

**CHAPTER 17**  
**UNEMPLOYMENT BENEFIT PAYMENTS**

**Authority**

N.J.S.A. 43:21-1 et seq., specifically, 43:21-7g.

**Source and Effective Date**

R.2009 d.21, effective December 10, 2008.  
See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

**Chapter Expiration Date**

Chapter 17, Unemployment Benefit Payments, expires on December 10, 2013.

**Chapter Historical Note**

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were adopted and became effective prior to September 1, 1969.

Subchapter 9, Procedures for Wage Benefit Conflicts, was adopted as new rules by R.1975 d.142, effective May 28, 1975. See: 7 N.J.R. 335(a).

Subchapter 10, Determination and Demand for Refund of Unemployment Benefits, was adopted as new rules by R.1980 d.468, effective October 23, 1980. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c).

Subchapter 11, Offset of Unemployment Insurance Benefits by Retirement and Pension Income, was adopted as new rules by R.1980 d.561, effective January 1, 1981. See: 13 N.J.R. 102(a).

Amendments to Subchapter 10 became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a).

Subchapter 12, Dependency Benefits, was adopted as new rules by R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on October 23, 1985, and new rules on the same subject were adopted as R.1985 d.657, effective January 6, 1986. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a).

Pursuant to Executive Order No. 66(1978), Subchapter 11 was readopted as R.1985 d.718, effective December 30, 1985. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, was readopted as R.1991 d.46, effective January 4, 1991. See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.1996 d.25, effective December 13, 1995. See: 27 N.J.R. 4123(b), 28 N.J.R. 270(a).

Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998). See: 29 N.J.R. 5158(a), 30 N.J.R. 2027(a).

Subchapter 20, Worker Profiling and Reemployment Services, and Subchapter 21, Relief from Benefit Charges, were adopted as R.1999 d.115, effective April 15, 1999. See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2003 d.276, effective June 13, 2003. See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

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## SUBCHAPTER 1. PURPOSE AND SCOPE

### 12:17-1.1 Purpose and scope

(a) The Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq., provides income security through the payment of unemployment insurance benefits to qualified individuals who are involuntarily unemployed. The UCL establishes the Unemployment Insurance (UI) Trust Fund which is financed by worker and employer contributions.

(b) The New Jersey Department of Labor and Workforce Development is charged with the administration of the Unemployment Insurance Program. This chapter will enable the Department to meet this charge by providing for the prompt and efficient payment of benefits to eligible individuals while protecting the interests of workers and employers who contribute to the Fund.

(c) The provisions of this chapter shall be applicable to all employers and to all workers who file claims for unemployment insurance with the New Jersey Department of Labor and Workforce Development.

(d) These rules shall be considered the basis by which the statutory purposes of the Unemployment Insurance benefit payment system are carried out. The Commissioner may relax these rules for good cause on a case-by-case basis, on notice to affected parties, in order to effectuate the purpose of the Unemployment Compensation Law.

(e) These rules shall be effective July 7, 2003.

1. New and additional claims filed on or after July 7, 2003 shall be subject to these rules.

2. For claims filed prior to July 7, 2003, continued issues adjudicated on or after July 7, 2003 shall be subject to these rules.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (e), substituted references to July 7, 2003 for references to July 5, 1998 throughout.

Amended by R.2005 d.385, effective November 7, 2005.  
See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (b) and (c), added "and Workforce Development".

## SUBCHAPTER 2. DEFINITIONS

### 12:17-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agent state" means any state in which an individual files a claim for benefits against another state.

"Benefits" means the compensation payable to an individual with respect to his or her unemployment, under the unemployment compensation law of any state.

"Civil union" means the legally recognized union of two eligible individuals of the same sex established pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union couple" means two persons who have established a civil union pursuant to N.J.S.A. 37:1-28 et seq.

"Civil union license" or "civil union certificate" means a document that certifies that the persons named on the license or certificate have established a civil union in New Jersey in compliance with N.J.S.A. 37:1-28 et seq.

"Civil union partner" means "one partner in a civil union couple," as that phrase is defined at N.J.S.A. 37:1-29; that is, a person who has established a civil union pursuant to the provisions of N.J.S.A. 37:1-28 et seq.

"Controller" means the Controller of the New Jersey Department of Labor and Workforce Development.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Deputy" means a representative of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Director" means the Director of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Division" means the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Employee" means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or part-time basis.

"Employer" means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employer-agent” means a person or entity that acts on behalf of an employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

“Employment service office” means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998. 29 U.S.C. §§ 2801 et seq.

“Interstate Benefit Payment Plan” means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

“Interstate claimant” means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that in accordance with the Interstate Benefit Payment Plan commuting would result in excessive travel time or cost to the claimant.

