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SENATE, No. 4204

STATE OF NEW JERSEY
218th LEGISLATURE

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Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on November 14, 2019, with amendments.



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 laws,
10 individuals who perform services for remuneration shall be deemed
11 employees, not independent contractors, and shall be subject to the
12 provisions of those laws, and shall be entitled to all rights and
13 remedies provided by those laws, unless and until it is shown to the
14 satisfaction of the Commissioner of Labor and Workforce
15 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 the
18 individual's contract of service and in fact; and

19 b. The individual's service is outside the usual course of the
20 business for which that service is performed; and

21 c. The individual is customarily engaged in an independently
22 established trade, occupation, profession or business of the same
23 nature as that involved in the work performed.

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

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

41
42 2. Section 4 of P.L.2007, c.114 (C. 34:20-4) is amended to read
43 as follows:

44 4. For purposes of the "New Jersey Prevailing Wage Act,"
45 P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment

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:

¹Senate SLA committee amendments adopted November 14, 2019.

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

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

14 b. the individual's service is **either** outside the usual course
15 of the business for which the service is performed**,** or the service is
16 performed outside of all the places of business of the employer for
17 which the service is performed**;** and

18 c. the individual is customarily engaged in an independently
19 established trade, occupation, profession or business of the same
20 nature as that involved in the work performed.

21 The failure to withhold federal or State income taxes or to pay
22 unemployment compensation contributions or workers'
23 compensation premiums with respect to an individual's wages shall
24 not be considered in making a determination under this section.
25 (cf: P.L.2007, c.114, s.4)

26

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

28 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
29 seq.), unless the context clearly requires otherwise:

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

33 (2) "Average annual payroll" means the average of the annual
34 payrolls of any employer for the last three or five preceding
35 calendar years, whichever average is higher, except that any year or
36 years throughout which an employer has had no "annual payroll"
37 because of military service shall be deleted from the reckoning; the
38 "average annual payroll" in such case is to be determined on the
39 basis of the prior three or five calendar years in each of which the
40 employer had an "annual payroll" in the operation of his business, if
41 the employer resumes his business within 12 months after
42 separation, discharge or release from such service, under conditions
43 other than dishonorable, and makes application to have his "average
44 annual payroll" determined on the basis of such deletion within 12
45 months after he resumes his business; provided, however, that
46 "average annual payroll" solely for the purposes of paragraph (3) of
47 subsection (e) of R.S.43:21-7 means the average of the annual
48 payrolls of any employer on which he paid contributions to the

1 State disability benefits fund for the last three or five preceding
2 calendar years, whichever average is higher; provided further that
3 only those wages be included on which employer contributions have
4 been paid on or before January 31 (or the next succeeding day if
5 such January 31 is a Saturday or Sunday) immediately preceding
6 the beginning of the 12-month period for which the employer's
7 contribution rate is computed.

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

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

15 With respect to a benefit year commencing on or after July 1,
16 1995, if an individual does not have sufficient qualifying weeks or
17 wages in his base year to qualify for benefits, the individual shall
18 have the option of designating that his base year shall be the
19 "alternative base year," which means the last four completed
20 calendar quarters immediately preceding the individual's benefit
21 year; except that, with respect to a benefit year commencing on or
22 after October 1, 1995, if the individual also does not have sufficient
23 qualifying weeks or wages in the last four completed calendar
24 quarters immediately preceding his benefit year to qualify for
25 benefits, "alternative base year" means the last three completed
26 calendar quarters immediately preceding his benefit year and, of the
27 calendar quarter in which the benefit year commences, the portion
28 of the quarter which occurs before the commencing of the benefit
29 year.

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

44 (2) With respect to a benefit year commencing on or after June
45 1, 1990 for an individual who immediately preceding the benefit
46 year was subject to a disability compensable under the provisions of
47 the "Temporary Disability Benefits Law," P.L.1948, c.110
48 (C.43:21-25 et seq.), "base year" shall mean the first four of the last

1 five completed calendar quarters immediately preceding the
2 individual's period of disability, if the employment held by the
3 individual immediately preceding the period of disability is no
4 longer available at the conclusion of that period and the individual
5 files a valid claim for unemployment benefits after the conclusion
6 of that period. For the purposes of this paragraph, "period of
7 disability" means the period defined as a period of disability by
8 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
9 c.110 (C.43:21-27). An individual who files a claim under the
10 provisions of this paragraph (2) shall not be regarded as having left
11 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

12 (3) With respect to a benefit year commencing on or after June
13 1, 1990 for an individual who immediately preceding the benefit
14 year was subject to a disability compensable under the provisions of
15 the workers' compensation law (chapter 15 of Title 34 of the
16 Revised Statutes), "base year" shall mean the first four of the last
17 five completed calendar quarters immediately preceding the
18 individual's period of disability, if the period of disability was not
19 longer than two years, if the employment held by the individual
20 immediately preceding the period of disability is no longer
21 available at the conclusion of that period and if the individual files a
22 valid claim for unemployment benefits after the conclusion of that
23 period. For the purposes of this paragraph, "period of disability"
24 means the period from the time at which the individual becomes
25 unable to work because of the compensable disability until the time
26 that the individual becomes able to resume work and continue work
27 on a permanent basis. An individual who files a claim under the
28 provisions of this paragraph (3) shall not be regarded as having left
29 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

