

CHAPTER 17

UNEMPLOYMENT BENEFIT PAYMENTS

Authority

N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-1 et seq., specifically 43:21-11.

Source and Effective Date

R.1991 d.46, effective January 4, 1991.
See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b).

Executive Order No. 66(1978) Expiration Date

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, expires on January 4, 1996.

Chapter Historical Note

Chapter 17, Unemployment Benefit Payments, was readopted by R.1991 d.46. See: Source and Effective Date. See subchapter and section levels for prior rulemaking activity.

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SUBCHAPTER 1. SEPARATION AND DISQUALIFICATION NOTICES

12:17-1.1 Statement to workers at time of separation

(a) Whenever a worker who at the time has been employed for at least one week, is separated from his work (permanently or for an indefinite period, or for an expected duration of seven or more days) under any conditions, the employer, at the time of such separation, shall deliver to such worker form BC-10 (Instructions for claiming unemployment benefits), instructing such worker to report promptly to a local employment service office. Such statement shall contain the employer's name, complete address, and his registration number.

(b) Failure to comply with such requirement will subject the defaulting employer to the penalties prescribed in N.J.S.A. 43:21-16(c).

12:17-1.2 Request for separation or wage information

(a) Upon request by the Division of Unemployment and Temporary Disability Insurance for information with respect to wages or the separation of any worker from an employer or employing unit, such employer or employing unit shall, within ten calendar days after the date of mailing the form covering such request, complete the form and return it to the unit which initiated the request.

(b) Failure to comply with such requests will subject the defaulting employer to the penalties prescribed in N.J.S.A. 43:21-16(b).

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted "Employment Security" and inserted "Unemployment and Temporary Disability Insurance".

Case Notes

Defendant-employer's statements about plaintiffs were not absolutely privileged, but conditionally privileged. *Rogozinski v. Airstream by Angell*, 152 N.J.Super. 133, 377 A.2d 807 (Law Div.1977), modified 164 N.J.Super. 465, 397 A.2d 334 (App.Div.1979).

12:17-1.3 Notice of failure to apply for or to accept suitable work

(a) When any individual fails to apply for, or to accept, suitable work when offered by a former employer, and such failure, in the opinion of the employer, disqualifies such individual for benefits, such employer shall, within 48 hours of such failure, complete Form BC-6 (Notice of Failure to Apply for or to Accept Suitable Work) and forward it to the proper local unemployment insurance claims office setting forth the facts which in the opinion of the employer constitute such individual's failure, without good cause, to apply for, or to accept suitable work.

(b) Whenever any employer or employing unit is notified by a local employment service office that any individual has been referred to such employer or employing unit for work, the employer or employing unit shall, if such individual fails to apply for work within 24 hours after the time designated in such notification, forthwith advise the local employment office service making the referral.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted "employment service" and substituted "unemployment insurance claims".

12:17-1.4 Notice of unemployment due to mass separation

(a) The term "mass separation" means the separation of 50 or more workers in a single establishment (either permanently or for an indefinite period, or for an expected duration of seven or more days) at or about the same time and for the same reason, except where the separation or unemployment is due to a labor dispute.

(b) The employer shall, 48 hours prior to any mass separation, file a notice thereof with the local unemployment insurance claims office nearest the place of employment.

(c) Such notice shall contain the following information:

1. The name and address of the employer;
2. A statement setting forth the cause of the separation;
3. The number of workers affected;
4. The expected duration of the period of unemployment;
5. Whether or not the employer will continue in employment during the shutdown a sufficient number of persons to handle request for wage information that may be issued by local employment offices.

(d) Where the employer has no advance knowledge of the mass separation, such notice shall be filed within 24 hours after the mass separation occurs.

(e) Where a mass separation has not occurred but is threatened or likely to occur the employer shall submit to the Division when requested such information as may be required.

(f) The employer is also required to deliver Form BC-10 (prescribed in Section 20.01) to each worker at the time of mass separation.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted "employment service" and substituted "unemployment insurance claims".

12:17-1.5 Notice of unemployment due to labor dispute

In case of unemployment due to a labor dispute, the employer or employing unit shall file immediately with the local unemployment insurance claims office nearest the place of employment a notice setting forth the existence of such dispute, the approximate number of workers involved, the name and address of the bargaining agency if any, together with a brief statement of the nature of the dispute.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted "employment service" and substituted "unemployment insurance claims".

12:17-1.6 Notice of temporary separation from work

(a) Whenever a worker is temporarily separated from his work through no fault of his own or not of his own accord, the employer, upon request by the local unemployment insurance claims office, shall verify the expected duration of the worker's period of unemployment, the reason for his separation, and the date on which the employer expects the worker to return to his work.

(b) If the period of temporary unemployment is for four weeks or less and the employer has furnished the information required in subsection (a) of this Section, the worker will be entitled to benefits if he meets all of the requirements of subsections (a), (b), (c), (d) and (e) of N.J.S.A. 43:21-4, except that the employer's verification that he expects the worker to return to work within the four-week period will dispense with the requirement of actively seeking work during such period.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted "employment service" and substituted "unemployment insurance claims".

register for work and for other job related activities. Failure to report without good cause shall render the individual ineligible for benefits for the week in which such failure to report occurs. For purposes of this section, good cause means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from reporting as required by the Division.

