3. None of such employers or their predecessors, if any, were participating in another joint account throughout the preceding calendar year;

4. The requirements of paragraphs (3) and (4) of N.J.S.A. 43:21–7(c) of the Unemployment Compensation Law have been met by all such employers;

5. Such employers intend to maintain the common ownership or control for at least three calendar years and will notify the Controller or his or her designee promptly of any change in such ownership or control; and

6. All contributions, interest, penalties and assessments which have become due from such employers on or before the date of application have been paid.

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

12:16–15.3 Effective date: duration of a voluntary joint account

(a) A voluntary joint account shall be established only as of the first day of any calendar year and shall become effective after approval by the Controller or his or her designee.

(b) The voluntary joint account so established shall remain in force for not less than three full calendar years, subject to the provisions of N.J.A.C. 12:16–15.5 (Modifications) and 12:16–15.6 (Dissolution).

(c) Contribution rates based on such voluntary joint accounts shall become effective for the fiscal year which begins on the first day of July of each calendar year following the approval of the application.

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

12:16–15.4 Maintenance of a voluntary joint account

(a) Separate accounts shall be maintained for each employer participating in a voluntary joint account.

(b) At the beginning of each calendar year the separate accounts shall be combined for the purpose of computing a joint contribution rate.

(c) Such joint rate shall be the contribution rate for each employer participating in the voluntary joint account.

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

12:16–15.5 Modification of a voluntary joint account

(a) Another employer may be added to an existing voluntary joint account if all the employers involved jointly make application for a new voluntary joint account and comply with the requirements of this subchapter.

(b) If during any calendar year an employing unit participating in a voluntary joint account ceases to be an employer under the New Jersey Unemployment Compensation Law, or ceases to be owned or controlled by the same interests, such employing unit shall be separated from the voluntary joint accounts as of the first day of such calendar year, but shall continue for the current fiscal year with the contribution rate computed under the voluntary joint account.

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

12:16–15.6 Dissolution of a voluntary joint account

(a) Voluntary joint accounts may be dissolved as of January 1 of any calendar year under any one of the conditions set forth below:

1. If at any time the Controller or his or her designee finds that with respect to such calendar year any one of the eligibility conditions set forth in N.J.A.C. 12:16–15.2 (Eligibility) with respect to employment, contributions, interest, penalties and assessments, and ownership or control, no longer exists and that it would not be in the best interest of the State to continue the voluntary joint account; or

2. Upon written application of one or more of the employers whose accounts have been joined, if such application is filed with the Controller or his or her designee on or before January 31 of such calendar year and the Controller or his or her designee finds that the voluntary joint account has been in existence for at least three calendar years. The form of application for dissolution of a voluntary joint account shall be prescribed by the Controller or his or her designee.

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

SUBCHAPTER 16. NOTICE TO WORKERS

12:16–16.1 Unemployment compensation coverage

(a) Every employer subject to the provisions of the Unemployment Compensation Law of New Jersey (including every employer who has elected to become subject pursuant to N.J.S.A. 43:21–8) shall post and maintain printed notices to its employees informing them that they are covered by the Unemployment Compensation Law of New Jersey, and that the employer has been so registered by the Controller or his or her designee.

(b) Such notices shall be displayed in prominent and conspicuous places at each worksite.

(c) No such notice shall be posted by any person, employing unit or employer who has not complied with the provisions of the Unemployment Compensation Law and to

whom an unemployment compensation registration number has not been assigned by the Controller or his or her designee, or who, in accordance with the provisions of the law, has ceased to be an employer as defined in the law.

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

12:16–16.2 Termination of subject status

Every employing unit which has ceased to be a subject employer, pursuant to the provisions of N.J.S.A. 43:21–8 of the Unemployment Compensation Law, shall post and maintain notice of such fact on forms supplied by the Controller or his or her designee, in order to inform its workers that they are not in covered employment and are not liable for contributions.

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

SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. TRANSFER OF EMPLOYMENT EXPERIENCE

12:16–18.1 Transfer of predecessor's whole experience

(a) Upon receipt of notification that a predecessor employer has transferred its organization, trade or business, or substantially all its assets to a successor in interest, the Controller or his or her designee shall transfer the employment experience of the predecessor employer to the successor in interest if the employment experience of the predecessor with respect to the organization, trade or business, or assets may be considered indicative of the anticipated employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) Unless the predecessor employer was owned or controlled, directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade or business, or assets, or thereafter upon good cause shown, files a written notice protesting the transfer of employment experience of the predecessor employer.

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

Construction company was successor entity. Spencer White and Prentis Associates Corporation v. New Jersey Department of Labor, 92 N.J.A.R.2d (LBR) 39.

12:16–18.2 Rate following transfer of predecessor's whole experience

(a) Any employer who acquires the organization, trade or business, or assets of another employer, shall continue to pay contributions at the rate currently assigned, for the period from the date of acquisition to the following July 1.

(b) Any employer who acquires the organization, trade or business, or assets of another employer, and the employment experience of the predecessor employer represents substantially all of the employment experience of the successor in interest and may be considered indicative of the future employment experience of the successor in interest, shall have its contribution rate determined by combining the employment experience of the predecessor employer and successor in interest as they appear on the records of the Controller or his or her designee. Such rate shall be in effect for the period from the date of acquisition to the following July 1.

(c) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of an employer shall be assigned the contribution rate of the predecessor employer for the period from the date of acquisition to the following July 1.

(d) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of two or more employers shall be assigned the rate of the predecessors, if they have the same rate. If the predecessors do not have the same rate, the successor employer shall be assigned a contribution rate based upon the combined employment experience of the predecessors as of the date of acquisition to the following July 1.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Formerly "Transfer of part of predecessor's experience by application".

