

[First Reprint]

SENATE, No. 2350

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

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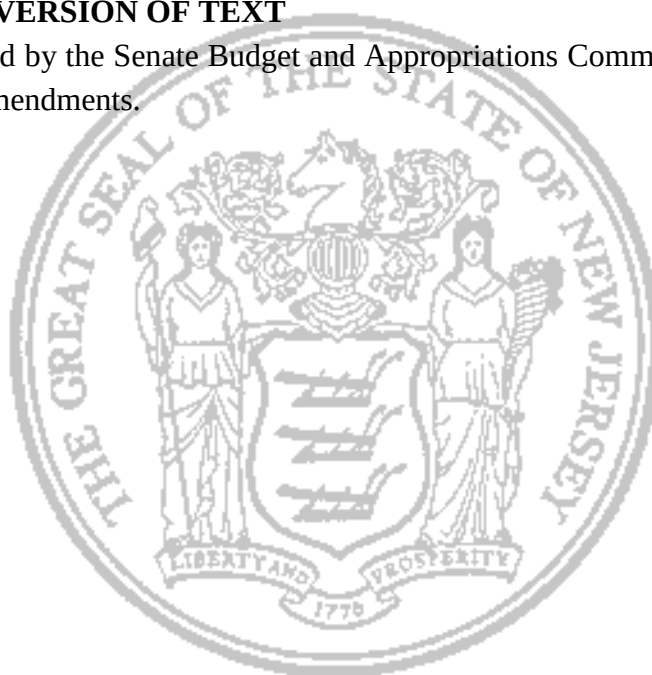
Senators Addiego, O'Scanlon and Cruz-Perez

SYNOPSIS

Concerns benefits provided to workers.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on May 7, 2020, with amendments.



(Sponsorship Updated As Of: 5/11/2020)

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

4

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

7

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted May 7, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. a. In order to receive any State aid pursuant to P.L.2007, c.260 (C.18A:7F-43 et al.), a school district, charter school, renaissance school project, county vocational school district, or county special services school district shall comply with the rules and standards for the equalization of opportunity which have been or may hereafter be prescribed by law or formulated by the commissioner pursuant to law, including those implementing P.L.1996, c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or related to the core curriculum content standards required by P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with any directive issued by the commissioner pursuant to section 6 of P.L.1996, c.138 (C.18A:7F-6). The commissioner is hereby authorized to withhold all or part of a district's State aid for failure to comply with any rule, standard or directive. No State aid shall be paid to any district which has not provided public school facilities for at least 180 days during the preceding school year, but the commissioner, for good cause shown, may remit the penalty.

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

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

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

37 c. In the event that the State or local health department
38 determines that it is advisable to close or mandates closure of the
39 schools of a school district due to a declared state of emergency,
40 declared public health emergency, or a directive by the appropriate
41 health agency or officer to institute a public health-related closure, the
42 superintendent of schools shall have the authority to implement the
43 school district's program of virtual or remote instruction. The
44 superintendent shall consult with the board of education prior to such
45 decision if practicable. The superintendent shall ensure that students,
46 parents, staff, and the board of education or boards of education are
47 informed promptly of the superintendent's decision.

1 d. The commissioner shall define virtual and remote instruction
2 and establish guidance for its use. The guidance shall provide school
3 districts with information on:

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

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

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

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

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

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

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

40 (3) If the schools of a school district are subject to a health-related
41 closure for a period longer than three consecutive school days, which
42 is the result of a declared state of emergency, declared public health
43 emergency, or a directive by the appropriate health agency or officer,
44 then the school district shall continue to make payments of benefits,
45 compensation, and emoluments pursuant to the terms of a contract
46 with a contracted service provider in effect on the date of the closure
47 as if the services for such benefits, compensation, and emoluments had
48 been provided, and as if the school facilities had remained open.
49 Payments received by a contracted service provider pursuant to this

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

30 (4) If the schools of a school district are subject to a health-related
31 closure for a period longer than three consecutive school days, which
32 is the result of a declared state of emergency, declared public health
33 emergency, or a directive by the appropriate health agency or officer,
34 the school district shall be obligated to make payments for benefits,
35 compensation, and emoluments and all payments required pursuant to
36 P.L.1968, c.243 (C.18A:6-51 et seq.), to an educational services
37 commission, county special services school district, and a jointure
38 commission, and under any shared services agreement and cooperative
39 contract entered into with any other public entity. An educational
40 services commission, county special services school district, and
41 jointure commission shall continue to make payments of benefits,
42 compensation, and emoluments pursuant to the terms of a contract
43 with a contracted service provider or a shared services agreement in
44 effect on the date of the closure as if the services for such benefits,
45 compensation, and emoluments had been provided, and as if the school
46 facilities had remained open. Payments received by a contracted
47 service provider or public entity pursuant to this paragraph shall be
48 used to meet the payroll and fixed costs obligations of the contracted

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

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

1 district to the educational services commission, county special services
2 school district, or jointure commission shall be reduced by the same
3 amount.¹

4 f. For purposes of subsections b., c., d., and e. of this section,
5 “school district” shall include a charter school and a renaissance
6 school project.
7 (cf: P.L.2020, c.27, s.1)

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

11 3. As used in this act:

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

16 b. "Director" means the Director of the Division on Civil
17 Rights.

