 1977, c. 151; 1977, c. 307, § 9; 1982, c. 144, § 1; 2005, c. 123, § 3, eff. July 2, 2005; 2005, c. 249, § 2, eff. Dec. 21, 2005.

**43:21-24.12. Effect of State law provisions relating to regular benefits on claims for, and the payment and charging of, extended benefits**

Except when the result would be inconsistent with other provisions of the "Extended Benefits Law," as provided in the regulations of the division, the provisions of the "unemployment compensation law" (*R.S. 43:21-1 et seq.*) which apply to claims for, and the payment and charging of, regular benefits shall apply to claims for, and the payment and charging of, extended benefits, provided, however, that no employer's account shall be charged for the payment of any extended benefits with respect to any weeks commencing prior to July 1, 1971; and provided further, that 50% of any extended benefits paid with respect to weeks commencing on or after July 1, 1971 shall be charged to the appropriate employers' accounts.

**HISTORY:** L. 1970, c. 324, § 6; amended 1994, c. 59, § 1.

**43:21-24.13. Eligibility requirements for extended benefits**

An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to that week:

a. he is an "exhaustee" as defined in paragraph j. of section 5 [*C.43:21-24.11*];

b. he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

c. he, for any initial claim for extended benefits effective after September 25, 1982, has established entitlement for his applicable benefit year based on the alternative earnings requirement specified in subsection (e) of *R.S. 43:21-4*, and was paid wages during the base year of his applicable benefit year which equaled or exceeded forty times his weekly benefit rate.

**HISTORY:** L. 1970, c. 324, § 7. Amended by L. 1982, c. 144, § 2, eff. Sept. 24, 1982.

**43:21-24.14. Weekly extended benefit rate**

The weekly extended benefit rate payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit rate payable to him during his applicable benefit year.

**HISTORY:** L. 1970, c. 324, 8.

**43:21-24.15. Total extended benefit amount**

a. Except as provided in subsection b. of this section, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the lesser of the following amounts:

(1) 50% of the total of regular benefits which were payable to him under the "unemployment compensation law" (*R.S.43:21-1 et seq.*) in his applicable benefit year; or

(2) Thirteen times his weekly benefit amount which was payable to him under the "unemployment compensation law" (*R.S.43:21-1 et seq.*) for a week of total unemployment in the applicable benefit year.

b. With respect to weeks beginning during a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to his applicable benefit year shall be the lesser of the following amounts:

(1) 80% of the total of regular benefits which were payable to the individual under the "unemployment compensation law" (*R.S.43:21-1 et seq.*) during the applicable benefit year; or

(2) Twenty times the weekly benefit amount which was payable to the individual under the "unemployment compensation law" (*R.S.43:21-1 et seq.*) for a week of total unemployment during the applicable benefit year.

c. Notwithstanding any other provisions of the "unemployment compensation law" (*R.S.43:21-1 et seq.*), if the benefit year of an adversely affected worker covered by a certification under subchapter A, chapter 2, Title II of the Trade Act of 1974, P.L.93-618, *19 U.S.C. § 2271 et seq.* as amended, ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

**HISTORY:** L. 1970, c. 324, § 9; amended 1982, c. 144, § 3; 2005, c. 123, § 4, eff. July 2, 2005.

#### **43:21-24.16. Beginning and termination of extended benefit period**

a. Whenever an extended benefit period is to become effective in this State as a result of a state "on" indicator, or an extended benefit period is to be terminated in this State as a result of a state "off" indicator, the division shall make an appropriate public announcement.

b. Computations required by the provisions of paragraph f. of section five [*C.43:21-24.11*] shall be made by the division, in accordance with regulations prescribed by the United States Secretary of Labor.

**HISTORY:** L. 1970, c. 324, § 10. Amended by L. 1982, c. 144, § 4, eff. Sept. 24, 1982.

#### **43:21-24.17. Short title**

Sections 5 through 11 [*C.43:21-24.11* through *C.43:21-24.17*] of this act shall be known and may be cited as the "Extended Benefits Law."

**HISTORY:** L. 1970, c. 324, § 11.

#### **43:21-24.18. Cessation of extended benefits when paid under an interstate claim in a state where an extended benefit period is not in effect**

a. Except as provided in paragraph b. of this section, an individual shall not be eligible for extended benefits for any week if:

(1) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and

(2) No extended benefit period is in effect for such week in such state.

b. Paragraph a. shall not apply with respect to the first 2 weeks for which extended benefits are payable (determined without regard to this section) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

**HISTORY:** L. 1981, c. 90, 1, eff. March 30, 1981.

**43:21-24.19. Ineligibility for benefits; failure to accept offer of, apply for or actively engage in seeking suitable work or dismissal for misconduct**

a. Notwithstanding the provisions of section 6 of P.L.1970, c. 324 (*C. 43:21-24.12*) an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if it is determined during such period:

(1) The individual failed to accept any offer of suitable work as defined in paragraph c. or failed to apply for any suitable work to which the individual was referred to by the employment service or the director; or

(2) The individual failed to actively engage in seeking work as prescribed under paragraph e.

b. Any individual who has been found ineligible for extended benefits by reason of the provisions in paragraph a. of this section shall also be denied benefits beginning with the first day of the week following the week in which the failure occurred and until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than 4 times the individual's weekly extended benefit rate.

c. For purposes of this section the term suitable work means, with respect to any individual, any work which is within such individual's capabilities; this work shall be held to be suitable only:

(1) If the gross average weekly remuneration payable for the work exceeds the sum of: the individual's weekly extended benefit rate as determined under section 8 of P.L.1970, c. 324 (*C. 43:21-24.14*), plus the amount, if any, of supplemental unemployment benefits (as defined in *Section 501(c)(17) of the Internal Revenue Code of 1954*) payable to the individual for the respective week;

(2) If the position pays wages not less than the higher of

(a) The minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (*29 U.S.C. 206*), without regard to any exemption; or

(b) The applicable state or local minimum wage;

(3) Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitable work as described above if:

(a) The position was not offered to the individual in writing or was not listed with the employment service;

(b) The failure could not result in a denial of benefits under the definition of suitable work for regular benefits as provided under subsection (c) of *R.S. 43:21-5* to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this paragraph c.;

(c) The individual furnishes satisfactory evidence to the division that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to the individual shall be made in accordance with the definition of suitable work for regular benefit claimants as provided under subsection (c) of *R.S. 43:21-5* without regard to the definition specified by this paragraph c.

d. Notwithstanding the provisions of section 6 of P.L.1970, c. 324 (*C. 43:21-24.12*) to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by *Section 3304(a)(5) of the Internal Revenue Code of 1954* and subsection (c) of *R.S. 43:21-5*.

e. For the purposes of subparagraph (2) of paragraph a. of this section, an individual shall be treated as actively engaged in seeking work during any week if

(1) The individual has engaged in a systematic and sustained effort to obtain work during the week, and

(2) The individual furnishes tangible evidence that he has engaged in this effort during the week.

f. The employment service shall refer any claimant entitled to extended benefits under this act to any suitable work which meets the criteria prescribed in paragraph c.

g. An individual who has been disqualified for regular benefits under the provisions of subsection (b) or (c) of *R.S. 43:21-5* will not meet the eligibility requirements for the payment of extended benefits unless the individual has had employment subsequent to the effective date of disqualification for regular benefits and has earned in employment remuneration equal to not less than four times the individual's weekly benefit rate.

h. (1) An individual claiming extended benefits who is an exhaustee, as defined under paragraph j. of section 5 of P.L.1970, c. 324 (*C. 43:21-24.11*), and who is subsequently discharged or suspended for misconduct connected with his work as provided in subsection (b) of *R.S. 43:21-5*, shall be disqualified for extended benefits for the week in which the separation occurs and for each week thereafter until he has earned in employment remuneration equal to at least four times his weekly extended benefit rate, notwithstanding the disqualifying period for regular benefits for misconduct imposed under the provisions of subsection (b) of *R.S. 43:21-5*.

(2) An individual claiming extended benefits who is an exhaustee, as defined under paragraph j. of section 5 of P.L.1970, c. 324 (*C. 43:21-24.11*), but has satisfied the requirements of subparagraph c.(3)(c) of this section concerning prospects for employment, and who subsequently fails without good cause either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work as defined in subsection (c) of *R.S. 43:21-5* when offered to him, or to return to his customary self-employment when directed by the director, shall be disqualified for extended benefits. The disqualification shall be only for the week in which the refusal occurs and for each week thereafter, until he has earned in employment remuneration equal to at least four times his weekly extended benefit rate, notwithstanding the disqualifying period for regular benefits for the refusal normally imposed under the provisions of subsection (c) of *R.S. 43:21-5* or the disqualification imposed in paragraph b. of this section for individuals who have not satisfied the requirements of subparagraph c.(3)(c) of this section.

**HISTORY:** L. 1981, c. 90, 2, eff. March 30, 1981. Amended by L. 1982, c. 144, 5, eff. Sept. 14, 1982.

#### **43:21-24.20. Inapplicability of C.43:21-24.19**

The provisions of section 2 of P.L.1981, c. 90 (*C. 43:21-24.19*) shall not apply to weeks of unemployment beginning after March 6, 1993 and before January 1, 1995.

**HISTORY:** L. 1994, c. 59, § 2.

#### **43:21-24.21. Definitions for purposes of Emergency Unemployment Benefits Program**

For the purposes of the Emergency Unemployment Benefits Program and as used in this act:

"Emergency unemployment benefits" means benefits financed entirely by the State and paid to exhaustees pursuant to this act.

"Emergency unemployment benefit period" means a period not within an extended benefit period which:

a. Begins on June 2, 1996, and

b. Ends upon the conclusion of the second week after the first week for which there is a State "on" indicator as defined in section 5 of P.L.1970, c. 324 (*C. 43:21-24.11*) or other federally-financed supplemental benefits program, or

c. If there is no such "on" indicator, ends with the occurrence of either of the following:

(1) The third week after the first week for which there is a State emergency unemployment benefits "off" indicator; or

(2) The calendar week after the calendar week in which total expenditures of emergency unemployment compensation fund Statewide first exceed \$ 350 million.

There is a State emergency unemployment benefits "off" indicator for any week in which it is determined by the division based on data reported by the U.S. Bureau of Labor Statistics that, for the prior four calendar months, the average total unemployment rate (seasonally adjusted) in this State is less than 6.0 percent.

Notwithstanding any other provision of this subsection c., no emergency unemployment benefits shall be paid after December 1, 1996, except that emergency benefits shall be paid to individuals who established emergency unemployment claims prior to that date. No emergency unemployment benefits shall be paid to any individual after March 1, 1997.

"Eligibility period" of an exhaustee means the period consisting of the weeks in the exhaustee's benefit year which begin in an emergency unemployment benefit period and, if that benefit year ends in the emergency unemployment benefit period, any weeks thereafter which begin in the period.

"Exhaustee" means an individual who exhausted all of the regular benefits that were available to the individual pursuant to the "unemployment compensation law," *R.S. 43:21-1 et seq.*, (including benefits payable to federal civilian employees and ex-service persons or payable under the combined wage program), after December 2, 1995 and before June 2, 1996, or during any calendar week of the emergency unemployment benefit period. No individual who exhausted all of the available regular benefits prior to December 3, 1995 shall be eligible for emergency unemployment benefits. An individual whose benefit year has expired prior to the beginning of the emergency unemployment benefit period shall not be eligible for such benefits.

