

SENATE, No. 2122

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

SYNOPSIS

Concerning certain unemployment insurance benefit claims.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain unemployment insurance benefit claims
2 and amending R.S.43:21-3, R.S.43:21-4, R.S.43:21-6, and
3 R.S.43:21-19.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.43:21-3 is amended to read as follows:
9 43:21-3. Benefits.

10 (a) Payment of benefits.

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

13 (b) Weekly benefits for unemployment.

14 (1) With respect to an individual's benefit year commencing on
15 or after July 1, 1961 and before July 1 2020, such individual, if
16 eligible and unemployed (as defined in subsection (m) of
17 R.S.43:21-19), shall be paid an amount (except as to final payment)
18 equal to his weekly benefit rate less any remuneration, other than
19 remuneration from self-employment paid to an individual who is
20 receiving a self-employment assistance allowance, paid or payable
21 to him for such week in excess of 20% of his weekly benefit rate
22 (fractional part of a dollar omitted) or \$5.00, whichever is the
23 greater; provided that such amount shall be computed to the next
24 lower multiple of \$1.00 if not already a multiple thereof.

25 (2) With respect to an individual's benefit year commencing on
26 or after July 1, 2020, such individual, if eligible and unemployed
27 (as defined in subsection (m) of R.S.43:21-19), shall be paid an
28 amount (except as to final payment) equal to his weekly benefit rate
29 less any remuneration, other than remuneration from self-
30 employment paid to an individual who is receiving a self-
31 employment assistance allowance, paid or payable to him for such
32 week in excess of 50% of his weekly benefit rate (fractional part of
33 a dollar omitted) or \$5.00, whichever is the greater; provided that
34 such amount shall be computed to the next lower multiple of \$1.00
35 if not already a multiple thereof.

36 (c) Weekly benefit rate.

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

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.

1 (2) Dependency benefits.

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

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

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

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

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

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

47 (3) For the purposes of this subsection (c), the "Statewide
48 average weekly remuneration paid to workers by employers" shall

1 be computed and determined by the Commissioner of Labor and
2 Workforce Development on or before September 1 of each year on
3 the basis of one-fifty-second of the total remuneration reported for
4 the preceding calendar year by employers subject to this chapter,
5 divided by the average of the number of workers reported by such
6 employers, and shall be effective as to benefit determinations in the
7 calendar year following such computation and determination.

8 (d) Maximum total benefits.

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

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

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

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

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

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

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

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

1 2. R.S.43:21-4 is amended to read as follows:

2 43:21-4. Benefit eligibility conditions. An unemployed
3 individual shall be eligible to receive benefits with respect to any
4 week eligible only if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this paragraph, "immediate family member" includes any of the following individuals: father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, child placed by the Division of Youth and Family Services in

1 the Department of Children and Families, sister or brother of the
2 unemployed individual and any relatives of the unemployed
3 individual residing in the unemployed individual's household.

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

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

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

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

31 (10) An individual who is employed by a shared work employer
32 and is otherwise eligible for benefits shall not be deemed ineligible
33 for short-time benefits because the individual is unavailable for
34 work with employers other than the shared work employer, so long
35 as:

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

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

43 (d) With respect to any benefit year commencing before January
44 1, 2002, the individual has been totally or partially unemployed for
45 a waiting period of one week in the benefit year which includes that
46 week. When benefits become payable with respect to the third
47 consecutive week next following the waiting period, the individual
48 shall be eligible to receive benefits as appropriate with respect to

1 the waiting period. No week shall be counted as a week of
2 unemployment for the purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

33 (B) If the individual has not met the requirements of
34 subparagraph (A) of this paragraph (4), earned remuneration not
35 less than an amount 1,000 times the minimum wage in effect
36 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
37 1 of the calendar year preceding the calendar year in which the
38 benefit year commences, which amount shall be adjusted to the next
39 higher multiple of \$100 if not already a multiple thereof.

