

# SENATE, No. 2339

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Senator M. TERESA RUIZ**

**District 29 (Essex)**

**Co-Sponsored by:**

**Senators Addiego and Sacco**

**SYNOPSIS**

Concerns certain benefits and leave provided to workers.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/13/2020)**

1 AN ACT concerning certain benefits and leave provided to workers  
2 and amending various parts of the statutory law.

3

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

6

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

9 3. As used in this act:

10 a. "Child" means a biological, adopted, foster child, or resource  
11 family child, stepchild, legal ward, or child of a parent, including a  
12 child who becomes the child of a parent pursuant to a valid written  
13 agreement between the parent and a gestational carrier.

14 b. "Director" means the Director of the Division on Civil Rights.

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

17 d. "Employ" means to suffer or permit to work for  
18 compensation, and includes ongoing, contractual relationships in  
19 which the employer retains substantial direct or indirect control over  
20 the employee's employment opportunities or terms and conditions of  
21 employment.

22 e. "Employee" means a person who is employed for at least 12  
23 months by an employer, with respect to whom benefits are sought  
24 under this act, for not less than 1,000 base hours during the  
25 immediately preceding 12-month period. Any time, up to a  
26 maximum of 90 calendar days, during which a person is laid off or  
27 furloughed by an employer due to that employer curtailing operations  
28 because of a state of emergency declared after October 22, 2012,  
29 shall be regarded as time in which the person is employed for the  
30 purpose of determining eligibility for leave time under this act. In  
31 making the determination, the base hours per week during the layoff  
32 or furlough shall be deemed to be the same as the average number of  
33 hours worked per week during the rest of the 12-month period.

34 f. "Employer" means a person or corporation, partnership,  
35 individual proprietorship, joint venture, firm or company or other  
36 similar legal entity which engages the services of an employee and  
37 which:

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

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

40 (3) **【**With respect to the period of time from the 1,095th day  
41 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)  
42 through June 30, 2019, employs 50 or more employees for each  
43 working day during each of 20 or more calendar workweeks in the  
44 then current or immediately preceding calendar year; and **】** (Deleted

**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 by amendment, P.L. , c. ) (pending before the Legislature as this  
2 bill)

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

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

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

15 g. "Employment benefits" means all benefits and policies  
16 provided or made available to employees by an employer, and  
17 includes group life insurance, health insurance, disability insurance,  
18 sick leave, annual leave, pensions, or other similar benefits.

19 h. "Parent" means a person who is the biological parent,  
20 adoptive parent, foster parent, resource family parent, step-parent,  
21 parent-in-law or legal guardian, having a "parent-child relationship"  
22 with a child as defined by law, or having sole or joint legal or physical  
23 custody, care, guardianship, or visitation with a child, or who became  
24 the parent of the child pursuant to a valid written agreement between  
25 the parent and a gestational carrier.

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

28 (1) the birth of a child of the employee, including a child born  
29 pursuant to a valid written agreement between the employee and a  
30 gestational carrier;

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

33 (3) the serious health condition of a family member of the  
34 employee.

35 j. "Family member" means a child, parent, parent-in-law,  
36 sibling, grandparent, grandchild, spouse, domestic partner, or one  
37 partner in a civil union couple, or any other individual related by  
38 blood to the employee, and any other individual that the employee  
39 shows to have a close association with the employee which is the  
40 equivalent of a family relationship.

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

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

47 (1) inpatient care in a hospital, hospice, or residential medical  
48 care facility; or

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

3 During a state of emergency declared by the Governor, or when  
4 indicated to be needed by the Commissioner of Health or other public  
5 health authority, "serious health condition" shall also include an  
6 illness caused by an epidemic of a communicable disease, a known  
7 or suspected exposure to a communicable disease, or efforts to  
8 prevent spread of a communicable disease, which requires in-home  
9 care or treatment of a family member of the employee due to:

10 (1) the issuance by a healthcare provider or the commissioner or  
11 other public health authority of a determination that the presence in  
12 the community of a family member may jeopardize the health of  
13 others; and

14 (2) the recommendation, direction, or order of the provider or  
15 authority that the family member be isolated or quarantined because  
16 of suspected exposure to the communicable disease.

17 m. "State of emergency" means a natural or man-made disaster  
18 or emergency for which a state of emergency has been declared by  
19 the President of the United States or the Governor, or for which a  
20 state of emergency has been declared by a municipal emergency  
21 management coordinator.

22 (cf: P.L.2020, c.17, s.2)

23

24 2. R.S.43:21-3 is amended to read as follows:

25 43:21-3. Benefits.

26 (a) Payment of benefits.

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

29 (b) Weekly benefits for unemployment.

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

41 (2) With respect to an individual's benefit year commencing on  
42 or after May 1, 2020, such individual, if eligible and unemployed (as  
43 defined in subsection (m) of R.S.43:21-19), shall be paid an amount  
44 (except as to final payment) equal to his weekly benefit rate less any  
45 remuneration, other than remuneration from self-employment paid to  
46 an individual who is receiving a self-employment assistance  
47 allowance, paid or payable to him for such week in excess of 50% of  
48 his weekly benefit rate (fractional part of a dollar omitted) or \$5.00,

1 whichever is the greater; provided that such amount shall be  
2 computed to the next lower multiple of \$1.00 if not already a multiple  
3 thereof.

