

[First Reprint]

ASSEMBLY, No. 4132

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman ADAM J. TALIAFERRO

District 3 (Cumberland, Gloucester and Salem)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Senator STEPHEN M. SWEENEY

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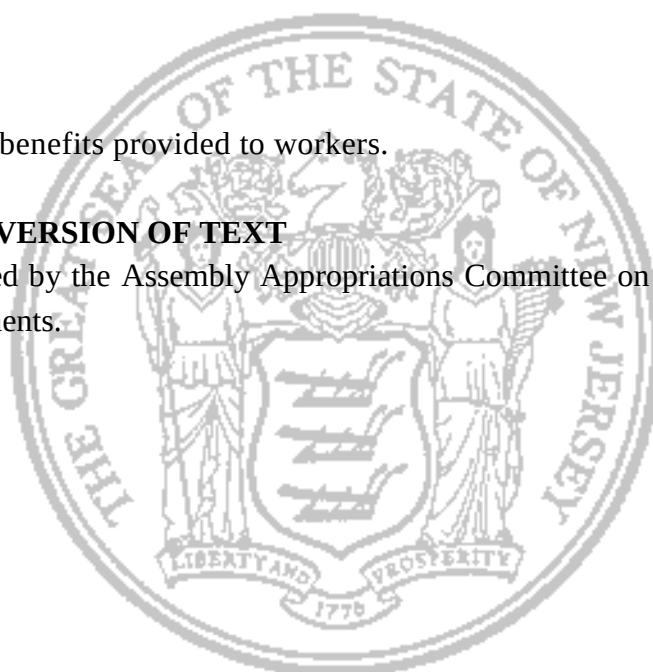
Assemblywomen Jimenez, Jasey, Assemblyman Houghtaling, Senators Addiego, O'Scanlon, Cruz-Perez and Thompson

SYNOPSIS

Concerns benefits provided to workers.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on May 11, 2020, with amendments.



(Sponsorship Updated As Of: 5/14/2020)

1 AN ACT concerning certain benefits ¹**[and leave]**¹ provided to
2 workers, and amending and supplementing various parts of the
3 statutory law.

4

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

7

8 1. NJ.S.11A:8-1 is amended to read as follows:

9 11A:8-1. a. A permanent employee may be laid off for
10 economy, efficiency or other related reason. A permanent
11 employee shall receive 45 days' written notice, unless in State
12 government a greater time period is ordered by the commission,
13 which shall be served personally or by certified mail, of impending
14 layoff or demotion and the reasons therefor. The requirements of
15 this section to provide 45 days' written notice of a layoff shall not
16 apply to employees who have their weekly hours of work reduced
17 and receive shared time unemployment benefits under a shared
18 work program approved pursuant to the provisions of
19 P.L.2011.c.154 (C.43:21-20.3 et seq.). The notice shall expire 120
20 days after service unless extended by the commission for good
21 cause. At the same time the notice is served, the appointing
22 authority shall provide the commission with a list of the names and
23 permanent titles of all employees receiving the notice. The Civil
24 Service Commission shall adopt rules to implement employee
25 layoff rights consistent with the provisions of this section. The
26 commission shall consult with the advisory board representing labor
27 organizations prior to such recommendations.

28 b. Permanent employees in the service of the State or a
29 political subdivision shall be laid off in inverse order of seniority.
30 As used in this subsection, "seniority" means the length of
31 continuous permanent service in the jurisdiction, regardless of title
32 held during the period of service, except that for police and
33 firefighting titles, "seniority" means the length of continuous
34 permanent service only in the current permanent title and any other
35 title that has lateral or demotional rights to the current permanent
36 title. Seniority for all titles shall be based on the total length of
37 calendar years, months and days in continuous permanent service
38 regardless of the length of the employee's work week, work year or
39 part-time status.

40 c. For purposes of State service, a "layoff unit" means a
41 department or autonomous agency and includes all programs
42 administered by that department or agency. For purposes of
43 political subdivision service, the "layoff unit" means a department
44 in a county or municipality, an entire autonomous agency, or an

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 AAP committee amendments adopted May 11, 2020.

1 entire school district, except that the commission may establish
2 broader layoff units.

3 d. For purposes of State service, "job location" means a county.
4 The commission shall assign a job location to every facility and
5 office within a State department or autonomous agency. For
6 purposes of local service, "job location" means the entire political
7 subdivision and includes any facility operated by the political
8 subdivision outside its geographic borders.

9 e. For purposes of determining lateral title rights in State and
10 political subdivision service, title comparability shall be determined
11 by the commission based upon whether the: (1) titles have
12 substantially similar duties and responsibilities; (2) education and
13 experience requirements for the titles are identical or similar; (3)
14 employees in an affected title, with minimal training and
15 orientation, could perform the duties of the designated title by
16 virtue of having qualified for the affected title; and (4) special
17 skills, licenses, certifications or registration requirements for the
18 designated title are similar and do not exceed those which are
19 mandatory for the affected title. Demotional title rights shall be
20 determined by the commission based upon the same criteria, except
21 that the demotional title shall have lower but substantially similar
22 duties and responsibilities as the affected title.

23 f. In State service, a permanent employee in a position affected
24 by a layoff action shall be provided with applicable lateral and
25 demotional title rights first, at the employee's option, within the
26 municipality in which the facility or office is located and then to the
27 job locations selected by the employee within the department or
28 autonomous agency. The employee shall select individual job
29 locations in preferential order from the list of all job locations and
30 shall indicate job locations at which the employee will accept lateral
31 and demotional title rights. In local service, a permanent employee
32 in a position affected by a layoff action shall be provided lateral and
33 demotional title rights within the layoff unit.

34 g. Following the employee's selection of job location
35 preferences, lateral and demotional title rights shall be provided in
36 the following order:

37 (1) a vacant position that the appointing authority has previously
38 indicated it is willing to fill;

39 (2) a position held by a provisional employee who does not have
40 permanent status in another title, and if there are multiple
41 employees at a job location, the specific position shall be
42 determined by the appointing authority;

43 (3) a position held by a provisional employee who has
44 permanent status in another title, and if there are multiple
45 provisional employees at a job location, the specific position shall
46 be determined based on level of the permanent title held and
47 seniority;

1 (4) the position held by the employee serving in a working test
2 period with the least seniority;

3 (5) in State service, and in local jurisdictions having a
4 performance evaluation program approved by the commission, the
5 position held by the permanent employee whose performance rating
6 within the most recent 12 months in the employee's permanent title
7 was significantly below standards or an equivalent rating;

8 (6) in State service, and in local jurisdictions having a
9 performance evaluation program approved by the commission, the
10 position held by the permanent employee whose performance rating
11 within the most recent 12 months in the employee's permanent title
12 was marginally below standards or an equivalent rating; and

13 (7) the position held by the permanent employee with the least
14 seniority.

15 h. A permanent employee shall be granted special
16 reemployment rights based on the employee's permanent title at the
17 time of the layoff action and the employee shall be certified for
18 reappointment after the layoff action to the same, lateral and lower
19 related titles. Special reemployment rights shall be determined by
20 the commission in the same manner as lateral and demotional
21 rights.

22 i. Notwithstanding the provisions above, at no time shall any
23 person on a military leave of absence for active service in the
24 Armed Forces of the United States or for active service in the
25 organized militia in time of war or emergency be laid off.

26 For the purposes of this section, "organized militia" means the
27 Army and Air National Guard of New Jersey or any other state, and
28 "active service" includes National Guard active service ordered by a
29 Governor of a state.

30 (cf: P.L.2019, c.286, s.3)

31

32 2. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to
33 read as follows:

34 9. a. In order to receive any State aid pursuant to P.L.2007,
35 c.260 (C.18A:7F-43 et al.), a school district, charter school,
36 renaissance school project, county vocational school district, or
37 county special services school district shall comply with the rules
38 and standards for the equalization of opportunity which have been
39 or may hereafter be prescribed by law or formulated by the
40 commissioner pursuant to law, including those implementing
41 P.L.1996, c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260
42 (C.18A:7F-43 et al.) or related to the core curriculum content
43 standards required by P.L.2007, c.260 (C.18A:7F-43 et al.), and
44 shall further comply with any directive issued by the commissioner
45 pursuant to section 6 of P.L.1996, c.138 (C.18A:7F-6). The
46 commissioner is hereby authorized to withhold all or part of a
47 district's State aid for failure to comply with any rule, standard or
48 directive. No State aid shall be paid to any district which has not

1 provided public school facilities for at least 180 days during the
2 preceding school year, but the commissioner, for good cause shown,
3 may remit the penalty.

4 b. Notwithstanding the provisions of subsection a. of this
5 section to the contrary, in the event that a school district is required
6 to close the schools of the district for more than three consecutive
7 school days due to a declared state of emergency, declared public
8 health emergency, or a directive by the appropriate health agency or
9 officer to institute a public health-related closure, the commissioner
10 shall allow the district to apply to the 180-day requirement
11 established pursuant to subsection a. of this section, one or more
12 days of virtual or remote instruction provided to students on the day
13 or days the schools of the district were closed if the program of
14 virtual or remote instruction meets such criteria as may be
15 established by the commissioner. A district that wants to use a
16 program of virtual or remote instruction to meet the 180-day
17 requirement in accordance with this subsection shall, with board of
18 education approval, submit its proposed program of virtual or
19 remote instruction to the commissioner within 30 days of the
20 effective date of P.L.2020, c.27 and annually thereafter, provided
21 however that if the school district is unable to complete and submit
22 its proposed program within the 30-day period and the district is
23 required to close its schools for a declared state of emergency,
24 declared public health emergency, or a directive by the appropriate
25 health agency or officer to institute a public health-related closure,
26 the commissioner may retroactively approve the program.

27 A day of virtual or remote instruction, if instituted under a
28 program approved by the commissioner, shall be considered the
29 equivalent of a full day of school attendance for the purposes of
30 meeting State and local graduation requirements, the awarding of
31 course credit, and such other matters as determined by the
32 commissioner.

