

[First Reprint]

ASSEMBLY, No. 5936

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:

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SYNOPSIS

Concerns employment status of individuals with respect to wage and hour and unemployment laws.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on November 18, 2019, with amendments.



(Sponsorship Updated As Of: 12/17/2019)

1 AN ACT concerning the employment status of individuals with
2 respect to State wage and hour and unemployment laws,
3 supplementing Article 3 of chapter 11 of Title 34 of the Revised
4 Statutes, and amending P.L.2007, c.114 and R.S.43:21-19.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. (New section) For the purposes of all State employment
10 laws, individuals who perform services for remuneration shall be
11 deemed employees, not independent contractors, and shall be
12 subject to the provisions of those laws, and shall be entitled to all
13 rights and remedies provided by those laws, unless and until it is
14 shown to the satisfaction of the Commissioner of Labor and
15 Workforce Development that:

16 a. The individual has been and will continue to be free from
17 control or direction over the performance of the service, both under
18 the individual's contract of service and in fact; and

19 b. The individual's service is ¹either¹ outside the usual course
20 of the business for which that service is performed¹, or the service
21 is performed outside of all the places of business of the employer
22 for which the service is performed¹; and

23 c. The individual is customarily engaged in an independently
24 established ¹**[**trade, occupation, profession or¹**]** business ¹or
25 enterprise¹ of the same nature as that involved in the work
26 performed.

27 ¹An individual shall not be regarded as an employee for the
28 purposes of this section if the individual is a certified public
29 accountant licensed by the State of New Jersey, or the individual
30 satisfies the requirements to be exempt from being deemed to be in
31 employment as set forth in R.S.43:21-19(i)(7)(J) or R.S.43:21-
32 19(i)(7)(K).¹

33 For the purposes of this section, "State employment laws" means
34 Article 1 of chapter 11 of Title 34 of the Revised Statutes and all
35 acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113
36 and all acts supplementing that act (C.34:11-56a et al.), P.L.2005,
37 c.379 (C.34:11-56.58 et seq.), and Article 3 of chapter 11 of Title
38 34 of the Revised Statutes and all acts supplementing that article
39 (R.S.34:11-57 et al.), but "State employment laws" do not include
40 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
41 56.25 et seq.), "The Public Works Contractor Registration Act,"
42 P.L.1999, c.238 (C.34:11-56.48 et seq.), or the "Construction
43 Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1
44 et seq.).

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted November 18, 2019.

1 2. Section 4 of P.L.2007, c.114 (C.34:20-4) is amended to read
2 as follows:

3 4. For purposes of the "New Jersey Prevailing Wage Act,"
4 P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment
5 compensation law," R.S.43:21-1 et seq., the "Temporary Disability
6 Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New
7 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or other
8 applicable State tax laws, P.L.1965, c.173 (C.34:11-4.1 et seq.) and
9 the "New Jersey State Wage and Hour Law," P.L.1966, c.113
10 (C.34:11-56a et seq.), services performed in the making of
11 improvements to real property by an individual for remuneration
12 paid by an employer shall be deemed to be employment unless and
13 until it is shown to the satisfaction of the Department of Labor and
14 Workforce Development that:

15 a. the individual has been and will continue to be free from
16 control or direction over the performance of that service, both under
17 his contract of service and in fact; and

18 b. the individual's service is ~~either~~ ¹either¹ outside the usual
19 course of the business for which the service is performed~~], or the~~
20 service is performed outside of all the places of business of the
21 employer for which the service is performed¹, or the service is
22 performed outside of all the places of business of the employer for
23 which the service is performed¹; and

24 c. the individual is customarily engaged in an independently
25 established ¹~~trade, occupation, profession or~~¹ business ¹or
26 enterprise¹ of the same nature as that involved in the work
27 performed.

28 The failure to withhold federal or State income taxes or to pay
29 unemployment compensation contributions or workers'
30 compensation premiums with respect to an individual's wages shall
31 not be considered in making a determination under this section.