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

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

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

38 f. "Employer" means a person or corporation, partnership,
39 individual proprietorship, joint venture, firm or company or other
40 similar legal entity which engages the services of an employee and
41 which:

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

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

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

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

3 (4) With respect to any period of time **【on or after】** from June
4 30, 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
10 one or more employees for each working day during each of 20 or
11 more calendar workweeks in the then current or immediately
12 preceding 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
23 physical custody, care, guardianship, or visitation with a child, or
24 who became the parent of the child pursuant to a valid written
25 agreement between 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
32 or in connection with adoption of such child by the employee;

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

35 (4) in the event of a state of emergency declared by the
36 Governor, or when indicated to be needed by the Commissioner of
37 Health or other public health authority, an epidemic of a
38 communicable disease, a known or suspected exposure to the
39 communicable disease, or efforts to prevent spread of a
40 communicable disease, which:

41 (a) requires in-home care or treatment of a child due to the
42 closure of the school or place of care of the child of the employee,
43 by order of a public official due to the epidemic or other public
44 health emergency;

45 (b) prompts the issuance by a public health authority of a
46 determination, including by mandatory quarantine, requiring or
47 imposing responsive or prophylactic measures as a result of illness
48 caused by an epidemic of a communicable disease or known or
49 suspected exposure to the communicable disease because the

1 presence in the community of a family member in need of care by
 2 the employee, would jeopardize the health of others; or

3 (c) results in the recommendation of a health care provider or
 4 public health authority, that a family member in need of care by the
 5 employee voluntarily undergo self-quarantine as a result of
 6 suspected exposure to a communicable disease because the presence
 7 in the community of that family member in need of care by the
 8 employee, would jeopardize the health of others.

9 j. "Family member" means a child, parent, parent-in-law,
 10 sibling, grandparent, grandchild, spouse, domestic partner, or one
 11 partner in a civil union couple, or any other individual related by
 12 blood to the employee, and any other individual that the employee
 13 shows to have a close association with the employee which is the
 14 equivalent of a family relationship.

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

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

21 (1) inpatient care in a hospital, hospice, or residential medical
 22 care facility; or

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

25 m. "State of emergency" means a natural or man-made disaster
 26 or emergency for which a state of emergency has been declared by
 27 the President of the United States or the Governor, or for which a
 28 state of emergency has been declared by a municipal emergency
 29 management coordinator.

30 n. "Health care provider" means a duly licensed health care
 31 provider or other health care provider deemed appropriate by the
 32 director.

33 (cf: P.L.2020, c.23, s.1)]¹

34
 35 ¹[4.] 3.¹ R.S.43:21-3 is amended to read as follows:

36 43:21-3. Benefits.

37 (a) Payment of benefits.

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

40 (b) Weekly benefits for unemployment.

41 (1) With respect to an individual's benefit year commencing on or
 42 after July 1, 1961 and before June 1, 2020¹, and after the time that
 43 federal financing of unemployment benefits in this State, pursuant to
 44 the "Coronavirus Aid, Relief, and Economic Security Act," Pub. Law
 45 116-136, ceases¹, such individual, if eligible and unemployed (as
 46 defined in subsection (m) of R.S.43:21-19), shall be paid an amount
 47 (except as to final payment) equal to his weekly benefit rate less any
 48 remuneration, other than remuneration from self-employment paid to

1 an individual who is receiving a self-employment assistance
2 allowance, paid or payable to him for such week in excess of 20% of
3 his weekly benefit rate (fractional part of a dollar omitted) or \$5.00,
4 whichever is the greater; provided that such amount shall be computed
5 to the next lower multiple of \$1.00 if not already a multiple thereof.

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

19 (c) Weekly benefit rate.

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

29 (2) Dependency benefits.

30 (A) With respect to an individual whose benefit year commences
31 after September 30, 1984, the individual's weekly benefit rate as
32 determined in paragraph (1) of this subsection (c) will be increased by
33 7% for the first dependent and 4% each for the next two dependents
34 (up to a maximum of three dependents), computed to the next lower
35 multiple of \$1.00 if not already a multiple thereof, except that the
36 maximum weekly benefit rate payable for an individual claiming
37 dependency benefits shall not exceed the maximum amount
38 determined under paragraph (1) of this subsection (c).

39 (B) For the purposes of this paragraph (2), a dependent is defined
40 as an individual's unemployed spouse or an unemployed unmarried
41 child (including a stepchild or a legally adopted child) under the age of
42 19 or an unemployed unmarried child, who is attending an educational
43 institution as defined in subsection (y) of R.S.43:21-19 on a full-time
44 basis and is under the age of 22. If an individual's spouse is employed
45 during the week the individual files an initial claim for benefits, this
46 paragraph (2) shall not apply. If both spouses establish a claim for
47 benefits in accordance with the provisions of this chapter (R.S.43:21-1
48 et seq.), only one shall be entitled to dependency benefits as provided
49 in this paragraph (2).