33 If a program of virtual or remote instruction is implemented for
34 the general education students the same educational opportunities
35 shall be provided to students with disabilities. Special education
36 and related services, including speech language services, counseling
37 services, physical therapy, occupational therapy, and behavioral
38 services, may be delivered to students with disabilities through the
39 use of electronic communication or a virtual or online platform and
40 as required by the student's Individualized Education Program
41 (IEP), to the greatest extent practicable.

42 c. In the event that the State or local health department
43 determines that it is advisable to close or mandates closure of the
44 schools of a school district due to a declared state of emergency,
45 declared public health emergency, or a directive by the appropriate
46 health agency or officer to institute a public health-related closure,
47 the superintendent of schools shall have the authority to implement
48 the school district's program of virtual or remote instruction. The

1 superintendent shall consult with the board of education prior to
2 such decision if practicable. The superintendent shall ensure that
3 students, parents, staff, and the board of education or boards of
4 education are informed promptly of the superintendent's decision.

5 d. The commissioner shall define virtual and remote instruction
6 and establish guidance for its use. The guidance shall provide
7 school districts with information on:

8 (1) providing instruction to students who may not have access to
9 a computer or to sufficient broadband, or to any technology
10 required for virtual or remote instruction;

11 (2) the required length of a virtual or remote instruction day;

12 (3) the impact of virtual or remote instruction on the school
13 lunch and school breakfast programs;

14 (4) the impact of virtual or remote instruction on the schedule
15 for administering State assessments; and

16 (5) such other topics as the commissioner deems necessary.

17 e. (1) Nothing in subsection b., c., or d. of this section shall be
18 construed to limit, supersede or preempt the rights, privileges,
19 compensation, remedies, and procedures afforded to public school
20 employees or a collective bargaining unit under federal or State law
21 or any provision of a collective bargaining agreement entered into
22 by the school district. In the event of the closure of the schools of a
23 school district due to a declared state of emergency, declared public
24 health emergency, or a directive by the appropriate health agency or
25 officer to institute a public health-related closure for a period longer
26 than three consecutive school days, public school employees
27 covered by a collective negotiations agreement shall be entitled to
28 compensation, benefits, and emoluments as provided in the
29 collective negotiations agreement as if the school facilities
30 remained open for any purpose and for any time lost as a result of
31 school closures or use of virtual or remote instruction, except that
32 additional compensation, benefits, and emoluments may be
33 negotiated for additional work performed.

34 (2) In the event of the closure of the schools of a school district
35 due to a declared state of emergency, declared public health
36 emergency, or a directive by the appropriate health agency or
37 officer to institute a public health-related closure for a period longer
38 than three consecutive school days, public school employees who
39 are not covered by a collective negotiations agreement shall be
40 entitled to any benefits, compensation, and emoluments to which
41 they otherwise would be entitled as if they had performed the work
42 for such benefits, compensation, and emoluments as if the school
43 facilities remained open for any purpose and for any time lost as a
44 result of school closures or use of virtual or remote instruction.

45 (3) If the schools of a school district are subject to a health-
46 related closure for a period longer than three consecutive school
47 days, which is the result of a declared state of emergency, declared
48 public health emergency, or a directive by the appropriate health

1 agency or officer, then the school district shall continue to make
2 payments of benefits, compensation, and emoluments pursuant to
3 the terms of a contract with a contracted service provider in effect
4 on the date of the closure as if the services for such benefits,
5 compensation, and emoluments had been provided, and as if the
6 school facilities had remained open. Payments received by a
7 contracted service provider pursuant to this paragraph shall be used
8 to meet the payroll and fixed costs obligations of the contracted
9 service provider¹, and employees of the contracted service provider
10 shall be paid as if the school facilities had remained open and in full
11 operation¹. ¹Upon request of the school district, the contracted
12 service provider shall certify, and provide any supporting
13 documentation to a school district as may be necessary to verify,
14 that payments received have been used solely to meet the payroll
15 and fixed costs of the contracted service provider. Any portion of
16 those payments not used to meet the payroll and fixed costs shall be
17 returned to the school district.¹ A school district shall make all
18 reasonable efforts to renegotiate a contract in good faith subject to
19 this paragraph and may direct contracted service providers, who are
20 a party to a contract and receive payments from the school district
21 under this paragraph, to provide services on behalf of the school
22 district which may reasonably be provided and are within the
23 general expertise or service provision of the original contract.
24 Negotiations shall not include indirect costs such as fuel or tolls.
25 As a condition of negotiations, a contracted service provider shall
26 reveal to the school district whether the entity has insurance
27 coverage for business interruption covering work stoppages. A
28 school district shall not be liable for the payment of benefits,
29 compensation, and emoluments pursuant to the terms of a contract
30 with a contracted service provider under this paragraph for services
31 which otherwise would not have been provided had the school
32 facilities remained open. Nothing in this paragraph shall be
33 construed to require a school district to make payments to a party in
34 material breach of a contract with a contracted service provider if
35 the breach was not due to a closure resulting from a declared state
36 of emergency, declared public health emergency, or a directive by
37 the appropriate health agency or officer.

38 (4) If the schools of a school district are subject to a health-
39 related closure for a period longer than three consecutive school
40 days, which is the result of a declared state of emergency, declared
41 public health emergency, or a directive by the appropriate health
42 agency or officer, the school district shall be obligated to make
43 payments for benefits, compensation, and emoluments and all
44 payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et
45 seq.), to an educational services commission, county special
46 services school district, and a jointure commission, and under any
47 shared services agreement and cooperative contract entered into
48 with any other public entity. An educational services commission,

1 county special services school district, and jointure commission
2 shall continue to make payments of benefits, compensation, and
3 emoluments pursuant to the terms of a contract with a contracted
4 service provider or a shared services agreement in effect on the date
5 of the closure as if the services for such benefits, compensation, and
6 emoluments had been provided, and as if the school facilities had
7 remained open. Payments received by a contracted service provider
8 or public entity pursuant to this paragraph shall be used to meet the
9 payroll and fixed costs obligations of the contracted service
10 provider or public entity¹, and employees of the contracted service
11 provider or public entity shall be paid as if the school facilities had
12 remained open and in full operation¹. ¹Upon request of the school
13 district, the educational services commission, county special
14 services school district, and a jointure commission shall certify, and
15 provide any supporting documentation to a school district as may be
16 necessary to verify, that payments received have been used solely to
17 meet the payroll and fixed costs of the contracted service provider
18 or public entity. Any portion of those payments not used to meet
19 the payroll and fixed costs shall be returned to the school district.¹
20 An educational services commission, county special services school
21 district, jointure commission or any lead school district under a
22 shared services agreement or cooperative contract, shall make all
23 reasonable efforts to renegotiate a contract in good faith subject to
24 this paragraph and may direct contracted service providers or public
25 entities, who are a party to a contract and receive payments under
26 this paragraph, to provide services which may reasonably be
27 provided and are within the general expertise or service provision of
28 the original contract. Negotiations shall not include indirect costs
29 such as fuel or tolls. As a condition of negotiations, a contracted
30 service provider or public entity shall reveal whether the entity has
31 insurance coverage for business interruption covering work
32 stoppages.

33 (5) The provisions ¹of paragraphs (1) through (4)¹ of this
34 subsection e. shall not apply to any employee whose weekly hours
35 of work are reduced, and to whom unemployment benefits are
36 provided, pursuant to a shared work program approved pursuant to
37 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). ¹A
38 contracted service provider, educational services commission,
39 county special services school district, or jointure commission shall
40 notify any school district with which it has entered into a contract to
41 provide services of its intent to reduce the hours of work of its
42 employees pursuant to a shared work program approved pursuant to
43 the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.).
44 Notwithstanding the provisions of paragraph (3) of this subsection
45 e., if a contracted service provider reduces the amount that it pays
46 to its employees providing services to a school district, and that
47 reduction is the result of a reduction of workhours of the those

1 employees made pursuant to a shared work program approved
2 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),
3 then the amount paid by the public school district to the contracted
4 service provider shall be reduced by the same amount.
5 Notwithstanding the provisions of paragraph (4) of this subsection
6 e., if an educational services commission, county special services
7 school district, or jointure commission reduces the amount that it
8 pays to its employees providing services to a school district, and
9 that reduction is the result of a reduction of workhours of the those
10 employees made pursuant to a shared work program approved
11 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.),
12 then the amount paid by the public school district to the educational
13 services commission, county special services school district, or
14 jointure commission shall be reduced by the same amount.¹

15 f. For purposes of subsections b., c., d., and e. of this section,
16 “school district” shall include a charter school and a renaissance
17 school project.

18 (cf: P.L.2020, c.27, s.1)

19

20 ¹[3. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
21 read as follows:

22 3. As used in this act:

23 a. "Child" means a biological, adopted, foster child, or resource
24 family child, stepchild, legal ward, or child of a parent, including a
25 child who becomes the child of a parent pursuant to a valid written
26 agreement between the parent and a gestational carrier.

27 b. "Director" means the Director of the Division on Civil
28 Rights.

29 c. "Division" means the Division on Civil Rights in the
30 Department of Law and Public Safety.

31 d. "Employ" means to suffer or permit to work for
32 compensation, and includes ongoing, contractual relationships in
33 which the employer retains substantial direct or indirect control
34 over the employee's employment opportunities or terms and
35 conditions of employment.

36 e. "Employee" means a person who is employed for at least 12
37 months by an employer, with respect to whom benefits are sought
38 under this act, for not less than 1,000 base hours during the
39 immediately preceding 12-month period. Any time, up to a
40 maximum of 90 calendar days, during which a person is laid off or
41 furloughed by an employer due to that employer curtailing
42 operations because of a state of emergency declared after October
43 22, 2012, shall be regarded as time in which the person is employed
44 for the purpose of determining eligibility for leave time under this
45 act. In making the determination, the base hours per week during
46 the layoff or furlough shall be deemed to be the same as the average
47 number of hours worked per week during the rest of the 12-month
48 period.