40 (5) With respect to benefit years commencing on or after
41 January 7, 2001 and before July 1, 2020, notwithstanding the
42 provisions of paragraph (4) of this subsection, an unemployed
43 individual claiming benefits on the basis of service performed in the
44 production and harvesting of agricultural crops shall, subject to the
45 limitations of subsection (i) of R.S.43:21-19, be eligible to receive
46 benefits if during his base year, as defined in subsection (c) of
47 R.S.43:21-19, the individual:

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

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

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

11 (6) With respect to benefit years commencing on or after
12 January 1, 2020, the individual, during his base year as defined in
13 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) of subsection (t) of R.S.43:21-19; or

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

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

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

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

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

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

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

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

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

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

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

44 (A) For any week with respect to which or a part of which the
45 individual has received or is seeking benefits under any
46 unemployment compensation or disability benefits law of any other
47 state or of the United States; provided that if the appropriate agency
48 of such other state or the United States finally determines that the

1 individual is not entitled to such benefits, this disqualification shall
2 not apply;

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

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

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

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

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

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

46 (2) With respect to weeks of unemployment beginning after
47 September 3, 1982, on the basis of service performed in any other
48 capacity for an educational institution, benefits shall not be paid on

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

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

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

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

39 (i) (1) Benefits shall not be paid on the basis of services
40 performed by an alien unless such alien is an individual who was
41 lawfully admitted for permanent residence at the time the services
42 were performed and was lawfully present for the purpose of
43 performing the services or otherwise was permanently residing in
44 the United States under color of law at the time the services were
45 performed (including an alien who is lawfully present in the United
46 States as a result of the application of the provisions of section
47 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and
48 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any

1 modifications of the provisions of section 3304(a)(14) of the
2 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) [as
3 provided by Pub.L.94-566], which specify other conditions or other
4 effective dates than stated herein for the denial of benefits based on
5 services performed by aliens and which modifications are required
6 to be implemented under State law as a condition for full tax credit
7 against the tax imposed by the Federal Unemployment Tax Act,
8 shall be deemed applicable under the provisions of this section.

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

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

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

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

25
26 3. R.S.43:21-6 is amended to read as follows:

27 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
28 accordance with such regulations as the Director of the Division of
29 Unemployment and Temporary Disability Insurance of the
30 Department of Labor and Workforce Development of the State of
31 New Jersey may approve. Each employer shall post and maintain
32 on his premises printed notices of his subject status, of such design,
33 in such numbers and at such places as the director of the division
34 may determine to be necessary to give notice thereof to persons in
35 the employer's service. Each employer shall give to each individual
36 at the time he becomes unemployed, for any reason, whether the
37 unemployment is permanent or temporary, or, if the employer
38 provides the individual an advanced notification of a layoff, at the
39 time of that notification, a printed copy of benefit instructions. The
40 benefit instructions given to the individual shall include, but not be
41 limited to, the following information: (A) the date upon which the
42 individual becomes unemployed, and, in the case that the
43 unemployment is temporary, to the extent possible, the date upon
44 which the individual is expected to be recalled to work; and (B) that
45 the individual may lose some or all of the benefits to which he is
46 entitled if he fails to file a claim in a timely manner. Both the
47 aforesaid notices and instructions, including information detailing
48 the time sensitivity of filing a claim, shall be supplied by the

1 division to employers without cost to them. Nothing in this section
2 shall be construed so as to require an employer to re-hire an
3 individual formerly in the employer's service.

4 (2) Any claimant may choose to certify, cancel or close his
5 claim for unemployment insurance benefits at any time, 24 hours a
6 day and seven days a week, via the Internet on a website developed
7 by the division; however, any claim that is certified, cancelled or
8 closed after 7:00 PM will not be processed by the division until the
9 next scheduled posting date.

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

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

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

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

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

37 The deputy shall make an initial determination contingent upon
38 the receipt of all necessary information and notify the claimant no
39 later than three weeks from the date on which the division received
40 the claim for benefits. If an initial determination cannot be made
41 due to the lack of documentation, notification will be sent to the
42 claimant providing a status of the claim. The division will then
43 have an additional two weeks to obtain the missing information in
44 order to make the initial determination and advise the claimant
45 accordingly. The initial determination shall show the weekly benefit
46 amount payable, the maximum duration of benefits with respect to
47 the employer to whom the determination relates, and the ratio of
48 benefits chargeable to the employer's account for benefit years

1 commencing on or after July 1, 1986, and also shall show whether
2 the claimant is ineligible or disqualified for benefits under the
3 initial determination. The employer whose account may be charged
4 for benefits payable pursuant to said determination shall be
5 promptly notified thereof.

