

CHAPTER 37**MANPOWER DEVELOPMENT AND TRAINING****Authority**

Unless otherwise expressly noted, all provisions of this Chapter 37 were adopted by the Commissioner of Labor and Industry, pursuant to authority delegated at N.J.S.A. 34:15A-1 et seq., and were filed and became effective prior to September 1, 1969.

Chapter Expiration Date

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SUBCHAPTER 1. GENERAL PROVISIONS**12:37-1.1 Title**

This Chapter shall be known and may be cited as the Manpower Development and Training Chapter.

12:37-1.2 Purpose of program

The purpose of the Manpower Development and Training Program is to assist the unemployed gain new skills and the underemployed upgrade their skills by means of institutional and on-the-job training.

12:37-1.3 Definitions

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

"Act" means the Manpower Development and Training Act of 1962, Public Law 87-415:¹

"Agreement" means an agreement entered into by the Secretary:

1. With the State of New Jersey enabling the State, acting as agent for the United States, to make payment of weekly training allowances to persons undergoing training in a program operated pursuant to the provisions of the Act;

2. With the State of New Jersey, private and public agencies, employers, trade associations, labor organizations, and other industrial and community groups the Secretary determines are qualified to conduct effective training programs under Title II of the Act; and

3. With the State of New Jersey for the utilization of the services of appropriate State agencies for the purpose of carrying out the Secretary's functions and duties under the Act, and make payments to the State for expenses incurred for such purposes.

"Allowance" includes training, subsistence and transportation allowances provided to persons engaged in training under Title II of the Act.

1. "Increased training allowance" means the training allowance that is payable to a qualified individual who, but for his training, would be entitled to receive unemployment compensation in an amount which exceeds the regular training allowance.

2. "Reduced training allowance" means the allowance payable (regular, increased, supplemental or youth) in a reduced amount when a trainee has compensated hours of employment in a training week.

3. "Regular training allowance" means an allowance equal to the average unemployment compensation payment in the State of New Jersey for a week of total unemployment in the most recent quarter for which data is available.

4. "Subsistence allowance" means the allowance provided for separate maintenance of an individual who is

receiving training at a training facility which is not within commuting distance of his regular place of residence.

5. "Supplemental training allowance" means the allowance payable to a trainee who receives unemployment compensation in an amount which is less than his regular or youth training allowance.

6. "Transportation allowance" means the allowance provided to an individual for transportation expenses between his regular place of residence and the training facility.

7. "Youth training allowance" means the training allowance not to exceed the regular training allowance that is payable to an unemployed individual who has attained his 17th birthday but has not reached his 22nd birthday and does not qualify for a regular training allowance because he lacks at least one year of experience in gainful employment.

"Annual net farm family income" means the net income as computed or reported in the preceding year by the head of a farm family under Internal Revenue rules.

"Farm family" means a family headed by an individual whose principal employment during the year was in agricultural labor.

"Compensated hours" means hours worked by a trainee in a training week:

1. In on-the-job training for which the employer pays the trainee in accordance with provisions of the regulations and agreements under Title II of the Act;
2. In paid employment;
3. In self-employment for profit engaged in by the trainee other than work on a farm as a member of a farm family with annual net farm family income of less than \$1,200; or
4. For which pay is due.

"Good cause" means justifiable reasons determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, and includes but is not limited to reasons beyond the control of the individual or factors connected with the capabilities of the individual to satisfactorily progress or complete the training.

"Head of family" means an individual who is responsible for supporting and maintaining a household or home for a dependent or dependents.

"Head of household" means an individual not a nonresident alien who is not married and either:

1. Maintains as his home a household which constitutes the principal place of abode, as a member of such household, of any person who could be qualified as a dependent of the individual; or

2. Maintains a household which constitutes the principal place of abode of the father or mother of the individual, if the individual would be entitled to a deduction for the father or mother for Internal Revenue purposes. An individual shall be considered as maintaining a household only if over half of the cost of maintaining the household is furnished by such individual.

"On-the-job training" means a training project or that part of a training project which uses instruction combined with work to qualify a trainee for a particular occupation.

"One year experience in gainful employment" means any combination of qualifying periods of employment for pay (including military service), self-employment for profit, or as a worker whose principal employment is in a family enterprise and for which he receives no salary, that do not overlap and which aggregate one year.

"Regular place of residence" means the city, town or other place where an individual has his principal place of abode.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or his authorized representative.

"Training" means a planned and systematic sequence of instruction under competent supervision designed to impart predetermined skills, knowledge or abilities with respect to a specific occupation and may include, to the extent necessary, instruction in basic subjects which is given specially in relation to such occupation.