32 (cf: P.L.2007, c.114, s.4)

33

34 3. R.S.43:21-19 is amended to read as follows:

35 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
36 seq.), unless the context clearly requires otherwise:

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

40 (2) "Average annual payroll" means the average of the annual
41 payrolls of any employer for the last three or five preceding
42 calendar years, whichever average is higher, except that any year or
43 years throughout which an employer has had no "annual payroll"
44 because of military service shall be deleted from the reckoning; the
45 "average annual payroll" in such case is to be determined on the
46 basis of the prior three or five calendar years in each of which the
47 employer had an "annual payroll" in the operation of his business, if

1 the employer resumes his business within 12 months after
2 separation, discharge or release from such service, under conditions
3 other than dishonorable, and makes application to have his "average
4 annual payroll" determined on the basis of such deletion within 12
5 months after he resumes his business; provided, however, that
6 "average annual payroll" solely for the purposes of paragraph (3) of
7 subsection (e) of R.S.43:21-7 means the average of the annual
8 payrolls of any employer on which he paid contributions to the
9 State disability benefits fund for the last three or five preceding
10 calendar years, whichever average is higher; provided further that
11 only those wages be included on which employer contributions have
12 been paid on or before January 31 (or the next succeeding day if
13 such January 31 is a Saturday or Sunday) immediately preceding
14 the beginning of the 12-month period for which the employer's
15 contribution rate is computed.

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

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

23 With respect to a benefit year commencing on or after July 1,
24 1995, if an individual does not have sufficient qualifying weeks or
25 wages in his base year to qualify for benefits, the individual shall
26 have the option of designating that his base year shall be the
27 "alternative base year," which means the last four completed
28 calendar quarters immediately preceding the individual's benefit
29 year; except that, with respect to a benefit year commencing on or
30 after October 1, 1995, if the individual also does not have sufficient
31 qualifying weeks or wages in the last four completed calendar
32 quarters immediately preceding his benefit year to qualify for
33 benefits, "alternative base year" means the last three completed
34 calendar quarters immediately preceding his benefit year and, of the
35 calendar quarter in which the benefit year commences, the portion
36 of the quarter which occurs before the commencing of the benefit
37 year.

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

1 adjusted when the quarterly report of wage information from the
2 employer is received if that information causes a change in the
3 determination.

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

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

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

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

7 (2) "Controller" means the Office of the Assistant
8 Commissioner for Finance and Controller of the Department of
9 Labor and Workforce Development, established by the 1982
10 Reorganization Plan of the Department of Labor.

11 (f) "Contributions" means the money payments to the State
12 Unemployment Compensation Fund, required by R.S.43:21-7.
13 "Payments in lieu of contributions" means the money payments to
14 the State Unemployment Compensation Fund by employers electing
15 or required to make payments in lieu of contributions, as provided
16 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-
17 7.3).

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

40 (h) "Employer" means:

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

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

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

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

13 (5) Any employing unit for which service in employment as
14 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
15 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
16 performed after December 31, 1977;

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

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

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

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

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

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

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

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

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

1 employing unit which has elected to become fully subject to this
2 chapter (R.S.43:21-1 et seq.).

3 (i) (1) "Employment" means:

4 (A) Any service performed prior to January 1, 1972, which was
5 employment as defined in the "unemployment compensation law"
6 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
7 provisions of this subsection, service performed on or after January
8 1, 1972, including service in interstate commerce, performed for
9 remuneration or under any contract of hire, written or oral, express
10 or implied.

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

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

24 (C) Service performed after December 31, 1971 by an individual
25 in the employ of a religious, charitable, educational, or other
26 organization, which is excluded from "employment" as defined in
27 the Federal Unemployment Tax Act, solely by reason of section
28 3306 (c)(8) of that act, if such service is not excluded from
29 "employment" under paragraph (D) below.