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

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

11 (i) All married individuals claiming dependents under this
12 paragraph (2) shall be required to provide the social security number
13 of the individual's spouse. If the individual indicates that the spouse is
14 unemployed, the division shall match the social security number of the
15 spouse against available wage records to determine whether earnings
16 were reported on the last quarterly earnings report filed by employers
17 under R.S.43:21-14. If earnings were reported, the division shall
18 contact in writing the last employer to determine whether the spouse is
19 currently employed.

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

24 (3) For the purposes of this subsection (c), the "Statewide average
25 weekly remuneration paid to workers by employers" shall be
26 computed and determined by the Commissioner of Labor and
27 Workforce Development on or before September 1 of each year on the
28 basis of one-fifty-second of the total remuneration reported for the
29 preceding calendar year by employers subject to this chapter, divided
30 by the average of the number of workers reported by such employers,
31 and shall be effective as to benefit determinations in the calendar year
32 following such computation and determination.

33 (d) Maximum total benefits.

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

35 (B) (i) With respect to an individual for whom benefits shall be
36 payable for benefit years commencing on or after July 1, 1986, and
37 before July 1, 2003 as provided in this section, the individual shall be
38 entitled to receive a total amount of benefits equal to three-quarters of
39 the individual's base weeks with all employers in the base year
40 multiplied by the individual's weekly benefit rate; but the amount of
41 benefits thus resulting under that determination shall be adjusted to the
42 next lower multiple of \$1.00 if not already a multiple thereof. With
43 respect to an individual for whom benefits shall be payable for benefit
44 years commencing on or after July 1, 2003 as provided in this section,
45 the individual shall be entitled to receive a total amount of benefits
46 equal to the number of the individual's base weeks with all employers
47 in the base year multiplied by the individual's weekly benefit rate; but
48 the amount of benefits thus resulting under that determination shall be

1 adjusted to the next lower multiple of \$1.00 if not already a multiple
2 thereof.

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

8 Each week of benefits paid to an eligible individual shall be
9 charged against each base year employer's account in the same
10 proportion that the wages paid by each employer to the individual
11 during the base year bear to the wages paid by all employers to that
12 individual during the base year.

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

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

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

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

25

26 **¹[5.] 4.¹** R.S.43:21-4 is amended to read as follows:

27 43:21-4. Benefit eligibility conditions. An unemployed
28 individual shall be eligible to receive benefits with respect to any week
29 eligible only if:

30 (a) The individual has filed a claim at an unemployment insurance
31 claims office and thereafter continues to report at an employment
32 service office or unemployment insurance claims office, as directed by
33 the division in accordance with such regulations as the division may
34 prescribe, except that the division may, by regulation, waive or alter
35 either or both of the requirements of this subsection as to individuals
36 attached to regular jobs, and as to such other types of cases or
37 situations with respect to which the division finds that compliance with
38 such requirements would be oppressive, or would be inconsistent with
39 the purpose of this act; provided that no such regulation shall conflict
40 with subsection (a) of R.S.43:21-3.

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

43 (c) (1) The individual is able to work, and is available for work,
44 and has demonstrated to be actively seeking work, except as
45 hereinafter provided in this subsection or in subsection (f) of this
46 section.

47 (2) The director may modify the requirement of actively seeking
48 work if such modification of this requirement is warranted by
49 economic conditions.

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

7 (4) (A) Subject to such limitations and conditions as the division
8 may prescribe, an individual, who is otherwise eligible, shall not be
9 deemed unavailable for work or ineligible because the individual is
10 attending a training program approved for the individual by the
11 division to enhance the individual's employment opportunities or
12 because the individual failed or refused to accept work while attending
13 such program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 For purposes of this paragraph, "immediate family member"
20 includes any of the following individuals: father, mother, mother-in-
21 law, father-in-law, grandmother, grandfather, grandchild, spouse,
22 child, child placed by the Division of Youth and Family Services in
23 the Department of Children and Families, sister or brother of the
24 unemployed individual and any relatives of the unemployed individual
25 residing in the unemployed individual's household.

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

32 (8) Any individual who is determined to be likely to exhaust
33 regular benefits and need reemployment services based on information
34 obtained by the worker profiling system shall not be eligible to receive
35 benefits if the individual fails to participate in available reemployment
36 services to which the individual is referred by the division or in similar
37 services, unless the division determines that:

38 (A) The individual has completed the reemployment services; or

39 (B) There is justifiable cause for the failure to participate, which
40 shall include participation in employment and training, self-
41 employment assistance activities or other activities authorized by the
42 division to assist reemployment or enhance the marketable skills and
43 earning power of the individual and which shall include any other
44 circumstance indicated pursuant to this section in which an individual
45 is not required to be available for and actively seeking work to receive
46 benefits.

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

1 individual's work as a board worker for a county board of elections on
2 an election day.