1 f. "Employer" means a person or corporation, partnership,
2 individual proprietorship, joint venture, firm or company or other
3 similar legal entity which engages the services of an employee and
4 which:

5 (1) (Deleted by amendment, P.L.2019, c.37);

6 (2) (Deleted by amendment, P.L.2019, c.37);

7 (3) **【With respect to the period of time from the 1,095th day**
8 **following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)**
9 **through June 30, 2019, employs 50 or more employees for each**
10 **working day during each of 20 or more calendar workweeks in the**
11 **then current or immediately preceding calendar year; and】** (Deleted
12 by amendment, P.L. , c.) (pending before the Legislature as
13 this bill)

14 (4) With respect to any period of time **【on or after】** from June
15 30, 2019 until the effective date of P.L. c. (pending before the
16 Legislature as this bill), employs 30 or more employees for each
17 working day during each of 20 or more calendar workweeks in the
18 then current or immediately preceding calendar year; and

19 (5) With respect to any period of time after the effective date of
20 P.L. c. (pending before the Legislature as this bill), employs
21 one or more employees for each working day during each of 20 or
22 more calendar workweeks in the then current or immediately
23 preceding calendar year.

24 "Employer" includes the State, any political subdivision thereof,
25 and all public offices, agencies, boards or bodies.

26 g. "Employment benefits" means all benefits and policies
27 provided or made available to employees by an employer, and
28 includes group life insurance, health insurance, disability insurance,
29 sick leave, annual leave, pensions, or other similar benefits.

30 h. "Parent" means a person who is the biological parent,
31 adoptive parent, foster parent, resource family parent, step-parent,
32 parent-in-law or legal guardian, having a "parent-child relationship"
33 with a child as defined by law, or having sole or joint legal or
34 physical custody, care, guardianship, or visitation with a child, or
35 who became the parent of the child pursuant to a valid written
36 agreement between the parent and a gestational carrier.

37 i. "Family leave" means leave from employment so that the
38 employee may provide care made necessary by reason of:

39 (1) the birth of a child of the employee, including a child born
40 pursuant to a valid written agreement between the employee and a
41 gestational carrier;

42 (2) the placement of a child into foster care with the employee
43 or in connection with adoption of such child by the employee;

44 (3) the serious health condition of a family member of the
45 employee; or.

46 (4) in the event of a state of emergency declared by the
47 Governor, or when indicated to be needed by the Commissioner of
48 Health or other public health authority, an epidemic of a

1 communicable disease, a known or suspected exposure to the
2 communicable disease, or efforts to prevent spread of a
3 communicable disease, which:

4 (a) requires in-home care or treatment of a child due to the
5 closure of the school or place of care of the child of the employee,
6 by order of a public official due to the epidemic or other public
7 health emergency;

8 (b) prompts the issuance by a public health authority of a
9 determination, including by mandatory quarantine, requiring or
10 imposing responsive or prophylactic measures as a result of illness
11 caused by an epidemic of a communicable disease or known or
12 suspected exposure to the communicable disease because the
13 presence in the community of a family member in need of care by
14 the employee, would jeopardize the health of others; or

15 (c) results in the recommendation of a health care provider or
16 public health authority, that a family member in need of care by the
17 employee voluntarily undergo self-quarantine as a result of
18 suspected exposure to a communicable disease because the presence
19 in the community of that family member in need of care by the
20 employee, would jeopardize the health of others.

21 j. "Family member" means a child, parent, parent-in-law,
22 sibling, grandparent, grandchild, spouse, domestic partner, or one
23 partner in a civil union couple, or any other individual related by
24 blood to the employee, and any other individual that the employee
25 shows to have a close association with the employee which is the
26 equivalent of a family relationship.

27 k. "Reduced leave schedule" means leave scheduled for fewer
28 than an employee's usual number of hours worked per workweek
29 but not for fewer than an employee's usual number of hours worked
30 per workday, unless agreed to by the employee and the employer.

31 l. "Serious health condition" means an illness, injury,
32 impairment, or physical or mental condition which requires:

33 (1) inpatient care in a hospital, hospice, or residential medical
34 care facility; or

35 (2) continuing medical treatment or continuing supervision by a
36 health care provider.

37 m. "State of emergency" means a natural or man-made disaster
38 or emergency for which a state of emergency has been declared by
39 the President of the United States or the Governor, or for which a
40 state of emergency has been declared by a municipal emergency
41 management coordinator.

42 n. "Health care provider" means a duly licensed health care
43 provider or other health care provider deemed appropriate by the
44 director.

45 (cf: P.L.2020, c.23, s.1)]¹

46

47 ¹[4.] 3.¹ R.S.43:21-3 is amended to read as follows:

48 43:21-3. Benefits.

1 (a) Payment of benefits.

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

4 (b) Weekly benefits for unemployment.

5 (1) With respect to an individual's benefit year commencing on
6 or after July 1, 1961 and before June 1, 2020¹, and after the time
7 that federal financing of unemployment benefits in this State,
8 pursuant to the "Coronavirus Aid, Relief, and Economic Security
9 Act," Pub. Law 116-136, ceases¹, such individual, if eligible and
10 unemployed (as defined in subsection (m) of R.S.43:21-19), shall
11 be paid an amount (except as to final payment) equal to his weekly
12 benefit rate less any remuneration, other than remuneration from
13 self-employment paid to an individual who is receiving a self-
14 employment assistance allowance, paid or payable to him for such
15 week in excess of 20% of his weekly benefit rate (fractional part of
16 a dollar omitted) or \$5.00, whichever is the greater; provided that
17 such amount shall be computed to the next lower multiple of \$1.00
18 if not already a multiple thereof.

19 (2) With respect to an individual's benefit year commencing on
20 or after June 1, 2020 ¹until the time that federal financing of
21 unemployment benefits in this State, pursuant to the "Coronavirus
22 Aid, Relief, and Economic Security Act," Pub. Law 116-136
23 ceases¹, such individual, if eligible and unemployed (as defined in
24 subsection (m) of R.S.43:21-19), shall be paid an amount (except as
25 to final payment) equal to his weekly benefit rate less any
26 remuneration, other than remuneration from self-employment paid
27 to an individual who is receiving a self-employment assistance
28 allowance, paid or payable to him for such week in excess of 40%
29 of his weekly benefit rate (fractional part of a dollar omitted) or
30 \$5.00, whichever is the greater; provided that such amount shall be
31 computed to the next lower multiple of \$1.00 if not already a
32 multiple thereof.

33 (c) Weekly benefit rate.

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

44 (2) Dependency benefits.

45 (A) With respect to an individual whose benefit year commences
46 after September 30, 1984, the individual's weekly benefit rate as
47 determined in paragraph (1) of this subsection (c) will be increased
48 by 7% for the first dependent and 4% each for the next two

1 dependents (up to a maximum of three dependents), computed to
2 the next lower multiple of \$1.00 if not already a multiple thereof,
3 except that the maximum weekly benefit rate payable for an
4 individual claiming dependency benefits shall not exceed the
5 maximum amount determined under paragraph (1) of this
6 subsection (c).

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

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

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

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

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

42 (3) For the purposes of this subsection (c), the "Statewide
43 average weekly remuneration paid to workers by employers" shall
44 be computed and determined by the Commissioner of Labor and
45 Workforce Development on or before September 1 of each year on
46 the basis of one-fifty-second of the total remuneration reported for
47 the preceding calendar year by employers subject to this chapter,
48 divided by the average of the number of workers reported by such

1 employers, and shall be effective as to benefit determinations in the
2 calendar year following such computation and determination.

3 (d) Maximum total benefits.

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

5 (B) (i) With respect to an individual for whom benefits shall be
6 payable for benefit years commencing on or after July 1, 1986, and
7 before July 1, 2003 as provided in this section, the individual shall
8 be entitled to receive a total amount of benefits equal to three-
9 quarters of the individual's base weeks with all employers in the
10 base year multiplied by the individual's weekly benefit rate; but the
11 amount of benefits thus resulting under that determination shall be
12 adjusted to the next lower multiple of \$1.00 if not already a
13 multiple thereof. With respect to an individual for whom benefits
14 shall be payable for benefit years commencing on or after July 1,
15 2003 as provided in this section, the individual shall be entitled to
16 receive a total amount of benefits equal to the number of the
17 individual's base weeks with all employers in the base year
18 multiplied by the individual's weekly benefit rate; but the amount of
19 benefits thus resulting under that determination shall be adjusted to
20 the next lower multiple of \$1.00 if not already a multiple thereof.

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

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

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

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

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

42 (cf: P.L.2004, c.45, s.1)

43
44 ¹**[5.] 4.¹** R.S.43:21-4 is amended to read as follows:

45 43:21-4. Benefit eligibility conditions. An unemployed
46 individual shall be eligible to receive benefits with respect to any
47 week eligible only if:

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

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

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

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

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

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

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

38 (i) The training is for a labor demand occupation and is likely to
39 enhance the individual's marketable skills and earning power,
40 except that the training may be for an occupation other than a labor
41 demand occupation if the individual is receiving short-time benefits
42 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)
43 and the training is necessary to prevent a likely loss of jobs;

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

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

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

7 (v) The individual enrolls in vocational training, remedial
8 education or a combination of both on a full-time basis, except that
9 the training or education may be on a part-time basis if the
10 individual is receiving short-time benefits pursuant to the provisions
11 of P.L.2011, c.154 (C.43:21-20.3 et al.).

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

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

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

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

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

24 (D) For the purpose of this paragraph (4), "labor demand
25 occupation" means an occupation for which there is or is likely to
26 be an excess of demand over supply for adequately trained workers,
27 including, but not limited to, an occupation designated as a labor
28 demand occupation by the Center for Occupational Employment
29 Information pursuant to the provisions of subsection d. of section
30 27 of P.L.2005, c.354 (C.34:1A-86).

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

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

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

47 (7) No individual, who is otherwise eligible, shall be deemed
48 ineligible or unavailable for work with respect to any week because,

1 during that week, the individual fails or refuses to accept work
2 while the individual is participating on a full-time basis in self-
3 employment assistance activities authorized by the division,
4 whether or not the individual is receiving a self-employment
5 allowance during that week.