**HISTORY:** L. 1996, c. 30, § 1.

#### **43:21-24.22. Provision of weekly emergency unemployment benefits**

During an emergency unemployment benefit period exhaustees, who otherwise continue to meet the eligibility requirements for regular benefits pursuant to the provisions of the "unemployment compensation law," *R.S. 43:21-1 et seq.*, and who are not eligible for any other unemployment benefits, including benefits provided for by any federal law extending benefits beyond those provided for as regular benefits or extended benefits, may receive weekly emergency unemployment benefits for weeks subsequent to June 2, 1996 in an amount equal to the weekly benefit amount of the individual's most recent regular unemployment benefit claim subject to the provisions of the "unemployment compensation law," *R.S. 43:21-1 et seq.* The maximum emergency unemployment benefits an individual may receive pursuant to this act is 50 percent of the regular unemployment benefits which were payable to the individual pursuant to the "unemployment compensation law," *R.S. 43:21-1 et seq.*, (including benefits payable to federal civilian employees and ex-service persons or payable under the combined wage program) in the individual's applicable benefit year.

**HISTORY:** L. 1996, c. 30, § 2.

#### **43:21-24.23. Employer's account not charged; exceptions**

No employer's account shall be charged for emergency unemployment benefits paid to an unemployed individual pursuant to this act, except for the account of an out-of-State employer who is liable for charges under the Combined Wage Program. However, nothing in this section shall be construed to relieve employers electing to make payments in lieu of contributions pursuant to section 3 or 4 of P.L.1971, c. 346 (*C. 43:21-7.2* or *C. 43:21-7.3*) from reimbursing the unemployment benefits paid to an unemployed individual pursuant to this act.

Emergency unemployment benefits paid to federal civilian employees shall be charged to the appropriate federal account. Emergency unemployment benefits paid to ex-service persons shall be charged to the unemployment compensation fund.

**HISTORY:** L. 1996, c. 30, § 3.

#### **43:21-24.24. Conditions for payment**

Emergency unemployment benefits may be paid pursuant to the provisions of this act only with respect to weeks not within an extended benefit period, and not within a period covered by any federal law allowing the filing of new claims extending benefits beyond those provided for as regular or extended benefits. If a federal extended benefits period triggers "on," maximum benefits payable to an individual under the federal extended benefits program or any federal supplemental benefits program shall be reduced by an amount equal to that received by the individual under the emergency unemployment benefits program.

**HISTORY:** L. 1996, c. 30, § 4.

#### **43:21-24.25. Administrative actions to ensure proper payment of emergency unemployment benefits**

Notwithstanding the provisions of any other law, the division shall use appropriate administrative means to insure that emergency unemployment benefits are paid only to individuals who meet the requirements of this act. These administrative actions may include, but shall not be limited to, the following procedure: the division shall match the claimant's social security number against available wage records to insure that no earnings were reported for that claimant by employers under *R.S. 43:21-14* for periods in which emergency unemployment benefits were paid. All necessary administrative costs related to implementation of this act shall be paid from contributions made pursuant to section 29 of P.L.1992, c. 160 (*C. 43:21-7b*).

**HISTORY:** L. 1996, c. 30, § 5.

#### **43:21-24.26. Definitions relative to Emergency Unemployment Benefits Program**

For the purposes of the Emergency Unemployment Benefits Program and as used in sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26* through *C. 43:21-24.30*):

"Emergency unemployment benefits" means benefits financed entirely by the State and paid to exhaustees pursuant to sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26* through *C. 43:21-24.30*).

"Emergency unemployment benefit period" means a period not within an extended benefit period, which:

- a. Begins on December 30, 2001, and

b. Ends on March 9, 2002 or at the conclusion of the calendar week in which total expenditures of emergency unemployment benefits chargeable to the unemployment compensation fund Statewide first exceed \$ 100 million, if the conclusion of that week occurs before March 9, 2002. No emergency unemployment benefits shall be paid to any individual with respect to periods of unemployment after March 9, 2002.

"Eligibility period" of an exhaustee means the period consisting of the weeks in the exhaustee's benefit year which begin in an emergency unemployment benefit period and, if that benefit year ends in the emergency unemployment benefit period, any weeks thereafter which begin in the period.

"Exhaustee" means an individual who exhausted all of the regular benefits that were available to the individual pursuant to the "unemployment compensation law," *R.S. 43:21-1 et seq.*, (including benefits payable to federal civilian employees and ex-service persons or payable under the combined wage program) after November 24, 2001 and before December 30, 2001, or during any calendar week of the emergency unemployment benefit period. No individual who exhausted all of the available regular benefits prior to November 25, 2001 shall be eligible for emergency unemployment benefits.

**HISTORY:** L. 2002, c. 13, § 7, eff. Mar. 26, 2002.

#### **43:21-24.27. Emergency unemployment benefits**

During an emergency unemployment benefit period, an exhaustee who otherwise continues to meet the eligibility requirements for regular benefits pursuant to the provisions of the "unemployment compensation law," *R.S. 43:21-1 et seq.*, and who is not eligible for any other unemployment benefits, including benefits provided for by any federal law extending benefits beyond those provided for as regular benefits or extended benefits, may receive weekly emergency unemployment benefits for weeks subsequent to December 29, 2001 in an amount equal to the weekly benefit amount of the exhaustee's most recent regular unemployment benefit claim subject to the provisions of the "unemployment compensation law," *R.S. 43:21-1 et seq.* The maximum emergency unemployment benefits an individual may receive pursuant to sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26 through C. 43:21-24.30*) is 10 times the weekly benefit amount that was payable to the individual pursuant to the "unemployment compensation law," *R.S. 43:21-1 et seq.*, (including benefits payable to federal civilian employees and ex-service persons or payable under the combined wage program) in the individual's applicable benefit year.

**HISTORY:** L. 2002, c. 13, § 8, eff. Mar. 26, 2002.

#### **43:21-24.28. Charging of employer's account for emergency unemployment benefits**

No employer's account shall be charged for emergency unemployment benefits paid to an unemployed individual pursuant to sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26 through C. 43:21-24.30*), except for the account of an out-of-State employer who is liable for charges under the Combined Wage Program. However, nothing in this section shall be construed to relieve employers electing to make payments in lieu of contributions pursuant to section 3 or 4 of P.L. 1971, c. 346 (*C. 43:21-7.2 or C. 43:21-7.3*) from reimbursing the unemployment benefits paid to an unemployed individual pursuant to sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26 through C. 43:21-24.30*).

Emergency unemployment benefits paid to federal civilian employees shall be charged to the appropriate federal account. Emergency unemployment benefits paid to ex-service persons shall be charged to the General Fund.

**HISTORY:** L. 2002, c. 13, § 9, eff. Mar. 26, 2002.

**43:21-24.29. Payment of emergency unemployment benefits**

Emergency unemployment benefits may be paid pursuant to the provisions of sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26* through *C. 43:21-24.30*) only with respect to weeks not within an extended benefit period, and not within a period covered by any federal law allowing the filing of new claims extending benefits beyond those provided for as regular or extended benefits.

**HISTORY:** L. 2002, c. 13, § 10, eff. Mar. 26, 2002.

**43:21-24.30. Administrative actions to ensure payment to eligible individuals**

The division shall use appropriate administrative means to insure that emergency unemployment benefits are paid only to individuals who meet the requirements of sections 7 through 11 of P.L. 2002, c. 13 (*C. 43:21-24.26* through *C. 43:21-24.30*). These administrative actions may include, but shall not be limited to, matching the claimant's social security number against available wage records to insure that no earnings were reported for that claimant by employers under *R.S. 43:21-14* for periods in which emergency unemployment benefits were paid.

**HISTORY:** L. 2002, c. 13, § 11, eff. Mar. 26, 2002.



# NEW JERSEY EMPLOYMENT AND WORKFORCE DEVELOPMENT ACT

## 43:21-57. Findings, declarations

The Legislature hereby finds and declares that:

a. During the 1980s, New Jersey employers reported serious difficulties in finding skilled workers for a wide range of jobs in key sectors of the State's economy, and, notwithstanding the current economic slowdown, a longterm shortage of skilled labor will continue in many parts of the State's economy during the 1990s and beyond;

b. In addition, many New Jersey businesses are also hindered by low levels of literacy and other basic skills among a significant minority of the workforce;

c. Basic workplace literacy and vocational skill levels must be raised if the industries and enterprises of this State are to be successful in an increasingly competitive global economy;

d. Because of a slowing rate of population growth, the retraining of the existing workforce will play a critical role in meeting the growing need for skilled labor;

e. The effectiveness of current programs to retrain displaced workers during the time that they receive unemployment benefits is hindered by the limited duration of those benefits, which often drives displaced workers into short-term retraining programs with limited skill enhancement or results in the programs' avoiding the selection of trainees who need more extensive training to succeed;

f. It would increase the effectiveness of programs which provide retraining to displaced workers if the unemployment benefit period could be extended in cases where the longer benefit period is necessary to provide needed in-depth education and training;

g. Such extended unemployment benefits in connection with job training and education would encourage displaced workers to make greater use of retraining opportunities, thus making productive use of periods of economic slowdown and helping to close the skilled labor shortage during the growth periods that follow;

h. New Jersey's Unemployment Compensation Fund, with its current balance of more than two billion dollars, is among the most solvent in the nation;

i. It is therefore an appropriate public purpose, beneficial to workers and employers and the longterm economic development of New Jersey, to use a limited amount of unemployment compensation funds to provide extended unemployment benefits as needed to enable displaced workers to obtain the high quality training and education required for success in occupations where there are demonstrated longterm shortages of skilled labor.

**HISTORY:** L. 1992, c. 47, § 1.

## 43:21-58. Definitions

As used in this act:

"Approved service provider" or "approved training provider" means a service provider which is on the State Eligible Training Provider List.

"Commission" means the State Employment and Training Commission.

"Employment and training services" means: counseling provided pursuant to section 3 of this act; occupational training; or remedial instruction.

"Labor Demand Occupation" means an occupation which:

a. The Center for Occupational Employment Information has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (*C.34:1A-86*), determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

b. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (*C.34:1A-86*), determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

"Qualified job counselor" means a job counselor whose qualifications meet standards established by the commissioner.

"Remedial education" or "remedial instruction" means any literacy or other basic skills training or instruction which may not be directly related to a particular occupation but is needed to facilitate success in occupational training or work performance.

"Service provider," "training provider" or "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.