"Training facility" means:

1. Public or private educational training institution which provides training; or
2. An institution including but not limited to a private or public agency, employer trade association, labor organization, or other industrial or community group, conducting on-the-job training approved by the Secretary.

"Training project" means a specified course of instruction for the training of referred individuals in one occupational training area.

"Underemployed individual" means for purposes of priority in selection and referral for training:

1. One working below skill capacity; or
2. One who now is or has received notice that he will be working less than full-time in his industry or occupation; or

3. One who has received notice he will be unemployed because his skill is becoming obsolete.

"Unemployed individual" means

1. For purposes of priority in selection and referral for training an individual who is able to work and available for full-time employment and has no job or is a member of a farm family which has less than \$1,200 annual net family income;

2. For purposes of paying training allowances an individual who:

- i. Has worked less than 40 compensated or compensable hours in the week; or
- ii. Worked for less than a full work week scheduled for his industry or occupation; or
- iii. Is a member of a farm family which has less than \$1,200 annual net family income.

"Unemployment compensation" means the compensation payable for weeks of unemployment in accordance with the provisions of a State or Federal law, including but not limited to the Unemployment Compensation Law of New Jersey², the Railroad Unemployment Insurance Act³ and Title XV of the Social Security Act⁴.

"Week" means a calendar week or any seven consecutive day period other than a calendar week.

"Youth" means a person who has attained the age of 16 years but has not reached his 22nd birthday, except that for eligibility for a youth training allowance a youth must be over 17 years of age.

¹ The Federal "Manpower Development and Training Act of 1962" (Public Law 87-415; 76 Stat. 29) was signed into Law March 15, 1962. Enabling legislation was enacted in New Jersey on March 7, 1962 as the "Manpower Training and Retraining Act of 1962".

² N.J.S.A. 43:21 et seq.

³ 45 U.S.C.A., Sec. 351 et seq.; June 25, 1938, c. 680, 52 Stat. 1094.

⁴ Unemployment Compensation for Federal Employees. Sept. 1, 1954, c. 1212, Sec. 4(a); 68 Stat. 1130.

SUBCHAPTER 2. SELECTION AND REFERRAL OF TRAINEES

12:37-2.1 Determination of employment opportunities

(a) Prior to referral to specific occupational training, a determination shall be made that there is a reasonable expectation of employment for the individual in the occupation.

(b) In the absence of such determination there shall be no referral of any person to a training program.

12:37-2.2 Limitation of training needs determination

(a) The determination of training needs shall not include jobs or opportunities which:

- 1. Do not meet prevailing standards of the industry in the labor market area in which they exist with respect to wages, hours and conditions of employment;
- 2. Exist due to the transfer of any establishment, production, business or service which has caused an increase in unemployment in the area of original location or in any other area where such establishment, production, business or service conducts business operations;
- 3. Requires less than two weeks training, unless there are immediate employment opportunities in such occupation; or
- 4. Could not be filled by the New Jersey State Employment Service under its policies and regulations with respect to referrals to employment.

12:37-2.3 Determination of individual's training needs

Prior to selection and referral of a person for training the New Jersey State Employment Service shall determine the training needs of such person by interviewing, testing, and counseling as necessary with regard to his aptitudes, interests, education and other pertinent factors.

12:37-2.4 Selection and referral of trainees

(a) Persons, including youths, who are otherwise eligible for training shall be selected for training projects which are commensurate with their training needs, if at the time of their selection and referral, they are:

- 1. Unemployed or underemployed and cannot reasonably be expected to secure appropriate full-time employment without training;
- 2. Registered at the appropriate local New Jersey State Employment Service Office; and
- 3. Available for counseling or other personal interviews and for aptitude, proficiency, or other occupational tests which may be required.

(b) In selecting and referring applicants for training projects, priority shall be extended to unemployed over underemployed individuals.

(c) Trainees shall not be referred to training projects to qualify them for employment where the terms or conditions of employment are contrary to Federal, State or local law.

SUBCHAPTER 3. ON-THE-JOB TRAINING

12:37-3.1 Standards

(a) Each project shall:

1. Have the objective of teaching the basic needs requisite for satisfactory performance in the occupation for which training is given;

2. Require that the trainee devote his time principally to training where the payment of allowances is contemplated;

3. Provide methods of instruction, scheduling of sessions, progression of trainees, size of the training class or group, all of which shall meet the approval of the Secretary, and be comparable in duration to similar projects, and adequate in content to qualify employees for employment;

4. Provide adequate and safe facilities and equipment, qualified instructors and other personnel;

5. Require that suitable records of employees be maintained and that such records be made available to the Secretary, when so requested;

6. Provide that upon request the trainee shall be given an opportunity to be heard and reconsideration or review of any certification made which terminates him from training absent good cause; and

7. Provide that for hours spent in production of any goods or services the rate of compensation to be paid to trainees shall be specified in a written agreement entered into by the training facility and the Secretary.