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

13 (A) The individual has completed the reemployment services; or
14 (B) There is justifiable cause for the failure to participate, which
15 shall include participation in employment and training, self-
16 employment assistance activities or other activities authorized by
17 the division to assist reemployment or enhance the marketable skills
18 and earning power of the individual and which shall include any
19 other circumstance indicated pursuant to this section in which an
20 individual is not required to be available for and actively seeking
21 work to receive benefits.

22 (9) An unemployed individual, who is otherwise eligible, shall
23 not be deemed unavailable for work or ineligible solely by reason of
24 the individual's work as a board worker for a county board of
25 elections on an election day.

26 (10) An individual who is employed by a shared work employer
27 and is otherwise eligible for benefits shall not be deemed ineligible
28 for short-time benefits because the individual is unavailable for
29 work with employers other than the shared work employer, so long
30 as:

31 (A) The individual is able to work and is available to work the
32 individual's normal full-time hours for the shared work employer;
33 or

34 (B) The individual is attending a training program which is in
35 compliance with the provisions of paragraph (4) of subsection (c) of
36 this section and the agreements and certifications required pursuant
37 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

38 (d) With respect to any benefit year commencing before January
39 1, 2002, the individual has been totally or partially unemployed for
40 a waiting period of one week in the benefit year which includes that
41 week. When benefits become payable with respect to the third
42 consecutive week next following the waiting period, the individual
43 shall be eligible to receive benefits as appropriate with respect to
44 the waiting period. No week shall be counted as a week of
45 unemployment for the purposes of this subsection:

46 (1) If benefits have been paid, or are payable with respect
47 thereto; provided that the requirements of this paragraph shall be

1 waived with respect to any benefits paid or payable for a waiting
2 period as provided in this subsection;

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

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

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

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

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

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

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

23 (4) With respect to benefit years commencing on or after
24 January 7, 2001 and before June 1 2020, except as otherwise
25 provided in paragraph (5) of this subsection, the individual has,
26 during his base year as defined in subsection (c) of R.S.43:21-19:

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

29 (B) If the individual has not met the requirements of
30 subparagraph (A) of this paragraph (4), earned remuneration not
31 less than an amount 1,000 times the minimum wage in effect
32 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
33 1 of the calendar year preceding the calendar year in which the
34 benefit year commences, which amount shall be adjusted to the next
35 higher multiple of \$100 if not already a multiple thereof.

36 (5) With respect to benefit years commencing on or after
37 January 7, 2001 and before June 1, 2020¹, and after the time that
38 federal financing of unemployment benefits in this State, pursuant
39 to the "Coronavirus Aid, Relief, and Economic Security Act," Pub.
40 Law 116-136, ceases¹, notwithstanding the provisions of paragraph
41 (4) of this subsection, an unemployed individual claiming benefits
42 on the basis of service performed in the production and harvesting
43 of agricultural crops shall, subject to the limitations of subsection
44 (i) of R.S.43:21-19, be eligible to receive benefits if during his base
45 year, as defined in subsection (c) of R.S.43:21-19, the individual:

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

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

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

9 (6) With respect to benefit years commencing on or after June 1,
10 2020¹, until the time that federal financing of unemployment
11 benefits in this State, pursuant to the "Coronavirus Aid, Relief, and
12 Economic Security Act," Pub. Law 116-136 ceases¹, the individual,
13 during his base year as defined in subsection (c) of R.S.43:21-19:

14 (A) Has established at least 20 base weeks as defined in
15 '[paragraphs (2) and (3)] paragraph (4)¹ of subsection (t) of
16 R.S.43:21-19; or

17 (B) Has, if the individual has not met the requirements of
18 subparagraph (A) of this paragraph (6), earned remuneration not
19 less than an amount 500 times the minimum wage in effect pursuant
20 to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the
21 calendar year preceding the calendar year in which the benefit year
22 commences, which amount shall be adjusted to the next higher
23 multiple of \$100 if not already a multiple thereof; or

24 (C) Has, if the individual has not met the requirements of
25 subparagraph (A) or subparagraph (B) of this paragraph (6),
26 performed at least 770 hours of service in the production and
27 harvesting of agricultural crops, subject to the limitations of
28 subparagraph (I) of paragraph (1) of subsection (i) of R.S.43:21-19.

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

35 (f) (1) The individual has suffered any accident or sickness not
36 compensable under the workers' compensation law, R.S.34:15-1 et
37 seq. and resulting in the individual's total disability to perform any
38 work for remuneration, and would be eligible to receive benefits
39 under this chapter (R.S.43:21-1 et seq.) (without regard to the
40 maximum amount of benefits payable during any benefit year)
41 except for the inability to work and has furnished notice and proof
42 of claim to the division, in accordance with its rules and
43 regulations, and payment is not precluded by the provisions of
44 R.S.43:21-3(d); provided, however, that benefits paid under this
45 subsection (f) shall be computed on the basis of only those base
46 year wages earned by the claimant as a "covered individual," as
47 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-

1 27); provided further that no benefits shall be payable under this
2 subsection to any individual:

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

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

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

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

21 (E) For any week with respect to which or part of which the
22 individual has received or is seeking disability benefits under the
23 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
24 25 et al.);

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

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

46 (A) For any week with respect to which or a part of which the
47 individual has received or is seeking benefits under any
48 unemployment compensation or disability benefits law of any other

1 state or of the United States; provided that if the appropriate agency
2 of such other state or the United States finally determines that the
3 individual is not entitled to such benefits, this disqualification shall
4 not apply;

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

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

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

23 (3) Benefit payments under this subsection (f) shall be charged
24 to and paid from the State disability benefits fund established by the
25 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
26 25 et al.), and shall not be charged to any employer account in
27 computing any employer's experience rate for contributions payable
28 under this chapter.

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

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

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

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

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

33 (5) With respect to services performed after the effective date of
34 P.L. , c. (pending before the legislature as this bill), as used in
35 this subsection:

36 "Established and customary vacation period or holiday recess"
37 includes those breaks scheduled during fall, winter, and spring
38 recesses when those vacation periods occur within a term or
39 semester. "Established and customary vacation period or holiday
40 recess" does not include the summer term or semester, unless, based
41 on objective criteria including enrollment and staffing, the summer
42 is not in fact a part of the academic year for a particular institution.

43 "Reasonable assurance" means a written, verbal, or implied
44 agreement that the employee will perform services in the same
45 capacity during the ensuing academic year or term as in the first
46 academic year or term. A person shall not be deemed to be
47 performing services "in the same capacity" unless those services are

1 rendered under the same terms or conditions of employment in the
2 ensuing year as in the first academic year or term.

3 An individual who is tenured or holds tenure track status is
4 considered to have reasonable assurance, unless advised otherwise.
5 For the purposes of this subsection, tenure track status means a
6 probationary faculty employee having an opportunity to be
7 reviewed for tenure.

8 A person is presumed not to have reasonable assurance under an
9 offer that is conditioned on enrollment, funding, program changes,
10 or other circumstances under the control of the employer. It is the
11 employer's burden to provide sufficient documentation to overcome
12 this presumption. Reasonable assurance shall be determined on a
13 case-by-case basis considering the totality of circumstances rather
14 than on the existence of any one factor. For an individual to be
15 regarded as having reasonable assurance of employment, the totality
16 of circumstances must show that it is highly probable that there is a
17 job available for the employee in the following academic year or
18 term. If any contingencies in the employment offer are within the
19 employer's control, the claimant shall not be regarded as having a
20 reasonable assurance of employment. Contingencies within the
21 employer's control include, but are not limited to, enrollment,
22 funding, including appropriations and the allocation of funding,
23 program changes, final course offering, and facility availability.

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

33 (i) (1) Benefits shall not be paid on the basis of services
34 performed by an alien unless such alien is an individual who was
35 lawfully admitted for permanent residence at the time the services
36 were performed and was lawfully present for the purpose of
37 performing the services or otherwise was permanently residing in
38 the United States under color of law at the time the services were
39 performed (including an alien who is lawfully present in the United
40 States as a result of the application of the provisions of section
41 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and
42 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any
43 modifications of the provisions of section 3304(a)(14) of the
44 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) [as
45 provided by Pub.L.94-566], which specify other conditions or other
46 effective dates than stated herein for the denial of benefits based on
47 services performed by aliens and which modifications are required
48 to be implemented under State law as a condition for full tax credit

1 against the tax imposed by the Federal Unemployment Tax Act,
2 shall be deemed applicable under the provisions of this section.

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

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

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

18 (cf: P.L.2019, c.37, s.5)

19

20 '【6.】 5.' R.S.43:21-6 is amended to read as follows:

21 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
22 accordance with such regulations as the Director of the Division of
23 Unemployment and Temporary Disability Insurance of the
24 Department of Labor and Workforce Development of the State of
25 New Jersey may approve. Each employer shall post and maintain
26 on his premises printed notices of his subject status, of such design,
27 in such numbers and at such places as the director of the division
28 may determine to be necessary to give notice thereof to persons in
29 the employer's service. Each employer shall give to each individual
30 at the time he becomes unemployed, for any reason, whether the
31 unemployment is permanent or temporary, or, if the employer
32 provides the individual an advanced notification of a layoff, at the
33 time of that notification, a printed copy of benefit instructions. The
34 benefit instructions given to the individual shall include, but not be
35 limited to, the following information: (A) the date upon which the
36 individual becomes unemployed, and, in the case that the
37 unemployment is temporary, to the extent possible, the date upon
38 which the individual is expected to be recalled to work; and (B) that
39 the individual may lose some or all of the benefits to which he is
40 entitled if he fails to file a claim in a timely manner. Both the
41 aforesaid notices and instructions, including information detailing
42 the time sensitivity of filing a claim, shall be supplied by the
43 division to employers without cost to them. Nothing in this section
44 shall be construed so as to require an employer to re-hire an
45 individual formerly in the employer's service.

