

CHAPTER 16

CONTRIBUTIONS, RECORDS AND REPORTS

Authority

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

Source and Effective Date

R.1995 d.138, effective February 9, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Executive Order No. 66(1978) Expiration Date

Chapter 16, Contributions, Records and Reports, expires on February 9, 2000.

Chapter Historical Note

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969. Subchapter 10, Hearings, was amended by R.1984 d.459, effective October 15, 1984. See: 16 N.J.R. 2240(a), 16 N.J.R. 2821(a). Chapter 16 was entirely revised by R.1985 d.147, effective April 1, 1985. See: 16 N.J.R. 2488(b), 17 N.J.R. 820(b). 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 Subchapter 10 was repealed and Subchapter 22, Hearings, was adopted as R.1989 d.208, effective April 17, 1989.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 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 was readopted as R.1995 d.138. See: Source and Effective Date. As a part of R.1995 d.138, Subchapter 11 was recodified as Subchapter 10, a new Subchapter 11, Special Employment Situations, was adopted, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a). See, also, section annotations.

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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).

Case Notes

Security guards were not independent contractors; unemployment and temporary disability contributions. *J. DiSanti Concrete Corp. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 55.

Company supplying personnel to churches; unemployment insurance contributions. *Church Personal Services, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 51.

Travel agency failed to prove that employees were independent contractors. *Ro-Burt Travel, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 46.

Contractor failed to prove that employees were independent contractors. *Taylor v. Department of Labor*, 94 N.J.A.R.2d (LBR) 33.

Bandleader ordered to pay unemployment and disability contributions as employer. *Koza v. Department of Labor*, 94 N.J.A.R.2d (LBR) 16.

Installers and salespersons were not independent contractors but employees. *Beautyguard Manufacturing Company of Middlesex, Inc. v. Department of Labor*, 94 N.J.A.R.2d (LBR) 13.

Contractors were not independent operators but were employees. *Tri-County Appliance Service Company, Inc., v. Department of Labor*, 94 N.J.A.R.2d (LBR) 7.

Employer failed to prove that deliverymen were independent contractors. *Independent Newspaper Delivery, Inc. v. New Jersey Department of Labor*, 93 N.J.A.R.2d (LBR) 11.

Carpenters were not independent contractors. *Jate Building Company Corp. v. New Jersey Department of Labor*, 93 N.J.A.R.2d (LBR) 5.

Undissolved corporation failed to show that it did not employ at least one employee. *Sureway Excavators Corp. v. New Jersey Department of Labor*, 93 N.J.A.R.2d (LBR) 3.

Construction workers were not independent contractors. *Beitz v. New Jersey Department of Labor*, 93 N.J.A.R.2d (LBR) 1.

Drywall installers were not independent contractors. *Surran v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 37.

Limousine drivers were not independent contractors. *A to Z Cab and Limousine Service, Inc., v. Department of Labor*, 92 N.J.A.R.2d (LBR) 29.

Carpet installers were not independent contractors. *Dilollo v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 21.

Drywall workers were not independent contractors. *Executive Dry-wall Construction v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 16.

Construction workers were not independent contractors. *Apicionek v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 13.

Workers were not independent contractors. *ACME Maintenance Corporation v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 1.

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.

12:16-1.5 Employer to inform worker in certain cases

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

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

SUBCHAPTER 2. RECORDS

12:16-2.1 Payroll records

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;
2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but

which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;

4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;

5. Such information as may be necessary to determine remuneration on a calendar week basis.

6. The number of base weeks (see N.J.S.A. 43:21-19(t)) and wages.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.3 Records defined

Records are defined as all books of original entry plus any summarizations or other media used to post to a general ledger or its equivalent as well as all Federal and State tax returns. Records shall also include machine sensible data media used for recording, consolidating, and summarizing accounting transactions within an employing unit's automatic data processing system.

12:16-2.4 Records retention

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

SUBCHAPTER 3. POWER OF ATTORNEY

12:16-3.1 Power of attorney: requirements

(a) An employer may grant power of attorney to another person to represent the employer before the Employment Security Agency in all matters affecting quarterly contribution reports, experience rating, tax liability, and claims for benefits.

(b) The power of attorney document must contain the following:

1. The corporate seal unless the employer is an individual or a partnership;
2. The signature of the employer(s) or duly authorized corporate officers;
3. Specific mention of the Employment Security Agency as the entity before whom representation will be made on behalf of the employer;
4. The signature of a notary public and the expiration date of commission;
5. The signature of the representative and a statement acknowledging power of attorney authorization.

(c) If the address of record for the employer is changed to that of the representative on the status (tax) file, the benefit file, or both, the representative must accept all reports, notices, billings, and correspondence pertinent to the particular file on which the address had been changed.

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

SUBCHAPTER 4. REMUNERATION

12:16-4.1 Remuneration defined

(a) The New Jersey Unemployment Compensation Law, at N.J.S.A. 43:21-19(p), states that "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.14.

1. Sick leave payments;