12:37-3.2 Requirements for agreements

(a) Prior to entering into an agreement with a training facility it shall first be determined that there is:

1. Joint agreement to the training project and the wage scale by the training facility and the bargaining agent where there is a collective bargaining agreement applicable to the establishment and the occupation;

2. Reasonable assurance that the wage rate set for the trainees will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or work standards established for experienced workers for work of a like or comparable character in the establishment and industry; and

3. No abnormal labor conditions such as a strike, a lock-out, or other similar condition, existing at the establishment.

12:37-3.3 Rates under agreements

(a) The agreement with the training facility shall include the rate of compensation to be paid to trainees by the training facility, determined as follows:

1. If experienced workers are paid on a piece rate basis, trainees shall be paid at least the same piece rates as experienced workers employed in similar work in the establishment;

2. If experienced workers in the establishment are paid on a time rate basis, trainees shall be paid on a time rate basis, which is to be expressed as a progressively increasing proportion of the rate paid to experienced workers and determined on a basis of information about the typical output curve of a trainee and the length of time required to reach the proficiency of an experienced worker; provided, however, that the training project is of such duration that periodic increases are reasonable;

3. In no case shall the wage rate paid a trainee be less than the following, whichever is highest:

i. The minimum entrance rate for inexperienced workers in the same occupation in the establishment, or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area;

ii. The minimum rate applicable to the trainee and required under any Federal, State or local law.

12:37-3.4 Provisions of agreements

(a) Any agreement entered into pursuant to on-the-job training shall provide:

1. That the training facility adhere to all requirements relative to terms or conditions of employment prescribed by any applicable Federal, State or local law;

2. That after notice and opportunity to be heard, including an opportunity to demonstrate compliance and make restitution, a determination of failure to adhere to any such requirements shall constitute cause for termination of the agreement.

SUBCHAPTER 4. ALLOWANCES

12:37-4.1 Eligibility

An unemployed individual who was selected and referred to training under Title II of the Act may be eligible for a regular or increased training allowance if, during the week, he is the head of a family or head of a household, and has had one year's experience in gainful employment prior to the week of training involved, or, if not so qualified, for a youth training allowance if, prior to the week, he has reached his 17th birthday and has not reached his 22nd birthday.

12:37-4.2 Gainful employment construed

In order for an individual to have one year's experience in gainful employment, the experience need not be consecutive and may have been acquired at any time in the individual's lifetime.

12:37-4.3 Qualifying period

(a) Qualifying periods for the one year's experience are:

1. A calendar year in which the individual had 150 days of work regardless of the months or quarters in the year in which the work was performed;
2. A calendar quarter in which the individual had 35 days of work regardless of the months within the quarter in which it occurred; or
3. A calendar month in which the individual had ten days of work; and
4. For purposes of this Section, a day of work shall include days on which work was performed, even though less than a full day.

12:37-4.4 Additional eligibility criteria

(a) In order for an individual to be eligible for a training allowance an unemployed individual must also:

1. Have been selected and referred to training under Title II of the Act;
2. Make a request for the training allowance in the manner and form prescribed by the Secretary;
3. Have been enrolled for the week during his training period in accordance with the requirements of the training facility;
4. Not have received or be seeking unemployment compensation under any Federal or State law for the week or any part of the week, except that:
 - i. If he is seeking unemployment compensation and his claim is finally denied by the responsible agency involved, this restriction shall not apply; or
 - ii. If he receives unemployment compensation in a lesser amount than the amount of the allowance to which he is otherwise entitled under this Chapter; and
5. Not be within a period of ineligibility described in Section 4.5 (Periods of ineligibility for training allowances) of this Chapter.

12:37-4.5 Periods of ineligibility for training allowances

An individual may not receive any allowance under Title II of the Act for a week of training that begins within one year following the date that the individual is terminated from training pursuant to certification under Section 5.1 (Attendance and progress; forms; certification) of this Chapter.

12:37-4.6 Maximum period for training allowances

(a) Training allowances may be paid to an individual for not more than 104 weeks.

(b) A payment under the Railroad Unemployment Insurance Act¹, the Temporary Extended Unemployment Com-

pensation Act of 1961², or Title XV of the Social Security Act³, or any payment (for which reimbursement is made under this Chapter) to an individual while taking training shall be applied against the 104 week maximum period.

¹ 45 U.S.C.A., Sec. 351 et seq.; June 25, 1938, c. 680, 52 Stat. 1094.

² 25 U.S.C.A. Secs. 3301, 3302 42 U.S.C.A. Secs. 1105, 1400 et seq.; March 24, 1961, P.L. 876-6, 75 Stat. 8.