46 (2) Any claimant may choose to certify, cancel or close his
47 claim for unemployment insurance benefits at any time, 24 hours a
48 day and seven days a week, via the Internet on a website developed

1 by the division; however, any claim that is certified, cancelled or
2 closed after 7:00 PM will not be processed by the division until the
3 next scheduled posting date.

4 (3) If an employer provides advanced notification of a layoff
5 pursuant to paragraph (1) of this subsection a., the notified
6 individual may file for benefits at the time of the notification, and
7 the division, upon finding that the claim is valid, shall pay the
8 benefit upon the commencement of the period of unemployment.

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

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

20 In his discretion, the director may appoint special deputies to
21 make initial or subsequent determinations under subsection (f) of
22 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

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

31 The deputy shall make an initial determination contingent upon
32 the receipt of all necessary information and notify the claimant no
33 later than three weeks from the date on which the division received
34 the claim for benefits. If an initial determination cannot be made
35 due to the lack of documentation, notification will be sent to the
36 claimant providing a status of the claim. The division will then
37 have an additional two weeks to obtain the missing information in
38 order to make the initial determination and advise the claimant
39 accordingly. The initial determination shall show the weekly benefit
40 amount payable, the maximum duration of benefits with respect to
41 the employer to whom the determination relates, and the ratio of
42 benefits chargeable to the employer's account for benefit years
43 commencing on or after July 1, 1986, and also shall show whether
44 the claimant is ineligible or disqualified for benefits under the
45 initial determination. The employer whose account may be charged
46 for benefits payable pursuant to said determination shall be
47 promptly notified thereof.

1 Whenever an initial determination is based upon information
2 other than that supplied by an employer because such employer
3 failed to respond to the deputy's request for information, such initial
4 determination and any subsequent determination thereunder shall be
5 incontestable by the noncomplying employer, as to any charges to
6 his employer's account because of benefits paid prior to the close of
7 the calendar week following the receipt of his reply. Such initial
8 determination shall be altered if necessary upon receipt of
9 information from the employer, and any benefits paid or payable
10 with respect to weeks occurring subsequent to the close of the
11 calendar week following the receipt of the employer's reply shall be
12 paid in accordance with such altered initial determination.

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

24 (A) The correctness of the benefit payments authorized to be
25 made under the determination;

26 (B) Fraud in connection with the claim pursuant to which the
27 initial determination is issued;

28 (C) The refusal of suitable work offered by the chargeable
29 employer filing the appeal;

30 (D) Gross misconduct as provided in subsection (b) of
31 R.S.43:21-5.

32 The amount of benefits payable under an initial determination
33 may be reduced or canceled if necessary to avoid payment of
34 benefits for a number of weeks in excess of the maximum specified
35 in subsection (d) of R.S.43:21-3.

36 Unless the claimant or any interested party, within seven
37 calendar days after delivery of notification of an initial
38 determination or within 10 calendar days after such notification was
39 mailed to his or their last-known address and addresses, files an
40 appeal from such decision, such decision shall be final and benefits
41 shall be paid or denied in accordance therewith, except for such
42 determinations as may be altered in benefit amounts or duration as
43 provided in this paragraph. Benefits payable for periods pending an
44 appeal and not in dispute shall be paid as such benefits accrue;
45 provided that insofar as any such appeal is or may be an appeal
46 from a determination to the effect that the claimant is disqualified
47 under the provisions of R.S.43:21-5 or any amendments thereof or
48 supplements thereto, benefits pending determination of the appeal

1 shall be withheld only for the period of disqualification as provided
2 for in said section, and notwithstanding such appeal, the benefits
3 otherwise provided by this act shall be paid for the period
4 subsequent to such period of disqualification; and provided, also,
5 that if there are two determinations of entitlement, benefits for the
6 period covered by such determinations shall be paid regardless of
7 any appeal which may thereafter be taken, but no employer's
8 account shall be charged with benefits so paid, if the decision is
9 finally reversed.

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

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

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

1 (c) Appeals. Unless such appeal is withdrawn, an appeal
2 tribunal, after affording the parties reasonable opportunity for fair
3 hearing, shall affirm or modify the findings of fact and the
4 determination. The parties shall be duly notified of such tribunal's
5 decision, together with its reasons therefor, which shall be deemed
6 to be the final decision of the board of review, unless further appeal
7 is initiated pursuant to subsection (e) of this section within 10 days
8 after the date of notification or mailing of the decision for any
9 decision made on or before December 1, 2010, or within 20 days
10 after the date of notification or mailing of such decision for any
11 decision made after December 1, 2010.

12 (d) Appeal tribunals. To hear and decide disputed benefit
13 claims, including appeals from determinations with respect to
14 demands for refunds of benefits under subsection (d) of R.S.43:21-
15 16, the director with the approval of the Commissioner of Labor and
16 Workforce Development shall establish impartial appeal tribunals
17 consisting of a salaried body of examiners under the supervision of
18 a Chief Appeals Examiner, all of whom shall be appointed pursuant
19 to the provisions of Title 11A of the New Jersey Statutes, Civil
20 Service and other applicable statutes.

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

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

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

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

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

30 (j) With respect to benefit payments made on or after October
31 22, 2013, an employer's account shall not be relieved of charges
32 related to a benefit payment that was made erroneously from the
33 division if it is determined that:

34 (1) The erroneous benefit payment was made because the
35 employer, or an agent of the employer, failed to respond in a timely
36 or adequate manner to a request from the division for information
37 related to the claim for benefits; and

38 (2) The employer, or an agent of the employer, has established a
39 pattern of failing to respond in a timely or adequate manner to
40 requests from the division for information related to claims for
41 benefits.

42 Determinations of the division prohibiting the relief of charges
43 pursuant to this subsection shall be subject to appeal in the same
44 manner as other determinations of the division related to the
45 charging of employer accounts.

46 For purposes of subsection (j) of this section:

47 "Erroneous benefit payment" means a benefit payment that,
48 except for the failure by the employer, or an agent of the employer,

1 to respond in a timely or adequate manner to a request from the
2 division for information with respect to the claim for benefits,
3 would not have been made; and

4 "Pattern of failing" means repeated documented failure on the
5 part of the employer, or an agent of the employer, to respond to
6 requests from the division to the employer or employer's agent for
7 information related to a claim for benefits, except that an employer,
8 or an agent of an employer, shall not be determined to have engaged
9 in a "pattern of failing" if the number of failures to respond to
10 requests from the division for information related to claims for
11 benefits during the previous 365 calendar days is less than three, or
12 if the number of failures is less than two percent of the number of
13 requests from the division, whichever is greater.

14 (k) The Department of Labor and Workforce Development shall
15 establish and maintain a procedure by which personnel access rights
16 to the department's primary system for unemployment claims
17 receipt and processing are comprehensively reviewed every
18 calendar quarter. The procedure shall include an evaluation of
19 access needs to the primary unemployment claims receipt and
20 processing system for all department personnel and the adjustment,
21 addition, or deletion of access rights for department personnel based
22 on the quarterly review.

23 (cf: P.L.2017, c.163, s.1)

24

25 **§ 7.1** R.S.43:21-19 is amended to read as follows:

26 43:21-19. Definitions. As used in this chapter (R.S.43:21-
27 1 et seq.), unless the context clearly requires otherwise:

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

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

1 only those wages be included on which employer contributions have
2 been paid on or before January 31 (or the next succeeding day if
3 such January 31 is a Saturday or Sunday) immediately preceding
4 the beginning of the 12-month period for which the employer's
5 contribution rate is computed.

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

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

13 With respect to a benefit year commencing on or after July 1,
14 1995, if an individual does not have sufficient qualifying weeks or
15 wages in his base year to qualify for benefits, the individual shall
16 have the option of designating that his base year shall be the
17 "alternative base year," which means the last four completed
18 calendar quarters immediately preceding the individual's benefit
19 year; except that, with respect to a benefit year commencing on or
20 after October 1, 1995, if the individual also does not have sufficient
21 qualifying weeks or wages in the last four completed calendar
22 quarters immediately preceding his benefit year to qualify for
23 benefits, "alternative base year" means the last three completed
24 calendar quarters immediately preceding his benefit year and, of the
25 calendar quarter in which the benefit year commences, the portion
26 of the quarter which occurs before the commencing of the benefit
27 year.

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

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

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

10 (3) With respect to a benefit year commencing on or after June
11 1, 1990 for an individual who immediately preceding the benefit
12 year was subject to a disability compensable under the provisions of
13 the workers' compensation law (chapter 15 of Title 34 of the
14 Revised Statutes), "base year" shall mean the first four of the last
15 five completed calendar quarters immediately preceding the
16 individual's period of disability, if the period of disability was not
17 longer than two years, if the employment held by the individual
18 immediately preceding the period of disability is no longer
19 available at the conclusion of that period and if the individual files a
20 valid claim for unemployment benefits after the conclusion of that
21 period. For the purposes of this paragraph, "period of disability"
22 means the period from the time at which the individual becomes
23 unable to work because of the compensable disability until the time
24 that the individual becomes able to resume work and continue work
25 on a permanent basis. An individual who files a claim under the
26 provisions of this paragraph (3) shall not be regarded as having left
27 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

45 (2) "Controller" means the Office of the Assistant
46 Commissioner for Finance and Controller of the Department of
47 Labor and Workforce Development, established by the 1982
48 Reorganization Plan of the Department of Labor.