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

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

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

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

45 (aa) as an elected official;

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

- 1 (cc) as a member of the State National Guard or Air National
2 Guard;
- 3 (dd) as an employee serving on a temporary basis in case of fire,
4 storm, snow, earthquake, flood or similar emergency;
- 5 (ee) in a position which, under or pursuant to the laws of this
6 State, is designated as a major nontenured policy making or
7 advisory position, or a policy making or advisory position, the
8 performance of the duties of which ordinarily does not require more
9 than eight hours per week; or
- 10 (iv) By an individual receiving rehabilitation or remunerative
11 work in a facility conducted for the purpose of carrying out a
12 program of rehabilitation of individuals whose earning capacity is
13 impaired by age or physical or mental deficiency or injury or
14 providing remunerative work for individuals who because of their
15 impaired physical or mental capacity cannot be readily absorbed in
16 the competitive labor market;
- 17 (v) By an individual receiving work-relief or work-training as
18 part of an unemployment work-relief or work-training program
19 assisted in whole or in part by any federal agency or an agency of a
20 state or political subdivision thereof; or
- 21 (vi) Prior to January 1, 1978, for a hospital in a State prison or
22 other State correctional institution by an inmate of the prison or
23 correctional institution and after December 31, 1977, by an inmate
24 of a custodial or penal institution.
- 25 (E) The term "employment" shall include the services of an
26 individual who is a citizen of the United States, performed outside
27 the United States after December 31, 1971 (except in Canada and in
28 the case of the Virgin Islands, after December 31, 1971) and prior
29 to January 1 of the year following the year in which the U.S.
30 Secretary of Labor approves the unemployment compensation law
31 of the Virgin Islands, under section 3304 (a) of the Internal
32 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an
33 American employer (other than the service which is deemed
34 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or
35 the parallel provisions of another state's unemployment
36 compensation law), if
- 37 (i) The American employer's principal place of business in the
38 United States is located in this State; or
- 39 (ii) The American employer has no place of business in the
40 United States, but (I) the American employer is an individual who
41 is a resident of this State; or (II) the American employer is a
42 corporation which is organized under the laws of this State; or (III)
43 the American employer is a partnership or trust and the number of
44 partners or trustees who are residents of this State is greater than the
45 number who are residents of another state; or
- 46 (iii) None of the criteria of divisions (i) and (ii) of this
47 subparagraph (E) is met but the American employer has elected to
48 become an employer subject to the "unemployment compensation

1 law" (R.S.43:21-1 et seq.) in this State, or the American employer
2 having failed to elect to become an employer in any state, the
3 individual has filed a claim for benefits, based on such service,
4 under the law of this State;

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

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

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

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

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

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

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

47 (ii) for the purposes of this subsection any individual who is a
48 member of a crew furnished by a crew leader to perform service in

1 agricultural labor for any other entity shall be treated as an
2 employee of such crew leader

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

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

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

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

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

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

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

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

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

33 (J) Domestic service after December 31, 1977 performed in the
34 private home of an employing unit which paid cash remuneration of
35 \$1,000.00 or more to one or more individuals for such domestic
36 service in any calendar quarter in the current or preceding calendar
37 year.

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

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

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

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

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

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

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

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

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

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

30 (B) **【Such】** The individual's service is **【either】** ¹either¹ outside
31 the usual course of the business for which **【such】** the service is
32 performed¹, or that such service is performed outside of all the
33 places of business of the enterprise for which such service is
34 performed¹, or the service is performed outside of all the places of
35 business of the employer for which the service is performed¹; and

36 (C) **【Such】** The individual is customarily engaged in an
37 independently established ¹**【trade, occupation, profession or】**¹
38 business ¹or enterprise¹ of the same nature as that involved in the
39 work performed.