4 (c) Weekly benefit rate.

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

14 (2) Dependency benefits.

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

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

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

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

46 (i) All married individuals claiming dependents under this  
47 paragraph (2) shall be required to provide the social security number  
48 of the individual's spouse. If the individual indicates that the spouse

1 is unemployed, the division shall match the social security number of  
2 the spouse against available wage records to determine whether  
3 earnings were reported on the last quarterly earnings report filed by  
4 employers under R.S.43:21-14. If earnings were reported, the  
5 division shall contact in writing the last employer to determine  
6 whether the spouse is currently employed.

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

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

20 (d) Maximum total benefits.

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

22 (B) (i) With respect to an individual for whom benefits shall be  
23 payable for benefit years commencing on or after July 1, 1986, and  
24 before July 1, 2003 as provided in this section, the individual shall  
25 be entitled to receive a total amount of benefits equal to three-  
26 quarters of the individual's base weeks with all employers in the base  
27 year multiplied by the individual's weekly benefit rate; but the  
28 amount of benefits thus resulting under that determination shall be  
29 adjusted to the next lower multiple of \$1.00 if not already a multiple  
30 thereof. With respect to an individual for whom benefits shall be  
31 payable for benefit years commencing on or after July 1, 2003 as  
32 provided in this section, the individual shall be entitled to receive a  
33 total amount of benefits equal to the number of the individual's base  
34 weeks with all employers in the base year multiplied by the  
35 individual's weekly benefit rate; but the amount of benefits thus  
36 resulting under that determination shall be adjusted to the next lower  
37 multiple of \$1.00 if not already a multiple thereof.

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

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

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

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

10 (3) (Deleted by amendment, P.L.1984, c.24.)  
11 (cf: P.L.2004, c.45, s.1)

12

13 3. R.S.43:21-4 is amended to read as follows:

14 43:21-4. Benefit eligibility conditions. An unemployed  
15 individual shall be eligible to receive benefits with respect to any  
16 week eligible only if:

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

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

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

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

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

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

1 because the individual failed or refused to accept work while  
2 attending such program.

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

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

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

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

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

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

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

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

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

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

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

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

47 (5) An unemployed individual, who is otherwise eligible, shall  
48 not be deemed unavailable for work or ineligible solely by reason of



1 the individual's attendance before a court in response to a summons  
2 for service on a jury.

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

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

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

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

- 29 (A) The individual has completed the reemployment services; or  
30 (B) There is justifiable cause for the failure to participate, which  
31 shall include participation in employment and training, self-  
32 employment assistance activities or other activities authorized by the  
33 division to assist reemployment or enhance the marketable skills and  
34 earning power of the individual and which shall include any other  
35 circumstance indicated pursuant to this section in which an individual  
36 is not required to be available for and actively seeking work to  
37 receive benefits.

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

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

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

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

5 (d) With respect to any benefit year commencing before January  
6 1, 2002, the individual has been totally or partially unemployed for a  
7 waiting period of one week in the benefit year which includes that  
8 week. When benefits become payable with respect to the third  
9 consecutive week next following the waiting period, the individual  
10 shall be eligible to receive benefits as appropriate with respect to the  
11 waiting period. No week shall be counted as a week of  
12 unemployment for the purposes of this subsection:

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

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

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

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

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

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

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

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

37 (4) With respect to benefit years commencing on or after January  
38 7, 2001 and before May 1, 2020, except as otherwise provided in  
39 paragraph (5) of this subsection, the individual has, during his base  
40 year as defined in subsection (c) of R.S.43:21-19:

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

43 (B) If the individual has not met the requirements of subparagraph  
44 (A) of this paragraph (4), earned remuneration not less than an  
45 amount 1,000 times the minimum wage in effect pursuant to section  
46 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar  
47 year preceding the calendar year in which the benefit year

1 commences, which amount shall be adjusted to the next higher  
2 multiple of \$100 if not already a multiple thereof.

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

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

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

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

21 (6) With respect to benefit years commencing on or after May 1,  
22 2020, the individual, during his base year as defined in subsection (c)  
23 of R.S.43:21-19:

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

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

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

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

44 (f) (1) The individual has suffered any accident or sickness not  
45 compensable under the workers' compensation law, R.S.34:15-1 et  
46 seq. and resulting in the individual's total disability to perform any  
47 work for remuneration, and would be eligible to receive benefits  
48 under this chapter (R.S.43:21-1 et seq.) (without regard to the

1 maximum amount of benefits payable during any benefit year) except  
2 for the inability to work and has furnished notice and proof of claim  
3 to the division, in accordance with its rules and regulations, and  
4 payment is not precluded by the provisions of R.S.43:21-3(d);  
5 provided, however, that benefits paid under this subsection (f) shall  
6 be computed on the basis of only those base year wages earned by  
7 the claimant as a "covered individual," as defined in subsection (b)  
8 of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that  
9 no benefits shall be payable under this subsection to any individual:

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

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

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

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

28 (E) For any week with respect to which or part of which the  
29 individual has received or is seeking disability benefits under the  
30 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-  
31 25 et al.);

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

36 (2) The individual is taking family temporary disability leave to  
37 provide care for a family member with a serious health condition or  
38 to be with a child during the first 12 months after the child's birth or  
39 placement of the child for adoption or as a foster child with the  
40 individual, and the individual would be eligible to receive benefits  
41 under R.S.43:21-1 et seq. (without regard to the maximum amount of  
42 benefits payable during any benefit year) except for the individual's  
43 unavailability for work while taking the family temporary disability  
44 leave, and the individual has furnished notice and proof of claim to  
45 the division, in accordance with its rules and regulations, and  
46 payment is not precluded by the provisions of R.S.43:21-3(d)  
47 provided, however, that benefits paid under this subsection (f) shall  
48 be computed on the basis of only those base year wages earned by

1 the claimant as a "covered individual," as defined in subsection (b)  
2 of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that  
3 no benefits shall be payable under this subsection to any individual:

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

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

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

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

28 (3) Benefit payments under this subsection (f) shall be charged to  
29 and paid from the State disability benefits fund established by the  
30 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-  
31 25 et al.), and shall not be charged to any employer account in  
32 computing any employer's experience rate for contributions payable  
33 under this chapter.

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

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

1 there is a contract or a reasonable assurance that such individual will  
2 perform services in any such capacity for any educational institution  
3 in the second of such academic years or terms;

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

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

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

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

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

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

1 performing services “in the same capacity” unless those services are  
2 rendered under the same terms or conditions of employment in the  
3 ensuing year as in the first academic year or term.

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

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

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

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

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

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

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

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

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

19

20 4. R.S.43:21-6 is amended to read as follows:

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

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



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

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

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

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

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

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

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

47 Whenever an initial determination is based upon information other  
48 than that supplied by an employer because such employer failed to

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

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

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

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

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

27 (D) Gross misconduct as provided in subsection (b) of R.S.43:21-  
28 5.

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

33 Unless the claimant or any interested party, within seven calendar  
34 days after delivery of notification of an initial determination or within  
35 10 calendar days after such notification was mailed to his or their  
36 last-known address and addresses, files an appeal from such decision,  
37 such decision shall be final and benefits shall be paid or denied in  
38 accordance therewith, except for such determinations as may be  
39 altered in benefit amounts or duration as provided in this paragraph.  
40 Benefits payable for periods pending an appeal and not in dispute  
41 shall be paid as such benefits accrue; provided that insofar as any  
42 such appeal is or may be an appeal from a determination to the effect  
43 that the claimant is disqualified under the provisions of R.S.43:21-5  
44 or any amendments thereof or supplements thereto, benefits pending  
45 determination of the appeal shall be withheld only for the period of  
46 disqualification as provided for in said section, and notwithstanding  
47 such appeal, the benefits otherwise provided by this act shall be paid  
48 for the period subsequent to such period of disqualification; and

1 provided, also, that if there are two determinations of entitlement,  
2 benefits for the period covered by such determinations shall be paid  
3 regardless of any appeal which may thereafter be taken, but no  
4 employer's account shall be charged with benefits so paid, if the  
5 decision is finally reversed.

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

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

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

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

1 notification or mailing of the decision for any decision made on or  
2 before December 1, 2010, or within 20 days after the date of  
3 notification or mailing of such decision for any decision made after  
4 December 1, 2010.

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

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

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

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

46 (h) Court review. Any decision of the board of review shall  
47 become final as to any party upon the mailing of a copy thereof to  
48 such party or to his attorney, or upon the mailing of a copy thereof to

1 such party at his last-known address. The Division of Unemployment  
2 and Temporary Disability Insurance and any party to a proceeding  
3 before the board of review may secure judicial review of the final  
4 decision of the board of review. Any party not joining in the appeal  
5 shall be made a defendant; the board of review shall be deemed to be  
6 a party to any judicial action involving the review of, or appeal from,  
7 any of its decisions, and may be represented in any such judicial  
8 action by any qualified attorney, who may be a regular salaried  
9 employee of the board of review or has been designated by it for that  
10 purpose, or, at the board of review's request, by the Attorney General.

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

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

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

29 (2) The employer, or an agent of the employer, has established a  
30 pattern of failing to respond in a timely or adequate manner to  
31 requests from the division for information related to claims for  
32 benefits.

33 Determinations of the division prohibiting the relief of charges  
34 pursuant to this subsection shall be subject to appeal in the same  
35 manner as other determinations of the division related to the charging  
36 of employer accounts.

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

38 "Erroneous benefit payment" means a benefit payment that, except  
39 for the failure by the employer, or an agent of the employer, to  
40 respond in a timely or adequate manner to a request from the division  
41 for information with respect to the claim for benefits, would not have  
42 been made; and

43 "Pattern of failing" means repeated documented failure on the part  
44 of the employer, or an agent of the employer, to respond to requests  
45 from the division to the employer or employer's agent for information  
46 related to a claim for benefits, except that an employer, or an agent  
47 of an employer, shall not be determined to have engaged in a "pattern  
48 of failing" if the number of failures to respond to requests from the

1 division for information related to claims for benefits during the  
2 previous 365 calendar days is less than three, or if the number of  
3 failures is less than two percent of the number of requests from the  
4 division, whichever is greater.

