

## CHAPTER 16

### CONTRIBUTIONS, RECORDS AND REPORTS

#### Authority

N.J.S.A. 43:21-1 et seq.

#### Source and Effective Date

R.2000 d.68, effective January 27, 2000.  
See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

#### Executive Order No. 66(1978) Expiration Date

Chapter 16, Contributions, Records and Reports, expires on January 27, 2005.

#### Chapter Historical Note

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969.

Subchapter 20, Work Relief and Work Training Programs, was adopted as R.1987 d.102, effective February 17, 1987. See: 18 N.J.R. 1683(a), 19 N.J.R. 363(b).

Subchapter 21, Zip Code Reporting, was adopted as R.1989 d.39, effective January 17, 1989. See: 20 N.J.R. 2625(b), 21 N.J.R. 167(a).

Subchapter 10, Hearings, was repealed and Subchapter 22, Hearings, was adopted by R.1989 d.208, effective April 17, 1989. See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1990 d.217, effective March 23, 1990. See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Subchapter 23, Services Excluded from Coverage by the Unemployment Compensation Law, was adopted as R.1995 d.84, effective February 6, 1995. See: 26 N.J.R. 4730(a), 27 N.J.R. 501(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1995 d.138, effective February 9, 1995, and Subchapter 11, Excess Worker Deductions, was recodified as Subchapter 10, Subchapter 11, Special Employment Situations, was adopted as new rules, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed by R.1995 d.138, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.2000 d.68, effective January 27, 2000. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

##### 12:16-1.1 Ascertainment of worker's Social Security account number

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

##### 12:16-1.2 Reporting of worker's Social Security account number

Each employer shall report a worker's Social Security account number in making any report required by the Department with respect to such worker.

##### 12:16-1.3 Evidence of application for Social Security account number

(a) If an employer has a worker engaged in employment who does not have a Social Security account number, the worker shall be requested to provide a receipt issued by an officer of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) The receipt shall be retained by the worker, but a copy or facsimile shall be retained by the employer.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

##### 12:16-1.4 Employer to inform worker without Social Security account number

An employer shall inform each worker who has not secured a Social Security account number that such number must be filed on or before the seventh day after the date on which the worker first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.

(d) If a party determined by the Department to be an employer asserts that it acted as an agent for another party pursuant to N.J.S.A. 43:21-19(g), or the nature of the business evidences an agency relationship may exist, the Department shall name both the agent and principal as parties to the administrative proceedings.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

In (a) and (c), substituted references to 30 days for references to 15 days.

#### 12:16-22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

(d) An employer may be represented by him or herself or by an attorney at the informal conference, or may be assisted by a non-attorney at the conference.

(e) If an employer fails to appear at an informal conference and fails to respond to the Division's notice granting the employer 10 days to contact the Division to reschedule the conference, the Department shall consider the employer to have withdrawn his or her request for hearing and to be liable for the unemployment and temporary disability assessment.

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d) and (e).

#### 12:16-22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### 12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad

testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

New Rule, R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-22.6 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

Recodified from 12:16-22.5 by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

#### 12:16-23.1 Exempt services

(a) Persons who perform services and receive remuneration are employees under the Unemployment Compensation Law unless the services meet the Unemployment Compensation Law definition of independence set forth in N.J.S.A. 43:21-19(i)(6).

(b) The Unemployment Compensation Law lists certain categories of services as being exempt from Unemployment Compensation coverage. However, these services are exempt only if there is a corresponding exemption under the Federal Unemployment Tax Act ("FUTA") or the services are otherwise not subject to tax or coverage under FUTA.

1. If an employing unit pays remuneration for services not specifically listed as exempt under the provisions of FUTA and seeks an exemption under this section, the employing unit has the burden of proof to show that the services are either exempt under FUTA or otherwise not subject to the tax imposed by FUTA.

2. The Division of Unemployment Insurance/Disability Insurance Financing will hold such class of individuals or type of service in covered employment pending receipt of proof of exemption under N.J.A.C. 12:16-23.2 below and determination of exemption.

#### 12:16-23.2 Evidence of FUTA exemption

(a) Evidence that services are not covered under FUTA may include among other things:

1. Private letter ruling(s) from the Internal Revenue Service;

2. An employment tax audit conducted by the Internal Revenue Service after 1987 which determined that there was to be no assessment of employment taxes for the services in question; however, the determination must not have been the result of the application of Section 530 of the Revenue Act of 1978;

3. Determination letter(s) from the Internal Revenue Service; and/or

4. Documentation of responses to the 20 tests required by the Internal Revenue Service to meet its criteria for independence. These tests are enumerated in IRS Revenue Rule 87-41.

(b) The Division reserves the right to examine the circumstances surrounding the relationship between the parties to determine if the conditions of the relationship with the employer have changed.