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

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

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

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

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

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

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

41 Unless the claimant or any interested party, within seven
42 calendar days after delivery of notification of an initial
43 determination or within 10 calendar days after such notification was
44 mailed to his or their last-known address and addresses, files an
45 appeal from such decision, such decision shall be final and benefits
46 shall be paid or denied in accordance therewith, except for such
47 determinations as may be altered in benefit amounts or duration as
48 provided in this paragraph. Benefits payable for periods pending an

1 appeal and not in dispute shall be paid as such benefits accrue;
2 provided that insofar as any such appeal is or may be an appeal
3 from a determination to the effect that the claimant is disqualified
4 under the provisions of R.S.43:21-5 or any amendments thereof or
5 supplements thereto, benefits pending determination of the appeal
6 shall be withheld only for the period of disqualification as provided
7 for in said section, and notwithstanding such appeal, the benefits
8 otherwise provided by this act shall be paid for the period
9 subsequent to such period of disqualification; and provided, also,
10 that if there are two determinations of entitlement, benefits for the
11 period covered by such determinations shall be paid regardless of
12 any appeal which may thereafter be taken, but no employer's
13 account shall be charged with benefits so paid, if the decision is
14 finally reversed.

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

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

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

1 determination, or the denial of benefits by the deputy on any such
2 determination, shall be appealable in the same manner and under
3 the same limitations as is provided in the case of initial
4 determinations.

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

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

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

40 (f) Procedure. The manner in which disputed benefit claims,
41 and appeals from determinations with respect to (1) claims for
42 benefits and (2) demands for refunds of benefits under subsection
43 (d) of R.S.43:21-16 shall be presented, the reports thereon required
44 from the claimant and from employers, and the conduct of hearings
45 and appeals shall be in accordance with rules prescribed by the
46 board of review for determining the rights of the parties, whether or
47 not such rules conform to common law or statutory rules of
48 evidence and other technical rules of procedure. A full and

1 complete record shall be kept of all proceedings in connection with
2 a disputed claim. All testimony at any hearing upon a disputed
3 claim shall be recorded, but need not be transcribed unless the
4 disputed claim is further appealed.

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

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

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

34 (j) With respect to benefit payments made on or after October
35 22, 2013, an employer's account shall not be relieved of charges
36 related to a benefit payment that was made erroneously from the
37 division if it is determined that:

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

42 (2) The employer, or an agent of the employer, has established a
43 pattern of failing to respond in a timely or adequate manner to
44 requests from the division for information related to claims for
45 benefits.

46 Determinations of the division prohibiting the relief of charges
47 pursuant to this subsection shall be subject to appeal in the same

1 manner as other determinations of the division related to the
2 charging of employer accounts.

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

4 "Erroneous benefit payment" means a benefit payment that,
5 except for the failure by the employer, or an agent of the employer,
6 to respond in a timely or adequate manner to a request from the
7 division for information with respect to the claim for benefits,
8 would not have been made; and

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

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

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

29

30 4. R.S.43:21-19 is amended to read as follows:

31 43:21-19. Definitions. As used in this chapter (R.S.43:21-
32 1 et seq.), unless the context clearly requires otherwise:

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

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

1 "average annual payroll" solely for the purposes of paragraph (3) of
2 subsection (e) of R.S.43:21-7 means the average of the annual
3 payrolls of any employer on which he paid contributions to the
4 State disability benefits fund for the last three or five preceding
5 calendar years, whichever average is higher; provided further that
6 only those wages be included on which employer contributions have
7 been paid on or before January 31 (or the next succeeding day if
8 such January 31 is a Saturday or Sunday) immediately preceding
9 the beginning of the 12-month period for which the employer's
10 contribution rate is computed.

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

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

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

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

47 (2) With respect to a benefit year commencing on or after June
48 1, 1990 for an individual who immediately preceding the benefit

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

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

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

44 (e) (1) "Division" means the Division of Unemployment and
45 Temporary Disability Insurance of the Department of Labor and
46 Workforce Development, and any transaction or exercise of
47 authority by the director of the division thereunder, or under this

1 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by
2 the division.