47 (2) "Controller" means the Office of the Assistant
48 Commissioner for Finance and Controller of the Department of

1 Labor and Workforce Development, established by the 1982
2 Reorganization Plan of the Department of Labor.

3 (f) "Contributions" means the money payments to the State
4 Unemployment Compensation Fund, required by R.S.43:21-7.
5 "Payments in lieu of contributions" means the money payments to
6 the State Unemployment Compensation Fund by employers electing
7 or required to make payments in lieu of contributions, as provided
8 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-
9 7.3).

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

32 (h) "Employer" means:

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

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

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

46 (4) Any employing unit which together with one or more other
47 employing units is owned or controlled (by legally enforceable
48 means or otherwise), directly or indirectly by the same interests, or

1 which owns or controls one or more other employing units (by
2 legally enforceable means or otherwise), and which, if treated as a
3 single unit with such other employing unit or interest, would be an
4 employer under paragraph (1) of this subsection;

5 (5) Any employing unit for which service in employment as
6 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
7 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
8 performed after December 31, 1977;

9 (6) Any employing unit for which service in employment as
10 defined in R.S.43:21-19 (i) (1) (c) is performed after December 31,
11 1971 and which in either the current or the preceding calendar year
12 paid remuneration for employment in the amount of \$1,000.00 or
13 more;

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

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

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

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

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

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

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

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

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

44 (A) Any service performed prior to January 1, 1972, which was
45 employment as defined in the "unemployment compensation law"
46 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
47 provisions of this subsection, service performed on or after January
48 1, 1972, including service in interstate commerce, performed for

1 remuneration or under any contract of hire, written or oral, express
2 or implied.

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

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

16 (C) Service performed after December 31, 1971 by an individual
17 in the employ of a religious, charitable, educational, or other
18 organization, which is excluded from "employment" as defined in
19 the Federal Unemployment Tax Act, solely by reason of section
20 3306 (c)(8) of that act, if such service is not excluded from
21 "employment" under paragraph (D) below.

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

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

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

32 (iii) Prior to January 1, 1978, in the employ of a school which is
33 not an institution of higher education, and after December 31, 1977,
34 in the employ of a governmental entity referred to in R.S.43:21-19

35 (i) (1) (B), if such service is performed by an individual in the
36 exercise of duties

37 (aa) as an elected official;

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

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

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

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

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

1 trustees are residents of the United States; or (IV) a corporation
2 organized under the laws of the United States or of any state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (J) Domestic service after December 31, 1977 performed in the
25 private home of an employing unit which paid cash remuneration of
26 \$1,000.00 or more to one or more individuals for such domestic
27 service in any calendar quarter in the current or preceding calendar
28 year.

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

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

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

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

45 (4) Services not covered under paragraph (2) of this subsection
46 and performed entirely without this State, with respect to no part of
47 which contributions are required and paid under an unemployment
48 compensation law of any other state or of the federal government,

1 shall be deemed to be employment subject to this chapter
2 (R.S.43:21-1 et seq.) if the individual performing such services is a
3 resident of this State and the employing unit for whom such
4 services are performed files with the division an election that the
5 entire service of such individual shall be deemed to be employment
6 subject to this chapter (R.S.43:21-1 et seq.).

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

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

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

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

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

20 (B) **【Such】** The individual's service is **【either】** outside the usual
21 course of the business for which **【such】** the service is performed**【,**
22 or that such service is performed outside of all the places of
23 business of the enterprise for which such service is performed**】**; and

24 (C) **【Such】** The individual is customarily engaged in an
25 independently established trade, occupation, profession or business
26 of the same nature as that involved in the work performed.

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

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

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

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

46 (B) Domestic service in a private home performed prior to
47 January 1, 1978; and after December 31, 1977, unless performed in
48 the private home of an employing unit which paid cash

1 remuneration of \$1,000.00 or more to one or more individuals for
2 such domestic service in any calendar quarter in the current or
3 preceding calendar year;

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

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

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

19 (F) Service performed in the employ of the United States
20 Government or of any instrumentality of the United States exempt
21 under the Constitution of the United States from the contributions
22 imposed by the "unemployment compensation law," except that to
23 the extent that the Congress of the United States shall permit states
24 to require any instrumentalities of the United States to make
25 payments into an unemployment fund under a state unemployment
26 compensation law, all of the provisions of this act shall be
27 applicable to such instrumentalities, and to service performed for
28 such instrumentalities, in the same manner, to the same extent and
29 on the same terms as to all other employers, employing units,
30 individuals and services; provided that if this State shall not be
31 certified for any year by the Secretary of Labor of the United States
32 under section 3304 of the federal Internal Revenue Code of 1986
33 (26 U.S.C. s.3304), the payments required of such instrumentalities
34 with respect to such year shall be refunded by the division from the
35 fund in the same manner and within the same period as is provided
36 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
37 or collected by the division;

