

9. Family leave insurance benefits paid by an insurance carrier under an approved private plan (see N.J.A.C. 12:16-4.11 for exceptions);

10. Family leave insurance benefits paid by a union under an approved self-insured private plan (see N.J.A.C. 12:16-4.11 for exceptions); and

11. Family leave insurance benefits paid by the employer under an approved self-insured private plan (see N.J.A.C. 12:16-4.11 for exceptions).

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.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Section was "Sick leave payments". In the introductory paragraphs of (a), (b), and (c), inserted "and continuation pay for family leave"; in the introductory paragraph of (a), inserted "or for periods of family leave"; in (b)4 and (c)7, substituted a semicolon for a period at the end; and added (b)5 and (c)8 through (c)11.

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. This includes all types of deferred compensation, 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).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

In (d), inserted ". This includes all types of deferred compensation," following "base".

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 divi-

dends 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. This subsection applies both to aliens who are workers legally admitted to the United States and to aliens who are workers and whose work status remains undocumented.

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).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

In (c), inserted the last sentence.

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 a-

greed 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).

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

See: 31 N.J.R. 3537(b).

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

See: 32 N.J.R. 4146(b).

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

See: 33 N.J.R. 3771(a).

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

See: 35 N.J.R. 3967(b).

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

See: 37 N.J.R. 3463(b).

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

See: 38 N.J.R. 3681(b).

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

See: 40 N.J.R. 220(b).

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

See: 41 N.J.R. 3326(a).

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

See: 42 N.J.R. 2646(b).

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

See: 43 N.J.R. 2534(b).

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

See: 44 N.J.R. 2254(b).

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

See: 45 N.J.R. 2405(b).

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

See: 46 N.J.R. 1909(b).

12:16-4.9 Tips and gratuities

If a worker receives gratuities and/or tips regularly in the course of employment from other than the employer, the gratuities and/or tips so received, if reported in writing to the employer, shall be considered taxable. The entire amount of charge tips are covered wages and are taxable to the maximum base even though the employee has not reported the entire amount to the employer. If the employee omits reporting tips, but the employer considers tips as part of an hourly rate for meeting the requirements of a Federal or State minimum wage law, it is considered that, in effect, tips have been reported to the employer to that extent and are therefore included as taxable wages.

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

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

12:16-4.10 Temporary disability payments

(a) Payments made to employees under an approved Private Plan shall be considered as taxable remuneration, if payments are for a period of seven or less consecutive days following the date of disability.

(b) Payments made for periods after the seventh consecutive day following the date of disability shall not be considered as taxable.

(c) If the period of disability extends to the twenty-second day of disability and payment is made for the twenty-second day, then the first seven days, referred to in (a) above would not be considered taxable.

New Rule, R.1986 d.21, effective February 3, 1986.

See: 17 N.J.R. 2850(b), 18 N.J.R. 284(b).

12:16-4.11 Family leave insurance benefits payments

(a) Family leave insurance benefits payments made to employees under an approved private plan shall be considered taxable remuneration if the payments are for a period of seven or less consecutive days following the first day that the individual establishes a claim.

(b) Family leave insurance benefits payments made for periods after the seventh consecutive day following the first day that the individual establishes a claim shall not be considered taxable remuneration.

(c) Family leave insurance benefits payments made for seven or less consecutive days following the first day that the individual establishes a claim referred to in (a) above would not be considered taxable remuneration when:

1. The period during which family leave insurance benefits have been paid extends to 22 consecutive days, or
2. The claimant is eligible for at least one day of family leave insurance benefits in three separate weeks subsequent to the week in which the claim for family leave insurance benefits was established.

New Rule, R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.11, Personal use of a company vehicle, recodified to N.J.A.C. 12:16-4.12.

12:16-4.12 Personal use of a company vehicle

(a) The personal use of a company vehicle shall be taxable remuneration.

1. Such personal use shall be valued pursuant to Section 61 of the Internal Revenue Code.

(b) If personal use is present (except for de minimis usage such as a lunch stop during company business), and such personal use has not been properly reported, the personal use shall be valued at the highest manner available.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.11 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.12, Dependent care assistance programs, recodified to N.J.A.C. 12:16-4.13.

12:16-4.13 Dependent care assistance programs

(a) Employer contributions on behalf of, or reimbursements to, an employee under a Dependent Care Assistance Program (Section 129 of the Internal Revenue Code) shall be taxable remuneration.

(b) If a Dependent Care Assistance Program is financed by an employee voluntary salary reduction, the amount of remuneration received under the program shall be determined as that amount which the employee could have elected to receive in lieu of making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.12 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.13, Interest on a below-market interest rate loan, recodified to N.J.A.C. 12:16-4.14.

12:16-4.14 Interest on a below-market interest rate loan

The amount of remuneration generated by a below-market interest rate loan shall be the same amount as that computed for purposes of F.U.T.A.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Recodified from N.J.A.C. 12:16-4.13 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.14, Section 125 cafeteria plans, recodified to N.J.A.C. 12:16-4.15.

12:16-4.15 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

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

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

Recodified from N.J.A.C. 12:16-4.14 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.15, Stock options, recodified to N.J.A.C. 12:16-4.16.

12:16-4.16 Stock options

(a) The value of a stock option is taxable remuneration at the time the option is exercised when the individual exercising the option is a current employee. The value of the stock option is also taxable remuneration when exercised after separation from employment but during the same calendar year in which the separation occurred.

(b) The value of a stock option is not taxable remuneration when exercised by a former employee in a calendar year following the calendar year in which the separation occurred.

(c) A wholly owned subsidiary company is the employer responsible for contribution payments when an employee of the subsidiary company exercises stock options of the parent corporation.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.15 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.16, Deferred payments, recodified to N.J.A.C. 12:16-4.17.

12:16-4.17 Deferred payments

Deferred payment of remuneration for services accrued by an employer that is not included as part of a qualified pension, profit sharing or stock option plans or another pension arrangement where a trust is created is taxable remuneration at the time payment is made.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.16 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

Former N.J.A.C. 12:16-4.17, Co-employed individuals, employee leasing clients, recodified to N.J.A.C. 12:16-4.18.

12:16-4.18 Co-employed individuals, employee leasing clients

A client company is the employer responsible for contribution payments when remuneration for services is paid directly by the client company to workers co-employed under an employee leasing agreement.

New Rule, R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Recodified from N.J.A.C. 12:16-4.17 by R.2009 d.20, effective January 5, 2009.

See: 40 N.J.R. 5167(a), 41 N.J.R. 258(a).

SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

12:16-5.1 Accrual as remuneration earned

(a) Employer's contributions shall accrue as remuneration is earned by workers in covered employment, but will not become due until payment or payment in kind is actually or constructively made.

(b) Payment of employers' contributions shall be made as prescribed within this chapter.

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

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

Cross References

Unemployment benefits, partial benefits, records in addition to those required under this section, see N.J.A.C. 12:17-4.1.

Case Notes

Hirees treated as employees for employment contributions if they lack independent business status. *Regency Real Estate Appraisal, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 21.

Service station owner was ordered to pay unemployment compensation contributions on wages paid to mechanic who performed automobile repairs at service station. *Carroll t/a Carroll Service v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 108.

Tile setters were contractors' employees, despite fact that tile setters considered themselves to be independent contractors and that it was industry practice to treat them as such, and thus contractors would be required to pay unemployment compensation and temporary disability benefit contribution arrearages. *Dandorf and Pezzano v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 105.

Attorney who received percentage of fees generated by other attorneys sharing office was liable for unemployment compensation benefits