"Vocational training" or "occupational training" means training or instruction which is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

**HISTORY:** L. 1992, c. 47, § 2; amended 2005, c. 354, § 30, eff. Jan. 12, 2006.

#### **43:21-59. Counseling, Employability Development Plan**

Counseling shall be made available by the Department of Labor and Workforce Development to each individual who meets the requirements indicated in subsections a. and b. of section 4 of this act. The department may provide the counseling or obtain the counseling from a service provider, if the service provider is different from and not affiliated with any service provider offering any employment and training services to the worker other than the counseling. The purpose of the counseling is to assist the individual in obtaining the employment and training services most likely to enable the individual to obtain employment providing self-sufficiency for the individual and also to provide the individual with the greatest opportunity for long-range career advancement with high levels of productivity and earning power. The counseling shall include:

a. Testing and assessment of the individual's job skills and aptitudes, including the individual's literacy skills and other basic skills. Basic skills testing and assessment shall be provided to the individual unless information is provided regarding the individual's educational background and occupational or professional experience which clearly demonstrates that the individual's basic skill level meets the standards indicated in section 14 of P.L.1989, c.293 (*C.34:15C-11*) or unless the individual is already participating in a remedial instruction program which meets those standards;

b. An evaluation by a qualified job counselor of:

(1) Whether the individual is eligible for the additional benefits indicated in section 5 of this act; and

(2) What remedial instruction, if any, is determined to be necessary for the individual to advance in his current occupation or succeed in any particular occupational training which the individual would undertake in connection with additional benefits indicated in section 4 of this act, provided that the remedial instruction shall be at a level not lower than that needed to meet the standards indicated in section 14 of P.L.1989, c.293 (*C.34:15C-11*);

c. The provision of information to the individual regarding any of the labor demand occupations for which training meets the requirements of subsection e. of section 4 of this act in the claimant's case, including information about the wage levels in those occupations, the effectiveness of any particular provider of training for any of those occupations which the individual is considering using, including a consumer report card on service providers showing the long-term success of former trainees of the provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training;

d. The timely provision of information to the individual regarding the services and benefits available to the individual, and all actions required of the individual to obtain the services and benefits, under the provisions of this act and employment and training programs provided or funded pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (*C.34:15D-1* et al.) and the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.). and regarding the tuition waivers available pursuant to P.L.1983, c.469 (*C.18A:64-13.1* et seq.) and P.L.1983, c.470 (*C.18A:64A-23.1* et seq.); and the timely provision to the individual of a written statement of the individual's rights and responsibilities with respect to programs for which the individual is eligible, which includes a full disclosure to the individual of his right to obtain the services most likely to enable the individual to obtain employment providing self-sufficiency and the individual's right not to be denied employment and training services for any of the reasons indicated in section 4 of P.L.1992, c.47 (*C.43:21-60*), including the individual's right not to be denied training services because the individual already has identifiable vocational skills, if those existing skills are for employment with a level of earnings lower than the level of self-sufficiency;

e. Discussion with the counselor of the results of the testing and evaluation; and

f. The development of a written Employability Development Plan, consistent with the requirements of subsections e., f. and g. of section 4 of this act, for the individual describing any remedial instruction and the occupational training that the individual will undertake in connection with benefits provided pursuant to the provisions of this act.

All information regarding an individual applicant or trainee which is obtained or compiled in connection with the testing, assessment and evaluation and which may be identified with the individual shall be confidential and shall not be released to an entity other than the individual, the counselor, the department, the commission or partners of the One-Stop system as necessary for them to provide training and employment services or other workforce investment services to the individual, unless the individual provides written permission to the department for the release of the information; or the information is used solely for program evaluation.

**HISTORY:** L. 1992, c. 47, § 3; amended 2001, c. 152, § 14, eff. July 13, 2001; 2005, c. 354, § 31, eff. Jan. 12, 2006.

#### **43:21-60. Requirements for provision of additional benefits**

Except as provided in section 8 of this act, the additional benefits indicated in section 5 of this act shall be provided to any individual who:

a. Has received a notice of a permanent termination of employment by the individual's employer or has been laid off and is unlikely to return to his previous employment because work opportunities in the individual's job classification are impaired by a substantial reduction of employment at the worksite;

b. Is, at the time of the layoff or termination, eligible, pursuant to the "unemployment compensation law," *R.S.43:21-1* et seq., for unemployment benefits;

c. Enters into the counseling made available pursuant to section 3 of this act as soon as possible following notification by the Department of Labor and Workforce Development of its availability;

d. (1) Notifies the department of the individual's intention to enter into the instruction and training identified in the Employability Development Plan developed pursuant to section 3 of this act, not later than 60 days after the date of the individual's termination or layoff, not later than 30 days after the department provides notice to the individual pursuant to section 6 of this act or not later than 30 days after the Employability Development Plan is developed, whichever occurs last;

(2) Enters into the instruction and training identified in the Employability Development Plan as soon as possible after giving the notice required by paragraph (1) of this subsection d.; and

(3) Maintains satisfactory progress in the instruction and training;

e. Enrolls in occupational training which:

(1) Is training for a labor demand occupation;

(2) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power;

(3) Is provided by an approved service provider; and

(4) Does not include on the job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives additional benefits pursuant to the provisions of section 5 of this act;

f. Enrolls in occupational training, remedial instruction or a combination of both on a full-time basis; and

g. Reasonably can be expected to successfully complete the occupational training and any needed remedial instruction, either during or after the period of additional benefits.

If the requirements of this section are met, the division shall not deny an individual unemployment benefits pursuant to the "unemployment compensation law," *R.S.43:21-1* et seq., P.L.1970, c.324 (*C.43:21-24.11* et seq.) or the additional benefits indicated in section 5 of this act for any of the following reasons: the training includes remedial instruction needed by the individual to succeed in the occupational component of the training; the individual 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; the training is part of a program under which the individual may obtain any college degree enhancing the individual's marketable skills and earning power; the individual has previously received a training grant; the length of the training period under the program; or the lack of a prior guarantee of employment upon completion of the training. If the requirements of this section are met, the division shall regard a training program as approved for the purposes of paragraph (4) of subsection (c) of *R.S.43:21-4*.

**HISTORY:** L. 1992, c. 47, § 4; amended 2001, c. 152, § 15, eff. July 13, 2001; 2005, c. 354, § 32, eff. Jan. 12, 2006.

#### **43:21-61. Additional benefits provided during completion of remedial education, vocational training**

Except as provided in section 8 of this act, each individual who meets the requirements of section 4 of this act, but has not completed the remedial education and vocational training at the end of the period during which he is entitled to receive unemployment benefits pursuant to the "unemployment compensation law" (*R.S. 43:21-1* et seq.), P.L.1970, c. 324 (*C. 43:21-24.11* et seq.) and any federally-financed supplemental benefits program shall be entitled to receive a weekly benefit equal to his previous weekly unemployment compensation benefit for each additional week certified by the division as needed to complete the remedial education or vocational training up to a total of 26 additional weeks.

No additional benefits shall be paid pursuant to the provisions of this section 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 section, "training allowances or stipends" means discretionary use, 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.

No employer's account shall be charged for the payment of additional benefits pursuant to the provisions of this section.

**HISTORY:** L. 1992, c. 47, § 5.

#### **43:21-62. Notice of services, benefits available, applications**

a. The Department of Labor shall provide notice to any individual who is laid off or notified of a pending layoff of the services and benefits available to the individual under the provisions of this act and employment and training programs provided or funded pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c. 43 (*C. 34:15D-1 et al.*) and the "Job Training Partnership Act," Pub.L. 97-300 (*29 U.S.C. 1501 et seq.*) and of the tuition waivers available pursuant to P.L.1983, c. 469 (*C. 18A:64-13.1 et seq.*) and P.L.1983, c. 470 (*C. 18A:64A-23.1 et seq.*) and permit the individual to apply to receive the benefits, services or waivers upon any of the following occurrences:

(1) When the individual applies for unemployment compensation;

(2) When an individual who receives notification of a pending layoff is contacted by the department prior to the layoff by means of a response team or by other means; or

(3) Not later than 60 days after the effective date of this act, if the individual has already been laid off and is receiving unemployment benefits upon that effective date.

b. If an individual is given pre-notification of a permanent layoff and subsequently receives vocational training or remedial education provided by any employment and training program funded or established pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c. 43 (*C. 34:15D-1 et al.*) or the "Job Training Partnership Act," Pub.L. 97-300 (*29 U.S.C. 1501 et seq.*), the individual shall be permitted to commence the training or education prior to the termination of employment, except that this provision shall not apply to a federally-funded program if permitting the individual to commence the training or education prior to the termination of employment will result in a reduction of federal funding for the program.

**HISTORY:** L. 1992, c. 47, § 6.

#### **43:21-63. Allocation of moneys for education, training**

In using moneys provided as individual grants pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c. 43 (*C. 34:15D-1 et al.*), and in using moneys appropriated for any employment and training program funded or established pursuant to the "Job Training Partnership Act," Pub.L. 97-300 (*29 U.S.C. 1501 et seq.*), the Department of Labor and each program shall, to the extent feasible and to the extent it has authority to do so, give priority to funding vocational training and remedial education for individuals who meet the requirements of section 4 of this act, to the extent that those individuals also fall within the target population of the respective program, except that moneys shall not be allocated in any case in a manner which is contrary to any other priorities imposed on the program by law or will result in a reduction of federal funds available to the State for the program.

**HISTORY:** L. 1992, c. 47, § 7.

#### **43:21-64. Prohibition of additional benefits**

a. Whenever the Commissioner of Labor and Workforce Development determines that the total amount of additional benefits paid pursuant to this act has become greater than 2.0% of the sum of balances in the unemployment trust fund on every December 31 since the effective date of P.L. 1992, c. 47 (C. 43:21-57 et seq.), the commissioner shall, during the period lasting until the end of the calendar year in which the determination is made, prohibit any additional individuals from beginning to receive additional benefits pursuant to this act and shall end the prohibition at the end of that calendar year.

b. The Department of Labor and Workforce Development shall, during any period in which the commissioner prohibits additional individuals from beginning to receive additional benefits pursuant to subsection a. of this section, continue to provide any otherwise eligible individual with:

(1) The notice required pursuant to section 6 of this act;

(2) The counseling required pursuant to section 3 of this act; and

(3) The opportunity for the individual to notify the department of the individual's intention to enter into remedial education or vocational training pursuant to subsection d. of section 4 of this act. Any individual who, during the period in which the commissioner prohibits additional individuals from beginning to receive additional benefits pursuant to subsection a. of this section, meets the requirements of section 4 of this act shall be permitted to receive additional benefits pursuant to this act after the commissioner has ended the prohibition pursuant to subsection a. of this section.

c. Additional benefits paid pursuant to this act shall continue for any individual who, at the time that the commissioner imposes the prohibition pursuant to subsection a. of this section, is already receiving the additional benefits or has already enrolled in the training or education identified in the Employability Development Plan developed pursuant to section 3 of this act.

**HISTORY:** L. 1992, c. 47, § 8; amended 2004, c. 45, § 4, eff. June 29, 2004.

#### **43:21-65. Rules, regulations**

The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations necessary to govern the proper conduct and operation of the program consistent with the provisions of this act.

**HISTORY:** L. 1992, c. 47, § 9.

#### **43:21-67. Short title**

This act shall be known and may be cited as the "Self-Employment Assistance and Entrepreneurial Training Act."

**HISTORY:** L. 1995, c. 394, § 1.

#### **43:21-68. Findings, declarations relative to small business**

The Legislature finds and declares that a significant percentage of new jobs in this country are created by small businesses and that approximately 12 percent of the persons employed in the United States are self-employed, mostly in small businesses. In the wake of recent corporate downsizing, it is imperative that ways are found to help unemployed individuals, including professional and technical employees, to re-enter the labor force. Experience in numerous other states and in certain urban areas of New Jersey has shown that "micro-lending," or carefully targeting small loans to individuals

with well-developed, realistic business plans, has been successful in helping those individuals to establish small businesses and become self-employed entrepreneurs. This approach is particularly successful where the loan recipients are part of a peer group that provides support, advice and assistance, and helps to ensure loan repayments.