“Liable state” means the state against which an individual files a claim for benefits through another state.

“Maximum benefit amount” on claims with benefit years commencing on or after July 1, 1986 and before July 1, 2003, means the total benefits payable to a claimant equal to three-quarters of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Moreover, maximum benefit amount on claims with benefit years commencing on or after July 1, 2003 means the total benefits payable to a claimant equal to the number of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Pursuant to N.J.S.A. 43:21-3(d)(2), the maximum benefit amount shall not exceed 26 times the individual’s weekly benefit rate.

“One-Stop Career Center” means one of the centers designated by the local Workforce Investment Boards and certified by the State Employment and Training Commission to provide workforce investment services.

“Remuneration” means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash, including payments “in kind” as defined at N.J.A.C. 12:16-4.8.

“State” means the states of the United States of America, the District of Columbia, the Virgin Islands or Puerto Rico.

“Unemployment” means the state of being unemployed (that is, not having a job, out of work). An individual shall be deemed “unemployed” for any week during which he or she is not engaged in full-time work and with respect to which his

or her remuneration is less than the individual’s weekly benefit rate, including any week during which he or she is on vacation without pay; provided such vacation is not the result of the individual’s voluntary action. However, an officer of a corporation, or a person who has more than a five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be deemed to be unemployed in any week during the individual’s term of office or ownership in the corporation.

“Wages” means remuneration paid by employers for employment including “in kind” payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her “wages” shall also include the gratuities received, if reported in writing to the employer in accordance with regulations of the Division at N.J.A.C. 12:16-4.9. If gratuities are not reported, the individual’s “wages” shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from the employer, whichever is the higher.

“Week” means the calendar week ending at midnight Saturday.

“Weekly benefit rate” means 60 percent of the claimant’s average weekly wage, subject to a maximum of 56 2/3 percent of the Statewide average weekly remuneration paid to workers by employers subject to the Unemployment Compensation Law.

“Week of disqualification” means a calendar week ending at midnight Saturday with respect to any disqualification arising under N.J.S.A. 43:21-5.

“Week of unemployment” includes any week of unemployment as defined in the Unemployment Compensation Law of the liable state from which benefits with respect to such week are claimed.

“Week of partial unemployment” means a calendar week ending at midnight Saturday in which an individual is employed not more than 80 percent of the hours normally worked in that individual’s occupation, profession, trade, or industry; due to lack of work; and earns remuneration which does not exceed the weekly benefit rate plus 20 percent of such rate.

“Week of total unemployment” means a calendar week ending at midnight Saturday in which an individual performs no services and with respect to which the individual receives no remuneration.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In “Employment service office”, inserted “or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998. 29 U.S.C. §§ 2801 et seq.”; in “Interstate Benefit Payment Plan”, substituted “National Association of State Workforce Agencies” for “Interstate Conference of Employment Security Agencies”; in “Interstate claimant”, substituted “Interstate Benefit Payment Plan” for “Interstate Benefit

4. Have recently completed similar reemployment services;
5. Are attending or registered to attend training at the time of profiling;
6. Are job-ready for existing job openings; or
7. Have become a member of an approved union hiring hall, have moved and are now filing on an interstate basis, or have received a definite recall date from the former employer.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).  
Rewrote the section.

### 12:17-20.8 Appeals

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

## SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

### 12:17-21.1 General provisions

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing same to the Division. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "providing same to the Division" for "providing some to the Division of Employer Accounts" in the first sentence.

### 12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct or gross misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;
5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or
6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) as amended by the Trade Act of 2002, P.L. 107-210, or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "as amended by the Trade Act of 2002, P.L. 107-210," preceding "or when the claimant leaves work" in 6.

### 12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information," shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Department form entitled, "Notice to Employer of Monetary Determination and Request for Separation Information" is not received by the Division or postmarked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received or postmarked within 21 calendar days after the date upon which

the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, “good cause” means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted “and” following “Form BC-3E” in the third sentence; in (b), substituted “Division” for “local claims office” preceding “or postmarked within 10 calendar days” and deleted “by the local claims office” preceding “or postmarked within 21 calendar days”.

Amended by R.2009 d.21, effective January 5, 2009.

See: 40 N.J.R. 4289(a), 41 N.J.R. 263(a).

In (a), substituted “the Department form entitled, ‘Notice’ for “Form BC-3E, Notice”, “Information,” and” for “Information, and”, “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information,’ ” for “Form BC-3E”; and in (b), substituted “Department form entitled, ‘Notice to Employer of Monetary Determination and Request for Separation Information’ ” for “Form BC-3E”, and “within 21” for “with 21”.

#### **12:17-21.4 Misrepresentation or false information**

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing

it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.

2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

#### **12:17-21.5 Determination and appeals**

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.