12:16–18.3 Transfer of predecessor's experience in part

(a) A predecessor employer and successor in interest may jointly make application, on Form UC–47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade or business, or assets acquired by the successor in interest. The employment experience will be transferred if the following conditions are met:

1. Either the predecessor or successor in interest shall report the transfer and acquisition and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file form UC–47 within 30 days from the date of mailing thereof.

3. The employment experience of the predecessor employer with respect to the portion of the organization, trade or business, or assets to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) The predecessor and successor in interest may choose to have the employment experience transferred either on an actual or percentage basis.

1. Under the first option, the actual portion of the organization, trade or business, or assets which have been transferred is both distinguishable and identifiable and can be supported through the furnishing by the predecessor and successor in interest of all of the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer.

2. Under the second option, the portion of employment experience to be transferred, which is both distinguishable and identifiable from the predecessor to the successor in interest, is determined by taking a percentage of the number of employees transferred from the predecessor to the successor in interest as of the date of acquisition.

3. Only one of the options may be selected to transfer contributions, benefit charges, three and five year taxable wage average and final experience rate from the predecessor to the successor in interest.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Formerly "Rate following acquisition".

12:16–18.4 Rate following transfer of predecessor's experience in part

(a) A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of transfer to the following July 1.

(b) The transfer of a portion of employment experience from a predecessor to a successor in interest will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective the following July 1.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Formerly "Assignment of contribution rates for interim periods".

SUBCHAPTER 19. BENEFIT CHARGES

12:16–19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to whom such determination relates, and when the benefit payment is made, the Department shall send notification to the employer against whose account the benefits are to be charged on a quarterly basis.

Amended by R.1987 d.104, effective February 17, 1987.
See: 18 N.J.R. 1682(a), 19 N.J.R. 363(a).
Defined who should send notification.
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16–19.2 Annual summary statement

All employers shall be furnished an annual summary statement of benefits charged to their accounts.

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

SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS

12:16–20.1 Work relief and work training programs: exempt employment

(a) In order to qualify for the exemption provided by N.J.S.A. 43:21–19(i)(1)(D)(v), an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a state or political subdivision of a State, must have as a minimum the following characteristics:

1. The employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy;

2. Qualifications for the jobs take into account as indispensable factors the economic status, that is, the standing conferred by income and assets, of the applicants;

3. The products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of

relief, even though the work may be meaningful or serve a useful public purpose.

(b) In order to qualify as an exempt unemployment work-relief or work-training program, it must also have one or more of the following characteristics:

1. The wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

2. The jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

3. The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors;

4. The jobs do not displace regularly employed workers or impair existing contracts for services.

SUBCHAPTER 21. ZIP CODE REPORTING

12:16–21.1 Scope

This subchapter is applicable to all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21–1 et seq.

12:16–21.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Labor.

"Department" means the New Jersey Department of Labor.

"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 regular part-time basis.

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

12:16–21.3 Reporting requirement

(a) Every employer shall report, on an annual basis, the Zip Code of the following:

1. The residence of each employee; and

2. The location where the employee regularly works.

(b) The information specified in (a) above is required only for employees who are employed by the employer at the time of receipt of the report form.

(c) The employer shall submit the information required under this section, on a form prescribed by the Commissioner, to the Department of Transportation. An envelope imprinted with the address of the Department of Transportation shall be provided to the employer with the information form.

(d) Any questions concerning the provisions of this subchapter may be addressed to:

Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625–0600

SUBCHAPTER 22. HEARINGS

12:16–22.1 Scope

All hearings involving any question of coverage, status, liability for contributions, reporting, refunds, or rates of contribution shall be conducted according to the procedure outlined in this subchapter.

12:16–22.2 Application

(a) Any written notice of determination by a representative of the Department as to any question of coverage, status, liability for contributions, reporting, refunds, or rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing on the prescribed form within 15 days after the date of the notice.

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied with the written confirmation letter sent by the Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) All completed requests shall be returned to the Chief Auditor within the required 15 days.

(d) If a party determined by the Department to be an employer asserts that it acted as an agent for another party pursuant to N.J.S.A. 43:21–19(g), or the nature of the business evidences an agency relationship may exist, the Department shall name both the agent and principal as parties to the administrative proceedings.

Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).
Amended by R.1996 d.221, effective May 5, 1996.
See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).
Added (d).

12:16–22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

(d) An employer may be represented by him or herself or by an attorney at the informal conference, or may be assisted by a non-attorney at the conference.

(e) If an employer fails to appear at an informal conference and fails to respond to the Division's notice granting the employer 10 days to contact the Division to reschedule the conference, the Department shall consider the employer to have withdrawn his or her request for hearing and to be liable for the unemployment and temporary disability assessment.

Amended by R.1996 d.221, effective May 5, 1996.
See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).
Added (d) and (e).

12:16–22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B–1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

12:16–22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

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

12:16–22.6 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

Recodified from 12:16–22.5 by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

12:16–23.1 Exempt services

(a) Persons who perform services and receive remuneration are employees under the Unemployment Compensation Law unless the services meet the Unemployment Compensation Law definition of independence set forth in N.J.S.A. 43:21–19(i)(6).

(b) The Unemployment Compensation Law lists certain categories of services as being exempt from Unemployment Compensation coverage. However, these services are exempt only if there is a corresponding exemption under the Federal Unemployment Tax Act ("FUTA") or the services are otherwise not subject to tax or coverage under FUTA.

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 Division of Unemployment Insurance/Disability Insurance Financing 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.

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 Division 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.