

CHAPTER 16

CONTRIBUTIONS, RECORDS AND REPORTS

Authority

N.J.S.A. 34:8-67 et seq., specifically 34:8-78, and 43:21-1 et seq.

Source and Effective Date

R.2011 d.085, effective February 10, 2011.
See: 42 N.J.R. 2371(a), 43 N.J.R. 639(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Contributions, Records and Reports, expires on February 10, 2018. See: 43 N.J.R. 1203(a).

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Subchapter 10, Hearings, was repealed and Subchapter 22, Hearings, was adopted as R.1989 d.208, effective April 17, 1989.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Special Employment Situations, was adopted as new rules, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed by R.1995 d.138, effective March 6, 1995.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: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Subchapter 24, Employee Leasing Companies, was adopted as R.2002 d.294, effective September 3, 2002. See: 34 N.J.R. 1892(a), 34 N.J.R. 3089(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2005 d.108, effective March 10, 2005. See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Subchapter 1A, Definitions, was adopted as new rules by R.2009 d.20, effective January 5, 2009. See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from March 10, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 2371(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2011 d.085, effective February 10, 2011. 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).

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 Department 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.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), substituted "Department" for "Division of Unemployment Insurance/Disability Insurance Financing" in 2.

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 Department 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.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), substituted "Department" for "Division".

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

12:16-24.1 Application and scope

(a) The rules in this subchapter set forth the requirements and methodology by which an employee leasing company, also known as a professional employer organization ("PEO"), shall register with the Commissioner of Labor and Workforce Development, pursuant to P.L. 2001, c.260, N.J.S.A. 34:8-67 et seq.

(b) The provisions of this subchapter apply to all employee leasing companies as defined in N.J.A.C. 12:16-24.2.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), inserted "and Workforce Development" following "Commissioner of Labor".

12:16-24.2 Definitions

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

"Benefit experience" means the relationship between an employer's contributions paid on his or her own behalf with respect to employment occurring during a specified period and benefits paid with respect to unemployment and temporary disability and charged against the account of the employer in whose employment such individual established base weeks constituting the basis of such benefits. Benefit experience for temporary disability purposes shall also take into account contributions paid by the employer's workers.

"Client company" means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees performing services in New Jersey by the employee leasing company.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Covered employee" means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

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

"Division of Revenue" means that unit of New Jersey State Government within the Department of Treasury which is responsible for the registration of employers for the payment of gross income taxes, unemployment and temporary disability contributions, and other State taxes.

"Employee leasing agreement" or "professional employer agreement" means an arrangement, under written contract, whereby:

1. An employee leasing company and a client company co-employ covered employees; and

2. The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company's work force.

"Employee leasing company" or "professional employer organization" means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agree-

ments and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in N.J.S.A. 34:8-68.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In "Commissioner" and "Department", inserted "and Workforce Development" following "Labor".

12:16-24.3 Initial and annual registration

(a) An employee leasing company or professional employer organization, as defined in N.J.A.C. 12:16-24.2, shall register with the Commissioner or his or her designee. This registration is separate from, and in addition to, any statutory requirements to register as an employer in this State or to conduct business in this State.

1. The form for the initial registration of an employee leasing company or professional employer organization shall be prescribed by the Commissioner or his or her designee, and is available on the Department website at: www.state.nj.us/labor/admin/forms.htm, or may be requested by contacting the Department directly, by calling the Labor and Workforce Development hotline at (609) 633-6400. This form requires the business to record its beginning date, the name of the business incorporation information, the names, social security numbers and home addresses of the owners, partners or responsible corporate officers, and relevant wage, salary and commission information, as well as indicating the status of the business in regard to various State and Federal contributory programs (for example, Unemployment Compensation).

2. An employee leasing company or professional employer organization shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.

3. The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of mailing. If the registration form is completed on the Department of Labor and Workforce Development website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.

(b) After initial registration, an employee leasing company or professional employer organization shall register annually on a form prescribed by the Commissioner or his or her designee.

(c) The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (a), inserted "and Workforce Development" preceding "hotline" in 1 and "website" in 3.

12:16-24.4 Financial security requirements

(a) An employee leasing company or professional employer organization shall submit a reviewed financial statement to the Commissioner or his or her designee with the initial registration and also with each annual registration on or before the dates detailed in N.J.A.C. 12:16-24.3(a)3 and (c).

1. Each reviewed financial statement shall incorporate a certification that it was prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of the initial or the annual registration or with a certification by the independent certified public accountant in accordance with generally accepted accounting principles stating that it is the most recent financial statement and that they have reviewed the financial statement within six months prior to the date of the initial or the annual registration and certify that there have been no adverse effects negatively impacting the minimum net worth of \$100,000.

2. Each reviewed financial statement shall demonstrate that the employee leasing company or professional employer organization has a minimum net worth of \$100,000.

(b) An employee leasing company or professional employer organization, which is not in compliance with (a) above, shall file with the Commissioner or his or her designee a security bond or deposit of securities with a current market value of \$75,000 on or before the dates detailed in N.J.A.C. 12:16-24.3(a)2 and 3.

1. The Commissioner or his or her designee may make a periodic review of the adequacy of the security furnished by the employee leasing company or professional employer organization to determine if any adjustment may be necessary.