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

44 (H) Services performed as a member of the board of directors, a
45 board of trustees, a board of managers, or a committee of any bank,
46 building and loan, or savings and loan association, incorporated or
47 organized under the laws of this State or of the United States, where

1 such services do not constitute the principal employment of the
2 individual;

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

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

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

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

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

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

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

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

37 (Q) Service performed in the employ of an instrumentality
38 wholly owned by a foreign government if (i) the service is of a
39 character similar to that performed in foreign countries by
40 employees of the United States Government or of an instrumentality
41 thereof, and (ii) the division finds that the United States Secretary
42 of State has certified to the United States Secretary of the Treasury
43 that the foreign government, with respect to whose instrumentality
44 exemption is claimed, grants an equivalent exemption with respect
45 to similar services performed in the foreign country by employees
46 of the United States Government and of instrumentalities thereof;

47 (R) Service in the employ of an international organization
48 entitled to enjoy the privileges, exemptions and immunities under

1 the International Organizations Immunities Act (22 U.S.C. s.288 et
2 seq.);

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

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

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

30 (V) Service performed in the employ of a hospital, if such
31 service is performed by a patient of the hospital; service performed
32 as a student nurse in the employ of a hospital or a nurses' training
33 school by an individual who is enrolled and regularly attending
34 classes in a nurses' training school approved under the laws of this
35 State;

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

40 (X) Services performed by operators of motor vehicles weighing
41 18,000 pounds or more, licensed for commercial use and used for
42 the highway movement of motor freight, who own their equipment
43 or who lease or finance the purchase of their equipment through an
44 entity which is not owned or controlled directly or indirectly by the
45 entity for which the services were performed and who were
46 compensated by receiving a percentage of the gross revenue
47 generated by the transportation move or by a schedule of payment
48 based on the distance and weight of the transportation move;

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

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

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

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

22 (A) The limousine franchisee is incorporated;

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

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

28 (D) The franchisee registers with the Department of Labor and
29 Workforce Development and receives an employer registration
30 number.

31 (10) Services performed by a legal transcriber, or certified court
32 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
33 shall not be deemed to be employment subject to the
34 "unemployment compensation law," R.S.43:21-1 et seq., if those
35 services are provided to a third party by the transcriber or reporter
36 who is referred to the third party pursuant to an agreement with
37 another legal transcriber or legal transcription service, or certified
38 court reporter or court reporting service, on a freelance basis,
39 compensation for which is based upon a fee per transcript page, flat
40 attendance fee, or other flat minimum fee, or combination thereof,
41 set forth in the agreement.

42 For purposes of this paragraph (10): "legal transcription service"
43 and "legal transcribing" mean making use, by audio, video or voice
44 recording, of a verbatim record of court proceedings, depositions,
45 other judicial proceedings, meetings of boards, agencies,
46 corporations, or other bodies or groups, and causing that record to
47 be printed in readable form or produced on a computer screen in

1 readable form; and "legal transcriber" means a person who engages
2 in "legal transcribing."

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

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

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

10 (m) "Unemployment."

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

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

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

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

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

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

41 (o) "Wages" means remuneration paid by employers for
42 employment. If a worker receives gratuities regularly in the course
43 of his employment from other than his employer, his "wages" shall
44 also include the gratuities so received, if reported in writing to his
45 employer in accordance with regulations of the division, and if not
46 so reported, his "wages" shall be determined in accordance with the
47 minimum wage rates prescribed under any labor law or regulation
48 of this State or of the United States, or the amount of remuneration

1 actually received by the employee from his employer, whichever is
2 the higher.

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

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

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

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

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

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

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

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

43 (3) "Base week," commencing on or after January 1, 2001,
44 means any calendar week during which the individual earned in
45 employment from an employer remuneration not less than an
46 amount 20 times the minimum wage in effect pursuant to section 5
47 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
48 year preceding the calendar year in which the benefit year

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

9 (u) "Average weekly wage" means the amount derived by
10 dividing an individual's total wages received during his base year
11 base weeks (as defined in subsection (t) of this section) from that
12 most recent base year employer with whom he has established at
13 least 20 base weeks, by the number of base weeks in which such
14 wages were earned. In the event that such claimant had no employer
15 in his base year with whom he had established at least 20 base
16 weeks, then such individual's average weekly wage shall be
17 computed as if all of his base week wages were received from one
18 employer and as if all his base weeks of employment had been
19 performed in the employ of one employer.

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

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

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

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

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

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

47 (B) Which is approved, licensed or issued a permit to operate as
48 a school by the State Department of Education or other government

1 agency that is authorized within the State to approve, license or
2 issue a permit for the operation of a school; and

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

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

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

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

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

19 (D) Is a public or other nonprofit institution.

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

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

25 (cf: P.L.2017, c.230, s.1)

26

27 4. This act shall take effect immediately.