**HISTORY:** L. 1995, c. 394, § 2.

#### **43:21-69. Definitions relative to self-employment assistance**

As used in P.L.1995, c. 394 (*C. 43:21-67 et al.*):

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

"Full-time basis" with respect to the amount of time spent participating in self-employment assistance activities shall have the meaning contained in regulations adopted by the Commissioner of Labor.

"Peer group" means a group of not more than twenty 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" (*R.S. 43:21-1 et seq.*), including benefits payable to federal civilian employees and to ex-service members pursuant to *5 U.S.C. chapter 85*, but not including additional benefits provided pursuant to P.L.1992, c. 47 (*C. 43:21-57 et seq.*) or extended benefits.

"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, including: activities in which the individual participates in connection with self-employment assistance services; and other activities in which the individual engages to establish the business, which may, at the discretion of the division, include participation in a peer group.

"Self-employment assistance allowance" means an allowance, payable in lieu of regular benefits and from the unemployment compensation fund, to an individual participating in self-employment assistance activities who meets the requirements of P.L.1995, c. 394 (*C. 43:21-67 et al.*).

"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, including entrepreneurial training and technical assistance supported by training grants provided pursuant to subsection b. of section 6 of P.L.1992, c. 43 (*C. 34:15D-6*).

"Worker profiling system" means the worker profiling system established pursuant to section 2 of P.L.1992, c. 46 (*C. 43:21-4.1*).

"Workforce Development Partnership Program" means the program created pursuant to P.L.1992, c. 43 (*C. 34:15D-1 et seq.*).

**HISTORY:** L. 1995, c. 394, § 3.

#### **43:21-70. Self-employment assistance allowance; conditions**

a. Any unemployed individual who qualifies for regular benefits and is identified through the worker profiling system as likely to exhaust regular benefits may apply to the division for a self-employment assistance allowance. If the individual is selected to receive a self-employment assistance allowance, the Department of Labor may also provide the individual with any available self-employment assistance services it deems appropriate, including services available from the Workforce Development Partnership Program, or the department may refer the individual to any other private or public entity it deems appropriate to provide the services. The department shall provide the individual with appropriate information available to the department regarding possible sources of financing for entrepreneurial activities, including information obtained from the Department of Banking and information regarding suitable "micro-lending" programs.

b. The weekly self-employment assistance allowance payable pursuant to this section to an individual shall be equal to the weekly benefit amount for regular benefits. In no instance shall a self-employment assistance allowance and regular benefits be paid to an individual with respect to the same period. The sum of the allowance and regular benefits paid under P.L.1995, c. 394 (*C. 43:21-67 et al.*) with respect to any benefit year shall not exceed the maximum benefit amount established for regular benefits alone with respect to that benefit year. The allowance shall not be paid for any week in which the individual does not participate, on a full-time basis, in self-employment assistance activities authorized by the division.

c. A self-employment assistance allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits, except as otherwise provided in P.L.1995, c. 394 (*C. 43:21-67 et al.*).

d. The aggregate number of individuals receiving self-employment assistance allowances at any time shall not exceed one percent of the number of individuals receiving regular benefits. The Commissioner of Labor shall adopt regulations consistent with the provisions of P.L.1995, c. 394 (*C. 43:21-67 et al.*) to establish eligibility requirements and procedures for the selection of individuals to receive self-employment assistance allowances and self-employment assistance services.

e. Self-employment assistance allowances shall be charged to employers in the same manner as provided for the charging of regular benefits.

f. The provisions of this section shall apply to weeks beginning after the effective date of P.L.1995, c. 394 (*C. 43:21-67 et al.*) and after any plan required by the United States Department of Labor is approved by that department. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless that date is a Saturday in which case the authority shall terminate as of that date.

**HISTORY:** L. 1995, c. 394, § 4.

#### **43:21-71. Rules, regulations**

The Department of Labor shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (*C. 52:14B-1 et seq.*), any rules and regulations necessary to effectuate the purposes of P.L.1995, c. 394 (*C. 43:21-67 et al.*).

**HISTORY:** L. 1995, c. 394, § 5.



## SUPPLEMENTARY LEGISLATION

### DEPARTMENT OF LABOR AND INDUSTRY ACT OF 1948

#### CHAPTER 1A, TITLE 34, REVISED STATUTES, 1937 AS AMENDED

##### **34:1A-1. Department of Labor and Industry established; "department" defined**

There is hereby established in the Executive Branch of the State Government a principal department which shall be known as the Department of Labor and Industry.

As used in this act, unless the context clearly indicates otherwise, the word "department" means the Department of Labor and Industry established herein.

**HISTORY:** L. 1948, c. 446, p. 1762, 1.

##### **34:1A-1.1. Change of name of department of labor and industry to department of labor**

On the effective date of this act the Department of Labor and Industry established pursuant to P.L.1948, c. 446 (*C. 34:1A-1 et seq.*) shall be entitled and known as the Department of Labor and whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Department of Labor and Industry, the same shall mean and refer to the Department of Labor.

**HISTORY:** L. 1981, c. 122, 29, eff. April 16, 1981.

##### **34:1A-1.2. Department of Labor and Workforce Development; reference**

On and after the effective date of this 2004 amendatory and supplementary act, the Department of Labor shall be entitled and known as the Department of Labor and Workforce Development and whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Department of Labor, the same shall mean and refer to the Department of Labor and Workforce Development.

**HISTORY:** L. 2004, c. 39, § 1, eff. June 23, 2004.

##### **34:1A-1.3. Transfer of workforce development programs from DHS**

a. To the extent not inconsistent with any federal law, and notwithstanding any other State law, all employment-directed and workforce development programs and activities of the Department of Human Services which are funded through the Work First New Jersey program established pursuant to P.L. 1997, c. 38 (*C. 44:10-55 et seq.*), the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub.L. 104-193, *42 U.S.C. § 601 et seq.*, and the federal Food Stamp Act of 1977, Pub.L. 95-113, *7 U.S.C. § 2011 et seq.* are hereby transferred to the Department of Labor and Workforce Development.

b. The employment-directed and workforce development programs and activities which shall be transferred from the Department of Human Services to the Department of Labor and Workforce Development pursuant to this section and provided by the Department of Labor and Workforce Development shall include, but not be limited to:

(1) Career guidance;

(2) Labor market information;

- (3) Employability assessment;
- (4) Development of Employability Development Plans;
- (5) Employment-directed case management;
- (6) Subsidized and unsubsidized employment in the public and private sectors;
- (7) Job search and readiness programs;
- (8) Community work experience programs;
- (9) Alternative work experience programs;
- (10) Community service programs;
- (11) On-the -job training;
- (12) Vocational education and training;
- (13) Employment-related education and job skill training;
- (14) Basic skills and literacy training;
- (15) Work-related educational enhancements;
- (16) A proportionate share of employment and training related expenses;
- (17) Referral and access to work support services, including transport and childcare services;
- (18) Early employment initiative; and
- (19) Career advancement vouchers.

c. The programmatic, administrative and support staff and equipment comprising the employment-directed and workforce development programs and activities in the Department of Human Services are transferred to the Department of Labor and Workforce Development pursuant to this section and the "State Agency Transfer Act," P.L. 1971, c. 375 (*C. 52:14D-1 et seq.*), with all of their functions, powers and duties and a proportionate share of the resources to maintain the programs and activities.

**HISTORY:** L. 2004, c. 39, § 2, eff. June 23, 2004.

#### **34:1A-1.4. New Jersey Youth Corps transferred**

The New Jersey Youth Corps, established pursuant to P.L. 1984, c. 198 (*C. 9:25-1 et seq.*), is hereby transferred to the Department of Labor and Workforce Development. To the extent not inconsistent with any federal law, and notwithstanding any other State law, the Department of Labor and Workforce Development is authorized to enhance, strengthen and expand the New Jersey Youth Corps program. The programmatic, administrative and support staff and equipment assigned to the New Jersey Youth Corps are transferred to the Department of Labor and Workforce Development, with all of their functions, powers and duties and the resources to maintain the programs and activities pursuant to this section and the "State Agency Transfer Act," P.L. 1971, c. 375 (*C. 52:14D-1 et seq.*).

**HISTORY:** L. 2004, c. 39, § 3, eff. June 23, 2004.

### **34:1A-1.5. Certain powers, functions, duties of DOE transferred**

a. Notwithstanding any other State law, all powers, functions and duties of the Department of Education with respect to the following employment-directed and workforce development programs and activities are hereby transferred to the Department of Labor and Workforce Development:

(1) The administration and provision of adult education and literacy activities as defined in *20 U.S.C. § 9202*;

(2) Operational authority for the approval of private or proprietary trade, business or vocational schools or similar training institutions pursuant to section 2 of P.L.1966, c.13 (*C.44:12-2*); and

(3) Registration and approval of registered apprenticeship programs under a joint agreement negotiated with the Bureau of Apprenticeship and Training in the United States Department of Labor.

b. The programmatic, administrative and support staff and equipment comprising the employment-directed and workforce development programs and activities in the Department of Education are transferred to the Department of Labor and Workforce Development pursuant to this section and the "State Agency Transfer Act," P.L.1971, c.375 (*C.52:14D-1 et seq.*), with all of their functions, powers and duties and a proportionate share of the resources to maintain the programs and activities.

**HISTORY:** L. 2004, c. 39, § 4, eff. June 23, 2004.

### **34:1A-1.6. Construction of act relative to Civil Service tenure, rights, protection**

a. Nothing in this 2004 amendatory and supplementary act and no transfer carried out pursuant to this act shall be construed or permitted to deprive any person of any tenure rights or reduce or deny any right or protection provided him or her by Title 11A, Civil Service, of the New Jersey Statutes, or under any pension law or retirement system.

b. All staff who are hired to work at a One Stop Career Center and supported by any resources transferred to the Department of Labor and Workforce Development pursuant to section 2, 3 or 4 of this act, shall be hired and employed by the State pursuant to Title 11A, Civil Service, of the New Jersey Statutes, be hired and employed by a political subdivision of the State, or be qualified staff hired and employed by a non-profit organization which began functioning as the One Stop Career Center operator with the written consent of the chief elected official and the commissioner prior to the effective date of this act.

c. Any staff member, including staff located at any One Stop Career Center, providing services to unemployment insurance claimants or services to employment service clients shall be hired and employed pursuant to Title 11A, Civil Service, of the New Jersey Statutes, if that staff member is supported by any funds provided to the State under the Wagner-Peyser Act (*29 U.S.C. § 49 et seq.*) or section 903 of the Social Security Act (*42 U.S.C. § 1103*), as amended.

d. For the purpose of this section, "One Stop Career Center" means any of the facilities established, sponsored or designated by the State, a political subdivision of the State or a Workforce Investment Board in a local area to coordinate or make available State and local programs providing employment and training services or other employment-directed and workforce development programs and activities, including job placement services, and any other similar facility as may be established, sponsored or designated at any later time to coordinate or make available any of those programs, services or activities, and "qualified staff" means staff whose qualifications meet standards set by regulations adopted by the Commissioner of Labor and Workforce Development.

**HISTORY:** L. 2004, c. 39, § 5, eff. June 23, 2004.

### **34:1A-1.7. Short title**

This act shall be known as "The Domestic Violence and Workforce Development Initiative Act."