5 (k) The Department of Labor and Workforce Development shall  
6 establish and maintain a procedure by which personnel access rights  
7 to the department's primary system for unemployment claims receipt  
8 and processing are comprehensively reviewed every calendar  
9 quarter. The procedure shall include an evaluation of access needs  
10 to the primary unemployment claims receipt and processing system  
11 for all department personnel and the adjustment, addition, or deletion  
12 of access rights for department personnel based on the quarterly  
13 review.

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

15

16 5. R.S.43:21-19 is amended to read as follows:

17 43:21-19. Definitions. As used in this chapter (R.S.43:21-  
18 1 et seq.), unless the context clearly requires otherwise:

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

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

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

47 (c) (1) "Base year" with respect to benefit years commencing on  
48 or after July 1, 1986, shall mean the first four of the last five

1 completed calendar quarters immediately preceding an individual's  
2 benefit year.

3 With respect to a benefit year commencing on or after July 1,  
4 1995, if an individual does not have sufficient qualifying weeks or  
5 wages in his base year to qualify for benefits, the individual shall  
6 have the option of designating that his base year shall be the  
7 "alternative base year," which means the last four completed calendar  
8 quarters immediately preceding the individual's benefit year; except  
9 that, with respect to a benefit year commencing on or after October  
10 1, 1995, if the individual also does not have sufficient qualifying  
11 weeks or wages in the last four completed calendar quarters  
12 immediately preceding his benefit year to qualify for benefits,  
13 "alternative base year" means the last three completed calendar  
14 quarters immediately preceding his benefit year and, of the calendar  
15 quarter in which the benefit year commences, the portion of the  
16 quarter which occurs before the commencing of the benefit year.

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

31 (2) With respect to a benefit year commencing on or after June 1,  
32 1990 for an individual who immediately preceding the benefit year  
33 was subject to a disability compensable under the provisions of the  
34 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
35 et seq.), "base year" shall mean the first four of the last five  
36 completed calendar quarters immediately preceding the individual's  
37 period of disability, if the employment held by the individual  
38 immediately preceding the period of disability is no longer available  
39 at the conclusion of that period and the individual files a valid claim  
40 for unemployment benefits after the conclusion of that period. For  
41 the purposes of this paragraph, "period of disability" means the  
42 period defined as a period of disability by section 3 of the  
43 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27).  
44 An individual who files a claim under the provisions of this  
45 paragraph (2) shall not be regarded as having left work voluntarily  
46 for the purposes of subsection (a) of R.S.43:21-5.

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

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

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

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

33 (2) "Controller" means the Office of the Assistant Commissioner  
34 for Finance and Controller of the Department of Labor and  
35 Workforce Development, established by the 1982 Reorganization  
36 Plan of the Department of Labor.

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

43 (g) "Employing unit" means the State or any of its  
44 instrumentalities or any political subdivision thereof or any of its  
45 instrumentalities or any instrumentality of more than one of the  
46 foregoing or any instrumentality of any of the foregoing and one or  
47 more other states or political subdivisions or any individual or type  
48 of organization, any partnership, association, trust, estate, joint-stock



1 company, insurance company or corporation, whether domestic or  
2 foreign, or the receiver, trustee in bankruptcy, trustee or successor  
3 thereof, or the legal representative of a deceased person, which has  
4 or subsequent to January 1, 1936, had in its employ one or more  
5 individuals performing services for it within this State. All  
6 individuals performing services within this State for any employing  
7 unit which maintains two or more separate establishments within this  
8 State shall be deemed to be employed by a single employing unit for  
9 all the purposes of this chapter (R.S.43:21-1 et seq.). Each individual  
10 employed to perform or to assist in performing the work of any agent  
11 or employee of an employing unit shall be deemed to be employed  
12 by such employing unit for all the purposes of this chapter  
13 (R.S.43:21-1 et seq.), whether such individual was hired or paid  
14 directly by such employing unit or by such agent or employee;  
15 provided the employing unit had actual or constructive knowledge of  
16 the work.

17 (h) "Employer" means:

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

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

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

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

37 (5) Any employing unit for which service in employment as  
38 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
39 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed  
40 after December 31, 1977;

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

46 (7) Any employing unit not an employer by reason of any other  
47 paragraph of this subsection (h) for which, within either the current  
48 or preceding calendar year, service is or was performed with respect

1 to which such employing unit is liable for any federal tax against  
2 which credit may be taken for contributions required to be paid into  
3 a state unemployment fund; or which, as a condition for approval of  
4 the "unemployment compensation law" for full tax credit against the  
5 tax imposed by the Federal Unemployment Tax Act, is required  
6 pursuant to such act to be an employer under this chapter (R.S.43:21-  
7 1 et seq.);

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

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

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

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

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

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

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

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

28 (A) Any service performed prior to January 1, 1972, which was  
29 employment as defined in the "unemployment compensation law"  
30 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
31 provisions of this subsection, service performed on or after January  
32 1, 1972, including service in interstate commerce, performed for  
33 remuneration or under any contract of hire, written or oral, express  
34 or implied.

