

4. Payment of unused sick leave made to an employee while still in employment.

(c) Those types of sick leave payments deemed benefits and therefore non-taxable are:

1. Benefits paid from the State Plan for temporary disability insurance;
2. Benefits paid by an insurance carrier under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
3. Benefits paid by a union under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
4. Benefits paid by the employer under an approved self-insured Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
5. Benefits paid for work related injury under Workers' Compensation;
6. Benefits paid to employees in the public sector for work related illness under Sick Leave Injury (SLI);
7. Payment of sick leave made after retirement or separation from employment.

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

12:16-4.3 Fringe benefit payments

(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.

(b) Taxable fringe benefits may include:

1. Vacation pay (both before and after dismissal);
2. Separation/severance pay (if made under a contractual obligation or by custom);
3. Guaranteed annual wage payments;
4. Difference between regular salary and jury duty pay;
5. Employer payments to employees' IRA;
6. Draw against future earnings (taxable when paid) unless the employer takes legal steps to recoup the overpayments;
7. Payment of employee's portion of Federal or State income tax unemployment/disability insurance taxes, or social security tax.
8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;
9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses; and

10. Expense allowances for which no accounting is made to the employer.

(c) Non-taxable fringe benefits may include:

1. Employer payments to retirement plans including, SEP-IRA plans (See (d) below);
2. Payments to hospitalization and medical/dental plans, and payments made under such plans;
3. Payments to union welfare funds;
4. Life insurance premiums;
5. Tuition reimbursements and payments.

(d) In general, the entire gross remuneration for services rendered by an employee is taxable up to the maximum yearly wage base including amounts deducted for payment into a deferred savings program that lets the employee set aside money for his or her retirement.

Amended by R.1990 d.217, effective April 16, 1990.
See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In (b): added 8-10.
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-4.4 Section 401(k) Plans

Effective January 1, 1984, employer contributions to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

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

12:16-4.5 Push payments

(a) Push payments are commission or bonus type payments made by a manufacturer to sales persons for "pushing" a certain product or product lines. These may also be referred to as push money, premiums, or incentive payments. Push payments take differing formats and are made in varying manners.

1. Push payments made directly by a manufacturer to its own sales-persons are taxable.
2. Payments made by one entity to employees of another are taxable remuneration to the actual employer when made pursuant to a contractual obligation, written or oral, expressed or implied.

12:16-4.6 Officer's remuneration

(a) For the purpose of the Unemployment Compensation and Temporary Disability Benefits Laws, each officer of a corporation receiving remuneration for any personal services

performed for that corporation shall be considered to be in its employ, and such payments shall be taxable.

(b) An election to report under the Small Business Corporation provisions of Section 1368 of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. Reasonable remuneration as determined through facts and circumstances, shall be considered wages for benefit and contribution purposes when paid to officers of corporations having made such an election if the officers perform any services.

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

12:16-4.7 Back pay, residuals, aliens

(a) Back pay awards are taxable remuneration where the discharge from employment was held invalid and reinstatement of the job ordered. Back pay is not taxable if considered damages for an illegal act without job reinstatement.

(b) Residual payments made to entertainers for reuse of commercial recordings are taxable if the original services were performed in this State.

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number.

Amended by R.1989 d.208, effective April 17, 1989.
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

At (c) deleted all reference to Federal Regulation 31.3306(c)(18)-1, added, "All wages paid to aliens are taxable and reportable ...".
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-4.8 Other remuneration

(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from an employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employing unit for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations.

(b) The Controller or his or her designee shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. Where a money value for board and room, meals and lodging, or for any of such items, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon shall be deemed the cash value of such item or items.

2. The Controller or his or her designee shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—35 percent of the current taxable wage base divided by 52;

ii. Meals per day—20 percent of the current taxable wage base divided by 260;

(1) If less than 3 meals per day, the individual meals shall be valued as follows:

(A) Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;

(B) Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;

(C) Dinner (meals served between 4:00 P.M. and 12:00 midnight)—40 percent of meals rate; and

iii. Lodging per week—15 percent of the current taxable wage base divided by 52.

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

Amended by R.1986 d.23, effective February 3, 1986.
See: 17 N.J.R. 2859(a), 18 N.J.R. 284(a).

Remuneration rates raised.
Amended by R.1989 d.303, effective June 5, 1989.
See: 21 N.J.R. 690, 21 N.J.R. 1576(a).

Full board and room, meals and lodging rates changed from dollar amounts to percentages of the current taxable wage base divided by 52, in (c). Method of computation of dollar amounts added at (d). Public notice specifying dollar amounts for categories in (c).

See: 21 N.J.R. 3564(c).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 22 N.J.R. 3057(c); 23 N.J.R. 2787(a); 24 N.J.R. 3182(a); 25 N.J.R. 6067(a); 26 N.J.R. 4228(c).

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

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

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 28 N.J.R. 4121(b).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 28 N.J.R. 4817(a).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 29 N.J.R. 4201(b).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 30 N.J.R. 3556(a).