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

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

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

13 (d) With respect to any benefit year commencing before January 1,
14 2002, the individual has been totally or partially unemployed for a
15 waiting period of one week in the benefit year which includes that
16 week. When benefits become payable with respect to the third
17 consecutive week next following the waiting period, the individual
18 shall be eligible to receive benefits as appropriate with respect to the
19 waiting period. No week shall be counted as a week of unemployment
20 for the purposes of this subsection:

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

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

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

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

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

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

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

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

44 (4) With respect to benefit years commencing on or after January
45 7, 2001 and before June 1 2020, except as otherwise provided in
46 paragraph (5) of this subsection, the individual has, during his base
47 year as defined in subsection (c) of R.S.43:21-19:

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

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

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

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

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

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

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

(A) Has established at least 20 base weeks as defined in ¹¶[paragraphs (2) and (3)] paragraph (4)¹ of subsection (t) of R.S.43:21-19; or

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

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

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

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

21 (A) For any period during which such individual is not under the
22 care of a legally licensed physician, dentist, optometrist, podiatrist,
23 practicing psychologist, advanced practice nurse, or chiropractor, who,
24 when requested by the division, shall certify within the scope of the
25 practitioner's practice, the disability of the individual, the probable
26 duration thereof, and, where applicable, the medical facts within the
27 practitioner's knowledge;

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

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

32 (D) For any week with respect to which or a part of which the
33 individual has received or is seeking benefits under any unemployment
34 compensation or disability benefits law of any other state or of the
35 United States; provided that if the appropriate agency of such other
36 state or the United States finally determines that the individual is not
37 entitled to such benefits, this disqualification shall not apply;

38 (E) For any week with respect to which or part of which the
39 individual has received or is seeking disability benefits under the
40 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
41 25 et al.);

42 (F) For any period of disability commencing while such individual
43 is a "covered individual," as defined in subsection (b) of section 3 of
44 the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
45 27).

46 (2) The individual is taking family temporary disability leave to
47 provide care for a family member with a serious health condition or to
48 be with a child during the first 12 months after the child's birth or
49 placement of the child for adoption or as a foster child with the

1 individual, and the individual would be eligible to receive benefits
2 under R.S.43:21-1 et seq. (without regard to the maximum amount of
3 benefits payable during any benefit year) except for the individual's
4 unavailability for work while taking the family temporary disability
5 leave, and the individual has furnished notice and proof of claim to the
6 division, in accordance with its rules and regulations, and payment is
7 not precluded by the provisions of R.S.43:21-3(d) provided, however,
8 that benefits paid under this subsection (f) shall be computed on the
9 basis of only those base year wages earned by the claimant as a
10 "covered individual," as defined in subsection (b) of section 3 of
11 P.L.1948, c.110 (C.43:21-27); provided further that no benefits shall
12 be payable under this subsection to any individual:

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

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

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

27 (D) For any period of family temporary disability leave for a
28 serious health condition of a family member of the claimant during
29 which the family member is not receiving inpatient care in a hospital,
30 hospice, or residential medical care facility and is not subject to
31 continuing medical treatment or continuing supervision by a health
32 care provider, who, when requested by the division, shall certify
33 within the scope of the provider's practice, the serious health condition
34 of the family member, the probable duration thereof, and, where
35 applicable, the medical facts within the provider's knowledge.

36 (3) Benefit payments under this subsection (f) shall be charged to
37 and paid from the State disability benefits fund established by the
38 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
39 25 et al.), and shall not be charged to any employer account in
40 computing any employer's experience rate for contributions payable
41 under this chapter.

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

48 (1) With respect to service performed after December 31, 1977, in
49 an instructional, research, or principal administrative capacity for an

1 educational institution, benefits shall not be paid based on such
2 services for any week of unemployment commencing during the
3 period between two successive academic years, or during a similar
4 period between two regular terms, whether or not successive, or during
5 a period of paid sabbatical leave provided for in the individual's
6 contract, to any individual if such individual performs such services in
7 the first of such academic years (or terms) and if there is a contract or
8 a reasonable assurance that such individual will perform services in
9 any such capacity for any educational institution in the second of such
10 academic years or terms;

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

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

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

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

45 "Established and customary vacation period or holiday recess"
46 includes those breaks scheduled during fall, winter, and spring
47 recesses when those vacation periods occur within a term or semester.
48 "Established and customary vacation period or holiday recess" does
49 not include the summer term or semester, unless, based on objective

1 criteria including enrollment and staffing, the summer is not in fact a
2 part of the academic year for a particular institution.

3 “Reasonable assurance” means a written, verbal, or implied
4 agreement that the employee will perform services in the same
5 capacity during the ensuing academic year or term as in the first
6 academic year or term. A person shall not be deemed to be performing
7 services “in the same capacity” unless those services are rendered
8 under the same terms or conditions of employment in the ensuing year
9 as in the first academic year or term.

10 An individual who is tenured or holds tenure track status is
11 considered to have reasonable assurance, unless advised otherwise.
12 For the purposes of this subsection, tenure track status means a
13 probationary faculty employee having an opportunity to be reviewed
14 for tenure.