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

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

47 (C) Service performed after December 31, 1971 by an individual  
48 in the employ of a religious, charitable, educational, or other

1 organization, which is excluded from "employment" as defined in the  
2 Federal Unemployment Tax Act, solely by reason of section 3306  
3 (c)(8) of that act, if such service is not excluded from "employment"  
4 under paragraph (D) below.

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

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

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

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

20 (aa) as an elected official;

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

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

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

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

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

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

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

47 (E) The term "employment" shall include the services of an  
48 individual who is a citizen of the United States, performed outside

1 the United States after December 31, 1971 (except in Canada and in  
2 the case of the Virgin Islands, after December 31, 1971) and prior to  
3 January 1 of the year following the year in which the U.S. Secretary  
4 of Labor approves the unemployment compensation law of the Virgin  
5 Islands, under section 3304 (a) of the Internal Revenue Code of 1986  
6 (26 U.S.C. s.3304 (a)) in the employ of an American employer (other  
7 than the service which is deemed employment under the provisions  
8 of R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another  
9 state's unemployment compensation law), if

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

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

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

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

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

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

47 (H) The term "United States" when used in a geographical sense  
48 in subsection R.S.43:21-19 (i) includes the states, the District of

1 Columbia, the Commonwealth of Puerto Rico and, effective on the  
2 day after the day on which the U.S. Secretary of Labor approves for  
3 the first time under section 3304 (a) of the Internal Revenue Code of  
4 1986 (26 U.S.C. s.3304 (a)) an unemployment compensation law  
5 submitted to the Secretary by the Virgin Islands for such approval,  
6 the Virgin Islands.

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

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

14 (bb) for some portion of a day in each of 20 different calendar  
15 weeks, whether or not such weeks were consecutive, in either the  
16 current or the preceding calendar year, employed in agricultural labor  
17 10 or more individuals, regardless of whether they were employed at  
18 the same moment in time.

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

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

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

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

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

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

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

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

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

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

7 (J) Domestic service after December 31, 1977 performed in the  
8 private home of an employing unit which paid cash remuneration of  
9 \$1,000.00 or more to one or more individuals for such domestic  
10 service in any calendar quarter in the current or preceding calendar  
11 year.

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

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

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

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

28 (4) Services not covered under paragraph (2) of this subsection  
29 and performed entirely without this State, with respect to no part of  
30 which contributions are required and paid under an unemployment  
31 compensation law of any other state or of the federal government,  
32 shall be deemed to be employment subject to this chapter (R.S.43:21-  
33 1 et seq.) if the individual performing such services is a resident of  
34 this State and the employing unit for whom such services are  
35 performed files with the division an election that the entire service of  
36 such individual shall be deemed to be employment subject to this  
37 chapter (R.S.43:21-1 et seq.).

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

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

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

44 (6) Services performed by an individual for remuneration shall be  
45 deemed to be employment subject to this chapter (R.S.43:21-  
46 1 et seq.) unless and until it is shown to the satisfaction of the  
47 division that:

- 1 (A) Such individual has been and will continue to be free from  
2 control or direction over the performance of such service, both under  
3 his contract of service and in fact; and
- 4 (B) Such service is either outside the usual course of the business  
5 for which such service is performed, or that such service is performed  
6 outside of all the places of business of the enterprise for which such  
7 service is performed; and
- 8 (C) Such individual is customarily engaged in an independently  
9 established trade, occupation, profession or business.
- 10 (7) Provided that such services are also exempt under the Federal  
11 Unemployment Tax Act, as amended, or that contributions with  
12 respect to such services are not required to be paid into a state  
13 unemployment fund as a condition for a tax offset credit against the  
14 tax imposed by the Federal Unemployment Tax Act, as amended, the  
15 term "employment" shall not include:
- 16 (A) Agricultural labor performed prior to January 1, 1978; and  
17 after December 31, 1977, only if performed in a calendar year for an  
18 entity which is not an employer as defined in the "unemployment  
19 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such  
20 calendar year; or unless performed for an employing unit which
- 21 (i) during a calendar quarter in either the current or the preceding  
22 calendar year paid remuneration in cash of \$20,000.00 or more to  
23 individuals employed in agricultural labor, or
- 24 (ii) for some portion of a day in each of 20 different calendar  
25 weeks, whether or not such weeks were consecutive, in either the  
26 current or the preceding calendar year, employed in agricultural labor  
27 10 or more individuals, regardless of whether they were employed at  
28 the same moment in time;
- 29 (B) Domestic service in a private home performed prior to  
30 January 1, 1978; and after December 31, 1977, unless performed in  
31 the private home of an employing unit which paid cash remuneration  
32 of \$1,000.00 or more to one or more individuals for such domestic  
33 service in any calendar quarter in the current or preceding calendar  
34 year;
- 35 (C) Service performed by an individual in the employ of his son,  
36 daughter or spouse, and service performed by a child under the age  
37 of 18 in the employ of his father or mother;
- 38 (D) Service performed prior to January 1, 1978, in the employ of  
39 this State or of any political subdivision thereof or of any  
40 instrumentality of this State or its political subdivisions, except as  
41 provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ  
42 of the South Jersey Port Corporation or its successors;
- 43 (E) Service performed in the employ of any other state or its  
44 political subdivisions or of an instrumentality of any other state or  
45 states or their political subdivisions to the extent that such  
46 instrumentality is with respect to such service exempt under the  
47 Constitution of the United States from the tax imposed under the