**HISTORY:** L. 2005, c. 309, § 1, eff. Jan. 11, 2006.

### **34:1A-1.8. Requirements for job training counselors for victims of domestic violence**

Each counselor who provides counseling pursuant to section 4 of P.L.1992, c.48 (*C.34:15B-38*), section 7 of P.L.1992, c.43 (*C.34:15D-7*), or section 3 of P.L.1992, c.47 (*C.43:21-59*), and any other staff member of the Department of Labor and Workforce Development or of a One Stop Career Center as defined in subsection d. of section 5 of P.L.2004, c.39 (*C.34:1A-1.6*) who processes unemployment compensation claims and has direct, in person, contact with claimants or who provides counseling or employment services to claimants, shall:

a. Be trained to implement the provisions of this section applicable to the counselor or staff member and to understand and address employment, training, income security, safety and related issues facing individuals who are victims of domestic violence as defined in section 3 of P.L.1991, c.261 (*C.2C:25-19*);

b. Comply with standards adopted by the Commissioner of Labor and Workforce Development, in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (*C.30:14-1* et seq.), regarding the screening or self-screening of each individual receiving any of the indicated counseling or employment services or applying for unemployment compensation, to ascertain whether the individual is a victim of domestic violence;

c. For each individual who is or appears to be a victim of domestic violence, make referrals to services determined to be appropriate in the case of the individual, including, but not limited to, any appropriate referral to a designated domestic violence agency as defined in subsection (j) of *R.S.43:21-5* or a community shelter for victims of domestic violence certified pursuant to standards and procedures established by P.L.1979, c.337 (*C.30:14-1* et seq.), and disclose the rights that the individual may have to unemployment compensation pursuant to subsection (j) of *R.S.43:21-5*, but shall not provide domestic violence counseling or be regarded as a Certified Domestic Violence Specialist;

d. Include in any Employability Development Plan developed for the individual appropriate accommodations for the individual's needs as a victim of domestic violence; and

e. Comply with all requirements regarding the confidentiality of the individual, including, as applicable, the requirements of section 4 of P.L.1992, c.48 (*C.34:15B-38*), section 7 of P.L.1992, c.43 (*C.34:15D-7*), section 3 of P.L.1992, c.47 (*C.43:21-59*) and the "Address Confidentiality Program Act," *R.S.47:4-1* et seq.

The training conducted pursuant to subsection a. of this section shall be conducted by a Certified Domestic Violence Specialist or, if a Certified Domestic Violence Specialist is not available to conduct the training, by another person found by the Commissioner of Labor and Workforce Development, in consultation with the Commissioner of Community Affairs, to have equivalent qualifications and expertise regarding domestic violence issues, based on standards of qualification and expertise developed by the commissioner in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (*C.30:14-1* et seq.). For the purposes of this section, "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.

**HISTORY:** L. 2005, c. 309, § 2, eff. Jan. 11, 2006.

### **34:1A-1.9. Rules, regulations**

The Commissioner of Labor and Workforce Development shall, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (*C. 52:14B-1 et seq.*), and in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (*C.30:14-1 et seq.*) and the Commissioner of Community Affairs, adopt rules and regulations to effectuate the purposes of section 2 of this act.

**HISTORY:** L. 2005, c. 309, § 3, eff. Jan. 11, 2006.

### **34:1A-10. Credentials Review Board established**

There is established, in the Department of Labor and Workforce Development, the Credentials Review Board, for the purpose of directing the technical credentialing process for the workforce investment system and approving such credentials as it deems appropriate for issuance to individuals in connection with employment and training programs. The board shall include the following members or their designated representatives: the Commissioner of Education; the Staff Director of the Center for Occupational Employment Information; the Chairman of the Commission on Higher Education; the Director of the Division of Vocational Education; the Commissioner of Labor and Workforce Development; the Executive Director of the State Employment and Training Commission; a Workforce Investment Board director as designated by the commissioner; and a One-Stop Career Center operator as designated by the department.

**HISTORY:** L. 2005, c. 354, § 25, eff. Jan. 12, 2006.

### **34:1A-2. Commissioner of Labor and Industry; head of department; appointment; term; salary**

The administrator and head of the department shall be a commissioner, who shall be known as the Commissioner of Labor and Industry, and who shall be a person qualified by training and experience to perform the duties of his office. The commissioner shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor during the Governor's term of office and until the appointment and qualification of the commissioner's successor. He shall receive such salary as shall be provided by law.

**HISTORY:** L. 1948, c. 446, p. 1763, 2.

### **34:1A-3. Duties of Commissioner**

The commissioner, as head of the department, shall:

- (a) Administer the work of the department;
- (b) Appoint and remove officers and other personnel employed within the department, subject to the provisions of Title 11 of the Revised Statutes, Civil Service, and other applicable statutes, except as herein otherwise specifically provided;
- (c) Perform, exercise and discharge the functions, powers and duties of the department through such divisions as may be established by this act or otherwise by law;
- (d) Organize the work of the department in such divisions, not inconsistent with the provisions of this act and in such bureaus and other organizational units as he may determine to be necessary for efficient and effective operation;
- (e) Adopt, issue and promulgate, in the name of the department, such rules and regulations as may be authorized by law;
- (f) Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees;

(g) Institute or cause to be instituted such legal proceedings or processes as may be necessary properly to enforce and give effect to any of his powers or duties;

(h) Make an annual report to the Governor and to the Legislature of the department's operations, and render such other reports as the Governor shall from time to time request or as may be required by law;

(i) Co-ordinate the activities of the department, and the several divisions and other agencies therein, in a manner designed to eliminate overlapping and duplicating functions;

(j) Integrate within the department, so far as practicable, all staff services of the department and of the several divisions and other agencies therein; and

(k) Perform such other functions as may be prescribed in this act or by any other law.

**HISTORY:** L. 1948, c. 446, p. 1763, 3.

#### **34:1A-4. Delegation of powers by commissioner**

The commissioner may delegate to subordinate officers or employees in the department such of his powers as he may deem desirable, to be exercised under his supervision and direction, and shall, by order, rule or regulation filed with the Secretary of State designate one or more officers or employees in the department who may act for him and on his behalf in the event of his absence or disability.

**HISTORY:** L. 1948, c. 446, p. 1764, 4.

#### **34:1A-5. Divisions in Department**

There is hereby established in the Department of Labor and Industry a Division of Labor, a Division of Workmen's Compensation, and a Division of Employment Security.

**HISTORY:** L. 1948, c. 446, p. 1764, 5.

##### **34:1A-5.1. Reference to division of workmen's compensation to mean and refer to division of workers' compensation**

Notwithstanding any other law to the contrary, the division heretofore referred to as the Division of Workmen's Compensation in the Department of Labor and Industry shall be known as the Division of Workers' Compensation, and whenever the term "Division of Workmen's Compensation" is used in any law or statute such term shall mean and refer to the Division of Workers' Compensation.

**HISTORY:** L. 1975, c. 352, 1, eff. March 3, 1976.

#### **34:1A-6. Powers and duties of existing Department of Labor, of Commissioner of Labor and of Unemployment Compensation Commission transferred**

All of the functions, powers and duties of the existing Department of Labor, of the Commissioner of Labor, and of the respective bureaus and divisions therein, of the existing Unemployment Compensation Commission, and of the respective bureaus and divisions therein, and of the executive director of such commission are continued, but such functions, powers and duties are hereby transferred to the Department of Labor and Industry established hereunder.

**HISTORY:** L. 1948, c. 446, p. 1764, 6.

**34:1A-7. Division of Labor to perform duties transferred exclusive of those administered through workmen's compensation bureau and those performed under chapter fifteen of Title 34**

All of the functions, powers and duties of the existing Department of Labor and of the respective bureaus and divisions therein and of the Commissioner of Labor herein transferred to the Department of Labor and Industry, exclusive of those of, or relating to, or administered through, the workmen's compensation bureau and those exercised or performed in the administration of the provisions of chapter fifteen of Title 34 of the Revised Statutes, and the acts amendatory and supplementary thereof, are hereby assigned to, and shall be exercised and performed through, the Division of Labor in the department.

**HISTORY:** L. 1948, c. 446, p. 1765, 7.

**34:1A-7.1. Orientation program to educate employers about wage and hour laws, etc.**

The Division of Workplace Standards shall conduct an extensive orientation program to educate new and existing employers about wage and hour laws and, as appropriate, other laws pertaining to workplace standards. To implement the program, the division may foster cooperative efforts with any appropriate business organization, trade association, civic or community organization or educational institution.

**HISTORY:** L. 1991, c. 205, § 27.

**34:1A-8. Director of Division of Labor**

The Division of Labor shall be under the immediate supervision of a director, who shall be a person qualified by training and experience to direct the work of such division. The director of such division shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the term of office of the Governor appointing him and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The director shall administer the work of such division under the direction and supervision of the commissioner, and shall perform such other functions of the department as the commissioner may prescribe.

**HISTORY:** L. 1948, c. 446, p. 1765, § 8.

**34:1A-9. Bureau of migrant labor; transfer of functions, powers and duties to**

There shall be within the Division of Labor, a Bureau of Migrant Labor.

The division of migrant labor of the existing Department of Labor and Industry, together with all of its functions, powers and duties is continued, but such division is transferred to and constituted the Bureau of Migrant Labor in the Division of Labor.

**HISTORY:** L. 1948, c. 446, p. 1765, 9. Amended by L. 1967, c. 91, 14, eff. June 7, 1967.

**34:1A-10. Organization of existing Department of Labor continued; divisions constituted bureaus; deputy directors**

Except as otherwise provided herein or as may be changed pursuant to authorization contained herein or in any other law, the organization of the existing Department of Labor is continued as the organization of the Division of Labor established hereunder; provided, however, that divisions in the Department of Labor shall hereafter be constituted bureaus in the Division of Labor established hereunder, and any person appointed, pursuant to law, as a deputy in such division shall hereafter be known and designated as a deputy director in such division.

**HISTORY:** L. 1948, c. 446, p. 1766, 10.

### **34:1A-11. Division of Workmen's Compensation; powers and duties**

All of the functions, powers and duties of the workmen's compensation bureau of the existing Department of Labor, and those exercised or performed by it or any of its officers or employees in the administration of the provisions of chapter fifteen of Title 34 of the Revised Statutes, and the acts amendatory and supplementary thereof, and all of the functions, powers and duties of the existing Department of Labor and of the Commissioner of Labor relating to or administered through such workmen's compensation bureau, and all of the functions, powers and duties of the director and secretary of such bureau, are hereby assigned to, and shall be exercised and performed through, the Division of Workmen's Compensation in the department.

**HISTORY:** L. 1948, c. 446, p. 1766, 11.

### **34:1A-12. Division of Workmen's Compensation; officials and employees in Division; director; powers and duties**

The Division of Workmen's Compensation shall consist of the Commissioner of Labor and Industry who shall act as chairman, a director who shall be appointed as hereinafter provided, judges of compensation appointed by the commissioner, and such referees and other employees as may, in the judgment of the commissioner, be necessary. Appointments of such judges of compensation, referees and other employees shall be made in accordance with the provisions of Title 11 of the Revised Statutes, Civil Service.

The Director of the Division of Workmen's Compensation shall be a person qualified by training and experience to direct the work of such division. He shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the term of office of the Governor appointing him and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The Director of the Division of Workmen's Compensation shall, subject to the supervision and direction of the Commissioner of Labor and Industry:

- (a) Be the administrative head of the division;
- (b) Prescribe the organization of the division, and the duties of his subordinates and assistants, except as may otherwise be provided by law;
- (c) Direct and supervise the activities of all members of the division;
- (d) Make an annual report to the Commissioner of Labor and Industry of the work of the division, which report shall be published annually for general distribution at such reasonable charge, not exceeding cost, as the commissioner shall determine;
- (e) Perform such other functions of the department as the commissioner may prescribe.