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

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

39 (i) (1) Benefits shall not be paid on the basis of services
40 performed by an alien unless such alien is an individual who was
41 lawfully admitted for permanent residence at the time the services
42 were performed and was lawfully present for the purpose of
43 performing the services or otherwise was permanently residing in the
44 United States under color of law at the time the services were
45 performed (including an alien who is lawfully present in the United
46 States as a result of the application of the provisions of section
47 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and Nationality
48 Act (8 U.S.C. s.1101 et seq.)); provided that any modifications of the
49 provisions of section 3304(a)(14) of the Federal Unemployment Tax

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

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

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

16 (j) Notwithstanding any other provision of this chapter, the
17 director may, to the extent that it may be deemed efficient and
18 economical, provide for consolidated administration by one or more
19 representatives or deputies of claims made pursuant to subsection (f)
20 of this section with those made pursuant to Article III (State plan) of
21 the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
22 25 et al.).
23 (cf: P.L.2019, c.37, s.5)

24
25 **‘【6.】 5.¹** R.S.43:21-6 is amended to read as follows:

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

1 shall be construed so as to require an employer to re-hire an
2 individual formerly in the employer's service.

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

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

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

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

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

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

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

1 initial determination. The employer whose account may be charged
2 for benefits payable pursuant to said determination shall be
3 promptly notified thereof.

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

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

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

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

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

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

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

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

1 under the provisions of R.S.43:21-5 or any amendments thereof or
2 supplements thereto, benefits pending determination of the appeal
3 shall be withheld only for the period of disqualification as provided
4 for in said section, and notwithstanding such appeal, the benefits
5 otherwise provided by this act shall be paid for the period
6 subsequent to such period of disqualification; and provided, also,
7 that if there are two determinations of entitlement, benefits for the
8 period covered by such determinations shall be paid regardless of
9 any appeal which may thereafter be taken, but no employer's
10 account shall be charged with benefits so paid, if the decision is
11 finally reversed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 "Erroneous benefit payment" means a benefit payment that,
48 except for the failure by the employer, or an agent of the employer,
49 to respond in a timely or adequate manner to a request from the

1 division for information with respect to the claim for benefits,
2 would not have been made; and

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

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

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

23

24 **'[7.] 6.'** R.S.43:21-19 is amended to read as follows:

25 43:21-19. Definitions. As used in this chapter (R.S.43:21-
26 1 et seq.), unless the context clearly requires otherwise:

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

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

1 immediately preceding the beginning of the 12-month period for
2 which the employer's contribution rate is computed.

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

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

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

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

38 (2) With respect to a benefit year commencing on or after June 1,
39 1990 for an individual who immediately preceding the benefit year
40 was subject to a disability compensable under the provisions of the
41 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
42 seq.), "base year" shall mean the first four of the last five completed
43 calendar quarters immediately preceding the individual's period of
44 disability, if the employment held by the individual immediately
45 preceding the period of disability is no longer available at the
46 conclusion of that period and the individual files a valid claim for
47 unemployment benefits after the conclusion of that period. For the
48 purposes of this paragraph, "period of disability" means the period
49 defined as a period of disability by section 3 of the "Temporary

1 Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An
2 individual who files a claim under the provisions of this paragraph (2)
3 shall not be regarded as having left work voluntarily for the purposes
4 of subsection (a) of R.S.43:21-5.

5 (3) With respect to a benefit year commencing on or after June 1,
6 1990 for an individual who immediately preceding the benefit year
7 was subject to a disability compensable under the provisions of the
8 workers' compensation law (chapter 15 of Title 34 of the Revised
9 Statutes), "base year" shall mean the first four of the last five
10 completed calendar quarters immediately preceding the individual's
11 period of disability, if the period of disability was not longer than two
12 years, if the employment held by the individual immediately preceding
13 the period of disability is no longer available at the conclusion of that
14 period and if the individual files a valid claim for unemployment
15 benefits after the conclusion of that period. For the purposes of this
16 paragraph, "period of disability" means the period from the time at
17 which the individual becomes unable to work because of the
18 compensable disability until the time that the individual becomes able
19 to resume work and continue work on a permanent basis. An
20 individual who files a claim under the provisions of this paragraph (3)
21 shall not be regarded as having left work voluntarily for the purposes
22 of subsection (a) of R.S.43:21-5.

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

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

38 (2) "Controller" means the Office of the Assistant Commissioner
39 for Finance and Controller of the Department of Labor and Workforce
40 Development, established by the 1982 Reorganization Plan of the
41 Department of Labor.

