

12:18-2.33 Unemployment disability account deficit

(a) The term “unemployment disability account deficit” means any negative balance between the credits and debits of the account as determined by the Act.

(b) If the accumulated deficit at the end of any calendar year after interest and other earnings have been credited in accordance with the Act exceeds \$200,000, such deficit shall be assessed and shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.34 Assessment of costs of administration

Any assessment under the provisions of N.J.S.A. 43:21-48 shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.35 Assessment of amount of refund of workers' contributions applicable to private plans

(a) The portion of the aggregate amount of refunds to workers during any calendar year pursuant to N.J.S.A. 43:21-7(d)(3) to be assessed against private plans shall be determined by multiplying the aggregate amount of such refunds by the ratio of taxable wages involved in such refunds and paid by employers to employees covered under private plans to the total taxable wages involved in such refunds and paid by all employers.

(b) Such amount shall be prorated among the applicable private plans in the proportion that the wages covered by each plan bears to the total private plan wages in such refunds.

(c) The amount so prorated to a private plan shall be assessed against the employer, or the insurer if the insurer has indemnified the employer with respect thereto, and shall be collected under the provisions of N.J.S.A. 43:21-14 except that interest shall not accrue on such assessment until 30 days after the date of notice of such assessment.

(d) The amounts so recovered by the Division shall be paid into the State Disability Benefits Fund. (See N.J.A.C. 12:16-15, Application for workers' refunds.)

12:18-2.36 Liability of successor employer

Any employer who acquires the organization, trade, assets or business, in whole or in part, whether by merger, consolidation, sale, transfer, descent or otherwise, from an employer liable for any assessment made under N.J.S.A. 43:21-7(d)(3), N.J.S.A. 43:21-46 and N.J.S.A. 43:21-48 shall likewise be liable for such assessment.

12:18-2.37 Continuation of plan on successor employer

(a) If there is a change in the employer and the successor employer assumes the obligations and liability of the predecessor under the plan, the plan shall be transferred to the successor, if:

1. The workers to be covered by the plan immediately after the succession are not required to contribute to the cost of the plan; or
2. The class or classes of workers covered by the plan immediately prior to the succession constitute a majority of the workers in the same class or classes employed by the successor immediately after the succession; or
3. A majority of the workers in the class or classes covered by the plan in the employ of the successor immediately after the succession give their written consent to the plan; or
4. The plan is limited to the separate unit, plant, department or establishment operated by the predecessor and the provisions of paragraphs 1, 2 or 3 of this Section are met with respect to such separate unit, plant, department or establishment.

SUBCHAPTER 3. STATE PLAN**12:18-3.1 Extent of coverage**

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 for any period of disability commencing while he or she is a “covered individual” as defined in N.J.S.A. 43:21-27(b).

(c) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to the disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21-4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21-4) would have been timely noticed to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-4).

(f) Where a covered employee has utilized a licensed medical practitioner, and that licensed medical practitioner has examined the covered employee and has diagnosed him or her with a disabling condition, and where the licensed medical practitioner has certified that the employee's condition renders him or her unable to perform the duties of his or her employment for a given period of time, the claimant may only be denied benefits during that period so certified where:

1. The Division has contacted the covered employee's personal licensed medical practitioner and has reached a mutual agreement therewith as to a change in the period of the covered employee's disability;

2. A licensed medical practitioner designated by the Commissioner of Labor or his or her designee has examined the covered employee and has determined that the covered employee is no longer disabled. Where such a determination has been made, benefits shall not be paid beyond the date of examination;

3. A covered employee refuses to submit to or fails to attend an examination conducted by a licensed medical practitioner designated by the Commissioner of Labor or his or her designee, in which case the covered employee shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid; or

4. The Division has obtained credible factual evidence showing that the covered employee is performing activities that demonstrate that he or she is able to perform the duties of his or her regular employment. In such instances, benefits shall not be paid beyond the date that such factual evidence is obtained.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed medical practitioner. Upon submission of a written report of the examination to the Department of Labor, a fee not exceeding \$75.00 for each such examination shall be paid to the examining medical practitioner, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in this fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting a diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

As amended, R.1974 d.284, effective October 17, 1974.

See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (d) and (e), deleted references to N.J.S.A. 43:21-3 throughout; and in (f) and (g), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, public health nurses, and optometrists throughout.

Amended by R.2000 d.327, effective August 7, 2000.

See: 32 N.J.R. 169(a), 32 N.J.R. 1700(a), 32 N.J.R. 2908(a).

Rewrote (f).

12:18-3.2 Notice and proof of disability

(a) Within 30 days after the commencement of a period of disability, a written notice of disability, on which a claim for State plan benefits is based, shall be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state the claimant's full name, address and valid social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) shall constitute notice of disability.