³ September 1, 1954, c. 1212 Sec. (4a); 68 Stat. 1130.

12:37-4.7 Minimum duration of training

No training allowance may be paid to an individual if he has been referred to training for less than six days.

12:37-4.8 Amount of training allowances

(a) The amount of the training allowance shall be as follows:

1. The amount of a regular training allowance shall be the average of payments of State unemployment compensation for weeks of total unemployment paid by the State of New Jersey in the calendar quarter preceding the quarter in which the payment is computed. The amount of an allowance based upon data for a calendar quarter shall be payable for weeks of training that begin within the second calendar quarter following the data quarter.

2. The amount of a training allowance for a youth who does not qualify for a regular training allowance may not exceed the amount of the regular training allowance.

3. A trainee who, but for his training, would have been entitled to unemployment compensation under a Federal or State law in an amount greater than the amount of regular training allowance as provided above, shall have his training allowance increased to the amount he would have been entitled to under the State or Federal law for those weeks during which he would be entitled to unemployment compensation, including extended durations. All adjustments required by the applicable State or Federal law shall be made, for example, deduction for pension or workmen's compensation and vacation pay. The amount and duration of an increased training allowance payable under this Chapter shall be for as long as the individual would draw unemployment compensation.

4. The regular, increased, youth or supplemental training allowance shall be reduced by 2½ per cent of such allowance for each compensated hour of the week. No allowances to which an individual may otherwise be entitled under this Chapter shall be diminished in any respect because of his receipt or entitlement to any supplemental unemployment benefits or separation allowances provided under any collective bargaining agreement.

5. Where the unemployment compensation received is less than the regular or youth training allowances the difference shall be paid as a supplemental training allowance subject to subsection 4 of this Section.

12:37-4.9 Overpayment and fraud

(a) The trainee shall be required to repay the amount of any overpayment and any overpayment not repaid shall be set off against any future allowance to which the trainee shall become entitled.

(b) Overpayments under any other program may not be offset against allowances payable to a trainee under this Chapter.

12:37-4.10 Transportation allowances

(a) The transportation allowance may not exceed the cost of the most economical public transportation the trainee could reasonably be expected to take or \$0.10 per mile, whichever is less.

(b) A transportation allowance will be paid to an eligible trainee upon the filing of a completed request, in accordance with instructions provided by the Secretary.

12:37-4.11 Subsistence allowances

(a) A subsistence allowance may be paid, without regard to eligibility for a training allowance or the 104-week limitation, for the period that the trainee is in training away from home at a facility which is not within commuting distance of the trainee's regular place of residence.

(b) Subsistence allowance shall be paid at the rate of \$35.00 per week, and \$5.00 per day, maximum.

(c) A subsistence allowance will be paid to an eligible trainee upon the filing of a completed request.

SUBCHAPTER 5. DETERMINATION AND REVIEW
12:37-5.1 Attendance and progress; forms; certification

(a) The New Jersey State Employment Service will furnish instructions and forms for use by the training facility in:

1. Determining whether a trainee has a satisfactory attendance record and is making satisfactory progress.

2. Where unsatisfactory attendance or progress is determined to exist, determining whether there was a good cause for such condition, and where the unsatisfactory attendance record or progress is determined to be good, certifying the determination to the State agency responsible for making payment.

12:37-5.2 Allowance qualification

The New Jersey State Employment Service shall determine whether an individual is qualified to receive training and eligible for training allowance, subsistence allowance or transportation allowance, and the amount of the allowance.

12:37-5.3 Notice of allowance denial

(a) Notice shall be given to an individual affected by any determination denying an allowance.

(b) The notice shall be in writing and shall clearly state the reasons for the denial.

(c) Notice of the determination shall be personally delivered to the individual or mailed to his last known address.

12:37-5.4 Review of determinations

(a) A determination of a training facility may be reconsidered or reviewed by the facility in accordance with its rules and regulations which must meet the approval of the Secretary of Labor or the Secretary of Health, Education and Welfare, whichever is appropriate. Such reconsideration or review shall be final and conclusive.

(b) Any determination with respect to allowance may be reconsidered by the New Jersey State Employment Service and shall be appealable under regular administrative appellate procedures except that there shall be no recourse to the State courts. Individuals shall be advised of their right to a reconsideration or review by the Secretary of the final determination under such administrative appellate procedures.

(c) The Secretary upon request of a trainee or a State agency or upon his own motion may review a decision of the authority that has final administrative jurisdiction of appeals. Upon review the Secretary may affirm, modify or reverse the decision or may remand it with direction for further hearings. The Secretary's decision shall be final and conclusive.