3 (2) "Controller" means the Office of the Assistant
4 Commissioner for Finance and Controller of the Department of
5 Labor and Workforce Development, established by the 1982
6 Reorganization Plan of the Department of Labor.

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

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

36 (h) "Employer" means:

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

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

45 (3) Any employing unit which acquired the organization, trade
46 or business, or substantially all the assets thereof, of another
47 employing unit and which, if treated as a single unit with such other

1 employing unit, would be an employer under paragraph (1) of this
2 subsection;

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

10 (5) Any employing unit for which service in employment as
11 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
12 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
13 performed after December 31, 1977;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (aa) as an elected official;

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

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

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

1 individual has filed a claim for benefits, based on such service,
2 under the law of this State;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (3) Services performed within this State but not covered under
47 paragraph (2) of this subsection shall be deemed to be employment
48 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not

1 required and paid with respect to such services under an
2 unemployment compensation law of any other state or of the federal
3 government.

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

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

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

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

20 (6) Services performed by an individual for remuneration shall
21 be deemed to be employment subject to this chapter (R.S.43:21-
22 1 et seq.) unless and until it is shown to the satisfaction of the
23 division that:

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

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

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

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

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

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

47 (ii) for some portion of a day in each of 20 different calendar
48 weeks, whether or not such weeks were consecutive, in either the

1 current or the preceding calendar year, employed in agricultural
2 labor 10 or more individuals, regardless of whether they were
3 employed at the same moment in time;

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

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

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

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

25 (F) Service performed in the employ of the United States
26 Government or of any instrumentality of the United States exempt
27 under the Constitution of the United States from the contributions
28 imposed by the "unemployment compensation law," except that to
29 the extent that the Congress of the United States shall permit states
30 to require any instrumentalities of the United States to make
31 payments into an unemployment fund under a state unemployment
32 compensation law, all of the provisions of this act shall be
33 applicable to such instrumentalities, and to service performed for
34 such instrumentalities, in the same manner, to the same extent and
35 on the same terms as to all other employers, employing units,
36 individuals and services; provided that if this State shall not be
37 certified for any year by the Secretary of Labor of the United States
38 under section 3304 of the federal Internal Revenue Code of 1986
39 (26 U.S.C. s.3304), the payments required of such instrumentalities
40 with respect to such year shall be refunded by the division from the
41 fund in the same manner and within the same period as is provided
42 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
43 or collected by the division;

44 (G) Services performed in the employ of fraternal beneficiary
45 societies, orders, or associations operating under the lodge system
46 or for the exclusive benefit of the members of a fraternity itself
47 operating under the lodge system and providing for the payment of

1 life, sick, accident, or other benefits to the members of such society,
2 order, or association, or their dependents;

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

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

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

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

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

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

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

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

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

43 (Q) Service performed in the employ of an instrumentality
44 wholly owned by a foreign government if (i) the service is of a
45 character similar to that performed in foreign countries by
46 employees of the United States Government or of an instrumentality
47 thereof, and (ii) the division finds that the United States Secretary
48 of State has certified to the United States Secretary of the Treasury

1 that the foreign government, with respect to whose instrumentality
2 exemption is claimed, grants an equivalent exemption with respect
3 to similar services performed in the foreign country by employees
4 of the United States Government and of instrumentalities thereof;

5 (R) Service in the employ of an international organization
6 entitled to enjoy the privileges, exemptions and immunities under
7 the International Organizations Immunities Act
8 (22 U.S.C. s.288 et seq.);

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

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

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

36 (V) Service performed in the employ of a hospital, if such
37 service is performed by a patient of the hospital; service performed
38 as a student nurse in the employ of a hospital or a nurses' training
39 school by an individual who is enrolled and regularly attending
40 classes in a nurses' training school approved under the laws of this
41 State;

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

46 (X) Services performed by operators of motor vehicles weighing
47 18,000 pounds or more, licensed for commercial use and used for
48 the highway movement of motor freight, who own their equipment

1 or who lease or finance the purchase of their equipment through an
2 entity which is not owned or controlled directly or indirectly by the
3 entity for which the services were performed and who were
4 compensated by receiving a percentage of the gross revenue
5 generated by the transportation move or by a schedule of payment
6 based on the distance and weight of the transportation move;

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

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

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

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

28 (A) The limousine franchisee is incorporated;

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

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

34 (D) The franchisee registers with the Department of Labor and
35 Workforce Development and receives an employer registration
36 number.