The Director of the Division of Workmen's Compensation shall also serve as secretary of such division, and may perform the duties of a judge of compensation.

**HISTORY:** L. 1948, c. 446, p. 1766, 12. Amended by L. 1950, c. 54, p. 95, 1; L. 1960, c. 58, p. 487, 1.

#### **34:1A-12.1. Director and each judge of compensation to be attorneys**

The Director of the Division of Workmen's Compensation and each judge of compensation shall be an attorney-at-law of the State of New Jersey.

**HISTORY:** L. 1952, c. 269, p. 921, 5. Amended by L. 1960, c. 58, p. 488, 2.



### **34:1A-12.2. Referee, qualifications of**

Any person hereafter appointed as a "referee," "referee, formal hearings," "supervising referee," or "supervising referee, formal hearings" shall be an attorney-at-law of the State of New Jersey, except that a referee or a referee, formal hearings who, on July 1, 1966, had been a referee or a referee, formal hearings for a period of not less than 5 years may be appointed as a "referee," "referee, formal hearings," or as a "supervising referee" or "supervising referee, formal hearings," notwithstanding that he is not such an attorney-at-law.

**HISTORY:** L. 1952, c. 269, p. 921, 6. Amended by L. 1960, c. 57, p. 486, 1; L. 1967, c. 128, 1, eff. June 22, 1967.

### **34:1A-12.3. Continuation of deputy directors as judges of compensation**

All persons heretofore appointed and serving as deputy directors of compensation shall continue in such appointments, as heretofore, with the title of judge of compensation.

**HISTORY:** L. 1960, c. 58, p. 488, 3.

### **34:1A-12.4. Director of Division of Worker's Compensation; duties**

The Director of the Division of Worker's Compensation shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (*C.19:31-6.4*) to be prominently displayed at each public office of the division and to be made readily available to each individual who, when applying for benefits under *R.S. 43:21-19* et seq., may wish, on a voluntary basis, to register to vote. An employee of the division shall provide the applicant with any assistance necessary in completing the form; shall inform the applicant that the applicant may leave the completed form with the employee; and, if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark it with the date on which it was so received, and forward it to the Secretary of State;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the division which distributes application forms for benefits administered by the division;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office of the division which distributes application forms for benefits administered by the division which is located in any county in which bilingual sample ballots must be provided pursuant to *R.S. 19:14-21*, *R.S. 19:49-4* or section 2 of P.L.1965, c.29 (*C.19:23-22.4*); and

d. provide for the collection of completed voter registration forms by any employee of the division who is employed in any office which distributes application forms for benefits administered by the division, and for the transmittal of the forms to the Secretary of State.

**HISTORY:** L. 1991, c. 318, § 4; amended 1994, c. 182, § 19.

### **34:1A-13. Organization of existing workmen's compensation bureau continued**

Except as otherwise provided herein or as may be changed pursuant to authorization contained herein or in any other law, the organization of the workmen's compensation bureau of the existing Department of Labor is continued as the organization of the Division of Workmen's Compensation established hereunder.

**HISTORY:** L. 1948, c. 446, p. 1767, 13.

### **34:1A-14. Powers and duties of the Unemployment Compensation Commission assigned to Division of Employment Security**

All of the functions, powers and duties of the Unemployment Compensation Commission, of the respective bureaus and divisions therein, and of the executive director of such commission, are hereby assigned to, and shall be exercised and performed through, the Division of Employment Security in the Department of Labor and Industry established hereunder.

**HISTORY:** L. 1948, c. 446, p. 1768, 14.

### **34:1A-15. Director of division of Employment Security**

The division of Employment Security shall be under the immediate supervision of a director who shall be a person qualified by training and experience to direct the work of such division. The director of such division shall be appointed by the Governor, with the advice and consent of the Senate and shall serve during the term of office of the Governor appointing him and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The director shall administer the work of such division under the direction and supervision of the commissioner, and shall perform such other functions of the department as the commissioner may prescribe.

**HISTORY:** L. 1948, c. 446, p. 1768, 15.

#### **34:1A-15.1. Director of Division of Employment Services; duties**

The Director of the Division of Employment Services shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (*C.19:31-6.4*) to be prominently displayed at each public office of the division and to be made readily available to each individual who, when applying for services administered by the division, may wish, on a voluntary basis, to register to vote. An employee of the division shall inquire of every applicant for such services whether the applicant, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the applicant that whether or not the applicant chooses to register will not affect the applicant's eligibility for those services. The employee shall provide the applicant with any assistance necessary in completing the form; shall inform the applicant that the applicant may leave the completed form with the employee; and, if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark it with the date on which it was so received, and forward it to the Secretary of State;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the division which receives applications for services administered by the division;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office of the division that receives applications for services administered by the division which is located in any county in which bilingual sample ballots must be provided pursuant to *R.S. 19:14-21*, *R.S. 19:49-4* or section 2 of P.L.1965, c.29 (*C.19:23-22.4*); and

d. provide for the collection of completed voter registration forms by any employee of the division who is employed in any office which receives applications for services administered by the division, and for the transmittal of the forms to the Secretary of State.

**HISTORY:** L. 1991, c. 318, § 5.

**34:1A-15.2. Director of the Division of Unemployment and Temporary Disability Insurance; duties**

The Director of the Division of Unemployment and Temporary Disability Insurance shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (*C.19:31-6.4*) to be prominently displayed at each public office of the division and to be made readily available to each individual who, when applying for benefits administered by the division, may wish, on a voluntary basis, to register to vote. An employee of the division shall inquire of every applicant for such services whether the applicant, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the applicant that whether or not the applicant chooses to register will not affect the applicant's eligibility for those benefits. The employee shall provide the applicant with any assistance necessary in completing the form; shall inform the applicant that the applicant may leave the completed form with the employee; and, if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark it with the date on which it was so received, and forward it to the Secretary of State;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the division which receives applications for services administered by the division;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office of the division that receives applications for services administered by the division which is located in any county in which bilingual sample ballots must be provided pursuant to *R.S. 19:14-21*, *R.S. 19:49-4* or section 2 of P.L.1965, c.29 (*C.19:23-22.4*); and

d. provide for the collection of completed voter registration forms by any employee of the division who is employed in any office which receives applications for services administered by the division, and for the transmittal of the forms to the Secretary of State.

**HISTORY:** L. 1991, c. 318, § 6.

**34:1A-16. Employment Security Council; members; appointment; term; chairman; vacancies; removal; compensation**

There shall be within the Department of Labor an Employment Security Council, which shall consist of nine members, not more than five of whom shall be of the same political affiliation. Three of the nine members of the council shall be persons who by reason of vocation, employment or affiliation, may fairly be regarded as representative of employers, three shall be persons who by reason of vocation, employment or affiliation, may fairly be regarded as representative of employees, and three shall represent the general public. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and shall serve until his successor has been appointed and has qualified.

Each Governor shall designate one of the members of the council representing the general public as chairman of such council. Any member of the council so designated shall serve as such chairman at the pleasure of the Governor designating him and until his successor has been designated. The chairman of the council shall be its presiding officer.

Any vacancies in the membership of said council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired terms only. Any member of the council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

**HISTORY:** L. 1948, c. 446, p. 1768, § 16. Amended by L. 1984, c. 24, § 13, eff. Oct. 1, 1984.

### **34:1A-17. Powers and duties of Employment Security Council**

The Employment Security Council shall:

(a) Consult and advise with the Commissioner of Labor or his designated representative with respect to the administration and operation of the unemployment compensation law and the temporary disability benefits law;

(b) Review the operation and effect of the unemployment compensation law and the temporary disability benefits law in their several parts, and to that end hold hearings with respect thereto as it may deem necessary or desirable; and

(c) Report to the Governor and the Legislature annually and at such other times as it may deem in the public interest with respect to its findings and conclusions.

The commissioner shall, insofar as practicable, consult the council on all matters of major policies and procedures involved in or connected with the administration of the unemployment compensation law and the temporary disability benefits law and he shall inform the council of the action taken in connection with such matters.

The council shall have access to all files and records of the division and may require any officer or employee thereof to provide such information as it may deem necessary in the performance of its functions.

**HISTORY:** L. 1948, c. 446, p. 1769, § 17. Amended by L. 1984, c. 24, § 14, eff. Oct. 1, 1984.

### **34:1A-18. Advisory Council on Disability Benefits in Division of Employment Security; powers**

There shall also be within the Division of Employment Security the Advisory Council on Disability Benefits, as established by and constituted under the Temporary Disability Benefits Law, except that, in keeping with the purposes and provisions of this act, the council shall aid, consult with and advise the Commissioner of Labor and Industry and the Director of the Division of Employment Security. The council shall have access to all files and records of the division relating to the administration of the Temporary Disability Benefits Law, and may require any officer or employee therein to provide such information as it may deem necessary in the performance of its functions.

**HISTORY:** L. 1948, c. 446, p. 1770, 18.

### **34:1A-19. Board of Review in Division of Employment Security**

There shall be within the Division of Employment Security a Board of Review consisting of three members, who shall act as a final appeals board in cases of benefit disputes, including appeals from determinations with respect to demands by the deputy for refunds of benefits under section *43:21-16(d)* of the Revised Statutes, and who shall supervise the work of local appeal tribunals which may be organized pursuant to the unemployment compensation law. The members of the Board of Review shall be appointed by the director of the Division of Employment Security, subject to the approval of the commissioner, pursuant to the provisions of Title 11 of the Revised Statutes, Civil Service. The first board constituted under this act shall consist of the members of the Board of Review constituted pursuant to section *43:21-10* of the Revised Statutes in office on the effective date of this act. No member of the Board of Review shall participate in any case in which he is an interested party.

**HISTORY:** L. 1948, c. 446, p. 1770, 19.

**34:1A-20. Appeal tribunals; membership; compensation; disqualification for interest; alternates; disputed benefit claims**

To hear and decide disputed benefit claims, including appeals from determinations with respect to demands by the deputy for refunds of benefits under section 43:21-16(d) of the Revised Statutes, the director of the Division of Employment Security, with the approval of the Commissioner of Labor and Industry, shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commissioner and be paid a fee of not more than twenty dollars (\$ 20.00) per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the division in any case in which he is an interested party. The director of the Division of Employment Security may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

Disputed claims for benefits under approved private plans established in accordance with the Temporary Disability Benefits Law shall be heard, reviewed, and determined as provided in section 26(a) of that act.

**HISTORY:** L. 1948, c. 446, p. 1771, 20.

**34:1A-21. Organization of existing Unemployment Compensation Commission continued; divisions constituted bureaus**

Except as otherwise provided herein or as may be changed pursuant to authorization contained herein or in any other law, the organization of the existing Unemployment Compensation Commission is continued as the organization of the Division of Employment Security established hereunder; provided, however, that any division required by law in the Unemployment Compensation Commission shall hereafter be constituted a bureau in the Division of Employment Security established hereunder.