1 Federal Unemployment Tax Act, as amended, except as provided in  
2 R.S.43:21-19 (i) (1) (B) above;

3 (F) Service performed in the employ of the United States  
4 Government or of any instrumentality of the United States exempt  
5 under the Constitution of the United States from the contributions  
6 imposed by the "unemployment compensation law," except that to  
7 the extent that the Congress of the United States shall permit states  
8 to require any instrumentalities of the United States to make  
9 payments into an unemployment fund under a state unemployment  
10 compensation law, all of the provisions of this act shall be applicable  
11 to such instrumentalities, and to service performed for such  
12 instrumentalities, in the same manner, to the same extent and on the  
13 same terms as to all other employers, employing units, individuals  
14 and services; provided that if this State shall not be certified for any  
15 year by the Secretary of Labor of the United States under section  
16 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C.  
17 s.3304), the payments required of such instrumentalities with respect  
18 to such year shall be refunded by the division from the fund in the  
19 same manner and within the same period as is provided in R.S.43:21-  
20 14 (f) with respect to contributions erroneously paid to or collected  
21 by the division;

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

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

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

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

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

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



- 1 (M) Service performed for or in behalf of the owner or operator of  
2 any theater, ballroom, amusement hall or other place of  
3 entertainment, not in excess of 10 weeks in any calendar year for the  
4 same owner or operator, by any leader or musician of a band or  
5 orchestra, commonly called a "name band," entertainer, vaudeville  
6 artist, actor, actress, singer or other entertainer;
- 7 (N) Services performed after January 1, 1973 by an individual for  
8 a labor union organization, known and recognized as a union local,  
9 as a member of a committee or committees reimbursed by the union  
10 local for time lost from regular employment, or as a part-time officer  
11 of a union local and the remuneration for such services is less than  
12 \$1,000.00 in a calendar year;
- 13 (O) Services performed in the sale or distribution of merchandise  
14 by home-to-home salespersons or in-the-home demonstrators whose  
15 remuneration consists wholly of commissions or commissions and  
16 bonuses;
- 17 (P) Service performed in the employ of a foreign government,  
18 including service as a consular, nondiplomatic representative, or  
19 other officer or employee;
- 20 (Q) Service performed in the employ of an instrumentality wholly  
21 owned by a foreign government if (i) the service is of a character  
22 similar to that performed in foreign countries by employees of the  
23 United States Government or of an instrumentality thereof, and (ii)  
24 the division finds that the United States Secretary of State has  
25 certified to the United States Secretary of the Treasury that the  
26 foreign government, with respect to whose instrumentality  
27 exemption is claimed, grants an equivalent exemption with respect to  
28 similar services performed in the foreign country by employees of  
29 the United States Government and of instrumentalities thereof;
- 30 (R) Service in the employ of an international organization entitled  
31 to enjoy the privileges, exemptions and immunities under the  
32 International Organizations Immunities Act  
33 (22 U.S.C. s.288 et seq.);
- 34 (S) Service covered by an election duly approved by an agency  
35 charged with the administration of any other state or federal  
36 unemployment compensation or employment security law, in  
37 accordance with an arrangement pursuant to R.S.43:21-21 during the  
38 effective period of such election;
- 39 (T) Service performed in the employ of a school, college, or  
40 university if such service is performed (i) by a student enrolled at  
41 such school, college, or university on a full-time basis in an  
42 educational program or completing such educational program leading  
43 to a degree at any of the severally recognized levels, or (ii) by the  
44 spouse of such a student, if such spouse is advised at the time such  
45 spouse commences to perform such service that (I) the employment  
46 of such spouse to perform such service is provided under a program  
47 to provide financial assistance to such student by such school,

1 college, or university, and (II) such employment will not be covered  
2 by any program of unemployment insurance;

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

14 (V) Service performed in the employ of a hospital, if such service  
15 is performed by a patient of the hospital; service performed as a  
16 student nurse in the employ of a hospital or a nurses' training school  
17 by an individual who is enrolled and regularly attending classes in a  
18 nurses' training school approved under the laws of this State;

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

22 (X) Services performed by operators of motor vehicles weighing  
23 18,000 pounds or more, licensed for commercial use and used for the  
24 highway movement of motor freight, who own their equipment or  
25 who lease or finance the purchase of their equipment through an  
26 entity which is not owned or controlled directly or indirectly by the  
27 entity for which the services were performed and who were  
28 compensated by receiving a percentage of the gross revenue  
29 generated by the transportation move or by a schedule of payment  
30 based on the distance and weight of the transportation move;

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

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

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

47 (9) Services performed by the owner of a limousine franchise  
48 (franchisee) shall not be deemed to be employment subject to the

1 "unemployment compensation law," R.S.43:21-1 et seq., with regard  
2 to the franchisor if:

- 3 (A) The limousine franchisee is incorporated;  
4 (B) The franchisee is subject to regulation by the Interstate  
5 Commerce Commission;  
6 (C) The limousine franchise exists pursuant to a written franchise  
7 arrangement between the franchisee and the franchisor as defined by  
8 section 3 of P.L.1971, c.356 (C.56:10-3); and  
9 (D) The franchisee registers with the Department of Labor and  
10 Workforce Development and receives an employer registration  
11 number.