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

48 (g) "Employing unit" means the State or any of its
49 instrumentalities or any political subdivision thereof or any of its

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

20 (h) "Employer" means:

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

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

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

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

40 (5) Any employing unit for which service in employment as
41 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December 31,
42 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed after
43 December 31, 1977;

44 (6) Any employing unit for which service in employment as
45 defined in R.S.43:21-19 (i) (1) ~~[(c)]~~ (C) is performed after December
46 31, 1971 and which in either the current or the preceding calendar year
47 paid remuneration for employment in the amount of \$1,000.00 or
48 more;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (aa) as an elected official;

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

25 (cc) as a member of the State National Guard or Air National
26 Guard;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (bb) if such individual is not an employee of such other person for
31 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 on
41 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 leader"
44 means an individual who

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (B) Such service is either outside the usual course of the business
49 for which such service is performed, or that such service is performed

1 outside of all the places of business of the enterprise for which such
2 service is performed; and

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

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

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

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

19 (ii) for some portion of a day in each of 20 different calendar
20 weeks, whether or not such weeks were consecutive, in either the
21 current or the preceding calendar year, employed in agricultural labor
22 10 or more individuals, regardless of whether they were employed at
23 the same moment in time;

24 (B) Domestic service in a private home performed prior to January
25 1, 1978; and after December 31, 1977, unless performed in the private
26 home of an employing unit which paid cash remuneration of \$1,000.00
27 or more to one or more individuals for such domestic service in any
28 calendar quarter in the current or preceding calendar year;

29 (C) Service performed by an individual in the employ of his son,
30 daughter or spouse, and service performed by a child under the age of
31 18 in the employ of his father or mother;

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

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

44 (F) Service performed in the employ of the United States
45 Government or of any instrumentality of the United States exempt
46 under the Constitution of the United States from the contributions
47 imposed by the "unemployment compensation law," except that to the
48 extent that the Congress of the United States shall permit states to
49 require any instrumentalities of the United States to make payments

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

13 (G) Services performed in the employ of fraternal beneficiary
14 societies, orders, or associations operating under the lodge system or
15 for the exclusive benefit of the members of a fraternity itself operating
16 under the lodge system and providing for the payment of life, sick,
17 accident, or other benefits to the members of such society, order, or
18 association, or their dependents;

19 (H) Services performed as a member of the board of directors, a
20 board of trustees, a board of managers, or a committee of any bank,
21 building and loan, or savings and loan association, incorporated or
22 organized under the laws of this State or of the United States, where
23 such services do not constitute the principal employment of the
24 individual;

25 (I) Service with respect to which unemployment insurance is
26 payable under an unemployment insurance program established by an
27 Act of Congress;

28 (J) Service performed by agents of mutual fund brokers or dealers
29 in the sale of mutual funds or other securities, by agents of insurance
30 companies, exclusive of industrial insurance agents or by agents of
31 investment companies, if the compensation to such agents for such
32 services is wholly on a commission basis;

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

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

39 (M) Service performed for or in behalf of the owner or
40 operator of any theater, ballroom, amusement hall or other place of
41 entertainment, not in excess of 10 weeks in any calendar year for the
42 same owner or operator, by any leader or musician of a band or
43 orchestra, commonly called a "name band," entertainer, vaudeville
44 artist, actor, actress, singer or other entertainer;

45 (N) Services performed after January 1, 1973 by an individual for a
46 labor union organization, known and recognized as a union local, as a
47 member of a committee or committees reimbursed by the union local
48 for time lost from regular employment, or as a part-time officer of a

1 union local and the remuneration for such services is less than
2 \$1,000.00 in a calendar year;

3 (O) Services performed in the sale or distribution of merchandise
4 by home-to-home salespersons or in-the-home demonstrators whose
5 remuneration consists wholly of commissions or commissions and
6 bonuses;

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

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

21 (m) "Unemployment."

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

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

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

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

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

48 (n) "Unemployment compensation administration fund" means the
49 unemployment compensation administration fund established by this

1 chapter (R.S.43:21-1 et seq.), from which administrative expenses
2 under this chapter (R.S.43:21-1 et seq.) shall be paid.

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

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

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

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

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

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

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

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

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

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

3 (3) "Base week," commencing on or after January 1, 2001 and
4 before January 1, 2020¹, and after the time that federal financing of
5 unemployment benefits in this State, pursuant to the "Coronavirus Aid,
6 Relief, and Economic Security Act," Pub. Law 116-136, ceases¹,
7 means any calendar week during which the individual earned in
8 employment from an employer remuneration not less than an amount
9 20 times the minimum wage in effect pursuant to section 5 of
10 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
11 preceding the calendar year in which the benefit year commences,
12 which amount shall be adjusted to the next higher multiple of \$1.00 if
13 not already a multiple thereof, except that if in any calendar week an
14 individual subject to this paragraph (3) is in employment with more
15 than one employer, the individual may in that calendar week establish
16 a base week with respect to each of the employers from whom the
17 individual earns remuneration equal to not less than the amount
18 defined in this paragraph (3) during that week.