**HISTORY:** L. 1948, c. 446, p. 1771, 21.

**34:1A-23. New Jersey State Board of Mediation transferred to Department of Labor and Industry; removal of members**

The New Jersey State Board of Mediation of the existing Department of Labor and all of its functions, powers and duties are hereby transferred to the Department of Labor and Industry established hereunder. Such board shall continue to have all of the powers and shall exercise all of the functions and duties vested in, or imposed upon, it by law. This act shall not affect the terms of office of the present members of such board. Such board shall continue to be constituted as provided by existing law. Any member of such board may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

**HISTORY:** L. 1948, c. 446, p. 1772, 23.

**34:1A-24. Directors of divisions; unclassified service of civil service; removal; vacancies**

The director of each division in the Department of Labor and Industry shall be in the unclassified service of the civil service of the State. Any such director may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

Any vacancy occurring in the office of director of any division in the department shall be filled in the same manner as the original appointment.

**HISTORY:** L. 1948, c. 446, p. 1772, 24.

#### **34:1A-25. Appropriations transferred**

All appropriations and other moneys available to become available to any department, commission, board, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any office or agency designated, continued or constituted therein, are hereby transferred to the Department of Labor and Industry established hereunder, and shall be available for the objects and purposes for which appropriated subject to any terms, restrictions, limitations or other requirements imposed by State or Federal law.

**HISTORY:** L. 1948, c. 446, p. 1772, 25.

#### **34:1A-26. Employees; transfer**

Such employees of any department, commission, board, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any office or agency designated, continued or constituted therein, as the Commissioner of Labor and Industry may determine are needed for the proper performance of the functions and duties imposed upon the Department of Labor and Industry, or such office or agency therein, are hereby transferred to the department, office or agency to which such functions, powers and duties have been herein assigned or transferred.

**HISTORY:** L. 1948, c. 446, p. 1773, 26.

#### **34:1A-27. Civil service, pension and retirement rights not affected**

Nothing in this act shall be construed to deprive any person holding any office or position not abolished pursuant to the provisions of this act, of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service. Nothing in this act shall be construed to deprive any person of any right or protection provided him under any pension law or retirement system.

**HISTORY:** L. 1948, c. 446, p. 1773, 27.

#### **34:1A-28. Files, books, records and property transferred**

All files, books, papers, records, equipment and other property of any department, commission, board, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any officer or agency designated, continued or constituted hereunder, shall upon the effective date of this act be transferred to the department, officer or agency to which such assignment or transfer has been made hereunder.

**HISTORY:** L. 1948, c. 446, p. 1773, 28.

#### **34:1A-29. Orders, rules and regulations continued**

This act shall not affect the orders, rules and regulations heretofore made or promulgated by any department, commission, board, officer or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any officer or agency designated, continued or constituted hereunder; but such orders, rules and regulations shall continue with full force and effect until amended or repealed pursuant to law.

**HISTORY:** L. 1948, c. 446, p. 1773, 29.

### **34:1A-30. Pending actions or proceedings; orders or recommendations not affected**

This act shall not affect actions or proceedings, civil or criminal, brought by or against any department, commission, board, officer or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any officer or agency designated, continued or constituted hereunder, and pending on the effective date of this act, but such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the department, officer or agency to which such assignment or transfer has been made hereunder, as if the foregoing provisions had not taken effect; nor shall any of the foregoing provisions affect any order or recommendation made by, or other matters or proceedings before, any department, commission, board, officer or agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Labor and Industry or to any officer or agency designated, continued or constituted hereunder, and all such matters or proceedings pending before such department, commission, board, officer or other agency on the effective date of this act shall be continued by the department, officer or agency to which such assignment or transfer has been made hereunder, as if the foregoing provisions had not taken effect.

**HISTORY:** L. 1948, c. 446, p. 1774, 30.

### **34:1A-31. Commissions and offices abolished**

The Unemployment Compensation Commission, the office of executive director of the Unemployment Compensation Commission, the office of director of the New Jersey State Employment Service Division of the Unemployment Compensation Commission and the office of commissioner of labor are hereby abolished.

The term of office of the present commissioner of labor shall expire on the effective date of this act.

**HISTORY:** L. 1948, c. 446, p. 1774, 31.

### **34:1A-32. Definition of terms referred to in laws, contracts or documents**

Subject to the provisions of this act:

Whenever the term "Commissioner of Labor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Commissioner of Labor and Industry designated as the head of the Department of Labor and Industry established hereunder.

Whenever the term "Unemployment Compensation Commission" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Commissioner of Labor and Industry designated as the head of the Department of Labor and Industry established hereunder.

Whenever the term "Department of Labor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Labor established hereunder.

Whenever the term "deputy commissioner of labor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to a deputy director in the Division of Labor established hereunder.

Whenever the term "deputy commissioner of workmen's compensation" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to a deputy director of workmen's compensation in the Division of Workmen's Compensation established hereunder.

Whenever the term "inspector of the department of labor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to an inspector of the Division of Labor established hereunder.

Whenever the term "workmen's compensation bureau" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Workmen's Compensation established hereunder.

Whenever the term "secretary of the workmen's compensation bureau" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the secretary of the Division of Workmen's Compensation established hereunder.

Whenever the term "division of migrant labor in the department of labor" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Bureau of Migrant Labor in the Division of Labor established hereunder.

Whenever the term "Executive Director of the Unemployment Compensation Commission" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the director of the Division of Employment Security established hereunder.

Whenever the term "New Jersey State Employment Service Division" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the New Jersey State Employment Service Bureau in the Division of Employment Security established hereunder.

Whenever the term "board of review" occurs or any reference is made thereto in the unemployment compensation law, the same shall be deemed to mean or refer to the Board of Review in the Division of Employment Security established hereunder.

Whenever the term "appeal tribunal" occurs or any reference is made thereto in the unemployment compensation law, the same shall be deemed to mean or refer to an appeal tribunal in the Division of Employment Security established hereunder.

**HISTORY:** L. 1948, c. 446, p. 1775, 32.

#### **34:1A-33. Repeal**

All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed.

**HISTORY:** L. 1948, c. 446, p. 1776, 33.

#### **34:1A-34. Short title**

This act shall be known as, and may be cited as the "Department of Labor and Industry Act of 1948."

**HISTORY:** L. 1948, c. 446, p. 1776, 34.

#### **34:1A-35. Effective date**

This act shall take effect on the first day of January, one thousand nine hundred and forty-nine, except that any appointment, and any confirmation or approval of any appointment, permitted by this act may be made prior to such date.

**HISTORY:** L. 1948, c. 446, p. 1777, 35.



**Ch. 48, L. 1980 (S.285), WAGE REPORTING ACT**

1. This act shall be known and may be cited as the "Wage Reporting Act."
2. The Director of the Division of Taxation in the Department of the Treasury shall design, develop and implement a reporting system for the purpose of receiving, maintaining and processing information required to be submitted by employers as specified in this act for the purpose of verifying eligibility for and entitlement to amounts of public assistance benefits, locating absent parents and, in appropriate cases, establishing support obligations and identifying fraud and abuse in connection with the unemployment insurance benefits system.
3. The Director of the Division of Public Welfare in the Department of Human Services shall, within 30 days after the end of each quarter, provide the Division of Taxation, in the Department of the Treasury with a list in a form and manner prescribed by the Director of the Division of Taxation, which shall contain the name and social security number of every person in receipt of public assistance through the Division of Public Welfare or through any county welfare board at any time during the quarter and an appropriate list of names and social security numbers for locating absent parents and, in appropriate cases, for establishing support obligations.
4. The Director of the Division of Unemployment and Disability Insurance in the Department of Labor and Industry shall, within 30 days after the end of each quarter, provide the Director of the Division of Taxation with a list, in a form and manner prescribed by the Director of the Division of Taxation, which shall contain the name and social security number of every person in receipt of unemployment compensation through the Division of Unemployment and Disability Insurance at any time during the quarter.
5. The Director of the Division of Taxation shall compare such lists with a list of all persons reported as having been employed during the preceding 3 months by employers in conformity with the requirements of section 7 of this act.
6. Upon making such comparison, the Director of the Division of Taxation shall provide to the Directors of the Divisions of Public Welfare and Unemployment and Disability Insurance the name, social security number and employer's name and address, of each person whose social security number appears on any list provided by either division and on the list of persons who were employed during the preceding 3 months. The respective divisions shall investigate and, if appropriate, take action against said person.
7. Every employer required to deduct and withhold tax pursuant to the "New Jersey Gross Income Tax Act" (N.J.S. 54A:1-1 et seq.) shall, for each calendar quarter commencing 4 months after enactment of this act, submit a report to the Director of the Division of Taxation, within 30 days after the end of such quarter, in the form and manner prescribed by the Director consistent with applicable Federal requirements or limitations, of the name and social security number of each employee who resides or is employed in this State, and any employer identification number which the employer is required to include on a withholding tax return filed pursuant to said act.
8. Any employer who fails without reasonable cause to comply with the reporting requirements of this act shall be liable for a penalty in the following amount for each employee with respect to whom the employer is required to file a report but who is not included in such report or for whom the required information is not accurately reported, for each employee required to be included, whether or not the employee is included:
  - (1) For the first failure for one quarter in any eight consecutive quarters, up to \$1.00 for each such employee;
  - (2) For the second failure for any quarter in any eight consecutive quarters, up to \$5.00 for each such employee; and
  - (3) For the third failure for any quarter in any eight consecutive quarters, and for any failure in any eight consecutive quarters which failure is subsequent to the third failure, up to \$25.00 for each such employee.

9. Notwithstanding the provisions of R.S.54:50-8 and R.S.54:50-9, the Division of Taxation or its employees may make only those disclosures to officers or employees of the Division of Public Welfare in the Department of Human Services, county welfare boards and the Division of Unemployment and Disability Insurance in the Department of Labor and Industry required to implement the provisions of this act; provided, however, that no disclosure may be made to any receiving agency herein with respect to Federal tax information obtained directly from the Internal Revenue Service pursuant to agreement except with the consent of the Internal Revenue Service.

10. No officer, employee or authorized representative of any agency authorized to receive information pursuant to this act shall disclose any personally identifiable information obtained or maintained pursuant to this act provided, however, that an officer or employee of the Division of Unemployment and Disability Insurance in the Department of Labor and Industry, the Division of Public Welfare in the Department of Human Services, or a county welfare board is authorized to disclose to any employer any information reported by the employer, including any information relating to the correctness of an employee's social security number, or to disclose to any employee any information reported which relates to the employee; and any officer or employee of the Division of Taxation is authorized to disclose to any employer, being notified of a determination of failure to comply with this act, any information concerning the employer's report or failure to report; provided, however, the Division of Taxation may utilize data reported pursuant to this act for purposes of verifying compliance with any tax imposed pursuant to Title 54 of the Revised Statutes and Title 54A of the New Jersey Statutes.

A person who intentionally violates the provisions of this section commits a crime of the fourth degree.

11. The Director of the Division of Taxation shall promulgate rules and regulations for the purpose of carrying out the provisions of this act.

12. Based on information received from the Directors of the Divisions of Unemployment and Disability Insurance and Public Welfare, the Director of the Division of Taxation shall submit to the Governor and the Legislature no later than April 1, in each year beginning with 1981 and ending with 1984, a detailed report relating to the cost effectiveness of the "Wage Reporting Act" and any legislative recommendation pertaining thereto.

15. This act shall take effect immediately, provided, however, that the first quarterly report to be filed shall be for the quarter next commencing at least four months from the effective date of this act. This act shall expire September 1, 1984, but the reporting provisions of sections 3, 4, and 7 of this act shall expire July 31, 1984.