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

22 For purposes of this paragraph (10): "legal transcription service"  
23 and "legal transcribing" mean making use, by audio, video or voice  
24 recording, of a verbatim record of court proceedings, depositions,  
25 other judicial proceedings, meetings of boards, agencies,  
26 corporations, or other bodies or groups, and causing that record to be  
27 printed in readable form or produced on a computer screen in  
28 readable form; and "legal transcriber" means a person who engages  
29 in "legal transcribing."

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

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

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

37 (m) "Unemployment."

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

- 40 (A) The individual is not engaged in full-time work and with  
41 respect to which his remuneration is less than his weekly benefit rate,  
42 including any week during which he is on vacation without pay;  
43 provided such vacation is not the result of the individual's voluntary  
44 action, except that for benefit years commencing on or after July 1,  
45 1984, an officer of a corporation, or a person who has more than a  
46 5% equitable or debt interest in the corporation, whose claim for  
47 benefits is based on wages with that corporation shall not be deemed

1 to be unemployed in any week during the individual's term of office  
2 or ownership in the corporation; or

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

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

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

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

21 (o) "Wages" means remuneration paid by employers for  
22 employment. If a worker receives gratuities regularly in the course  
23 of his employment from other than his employer, his "wages" shall  
24 also include the gratuities so received, if reported in writing to his  
25 employer in accordance with regulations of the division, and if not  
26 so reported, his "wages" shall be determined in accordance with the  
27 minimum wage rates prescribed under any labor law or regulation of  
28 this State or of the United States, or the amount of remuneration  
29 actually received by the employee from his employer, whichever is  
30 the higher.

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

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

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

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

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

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

45 (A) Any calendar week during which the individual earned in  
46 employment from an employer remuneration not less than an amount  
47 which is 20% of the Statewide average weekly remuneration defined  
48 in subsection (c) of R.S.43:21-3 which amount shall be adjusted to

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

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

22 (Deleted by amendment, P.L. , c. )(pending before the Legislature  
23 as this bill)

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

37 (4) "Base week," commencing on or after January 1, 2020, means  
38 any calendar week during which the individual earned in employment  
39 from an employer remuneration not less than an amount 10 times the  
40 minimum wage in effect pursuant to section 5 of P.L.1966, c.113  
41 (C.34:11-56a4) on October 1 of the calendar year preceding the  
42 calendar year in which the benefit year commences, which amount  
43 shall be adjusted to the next higher multiple of \$1.00 if not already a  
44 multiple thereof, except that if in any calendar week an individual  
45 subject to this paragraph (4) is in employment with more than one  
46 employer, the individual may in that calendar week establish a base  
47 week with respect to each of the employers from whom the individual

1 earns remuneration equal to not less than the amount defined in this  
2 paragraph (4) during that week.

3 (u) "Average weekly wage" means the amount derived by  
4 dividing an individual's total wages received during his base year  
5 base weeks (as defined in subsection (t) of this section) from that  
6 most recent base year employer with whom he has established at least  
7 20 base weeks, by the number of base weeks in which such wages  
8 were earned. In the event that such claimant had no employer in his  
9 base year with whom he had established at least 20 base weeks, then  
10 such individual's average weekly wage shall be computed as if all of  
11 his base week wages were received from one employer and as if all  
12 his base weeks of employment had been performed in the employ of  
13 one employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20

21 6. Section 2 of P.L.1948, c.110 (C.43:21-26) is amended to read  
22 as follows:

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

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

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

47 It was found, prior to the enactment of the "Temporary Disability  
48 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then existing

1 voluntary plans for the payment of cash sickness benefits covered  
2 less than one-half of the number of working people of this State who  
3 were covered by the "unemployment compensation law," and that  
4 even that degree of voluntary protection afforded uneven, unequal  
5 and sometimes uncertain protection among the various voluntary  
6 benefit programs.