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

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

30 (h) "Employer" means:

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

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

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

44 (4) Any employing unit which together with one or more other
45 employing units is owned or controlled (by legally enforceable
46 means or otherwise), directly or indirectly by the same interests, or
47 which owns or controls one or more other employing units (by
48 legally enforceable means or otherwise), and which, if treated as a

1 single unit with such other employing unit or interest, would be an
2 employer under paragraph (1) of this subsection;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) Prior to January 1, 1978, in the employ of a school which
31 is not an institution of higher education, and after December 31,
32 1977, in the employ of a governmental entity referred to in
33 R.S.43:21-19 (i) (1) (B), if such service is performed by an
34 individual in the exercise of duties

35 (aa) as an elected official;

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

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

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

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

47 (iv) By an individual receiving rehabilitation or remunerative
48 work in a facility conducted for the purpose of carrying out a

1 program of rehabilitation of individuals whose earning capacity is
2 impaired by age or physical or mental deficiency or injury or
3 providing remunerative work for individuals who because of their
4 impaired physical or mental capacity cannot be readily absorbed in
5 the competitive labor market;

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

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

14 (E) The term "employment" shall include the services of an
15 individual who is a citizen of the United States, performed outside
16 the United States after December 31, 1971 (except in Canada and in
17 the case of the Virgin Islands, after December 31, 1971) and prior
18 to January 1 of the year following the year in which the U.S.
19 Secretary of Labor approves the unemployment compensation law
20 of the Virgin Islands, under section 3304 (a) of the Internal
21 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an
22 American employer (other than the service which is deemed
23 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or
24 the parallel provisions of another state's unemployment
25 compensation law), if

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

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

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

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

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

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

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

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

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

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

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

41 (aa) if such crew leader holds a certification of registration
42 under the Migrant and Seasonal Agricultural Worker Protection
43 Act, **【Pub.L.97-470】** (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
44 (C.34:8A-7 et seq.); or substantially all the members of such crew
45 operate or maintain tractors, mechanized harvesting or cropdusting
46 equipment, or any other mechanized equipment, which is provided
47 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-
15 1 et seq.) unless and until it is shown to the satisfaction of the
16 division that:

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

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

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

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

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

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

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

45 (B) Domestic service in a private home performed prior to
46 January 1, 1978; and after December 31, 1977, unless performed in
47 the private home of an employing unit which paid cash
48 remuneration of \$1,000.00 or more to one or more individuals for

1 such domestic service in any calendar quarter in the current or
2 preceding calendar year;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (R) Service in the employ of an international organization
46 entitled to enjoy the privileges, exemptions and immunities under
47 the International Organizations Immunities Act
48 (22 U.S.C. s.288 et seq.);

- 1 (S) Service covered by an election duly approved by an agency
2 charged with the administration of any other state or federal
3 unemployment compensation or employment security law, in
4 accordance with an arrangement pursuant to R.S.43:21-21 during
5 the effective period of such election;
- 6 (T) Service performed in the employ of a school, college, or
7 university if such service is performed (i) by a student enrolled at
8 such school, college, or university on a full-time basis in an
9 educational program or completing such educational program
10 leading to a degree at any of the severally recognized levels, or (ii)
11 by the spouse of such a student, if such spouse is advised at the time
12 such spouse commences to perform such service that (I) the
13 employment of such spouse to perform such service is provided
14 under a program to provide financial assistance to such student by
15 such school, college, or university, and (II) such employment will
16 not be covered by any program of unemployment insurance;
- 17 (U) Service performed by an individual who is enrolled at a
18 nonprofit or public educational institution which normally
19 maintains a regular faculty and curriculum and normally has a
20 regularly organized body of students in attendance at the place
21 where its educational activities are carried on, as a student in a full-
22 time program, taken for credit at such institution, which combines
23 academic instruction with work experience, if such service is an
24 integral part of such program, and such institution has so certified
25 to the employer, except that this subparagraph shall not apply to
26 service performed in a program established for or on behalf of an
27 employer or group of employers;
- 28 (V) Service performed in the employ of a hospital, if such
29 service is performed by a patient of the hospital; service performed
30 as a student nurse in the employ of a hospital or a nurses' training
31 school by an individual who is enrolled and regularly attending
32 classes in a nurses' training school approved under the laws of this
33 State;
- 34 (W) Services performed after the effective date of this
35 amendatory act by agents of mutual benefit associations if the
36 compensation to such agents for such services is wholly on a
37 commission basis;
- 38 (X) Services performed by operators of motor vehicles weighing
39 18,000 pounds or more, licensed for commercial use and used for
40 the highway movement of motor freight, who own their equipment
41 or who lease or finance the purchase of their equipment through an
42 entity which is not owned or controlled directly or indirectly by the
43 entity for which the services were performed and who were
44 compensated by receiving a percentage of the gross revenue
45 generated by the transportation move or by a schedule of payment
46 based on the distance and weight of the transportation move;
- 47 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

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

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

21 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

8 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (3) "Base week," commencing on or after January 1, 2001 and
43 before January 1, 2020¹, and after the time that federal financing of
44 unemployment benefits in this State, pursuant to the "Coronavirus
45 Aid, Relief, and Economic Security Act," Pub. Law 116-136,
46 ceases¹, means any calendar week during which the individual
47 earned in employment from an employer remuneration not less than
48 an amount 20 times the minimum wage in effect pursuant to section

1 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
2 year preceding the calendar year in which the benefit year
3 commences, which amount shall be adjusted to the next higher
4 multiple of \$1.00 if not already a multiple thereof, except that if in
5 any calendar week an individual subject to this paragraph (3) is in
6 employment with more than one employer, the individual may in
7 that calendar week establish a base week with respect to each of the
8 employers from whom the individual earns remuneration equal to
9 not less than the amount defined in this paragraph (3) during that
10 week.

11 (4) "Base week," commencing on or after January 1, 2020 ¹until
12 the time that federal financing of unemployment benefits in this
13 State, pursuant to the "Coronavirus Aid, Relief, and Economic
14 Security Act," Pub. Law 116-136 ceases¹, means any calendar week
15 during which the individual earned in employment from an
16 employer remuneration not less than an amount 10 times the
17 minimum wage in effect pursuant to section 5 of P.L.1966, c.113
18 (C.34:11-56a4) on October 1 of the calendar year preceding the
19 calendar year in which the benefit year commences, which amount
20 shall be adjusted to the next higher multiple of \$1.00 if not already
21 a multiple thereof, except that if in any calendar week an individual
22 subject to this paragraph (4) is in employment with more than one
23 employer, the individual may in that calendar week establish a base
24 week with respect to each of the employers from whom the
25 individual earns remuneration equal to not less than the amount
26 defined in this paragraph (4) during that week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45

46 ¹[8.] 7¹ (New section) Sections ¹[8] 7¹ through ¹[11] 10¹ of
47 this act shall be known and may be cited as the "Employee Job-
48 Sharing Furlough Protection Act."

1 **'[9.] 8.¹** (New section) To facilitate the providing of the
2 maximum possible benefits for employees and savings for
3 employers in the State from the federal financing of unemployment
4 benefits provided in connection with short-time compensation
5 programs pursuant to section 2108 of the “Coronavirus Aid, Relief,
6 and Economic Security Act,” Pub. Law 116-136 and from federal
7 financing of emergency increases in unemployment benefits under
8 section 2104 of that act, the division shall, during the period from
9 the effective date of this act until December 31, 2020, undertake the
10 following actions:

11 a. Make available to all employers who may be eligible to
12 participate in a shared work program pursuant to P.L.2011, c.154
13 (C.43:21-20.3 et seq.) for which full federal funding of short-time
14 unemployment benefits is available pursuant to section 2108 of the
15 “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law
16 116-136, a guidance document which explains:

17 (1) what the employer is required to do to establish, pursuant to
18 P.L.2011, c.154 (C.43:21-20.3 et seq.), shared work programs
19 eligible for the federal funding, including providing certification to
20 the division that any union representing employees in collective
21 bargaining has entered into a written agreement regarding the terms
22 of the program and certification that the employer will continue
23 providing any current health insurance and pension coverage, paid
24 time off and other benefits in the manner required by P.L.2011,
25 c.154 (C.43:21-20.3 et seq.);

26 (2) procedures for an employer to make an application for
27 approval of a shared work program, including an explanation of
28 how the employer may make preliminary calculations of benefits to
29 be paid to participating employees to expedite the commencement
30 of the payment of the benefits in the shortest possible time;

31 b. Provide any eligible employer with any assistance requested
32 by the employer in making an application;

33 c. Permit an application for approval of a shared work program
34 to be submitted to, and approved by, the division in advance of the
35 date on which reduced hours of employment are to commence to
36 permit payment of benefits under the program immediately upon
37 that commencement, or, as an alternative, permit the payment of
38 benefits under a shared work program to commence immediately
39 upon the date of an application by an eligible employer for approval
40 of the program, and pay, for any period of shared work under the
41 program, amounts of benefits which are based on determinations
42 made by the division or based on preliminary determinations made
43 by the employer pursuant to paragraph (2) of subsection a. of this
44 section, which the division shall review and, if appropriate, revise,
45 and shall subsequently pay any underpayment in benefits, or collect
46 from subsequent benefits any overpayment in benefits, including
47 the collecting of an amount equal to all benefits paid, if the
48 application is rejected, without penalty to the employees and, if the

1 division finds that the employer made a good faith effort to follow
2 the division's guidance, impose no penalty on the employer for the
3 overpayment;

4 d. Permit employers who have fully laid off employees to
5 resume employing those employees on a partial basis in a manner
6 consistent with the requirements of P.L.2011, c.154 (C.43:21-20.3
7 et seq.), and establish a shared work program to make short-time
8 benefits available to those employees;

9 e. Permit, upon the approval of a shared work program, of the
10 payment of benefits retroactively back to the time that shared work
11 commenced in a manner consistent with the requirements of
12 P.L.2011, c.154 (C.43:21-20.3 et seq.);

13 f. Contact each employer which is a non-profit organization
14 subject to the provisions of section 3 of P.L.1971, c.346 (C.43:21-
15 7.2) or a governmental entity or instrumentality subject to the
16 provisions of section 4 of P.L.1971, c.346 (C.43:21-7.3) to provide
17 that employer, in addition to the guidance document indicated in
18 subsection a. of this section, information regarding the potential
19 reduction in the expenses of that employer from participating in a
20 shared work program pursuant to P.L.2011, c.154 (C.43:21-20.3 et
21 seq.) for which full federal funding of short-time unemployment
22 benefits is available pursuant to section 2108 of the "Coronavirus
23 Aid, Relief, and Economic Security Act," Pub. Law 116-136.