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

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

44 For the purpose of computing the average weekly wage, the
45 monetary alternative in subparagraph (B) of paragraph **[(2)] (4)** of
46 subsection (e) of R.S.43:21-4 shall only apply in those instances where
47 the individual did not have at least 20 base weeks in the base year. For
48 benefit years commencing on or after July 1, 1986, "average weekly

1 wage" means the amount derived by dividing an individual's total base
2 year wages by the number of base weeks worked by the individual
3 during the base year; provided that for the purpose of computing the
4 average weekly wage, the maximum number of base weeks used in the
5 divisor shall be 52.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ¹~~8.1~~ 7.1 (New section) Sections ¹~~8.1~~ 7.1 through ¹~~11.1~~ 10.1 of
2 this act shall be known and may be cited as the “Employee Job-
3 Sharing Furlough Protection Act.”
4

5 ¹~~9.1~~ 8.1 (New section) To facilitate the providing of the
6 maximum possible benefits for employees and savings for
7 employers in the State from the federal financing of unemployment
8 benefits provided in connection with short-time compensation
9 programs pursuant to section 2108 of the “Coronavirus Aid, Relief,
10 and Economic Security Act,” Pub. Law 116-136 and from federal
11 financing of emergency increases in unemployment benefits under
12 section 2104 of that act, the division shall, during the period from
13 the effective date of this act until December 31, 2020, undertake the
14 following actions:

15 a. Make available to all employers who may be eligible to
16 participate in a shared work program pursuant to P.L.2011, c.154
17 (C.43:21-20.3 et seq.) for which full federal funding of short-time
18 unemployment benefits is available pursuant to section 2108 of the
19 “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law
20 116-136, a guidance document which explains:

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

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

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

37 c. Permit an application for approval of a shared work program
38 to be submitted to, and approved by, the division in advance of the
39 date on which reduced hours of employment are to commence to
40 permit payment of benefits under the program immediately upon
41 that commencement, or, as an alternative, permit the payment of
42 benefits under a shared work program to commence immediately
43 upon the date of an application by an eligible employer for approval
44 of the program, and pay, for any period of shared work under the
45 program, amounts of benefits which are based on determinations
46 made by the division or based on preliminary determinations made
47 by the employer pursuant to paragraph (2) of subsection a. of this
48 section, which the division shall review and, if appropriate, revise,
49 and shall subsequently pay any underpayment in benefits, or collect

1 from subsequent benefits any overpayment in benefits, including
2 the collecting of an amount equal to all benefits paid, if the
3 application is rejected, without penalty to the employees and, if the
4 division finds that the employer made a good faith effort to follow
5 the division's guidance, impose no penalty on the employer for the
6 overpayment;

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

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

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

27
28 **'[10.] 9.'** (New section) A public employee enrolled in a State-
29 administered retirement system or fund, and the employer of that
30 employee, shall be required to make contributions to the system or
31 fund during the period that the employee is on a furlough pursuant to
32 section **'[9] 8'** of this act, P.L. , c. (C.) (pending before the
33 Legislature as this bill) and P.L.2011, c.154 (C.43:21-20.3 et seq.).
34 The contributions shall be based on the base salary or compensation,
35 as defined by the retirement system or fund, that would have been paid
36 to the employee if the employee had not been on furlough. The
37 employee's service credit as a member of the system or fund shall
38 include the period of furlough. For all purposes under the retirement
39 system or fund, the period of furlough and the base salary or
40 compensation upon which contribution were made during the period of
41 furlough shall be recognized by the retirement system or fund. The
42 seniority rights and health benefits coverage of an employee who
43 participates in this furlough program shall continue and shall not be
44 adversely affected by participation. The employer shall enter into a
45 written agreement with any collective bargaining agent representing
46 the employees regarding the terms of the program, including terms
47 regarding attendance in training programs while receiving short-time
48 benefits, and provide certification, and the copy, of the agreement to
49 the division as required by P.L.2011, c.154 (C.43:21-20.3 et seq.). This

1 section shall not be construed to conflict with any applicable
2 provisions of federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 While the enactment of that law has provided stable protection
49 for New Jersey's disabled workers, very few workers are protected

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

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

38 **【**While the Legislature recognizes the pressing need for benefits
39 for workers taking leave to care for family members incapable of
40 self-care, it also finds that the need of workers for leave during their
41 own disability continues to be especially acute, as a disabled worker
42 has less discretion about taking time off from work than a worker
43 caring for a family member. Notwithstanding any interpretation of
44 law which may be construed as providing a worker with rights to
45 take action against an employer who fails or refuses to restore the
46 worker to employment after the worker's own disability, the
47 Legislature does not intend that the policy established by P.L.2008,
48 c.17 (C.43:21-39.1 et al.) of providing benefits for workers during
49 periods of family temporary disability leave to care for family

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

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

29
30 ¹13. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
31 read as follows:

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

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

41 c. The employer of an individual may, notwithstanding any
42 other provision of law, including the provisions of N.J.S.18A:30-1
43 et seq., permit the individual, during a period of family temporary
44 disability leave, to use any paid sick leave, vacation time or other
45 leave at full pay made available by the employer before the
46 individual uses disability benefits for family temporary disability
47 leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in
48 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying
49 any provision of an existing collective bargaining agreement or