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

1 For purposes of this paragraph (10): "legal transcription service"
2 and "legal transcribing" mean making use, by audio, video or voice
3 recording, of a verbatim record of court proceedings, depositions,
4 other judicial proceedings, meetings of boards, agencies,
5 corporations, or other bodies or groups, and causing that record to
6 be printed in readable form or produced on a computer screen in
7 readable form; and "legal transcriber" means a person who engages
8 in "legal transcribing."

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

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

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

16 (m) "Unemployment."

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

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

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

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

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

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

47 (o) "Wages" means remuneration paid by employers for
48 employment. If a worker receives gratuities regularly in the course

1 of his employment from other than his employer, his "wages" shall
2 also include the gratuities so received, if reported in writing to his
3 employer in accordance with regulations of the division, and if not
4 so reported, his "wages" shall be determined in accordance with the
5 minimum wage rates prescribed under any labor law or regulation
6 of this State or of the United States, or the amount of remuneration
7 actually received by the employee from his employer, whichever is
8 the higher.

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

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

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

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

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

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

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

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

1 (B) during that week.】 (Deleted by amendment, P.L. , c.)(now
2 pending before the Legislature as this bill)

3 (3) "Base week," commencing on or after January 1, 2001 and
4 before January 1, 2020, means any calendar week during which the
5 individual earned in employment from an employer remuneration
6 not less than an amount 20 times the minimum wage in effect
7 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
8 1 of the calendar year preceding the calendar year in which the
9 benefit year commences, which amount shall be adjusted to the next
10 higher multiple of \$1.00 if not already a multiple thereof, except
11 that if in any calendar week an individual subject to this paragraph
12 (3) is in employment with more than one employer, the individual
13 may in that calendar week establish a base week with respect to
14 each of the employers from whom the individual earns
15 remuneration equal to not less than the amount defined in this
16 paragraph (3) during that week.

17 (4) "Base week," commencing on or after January 1, 2020,
18 means any calendar week during which the individual earned in
19 employment from an employer remuneration not less than an
20 amount 10 times the minimum wage in effect pursuant to section 5
21 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
22 year preceding the calendar year in which the benefit year
23 commences, which amount shall be adjusted to the next higher
24 multiple of \$1.00 if not already a multiple thereof, except that if in
25 any calendar week an individual subject to this paragraph (4) is in
26 employment with more than one employer, the individual may in
27 that calendar week establish a base week with respect to each of the
28 employers from whom the individual earns remuneration equal to
29 not less than the amount defined in this paragraph (4) during that
30 week.

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

42 For the purpose of computing the average weekly wage, the
43 monetary alternative in subparagraph (B) of paragraph 【(2)】 (4) of
44 subsection (e) of R.S.43:21-4 shall only apply in those instances
45 where the individual did not have at least 20 base weeks in the base
46 year. For benefit years commencing on or after July 1, 1986,
47 "average weekly wage" means the amount derived by dividing an
48 individual's total base year wages by the number of base weeks

1 worked by the individual during the base year; provided that for the
2 purpose of computing the average weekly wage, the maximum
3 number of base weeks used in the divisor shall be 52.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 5. This act shall take effect immediately.

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STATEMENT

5

6 This bill assists certain laid off individuals by:

7 1. increasing the maximum amount which a laid off individual
8 may earn in employment without a reduction in unemployment
9 insurance (UI) benefits, from 20% of the individual's weekly UI
10 benefit amount, to 50% of the individual's weekly UI benefit
11 amount;

12 2. reducing the minimum weekly earnings required in each of
13 20 base weeks for an individual to be eligible for UI benefits from
14 20 times the State minimum wage to 10 times and State minimum
15 wage, and reducing the alternative annual earnings required for
16 eligibility from 1,000 times the State minimum wage to 500 times
17 the State minimum wage; and

18 3. permitting, if the employer provides advanced notice of a
19 layoff, an individual to file for UI benefits upon receiving the
20 notification, and requiring that the claim, if found valid, be paid
21 upon the commencement of the period of unemployment.