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

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

44 **【**While the Legislature recognizes the pressing need for benefits  
45 for workers taking leave to care for family members incapable of  
46 self-care, it also finds that the need of workers for leave during their  
47 own disability continues to be especially acute, as a disabled worker  
48 has less discretion about taking time off from work than a worker



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

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

34 (cf: P.L.2019, c.37, s.7)

35

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

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

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

47 c. The employer of an individual may, notwithstanding any  
48 other provision of law, including the provisions of N.J.S.18A:30-1 et

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

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

46 e. An employee taking family temporary disability leave or an  
47 employer from whom the employee is taking the leave shall have the  
48 same right to appeal a determination of a benefit for the family

1 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1  
2 et al.) as an employee or employer has to appeal a determination of a  
3 benefit for the disability of the employee under the "Temporary  
4 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and  
5 any regulations adopted pursuant to the "Temporary Disability  
6 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

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

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

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

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

36 (cf: P.L.2019, c.37, s.13)

37

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

40 24. a. An employer shall not discharge, harass, threaten, or  
41 otherwise discriminate or retaliate against an employee with respect  
42 to the compensation, terms, conditions, or privileges of employment  
43 on the basis that the employee requested or took any temporary  
44 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.), or  
45 family temporary disability leave benefits pursuant to P.L.2008, c.17  
46 (C.43:21-39.1 et al.), including retaliation by refusing to **【restore】**  
47 reinstate the employee to employment following a period of leave**【,**  
48 except that, pursuant to section 2 of P.L.1948, c.110 (C.43:21-26),

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

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

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

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

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

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

34 (5) compensation for any lost wages, benefits and other  
35 remuneration; and

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

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

38

39 9. This act shall take effect immediately, provided that:

40 a. in the case of any employer who becomes subject to the  
41 provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the  
42 provisions of paragraph (5) of subsection f. of section 3 of P.L.1989,  
43 c.261 (C.34:11B-3), the provisions of P.L.1989, c.261 (C.34:11B-1  
44 et seq.) shall apply to the employer only with respect to periods of  
45 family leave which take place, in full or in part, after the effective  
46 date of this act; and

47 b. in the case of any employer who becomes subject to the  
48 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because of

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

8 STATEMENT  
9

10 This bill enhances certain rights of workers to benefits and leave.

11 The bill assists certain laid off workers by:

12 1. increasing the maximum amount which a laid off worker may  
13 earn in employment without a reduction in unemployment insurance  
14 (UI) benefits, from 20% of the worker's weekly UI benefit amount,  
15 to 50% of the worker's weekly UI benefit amount;

16 2. reducing the minimum weekly earnings required in each of 20  
17 base weeks for a worker to be eligible for UI benefits from 20 times  
18 the State minimum wage to 10 times and State minimum wage, and  
19 reducing the alternative annual earnings required for eligibility from  
20 1,000 times the State minimum wage to 500 times the State minimum  
21 wage; and

22 3. permitting, if the employer provides advanced notice of a  
23 layoff, a worker to file for UI benefits upon receiving the notification,  
24 and requiring that the claim, if found valid, be paid upon the  
25 commencement of the period of unemployment.

26 The bill clarifies certain provisions of the UI law concerning the  
27 providing of UI benefits to an employee of an education institution  
28 during times when work is not available. The law currently provides  
29 that an employee may not receive UI benefits when unemployed  
30 during a customary vacation period or holiday recess between  
31 successive academic years or terms if the employee is given a  
32 reasonable assurance that the employee will return to employment in  
33 the same capacity following the period or recess. Currently, vacation  
34 periods are interpreted to include summer, even if the institution is in  
35 session during the summer. The bill specifies that an employee laid  
36 off during the summer may receive benefits if the institution is in  
37 session during the summer. The bill also specifies that for the  
38 employment provided after a break to be regarded as "in the same  
39 capacity", it must be under the same terms and conditions as the  
40 employment before the break. Finally, the bill indicates that the  
41 employee is not regarded as having a reasonable assurance if the offer  
42 is conditioned on factors such as enrollment, allocation of funding,  
43 or program changes.

44 This bill extends to workers employed by employers of less than  
45 30 workers the right to be reinstated to employment after taking paid  
46 or unpaid family leave, thus ensuring that all workers who pay for  
47 family leave insurance (FLI) will have the right to return to work  
48 after taking FLI benefits.

1       The bill extends to workers, no matter how few workers their  
2 employer employs, the current provision of section 24 of P.L.2019,  
3 c.37 (C.43:21-55.2) that a worker who takes FLI benefits to care for  
4 a family member may not be retaliated against by their employer  
5 refusing to reinstate them after the leave. Currently, an employer  
6 who employs less than 30 workers, and is thus exempt from the  
7 reinstatement requirements of the Family Leave Act (FLA), is also  
8 exempt from the reinstatement requirements of that section. By  
9 removing this exemption, the bill extends that section's reinstatement  
10 rights to recipients of FLI benefits even if their employers employs  
11 less than 30 workers, in the same way that section currently provides  
12 that reinstatement protection for temporary disability insurance  
13 recipients no matter how few workers the employer employs.

14       The bill also amends the FLA to make employers, regardless of  
15 how few workers they employ, subject to that law's requirement to  
16 reinstate leave takers, thereby extending that right of reinstatement  
17 to workers employed by employers employing less than 30 workers,  
18 whether or not the workers receive FLI benefits.

19       Finally, the bill provides that an employer is not penalized for  
20 failing to reinstate a worker taking leave if the employer has a layoff  
21 during the leave period and the worker would have been laid off if  
22 not on leave, but only if the employer notifies the worker of the  
23 worker's rights under the unemployment insurance (UI) law to claim  
24 UI benefits after the leave period ends.

25       The bill's provisions would apply only to periods of family leave  
26 which take place, in full or in part, after the effective date of the bill.