**CH. 417, I. 1981,  
GARNISHMENT OF UNEMPLOYMENT INSURANCE BENEFITS**

2. Every order of a court for alimony, maintenance or child support payments shall include a written notice to the payer stating that the order may be enforced by an income execution upon the commissions, earnings, salaries, wages and other current or future income due from the payer's employer or successor employers and upon the unemployment compensation benefits due the payer and against debts, income, trust funds, profits or income from any other source due the payer.

**CH. 453, I. 1981,  
GROSS INCOME TAX CREDIT FOR EXCESS CONTRIBUTIONS**

2. a. Any employee who is a taxpayer and entitled, pursuant to the provisions of R.S.43:21-7(d)(3) or section 1 of P.L. 1944, c.81 (C. 43:21-14.1), to a refund of contributions deducted during a tax year from his wages shall, in lieu of such refund, be entitled to a credit in the full amount thereof against the tax otherwise due on his New Jersey gross income for that tax year if he submits his claim for the credit and accompanies that claim with evidence of his right to the credit in such manner as the Director of the Division of Taxation may by regulation provide. In any case in which the amount, or

any portion thereof, of any credit allowed hereunder results in or increases an excess of income tax payment over income tax liability, the amount of such new or increased excess shall be considered an overpayment and shall be refunded to the taxpayer in the manner provided by subsection (a) of N.J.S. 54A:9-7.

b. On the first day of each month, or at such other time as the director shall determine, the director shall forward to the Division of Unemployment and Temporary Disability Insurance a statement of the total amount of credits actually allowed pursuant to subsection a. of this section during the preceding month or period covered by the statement. Such statement shall indicate the totals of credits allowed on claims and shall be accompanied by such documents as the director and the Director of the Division of Unemployment and Disability Insurance shall prescribe. Moneys reimbursed by the Division of Unemployment and Temporary Disability Insurance to the director shall be treated as taxes collected under the provisions of this Title.

3. Upon receipt from the director of a statement of the total amount of State income tax credits allowed on claims, the Division of Unemployment and Temporary Disability Insurance shall within 5 days reimburse to the director from the respective funds sums equal to the amounts so allowed. No interest shall be paid with respect to the sums reimbursed.

#### **CH. 144, I. 1982, DEDUCTION OF CHILD SUPPORT OBLIGATIONS**

7. a. An individual filing a new claim for unemployment compensation with an effective date on or after October 1, 1982 shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under paragraph g. If any individual discloses that he or she owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the State or local child support enforcement agency enforcing this obligation that the individual has been determined to be eligible for unemployment compensation.

b. The division shall deduct and withhold from any unemployment compensation to an individual that owes child support obligations as defined under paragraph g., (1) the amount specified by the individual to the division to be deducted and withheld under this section, or: p. (2) the amount (if any) determined pursuant to an agreement submitted to the division under Section 454(20)(B)(i) of the Social Security Act, P.L. 97-35, 42 U.S.C. 654, by the State or local child support enforcement agency, or

(3) any amount otherwise required to be so deducted and withheld from unemployment compensation pursuant to legal process (as that term is defined by the Commissioner of Labor in regulations, which definition shall be identical to the definition of legal process in Section 462(e) of the Social Security Act, P.L. 95-30, Title V, 42 U.S.C. 662) properly served upon the division.

c. Any amount deducted and withheld under paragraph b. shall be paid by the division to the appropriate State or local child support enforcement agency.

d. Any amount deducted and withheld under paragraph b. shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.

e. For purposes of paragraphs a. through d., the term "unemployment compensation" means any compensation payable under the Unemployment Compensation Law (R.S.43:21-1 et seq.) (including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment).

f. This section applies only if appropriate arrangements have been made for reimbursement by the State or local child support enforcement agency for the administrative costs incurred by the division under this section which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

g. The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act, P.L. 97-35, 42 U.S.C. 654, which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

h. The term "State or local child support enforcement agency" as used in these provisions means any agency of a State or a political subdivision thereof operating pursuant to a plan described in paragraph g.

**CH. 24, I. 1984,  
UNEMPLOYMENT COMPENSATION INTEREST REPAYMENT FUND**

16. a. The Unemployment Compensation Interest Repayment Fund is established in the Department of Labor and shall be used solely for the purpose of paying interest due on any advances made from the federal unemployment account under Title XII of the Social Security Act (42 U.S.C. 1321 et seq.). All moneys deposited on this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury.

b. On or before June 30 of each year the Commissioner of Labor shall review the status of any interest bearing advances made from the federal unemployment account to determine the interest amount (if any) to be repaid to the United States Treasury by September 30 of that calendar year, pursuant to the provisions of section 1202(b) of the Social Security Act, U.S.C. 1322. If it is determined that interest shall be paid to the United States Treasury, the Commissioner of Labor shall first determine whether there are sufficient moneys in the unemployment compensation auxiliary fund, as established in subsection (g) of R.S.43:21-14, to repay the entire interest amount due on September 30 of that calendar year. If it is determined that there are sufficient moneys in the unemployment compensation auxiliary fund to repay the entire amount, no special assessment on employers shall be made. If, however, it is determined that there are insufficient moneys in the unemployment compensation auxiliary fund to repay the entire interest amount due on September 30 of that calendar year, a special assessment shall be made against all employers, except governmental entities or instrumentalities defined as employers under R. S. 43:21-19 (h)(5) and nonprofit organizations defined as employers under R.S.43:21-19(h)(6).

c. In the event that it shall be necessary to make a special assessment, the commissioner shall establish the ratio of the amount of interest determined under subsection b. of this section to 95% of the total employer contributions payable for unemployment insurance on taxable wages paid during the preceding calendar year by all employers subject to this interest assessment. This ratio shall be calculated to five significant figures and rounded upward to the next highest ten thousandth. The assessment against each employer shall be in an amount equal to its unemployment contributions payable on the total taxable wages it paid during the preceding calendar year multiplied by the ratio established herein but in no event shall any assessment be less than \$5.00. This special assessment shall be mailed by the controller to all affected employers on or before July 31 and shall be due 30 days from that date. This assessment shall be collectible by the controller in the same manner as provided for employer contributions under chapter 21 of Title 43 of the Revised Statutes.

d. All moneys received by the controller under this special assessment shall be deposited in the Unemployment Compensation Interest Repayment Fund. After all known interest charges have been paid, any remaining moneys in the fund may be transferred to the unemployment compensation auxiliary fund at the discretion of the Commissioner of Labor.

**CH. 508, L. 1986, AGRICULTURAL WORKER LEGISLATION**

1. (New section) The Legislature finds and determines that:

a. Agriculture is now and has traditionally been an essential part of the State's economic base, and it is the public policy of this State to ensure the survival of this sector of the economy, particularly in the face of encroaching industrial and commercial development and increasing urbanization; and

b. The continuing survival of New Jersey agriculture is dependent upon a steady and reliable supply of labor; and

c. The complexity of the problem of the compensation of agricultural laborers, which has been heightened by the increasing urbanization and industrial development in this State, needs to be studied by the Legislature in order to determine what remedial actions it may be necessary to take; and

d. It is the intention of the Legislature that the problems of the New Jersey agricultural workers be addressed without sacrificing the basic principles of the recently enacted unemployment compensation reform law (P.L. 1984, c. 24), which was a product of cooperation between business and labor; and

e. The following are valid public purposes and are not regarded by the Legislature as sacrificing the basic principles of the unemployment compensation reform law:

(1) Creating a commission to study the hiring, employment and compensation of agricultural labor in this State, to report its findings thereon, and to propose solutions to the Legislature; and

(2) Enacting temporary measures to assist certain agricultural workers to maintain eligibility for unemployment compensation benefits during the time that the commission conducts its study.

Sections 2 and 3 incorporated into Unemployment Compensation Law text.

4. (New section) There is created a commission to be known as the "Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey," which shall consist of 13 members. Two members of the commission shall be members of the Senate, to be appointed by the President thereof, not more than one of whom shall be of the same political party, and two members shall be members of the General Assembly, to be appointed by the Speaker thereof, not more than one of whom shall be of the same political party. In addition, the Governor shall appoint six public members, three of whom shall represent business, including one representative of agricultural business; and three of whom shall represent labor, including one representative of agricultural labor. The Commissioner of Labor, the Commissioner of Commerce and Economic Development, and the State Secretary of Agriculture shall be members of the commission ex officio. All members of the commission shall serve without compensation. Members who are legislators shall serve only as long as they hold the legislative seat they held at the time of the appointment. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

5. (New section) It shall be the duty of the commission to inquire into the hiring, employment and compensation of agricultural labor in this State and make such legislative proposals to the Legislature as it may deem necessary. In making its inquiries and formulating its proposals, the commission shall take into consideration, as it deems appropriate, recommendations of the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" submitted to the President of the Senate and the Speaker of the General Assembly pursuant to Assembly Concurrent Resolution No. 151 of 1984. In addition to its other duties, the commission shall specifically address the following issues: a range of possible changes in unemployment compensation eligibility standards to make them the same for farmers as for other employers; a range of possible changes in the minimum wage level; extension of the time and one-half overtime pay requirements to agriculture; enforcement of the requirement that payments-in-kind be reported as taxable wages; the establishment of an eligibility threshold for farm workers at a fixed percentage of the threshold for other employees; and the establishment of a separate unemployment insurance fund for farm workers or for other seasonal employees.

6. (New section) The commission shall organize within 15 days after the appointment of its members. The commission shall elect a chairman from among its members and the chairman shall appoint a secretary who need not be a member of the commission.

7. (New section) The commission may hold public hearings and shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for this

purpose, and to employ counsel and such stenographic and clerical assistance and incur traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise available to it for that purpose.

8. (New section) The commission shall report its findings and recommendations, which shall include draft legislation if the commission recommends that legislation is necessary, to the Governor, the President of the Senate and the Speaker of the General Assembly no later than January 31, 1987.

9. (New section) The Department of Labor shall take any actions as the commissioner deems necessary to improve the administration of the unemployment compensation program as it concerns agricultural workers. The actions shall include, but not be limited to, the following:

a. Strengthening the enforcement of the provisions of subsections (a) and (c) of R.S.43:21-5 concerning the disqualification of applicants for benefits as the provisions apply to agricultural workers;

b. Making bilingual forms available for all Spanish speaking agricultural workers applying for or receiving benefits; and

c. Implementing procedures to accelerate the processing of the unemployment compensation claims of agricultural workers, including workers who live outside of the State.

10. (New section) The Department of Labor is directed to gather information needed by the "Commission to Study the Hiring, Employment and Compensation of Agricultural Labor in New Jersey," created pursuant to section 4 of this act, for the conduct of its inquiry and the formulation of its proposals, and to provide the information to the commission not later than July 31, 1986. Information requirements shall be delineated by the commission, taking into consideration, as it deems appropriate, the research recommendations of the "Commission to Study the Employment and Compensation of Agricultural Labor in New Jersey" submitted to the President of the Senate and the Speaker of the General Assembly pursuant to Assembly Concurrent Resolution No. 151 of 1984. This information shall be sufficient to make reasonable estimates of:

a. The total number of agricultural workers in the State; and

b. The number of agricultural workers participating in the unemployment compensation program.

11. This act shall take effect immediately, except for sections 4, 5, 6, 7, 8 and 10 of this act which shall take effect on January 31, 1986. Sections 4, 5, 6, 7, 8 and 10 of this act shall expire on January 31, 1987.