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

46 (A) Agricultural labor performed prior to January 1, 1978; and
47 after December 31, 1977, only if performed in a calendar year for

1 an entity which is not an employer as defined in the "unemployment
2 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
3 calendar year; or unless performed for an employing unit which

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

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

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

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

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

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

33 (F) Service performed in the employ of the United States
34 Government or of any instrumentality of the United States exempt
35 under the Constitution of the United States from the contributions
36 imposed by the "unemployment compensation law," except that to
37 the extent that the Congress of the United States shall permit states
38 to require any instrumentalities of the United States to make
39 payments into an unemployment fund under a state unemployment
40 compensation law, all of the provisions of this act shall be
41 applicable to such instrumentalities, and to service performed for
42 such instrumentalities, in the same manner, to the same extent and
43 on the same terms as to all other employers, employing units,
44 individuals and services; provided that if this State shall not be
45 certified for any year by the Secretary of Labor of the United States
46 under section 3304 of the federal Internal Revenue Code of 1986
47 (26 U.S.C. s.3304), the payments required of such instrumentalities
48 with respect to such year shall be refunded by the division from the

1 fund in the same manner and within the same period as is provided
2 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
3 or collected by the division;

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

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

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

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

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

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

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

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

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

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

4 (Q) Service performed in the employ of an instrumentality
5 wholly owned by a foreign government if (i) the service is of a
6 character similar to that performed in foreign countries by
7 employees of the United States Government or of an instrumentality
8 thereof, and (ii) the division finds that the United States Secretary
9 of State has certified to the United States Secretary of the Treasury
10 that the foreign government, with respect to whose instrumentality
11 exemption is claimed, grants an equivalent exemption with respect
12 to similar services performed in the foreign country by employees
13 of the United States Government and of instrumentalities thereof;

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

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

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

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

45 (V) Service performed in the employ of a hospital, if such
46 service is performed by a patient of the hospital; service performed
47 as a student nurse in the employ of a hospital or a nurses' training
48 school by an individual who is enrolled and regularly attending

1 classes in a nurses' training school approved under the laws of this
2 State;

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

7 (X) Services performed by operators of motor vehicles weighing
8 18,000 pounds or more, licensed for commercial use and used for
9 the highway movement of motor freight, who own their equipment
10 or who lease or finance the purchase of their equipment through an
11 entity which is not owned or controlled directly or indirectly by the
12 entity for which the services were performed and who were
13 compensated by receiving a percentage of the gross revenue
14 generated by the transportation move or by a schedule of payment
15 based on the distance and weight of the transportation move;

16 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

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

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

37 (A) The limousine franchisee is incorporated;

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

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

43 (D) The franchisee registers with the Department of Labor and
44 Workforce Development and receives an employer registration
45 number.

46 (10) Services performed by a legal transcriber, or certified court
47 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
48 shall not be deemed to be employment subject to the

1 "unemployment compensation law," R.S.43:21-1 et seq., if those
2 services are provided to a third party by the transcriber or reporter
3 who is referred to the third party pursuant to an agreement with
4 another legal transcriber or legal transcription service, or certified
5 court reporter or court reporting service, on a freelance basis,
6 compensation for which is based upon a fee per transcript page, flat
7 attendance fee, or other flat minimum fee, or combination thereof,
8 set forth in the agreement.

9 For purposes of this paragraph (10): "legal transcription service"
10 and "legal transcribing" mean making use, by audio, video or voice
11 recording, of a verbatim record of court proceedings, depositions,
12 other judicial proceedings, meetings of boards, agencies,
13 corporations, or other bodies or groups, and causing that record to
14 be printed in readable form or produced on a computer screen in
15 readable form; and "legal transcriber" means a person who engages
16 in "legal transcribing."

17 (j) "Employment office" means a free public employment
18 office, or branch thereof operated by this State or maintained as a
19 part of a State-controlled system of public employment offices.

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

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

24 (m) "Unemployment."

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

27 (A) The individual is not engaged in full-time work and with
28 respect to which his remuneration is less than his weekly benefit
29 rate, including any week during which he is on vacation without
30 pay; provided such vacation is not the result of the individual's
31 voluntary action, except that for benefit years commencing on or
32 after July 1, 1984, an officer of a corporation, or a person who has
33 more than a 5% equitable or debt interest in the corporation, whose
34 claim for benefits is based on wages with that corporation shall not
35 be deemed to be unemployed in any week during the individual's
36 term of office or ownership in the corporation; or

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

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

47 (3) An individual's week of unemployment shall be deemed to
48 commence only after the individual has filed a claim at an

1 unemployment insurance claims office, except as the division may
2 by regulation otherwise prescribe.