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

11 d. An individual who is entitled to leave under the provisions
12 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or
13 the federal "Family and Medical Leave Act of 1993," Pub.L.103-3
14 (29 U.S.C. s.2601 et seq.), shall take any benefits provided for
15 family temporary disability leave pursuant to P.L.2008, c.17
16 (C.43:21-39.1 et al.) concurrently with leave taken pursuant to the
17 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the
18 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
19 U.S.C. s.2601 et seq.). [Nothing in P.L.2008, c.17 (C.43:21-39.1 et
20 al.) shall be construed to grant an employee any entitlement to be
21 restored by the employer to employment held by the employee prior
22 to taking family temporary disability leave or any right to take
23 action against an employer who refuses to restore the employee to
24 employment after the leave. Nothing in P.L.2008, c.17 (C.43:21-
25 39.1 et al.) shall be construed to increase, reduce or otherwise
26 modify any entitlement of an employee to return to employment or
27 right of the employee to take action under the provisions of the
28 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.). If an
29 employee receives benefits for family temporary disability leave
30 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.) with respect to
31 employment with an employer who is not an employer as defined in
32 the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) and
33 that employer fails or refuses to restore the employee to
34 employment after the period of family temporary disability leave,
35 that failure or refusal shall not be a wrongful discharge in violation
36 of a clear mandate of public policy, and the employee shall not have
37 a cause of action against that employer, in tort, or for breach of an
38 implied provision of the employment agreement, or under common
39 law, for that failure or refusal.]

40 e. An employee taking family temporary disability leave or an
41 employer from whom the employee is taking the leave shall have
42 the same right to appeal a determination of a benefit for the family
43 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
44 et al.) as an employee or employer has to appeal a determination of
45 a benefit for the disability of the employee under the "Temporary
46 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
47 any regulations adopted pursuant to the "Temporary Disability
48 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

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

34 g. Each covered employer shall conspicuously post
35 notification, in a place or places accessible to all employees in each
36 of the employer's workplaces, in a form issued by regulation
37 promulgated by the commissioner, of each covered employee's
38 rights regarding benefits payable pursuant to this section. The
39 employer shall also provide each employee of the employer with a
40 written copy of the notification: (1) not later than 30 days after the
41 form of the notification is issued by regulation; (2) at the time of the
42 employee's hiring, if the employee is hired after the issuance; (3)
43 whenever the employee notifies the employer that the employee is
44 taking time off for circumstances under which the employee is
45 eligible for benefits pursuant to this section; and (4) at any time,
46 upon the first request of the employee.

47 h. With respect to any period of family temporary disability
48 leave commencing on or after October 4, 2019 if an individual
49 knows in advance when the period will commence, the individual

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

31 (cf: P.L.2019, c.37, s.13)]¹

32
33 ¹[14. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to
34 read as follows:

35 24. a. An employer shall not discharge, harass, threaten, or
36 otherwise discriminate or retaliate against an employee with respect
37 to the compensation, terms, conditions, or privileges of employment
38 on the basis that the employee requested or took any temporary
39 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.),
40 or family temporary disability leave benefits pursuant to P.L.2008,
41 c.17 (C.43:21-39.1 et al.), including retaliation by refusing to
42 **[restore]** reinstate the employee to employment following a period
43 of leave[, except that, pursuant to section 2 of P.L.1948, c.110
44 (C.43:21-26), nothing in this section or any other section of
45 P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1
46 et al.) shall be construed as increasing, reducing or otherwise
47 modifying any entitlement provided to a worker by the provisions
48 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to

1 be restored to employment by the employer after a period of family
2 temporary disability leave¹ in the position held when the leave
3 commenced or an equivalent position of like seniority, status,
4 employment benefits, pay and other terms and conditions of
5 employment, except that if, during period of leave, the employer
6 reduces the number of employees and that reduction would have
7 caused the employee to have been laid off if the employee had not
8 been on leave, the employee shall not be entitled to reinstatement,
9 but only if the employer notifies the employee of the employee's
10 right to file a claim for unemployment benefits after the leave
11 period ends as provided by paragraph (2) of subsection (c) of
12 R.S.43:21-19.

13 b. Upon a violation of subsection a. of this section, an
14 employee or former employee may, as an alternative to any action
15 that the employee is permitted to take for the violation pursuant to
16 the provisions of P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17
17 (C.43:21-39.1 et al.), or the "Family Leave Act," P.L.1989, c.261
18 (C.34:11B-1 et seq.), institute a civil action in the Superior Court
19 for relief¹. All¹ in which all remedies available in common law
20 tort actions shall be available to a prevailing plaintiff. The court
21 may also order any or all of the following relief:

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

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

27 (3) reinstatement of the employee to the same position or to a
28 position equivalent to that which the employee held prior to
29 unlawful discharge or retaliatory action;

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

31 (5) compensation for any lost wages, benefits and other
32 remuneration; and

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

34 (cf: P.L.2019, c.37, s.24).¹

35

36 ¹**[15.] 11.**¹ This act shall take effect immediately¹, provided
37 that:

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

45 b. in the case of any employer who becomes subject to the
46 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because of
47 the changes made in that section by P.L. , c. (C.)(pending
48 before the Legislature as this bill) the provisions of section 24 of

- 1 P.L.2019, c.37 (C.43:21-55.2) shall apply to the employer only with
- 2 respect to periods of disability for family temporary disability leave
- 3 which take place, in full or in part, after the effective date of this act¹.