2. The Commissioner or his or her designee may sell the securities so deposited to the extent necessary to satisfy any unpaid unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee. The employee leasing company or professional employer organization will be notified of the sale of such securities and the amount used.

3. The Commissioner or his or her designee may also require the bond or deposit of securities described in (b) above if he or she finds that the employee leasing company or professional employer organization has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any Federal or State payroll taxes or unemployment and/or disability contributions when due, or for other good cause.

4. An employee leasing company or professional employer organization which has had its security reduced to satisfy any unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee, and has not had its registration rescinded, shall file with the Commissioner or his or her designee an additional security bond or deposit of securities which when combined with any unused portion of the prior security bond or securities will equal a current market value of \$75,000. Such additional securities must be received no later than 60 days after the notification of sale of such securities as set forth in (b)2 above.

5. The Commissioner or his or her designee may extend for good cause the date for complying with the security requirement for a period of up to 30 days beyond the original due date.

12:16-24.5 Payroll tax certification

(a) An employee leasing company or professional employer organization shall provide the Commissioner or his or her designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant on a form prescribed by the Commissioner or his or her designee that all applicable Federal and State payroll taxes have been paid on a timely basis.

(b) The payroll certification form shall be filed quarterly by the following dates:

| <u>Quarter Ending</u> | <u>Due Date</u> | |
|-----------------------|-----------------|--|
| March 31 | May 30 | |
| June 30 | August 29 | |
| September 30 | November 29 | |
| December 31 | March 1 | |

(c) The Commissioner or his or her designee shall notify the client companies reported on the most recent registration form if an employee leasing company or professional employer organization fails to file its quarterly payroll tax certification within 10 days of the mailing of the notice of delinquency in accordance with N.J.S.A. 34:8-71.

12:16-24.6 Workers' compensation insurance

(a) It is the obligation of the employee leasing company to provide workers' compensation insurance for their covered employees. Policies may be issued by any insurance carrier licensed by the State of New Jersey. Policies shall indicate that the employee leasing company is the labor contractor for each client company, by name.

12:16-24.7 Dissolution of employee leasing agreement

(a) When one or more employee leasing agreements are to be dissolved, the employee leasing company or professional employer organization shall give advance notice of dissolution to the Commissioner or his or her designee. In the event that it is impracticable to give such advance notice, the employee leasing company or professional employer organization shall notify the Commissioner or his or her designee within 10 business days of such dissolution.

(b) Such notice shall contain the following information:

1. The name, address, and taxpayer identification number of the employee leasing company or professional employer organization;

2. The expected or actual date of dissolution; and

3. The name, address, and taxpayer identification number or Federal employer identification number of each client company for whom an employee leasing agreement is or will be dissolved.

(c) For each client company that leased its total workforce, or any part thereof, from the employee leasing company or professional employer organization for a period of less than two full calendar years, such notice shall include the names and social security numbers of the leased employees and the amount of taxable wages, employer unemployment and disability contributions and unemployment and disability benefit charges attributable to the client company during the duration of the leasing agreement.

12:16-24.8 Rescission of the registration of an employee leasing company or professional employer organization

(a) The registration of an employee leasing company or professional employer organization may be rescinded by the Commissioner, or his or her designee, for violations as set forth in N.J.S.A. 34:8-67 through 78 and for non-compliance with this subchapter. The rescission shall be effective as of the first day of the next calendar quarter.

(b) After the registration of an employee leasing company or professional employer organization has been rescinded, all of the client companies will be notified by the Commissioner or his or her designee that they are required to file reports and submit payment of contributions on their own behalf effective with the date of the rescission. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(c) A client company of an employee leasing company which has had its registration rescinded shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

12:16-24.9 Dissolution of an employee leasing company or professional employer organization

(a) Upon the dissolution of an employee leasing company or professional employer organization, all of the client companies shall file reports and submit payment of contributions on their own behalf effective with the date of dissolution. The rates assigned to the individual client com-

panies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(b) A client company which has dissolved its employee leasing arrangement shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

12:16-24.10 Violations

(a) If an employee leasing company knowingly and willfully fails to file a contribution or wage report by the due date, the Commissioner, or his or her designee, shall consider such failure as a separate violation for each client with whom the leasing company has an employee leasing agreement.

(b) If an employee leasing company fails to file a contribution or wage report or fails to remit payment within 15 days of the due date, the Commissioner, or his or her designee, shall consider such failure as egregious violations under N.J.S.A. 34:8-76c and shall result in rescission.

(c) In determining if rescission is an appropriate remedy, the Commissioner may also consider the following factors:

1. The record of previous violations by the employee leasing company;
2. The significance or scale of the violations;
3. The existence of outstanding reports or failure to pay;
4. Failure to respond to a request to produce records, documents, or proof of payment;
5. Submission of falsified or altered records, forms, documents, or proof of payment;
6. Whether the violations were willful or knowing; and
7. Good faith efforts by the employee leasing company to remedy any violations.

12:16-24.11 Appeals

The Commissioner, or his or her designee, shall notify the employee leasing company or professional employer organization in writing of the reason for rescission which notice shall include a "Request for Hearing" as provided for in N.J.A.C. 12:16-22.