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

7 (o) "Wages" means remuneration paid by employers for
8 employment. If a worker receives gratuities regularly in the course
9 of his employment from other than his employer, his "wages" shall
10 also include the gratuities so received, if reported in writing to his
11 employer in accordance with regulations of the division, and if not
12 so reported, his "wages" shall be determined in accordance with the
13 minimum wage rates prescribed under any labor law or regulation
14 of this State or of the United States, or the amount of remuneration
15 actually received by the employee from his employer, whichever is
16 the higher.

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

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

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

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

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

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

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

42 (B) If the individual does not establish in his base year 20 or
43 more base weeks as defined in subparagraph (A) of this paragraph
44 (2), any calendar week of an individual's base year during which the
45 individual earned in employment from an employer remuneration
46 not less than an amount 20 times the minimum wage in effect
47 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
48 1 of the calendar year preceding the calendar year in which the

1 benefit year commences, which amount shall be adjusted to the next
2 higher multiple of \$1.00 if not already a multiple thereof, except
3 that if in any calendar week an individual subject to this
4 subparagraph (B) is in employment with more than one employer,
5 the individual may in that calendar week establish a base week with
6 respect to each of the employers from whom the individual earns
7 remuneration not less than the amount defined in this subparagraph
8 (B) during that week.

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

23 (u) "Average weekly wage" means the amount derived by
24 dividing an individual's total wages received during his base year
25 base weeks (as defined in subsection (t) of this section) from that
26 most recent base year employer with whom he has established at
27 least 20 base weeks, by the number of base weeks in which such
28 wages were earned. In the event that such claimant had no employer
29 in his base year with whom he had established at least 20 base
30 weeks, then such individual's average weekly wage shall be
31 computed as if all of his base week wages were received from one
32 employer and as if all his base weeks of employment had been
33 performed in the employ of one employer.

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

44 (v) "Initial determination" means, subject to the provisions of
45 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
46 measured by an eligible individual's base year employment with a
47 single employer covering all periods of employment with that
48 employer during the base year.

- 1 (w) "Last date of employment" means the last calendar day in
2 the base year of an individual on which he performed services in
3 employment for a given employer.
- 4 (x) "Most recent base year employer" means that employer with
5 whom the individual most recently, in point of time, performed
6 service in employment in the base year.
- 7 (y) (1) "Educational institution" means any public or other
8 nonprofit institution (including an institution of higher education):
- 9 (A) In which participants, trainees, or students are offered an
10 organized course of study or training designed to transfer to them
11 knowledge, skills, information, doctrines, attitudes or abilities from,
12 by or under the guidance of an instructor or teacher;
- 13 (B) Which is approved, licensed or issued a permit to operate as
14 a school by the State Department of Education or other government
15 agency that is authorized within the State to approve, license or
16 issue a permit for the operation of a school; and
- 17 (C) Which offers courses of study or training which may be
18 academic, technical, trade, or preparation for gainful employment in
19 a recognized occupation.
- 20 (2) "Institution of higher education" means an educational
21 institution which:
- 22 (A) Admits as regular students only individuals having a
23 certificate of graduation from a high school, or the recognized
24 equivalent of such a certificate;
- 25 (B) Is legally authorized in this State to provide a program of
26 education beyond high school;
- 27 (C) Provides an educational program for which it awards a
28 bachelor's or higher degree, or provides a program which is
29 acceptable for full credit toward such a degree, a program of post-
30 graduate or post-doctoral studies, or a program of training to
31 prepare students for gainful employment in a recognized
32 occupation; and
- 33 (D) Is a public or other nonprofit institution.
- 34 Notwithstanding any of the foregoing provisions of this
35 subsection, all colleges and universities in this State are institutions
36 of higher education for purposes of this section.
- 37 (z) "Hospital" means an institution which has been licensed,
38 certified or approved under the law of this State as a hospital.
39 (cf: P.L.2017, c.230, s.1)
- 40
- 41 4. This act shall take effect immediately.