24
25 **¹[10.] 9.¹** (New section) A public employee enrolled in a
26 State-administered retirement system or fund, and the employer of
27 that employee, shall be required to make contributions to the system
28 or fund during the period that the employee is on a furlough
29 pursuant to section **¹[9] 8.¹** of this act, P.L. , c. (C.)
30 (pending before the Legislature as this bill) and P.L.2011, c.154
31 (C.43:21-20.3 et seq.). The contributions shall be based on the base
32 salary or compensation, as defined by the retirement system or
33 fund, that would have been paid to the employee if the employee
34 had not been on furlough. The employee's service credit as a
35 member of the system or fund shall include the period of furlough.
36 For all purposes under the retirement system or fund, the period of
37 furlough and the base salary or compensation upon which
38 contribution were made during the period of furlough shall be
39 recognized by the retirement system or fund. The seniority rights
40 and health benefits coverage of an employee who participates in
41 this furlough program shall continue and shall not be adversely
42 affected by participation. The employer shall enter into a written
43 agreement with any collective bargaining agent representing the
44 employees regarding the terms of the program, including terms
45 regarding attendance in training programs while receiving short-
46 time benefits, and provide certification, and the copy, of the
47 agreement to the division as required by P.L.2011, c.154 (C.43:21-

1 20.3 et seq.). This section shall not be construed to conflict with any
2 applicable provisions of federal law.

3
4 ¹**【11.】 10.**¹ (New section) a. The division shall, not later than
5 March 31, 2021, issue, make public on the website of the
6 Department of Labor and Workforce Development, and submit to
7 the Governor and Legislature, pursuant to section 2 of P.L.1991,
8 c.164 (C.52:14-19.1), a report on all shared work programs
9 approved during calendar year 2020 pursuant to P.L.2011, c.154
10 (C.43:21-20.3 et seq.) and the impact of federal financing of those
11 programs pursuant to section 2108 of the “Coronavirus Aid, Relief,
12 and Economic Security Act,” Pub. Law 116-136 and of federal
13 financing pursuant to section 2104 of that act of emergency
14 increases in unemployment benefits for participants in approved
15 shared work programs.

16 b. The report shall provide separately for governmental
17 employers, for-profit private employers, and nonprofit employers,
18 during calendar year 2020:

19 (1) The total number of participating employers and employees,
20 the total amount of unemployment benefits paid to participants, the
21 portion of those benefits that was pandemic unemployment
22 compensation, the total wage compensation that was paid to
23 participants during participation in the program, and the share, if
24 any, of the benefit costs not paid or reimbursed by the federal
25 government;

26 (2) The minimum, maximum, and average duration of programs,
27 the average weekly benefit, and the average weekly wage paid
28 during participation in the program;

29 (3) The number of participating employers who provided, and
30 the total number of employees who received, health insurance
31 coverage, and the total number of participating employers who
32 provided, and the total number of employees who received, pension
33 coverage;

34 (4) The number of participating employers who entered into
35 agreements with collective bargaining agents regarding the terms of
36 the program, and the total number of employees covered by those
37 agreements;

38 (5) The total reduction in payroll costs due to reduced hours of
39 paid employment by participants;

40 (6) In the case of governmental employers and, separately,
41 nonprofit employers, the portion of the participating employers that
42 elected to make payments in lieu of contributions pursuant to
43 section 3 of P.L.1971, c.346 (C.43:21-7.2) or section 4 of P.L.1971,
44 c.346 (C.43:21-7.3), the portion of participating employees who
45 were employed by those employers, the portion of benefits that
46 were paid by those employers, and the total reduction in cost to
47 those employers due to federal financing of short-time
48 compensation.

1 c. The report shall provide an estimate of the total cost of
2 unemployment benefits to the unemployment compensation fund if
3 employers who used federally-funded, approved shared work
4 programs to partially lay off employees had instead reduced work
5 hours by the same amount, by fully laying off a smaller number of
6 employees, and the effect that would have had on employer
7 contribution rates.

8 d. The report shall provide, for each calendar year from 2012
9 through 2019, the total number of employers and employees
10 participating in approved shared work programs and the total
11 amount of unemployment benefits paid to participating employees.

12
13 ¹§12. Section 2 of P.L.1948, c.110 (C.43:21-26) is amended to
14 read as follows:

15 2. Purpose. This act shall be liberally construed as remedial
16 legislation enacted upon the following declarations of public policy
17 and legislative findings of fact:

18 The public policy of this State, already established, is to protect
19 employees against the suffering and hardship generally caused by
20 involuntary unemployment. But the "unemployment compensation
21 law" provides benefit payments to replace wage loss caused by
22 involuntary unemployment only so long as an individual is "able to
23 work, and is available for work," and fails to provide any protection
24 against wage loss suffered because of inability to perform the duties
25 of a job interrupted by nonoccupational illness, injury, or other
26 disability of the individual or of members of the individual's family.
27 Nor is there any other comprehensive and systematic provision for
28 the protection of working people against loss of earnings due to a
29 nonoccupational sickness, accident, or other disability.

30 The prevalence and incidence of nonoccupational sickness,
31 accident, and other disability among employed people is greatest
32 among the lower income groups, who either cannot or will not
33 voluntarily provide out of their own resources against the hazard of
34 an earnings loss caused by nonoccupational sickness, accident, or
35 other disability. Disabling sickness or accident occurs throughout
36 the working population at one time or another, and approximately
37 fifteen per centum (15%) of the number of people at work may be
38 expected to suffer disabling illness of more than one week each
39 year.

40 It was found, prior to the enactment of the "Temporary Disability
41 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then
42 existing voluntary plans for the payment of cash sickness benefits
43 covered less than one-half of the number of working people of this
44 State who were covered by the "unemployment compensation law,"
45 and that even that degree of voluntary protection afforded uneven,
46 unequal and sometimes uncertain protection among the various
47 voluntary benefit programs.

1 While the enactment of that law has provided stable protection
2 for New Jersey's disabled workers, very few workers are protected
3 from income losses caused by the need to take time off from work
4 to care for family members who are incapable of self-care,
5 including newborn and newly-adopted children. The growing
6 portion of middle-income families in which all adult family
7 members work, largely due to economic necessity, points to the
8 desperate need for replacement income when a working family
9 member must take time to care for family members who are unable
10 to take care of themselves. Moreover, the United States is the only
11 industrialized nation in the world which does not have a mandatory
12 workplace-based program for such income support. It is therefore
13 desirable and necessary to fill the gap in existing provisions for
14 protection against the loss of earnings caused by involuntary
15 unemployment, by extending such protection to meet the hazard of
16 earnings loss due to inability to work caused by nonoccupational
17 sickness, accidents, or other disabilities of workers and members of
18 their families. Developing systems that help families adapt to the
19 competing interests of work and home not only benefits workers,
20 but also benefits employers by reducing employee turnover and
21 increasing worker productivity.

22 The foregoing facts and considerations require that there be a
23 uniform minimum program providing in a systematic manner for
24 the payment of reasonable benefits to replace partially such
25 earnings loss and to meet the continuing need for benefits where an
26 individual becomes disabled during unemployment or needs to care
27 for family members incapable of self-care. In order to maintain
28 consumer purchasing power, relieve the serious menace to health,
29 morals and welfare of the people caused by insecurity and the loss
30 of earnings, to reduce the necessity for public relief of needy
31 persons, to increase workplace productivity and alleviate the
32 enormous and growing stress on working families of balancing the
33 demands of work and family needs, and in the interest of the health,
34 welfare and security of the people of this State, such a system,
35 enacted under the police power, is hereby established, requiring the
36 payment of reasonable cash benefits to eligible individuals who are
37 subject to accident or illness which is not compensable under the
38 worker's compensation law or who need to care for family members
39 incapable of self-care.

40 **【**While the Legislature recognizes the pressing need for benefits
41 for workers taking leave to care for family members incapable of
42 self-care, it also finds that the need of workers for leave during their
43 own disability continues to be especially acute, as a disabled worker
44 has less discretion about taking time off from work than a worker
45 caring for a family member. Notwithstanding any interpretation of
46 law which may be construed as providing a worker with rights to
47 take action against an employer who fails or refuses to restore the
48 worker to employment after the worker's own disability, the

1 Legislature does not intend that the policy established by P.L.2008,
2 c.17 (C.43:21-39.1 et al.) of providing benefits for workers during
3 periods of family temporary disability leave to care for family
4 members incapable of self-care be construed as granting any worker
5 an entitlement to be restored by the employer to employment held
6 by the worker prior to taking family temporary disability leave or
7 any right to take action, in tort, or for breach of an implied
8 provision of the employment agreement, or under common law,
9 against an employer who fails or refuses to restore the worker to
10 employment after the family temporary disability leave, and the
11 Legislature does not intend that the policy of providing benefits
12 during family temporary disability leave be construed as increasing,
13 reducing or otherwise modifying any entitlement of a worker to
14 return to employment or right of the worker to take action under the
15 provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1
16 et seq.).¹

17 Since the enactment of the "Temporary Disability Benefits Law,"
18 P.L.1948, c.110 (C.43:21-25 et al.), the State government-operated
19 State temporary disability benefits plan, or "State plan," has proven
20 to be highly efficient and cost effective in providing temporary
21 disability benefits to New Jersey workers. The State plan
22 guarantees the availability of coverage for all employers, regardless
23 of experience, with low overhead costs and a rapid processing of
24 claims and appeals by knowledgeable, impartial public employees.
25 Consequently, the percentage of all employers using the State plan
26 increased from 64% in 1952 to 98% in 2006, while the percentage
27 of employees covered by the State plan increased from 28% to 83%.
28 A publicly-operated, nonprofit State plan is therefore indispensable
29 to achieving the goals of the "Temporary Disability Benefits Law,"
30 P.L.1948, c.110 (C.43:21-25 et al.).
31 (cf: P.L.2019, c.37, s.7)¹

32

33 ¹13. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
34 read as follows:

35 10. a. Family temporary disability leave shall be compensable
36 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
37 any period of family temporary disability leave taken by a covered
38 individual which commences after June 30, 2009.

39 b. An individual shall not simultaneously receive disability
40 benefits for family temporary disability leave and any other
41 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or
42 any unemployment compensation, or any paid sick leave, vacation
43 time or other leave at full pay from the employer of the individual.

44 c. The employer of an individual may, notwithstanding any
45 other provision of law, including the provisions of N.J.S.18A:30-1
46 et seq., permit the individual, during a period of family temporary
47 disability leave, to use any paid sick leave, vacation time or other
48 leave at full pay made available by the employer before the

1 individual uses disability benefits for family temporary disability
2 leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in
3 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying
4 any provision of an existing collective bargaining agreement or
5 employer policy, or preventing any new provision of a collective
6 bargaining agreement or employer policy, which provides
7 employees more generous leave or gives employees greater rights to
8 select which kind of leave is used or select the order in which the
9 different kinds of leave are used. Nothing in P.L.2008, c.17
10 (C.43:21-39.1 et al.) shall be construed as preventing an employer
11 from providing more generous benefits than are provided under
12 P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which
13 supplement the benefits provided under P.L.2008, c.17 (C.43:21-
14 39.1 et al.) for some or all of the employer's employees.

15 d. An individual who is entitled to leave under the provisions
16 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or
17 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
18 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
19 family temporary disability leave pursuant to P.L.2008, c.17
20 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
21 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
22 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
23 U.S.C. s.2601 et seq.). [Nothing in P.L.2008, c.17 (C.43:21-39.1 et
24 al.) shall be construed to grant an employee any entitlement to be
25 restored by the employer to employment held by the employee prior
26 to taking family temporary disability leave or any right to take
27 action against an employer who refuses to restore the employee to
28 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
29 39.1 et al.) shall be construed to increase, reduce or otherwise
30 modify any entitlement of an employee to return to employment or
31 right of the employee to take action under the provisions of the
32 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.). If an
33 employee receives benefits for family temporary disability leave
34 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) with respect to
35 employment with an employer who is not an employer as defined in
36 the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and
37 that employer fails or refuses to restore the employee to
38 employment after the period of family temporary disability leave,
39 that failure or refusal shall not be a wrongful discharge in violation
40 of a clear mandate of public policy, and the employee shall not have
41 a cause of action against that employer, in tort, or for breach of an
42 implied provision of the employment agreement, or under common
43 law, for that failure or refusal.]

44 e. An employee taking family temporary disability leave or an
45 employer from whom the employee is taking the leave shall have
46 the same right to appeal a determination of a benefit for the family
47 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
48 et al.) as an employee or employer has to appeal a determination of

1 a benefit for the disability of the employee under the "Temporary
2 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
3 any regulations adopted pursuant to the "Temporary Disability
4 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

5 f. In the event of a period of family temporary disability leave
6 of any individual covered under the State plan, the employer shall,
7 not later than the ninth day of the period of family temporary
8 disability leave, or not later than the ninth day after the employee
9 notifies the employer of an anticipated period of family temporary
10 disability leave pursuant to subsection h. of this section, whichever
11 comes first, including any time in which the employer provides sick
12 leave, vacation or other fully paid leave, issue to the individual and
13 to the division printed notices on division forms containing the
14 name, address and Social Security number of the individual, such
15 wage information as the division may require to determine the
16 individual's eligibility for benefits, including any sick pay, vacation
17 or other fully paid time off provided by the employer during the
18 period of family temporary disability leave, and the name, address,
19 and division identity number of the employer. Not later than 30
20 days after the commencement of the period of family temporary
21 disability leave for which the notice is furnished by the employer,
22 the individual shall furnish to the division a notice and claim for
23 family temporary disability leave benefits. Upon the submission of
24 the notices by the employer and the individual, and the
25 commencement of the compensable portion of the family temporary
26 disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the
27 division may issue benefit payments. In the case of family
28 temporary disability leave taken to care for a family member with a
29 serious health condition, the benefits may be paid for periods not
30 exceeding three weeks pending the receipt of the certification
31 required pursuant to subsection b. of section 11 of P.L.2008, c.17
32 (C.43:21-39.2). Failure to furnish notice and certification in the
33 manner above provided shall not invalidate or reduce any claim if it
34 shall be shown to the satisfaction of the division not to have been
35 reasonably possible to furnish the notice and certification and that
36 the notice and certification was furnished as soon as reasonably
37 possible.

38 g. Each covered employer shall conspicuously post
39 notification, in a place or places accessible to all employees in each
40 of the employer's workplaces, in a form issued by regulation
41 promulgated by the commissioner, of each covered employee's
42 rights regarding benefits payable pursuant to this section. The
43 employer shall also provide each employee of the employer with a
44 written copy of the notification: (1) not later than 30 days after the
45 form of the notification is issued by regulation; (2) at the time of the
46 employee's hiring, if the employee is hired after the issuance; (3)
47 whenever the employee notifies the employer that the employee is
48 taking time off for circumstances under which the employee is

1 eligible for benefits pursuant to this section; and (4) at any time,
2 upon the first request of the employee.

3 h. With respect to any period of family temporary disability
4 leave commencing on or after October 4, 2019 if an individual
5 knows in advance when the period will commence, the individual
6 may notify the employer of the anticipated period of family
7 temporary disability leave and submit to the division a claim for
8 benefits for that period, which shall include a statement of when the
9 period will commence and any certification required pursuant to
10 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior
11 to, but not more than 60 days prior to, the date that the period will
12 commence. The division shall process that claim immediately and,
13 upon finding that the claim is valid, shall pay the benefit upon the
14 commencement of the period of family temporary disability leave,
15 except that if the division receives the claim less than 30 days
16 before the commencement of the period, the division shall make the
17 payment not more than 30 days after the receipt of the claim. The
18 periods of family temporary disability leave to which the provisions
19 of this subsection apply shall include, but not be limited to, any of
20 the following if the commencement date of the leave is known in
21 advance: periods of leave for care of a child of the individual after
22 adoption, the placement of a child into foster care, or childbirth,
23 including childbirth under a valid agreement between the individual
24 and a gestational carrier; periods of leave for scheduled medical
25 procedures, treatments, or appointments for a family member of the
26 individual; and periods of leave for scheduled ongoing care of a
27 family member of the individual. If the individual did not establish
28 enough base weeks or have enough total earnings during the base
29 year preceding the week the individual submits the claim, the
30 division shall notify the individual that the individual may file the
31 claim again upon or after the commencement of the period of
32 family temporary disability leave and the division shall then
33 reconsider the individual's eligibility for benefits based on the base
34 year preceding the week in which the period of family temporary
35 disability leave commences.

36 (cf: P.L.2019, c.37, s.13)]¹

37
38 ¹[14. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to
39 read as follows:

40 24. a. An employer shall not discharge, harass, threaten, or
41 otherwise discriminate or retaliate against an employee with respect
42 to the compensation, terms, conditions, or privileges of employment
43 on the basis that the employee requested or took any temporary
44 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.),
45 or family temporary disability leave benefits pursuant to P.L.2008,
46 c.17 (C.43:21-39.1 et al.), including retaliation by refusing to
47 **[restore]** reinstate the employee to employment following a period
48 of leave], except that, pursuant to section 2 of P.L.1948, c.110

1 (C.43:21-26), nothing in this section or any other section of
2 P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1
3 et al.) shall be construed as increasing, reducing or otherwise
4 modifying any entitlement provided to a worker by the provisions
5 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to
6 be restored to employment by the employer after a period of family
7 temporary disability leave] in the position held when the leave
8 commenced or an equivalent position of like seniority, status,
9 employment benefits, pay and other terms and conditions of
10 employment, except that if, during period of leave, the employer
11 reduces the number of employees and that reduction would have
12 caused the employee to have been laid off if the employee had not
13 been on leave, the employee shall not be entitled to reinstatement,
14 but only if the employer notifies the employee of the employee's
15 right to file a claim for unemployment benefits after the leave
16 period ends as provided by paragraph (2) of subsection (c) of
17 R.S.43:21-19.

18 b. Upon a violation of subsection a. of this section, an
19 employee or former employee may, as an alternative to any action
20 that the employee is permitted to take for the violation pursuant to
21 the provisions of P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17
22 (C.43:21-39.1 et al.), or the "Family Leave Act," P.L.1989, c.261
23 (C.34:11B-1 et seq.), institute a civil action in the Superior Court
24 for relief]. All] in which all remedies available in common law
25 tort actions shall be available to a prevailing plaintiff. The court
26 may also order any or all of the following relief:

27 (1) an assessment of a civil fine of not less than \$1,000 and not
28 more than \$2,000 for the first violation of any of the provisions of
29 this section and not more than \$5,000 for each subsequent violation;

30 (2) an injunction to restrain the continued violation of any of the
31 provisions of this section;

32 (3) reinstatement of the employee to the same position or to a
33 position equivalent to that which the employee held prior to
34 unlawful discharge or retaliatory action;

35 (4) reinstatement of full fringe benefits and seniority rights;

36 (5) compensation for any lost wages, benefits and other
37 remuneration; and

38 (6) payment of reasonable costs and attorney's fees.

39 (cf: P.L.2019, c.37, s.24).]¹

40

41 ¹[15.] 11.¹ This act shall take effect immediately¹], provided
42 that:

43 a. in the case of any employer who becomes subject to the
44 provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the
45 provisions of paragraph (5) of subsection f. of section 3 of
46 P.L.1989, c.261 (C.34:11B-3), the provisions of P.L.1989, c.261
47 (C.34:11B-1 et seq.) shall apply to the employer only with respect

1 to periods of family leave which take place, in full or in part, after
2 the effective date of this act; and
3 b. in the case of any employer who becomes subject to the
4 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because
5 of the changes made in that section by P.L. ,
6 c. (C.)(pending before the Legislature as this bill) the
7 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) shall
8 apply to the employer only with respect to periods of disability for
9 family temporary disability leave which take place, in full or in
10 part, after the effective date of this act **1**'.