(c) To maintain continuing eligibility for benefits, an individual shall continue to file weekly claims in person or by mail in accordance with instructions from the Division. No weekly claim for benefits will be allowed until the claimant has signed and furnished to the Division a claim for benefits on the prescribed form.

(d) Each individual shall file a weekly claim as soon as possible after the last week ending date shown on the claim. The Division shall consider that a weekly claim for benefits has been filed timely if postmarked or received by the Division within 14 days after the last week ending date shown on the claim. The Division shall accept claims received after the deadline if good cause has been shown by the individual for late filing, provided that the individual reports by mail or in person as soon as possible thereafter.

1. Each individual, when directed by the Division, shall report in person to the local unemployment insurance claims office for scheduled interviews. Failure to report in person without good cause shall result in ineligibility for the week in which the failure occurs.

(e) Each individual may reopen his or her claim any time during the 52-week period after first filing a claim, by reporting to a local unemployment insurance office in person as outlined in (a)1 above.

1. Each individual who fails to report by mail for four consecutive weeks of benefits must report to the unemployment insurance office in person to reopen the claim.

2. Each individual who returns to full employment during more than one calendar week in a reporting cycle must report in person to reopen the claim.

(f) The Division shall deny benefit rights to each individual who fails to report as directed by the Division except when the failure to report is due to reemployment and the claimant has notified, in writing, the local unemployment insurance claims office at which he or she has been reporting of the reason for the failure to report within 14 days after the last week ending date being claimed.

(g) Each individual who, without good cause, reports before the designated reporting time may be required to report at the designated time. Each individual who, after being warned, and without good cause, has reported after the designated reporting time may be required to report again at a future day and time.

SUBCHAPTER 2. REGISTRATION FOR WORK AND CLAIM FOR BENEFITS

12:17-2.1 Claims and registration

(a) Each individual who desires to claim benefits shall report to an unemployment insurance claims office and file a claim during the week for which he or she desires to claim the benefits and not after that week has passed. The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement.

1. Each individual shall report in person to file an initial claim for benefits. The effective date of the claim for benefits shall be the Sunday of the week in which the claim is filed.

(b) Each individual shall report in person to the local employment service office as directed by the Division to

(h) The Division may permit an individual to report to any other local unemployment insurance claims office if the individual demonstrates to the satisfaction of the Division that he or she is unable to continue to report to the local office where he or she originally filed the claim.

(i) During periods when unusual unemployment conditions prevail, or in the case of a temporary mass separation with a specific date of recall, the Division, through the Director, may, subject to the approval of the Employment and Training Administration of the United States Department of Labor, direct individuals to report on any periodic basis deemed to be in the best interests of all concerned.

Amended by R.1975 d.72, eff. April 7, 1975.

See: 7 N.J.R. 169(b).

Amended by R.1984 d.458, eff. October 15, 1984.

See: 16 N.J.R. 1456(a), 16 N.J.R. 2822(a).

Section substantially amended.

Amended by R.1986 d.286, effective July 21, 1986.

See: 18 N.J.R. 811(a), 18 N.J.R. 1478(a).

Old (a)1 deleted and new text inserted; (a)2 substantially amended.

Correction: (h)1 should read "Failure to report shall not be ...".

See: 19 N.J.R. 1841(a).

Repeal and New Rule, R. 1990 d.420, effective August 20, 1990.

See: 22 N.J.R. 901(a), 22 N.J.R. 2508(b).

Section was "Claims and registration for individuals generally".

Case Notes

Claimant's letter to claims office stating that he was unable to report on appointed day was insufficient to comply with former rule requiring personal report. *Zimmerman v. Bd. of Review, Div. of Unemployment Security*, 132 N.J.Super. 316, 333 A.2d 554 (App.Div.1975).

12:17-2.2 Claimant identification

(a) The Division shall require each claimant to present proper identification, including a valid Social Security Card and other documentation showing his or her legal name and address in order to file a claim for benefits.

1. In the event a claimant is unable to present his or her Social Security Card for verification or if departmental records indicate any discrepancies with the Social Security Account Number presented, the Division will require the claimant to obtain a duplicate Social Security Card and/or to resolve any discrepancies.

2. Any person who refuses or fails to cooperate with the Division in any effort to verify the validity of a Social Security Account Number, may, after being given the opportunity for a hearing, be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

Amended by R.1984 d.458, eff. October 15, 1984.

See: 16 N.J.R. 1456(a), 16 N.J.R. 2822(a).

This section was "Claims and registrations for individuals located in isolated areas".

New Rule, R.1987 d.103, effective February 17, 1987.

See: 18 N.J.R. 1683(b), 19 N.J.R. 363(c).

12:17-2.3 (Reserved)

As amended, R.1984 d.458, eff. October 15, 1984.

See: 16 N.J.R. 1456(a), 16 N.J.R. 2822(a).

This section was "Claims and registrations of individuals employed due to a labor dispute or mass separation".

12:17-2.4 Forms prescribed for recording claims for benefits for unemployment

(a) Claims for benefits for unemployment shall be made on the forms prescribed by the Director, setting forth:

1. That the individual claims benefits and such other information as is required.

(b) The claim for benefits for unemployment shall constitute the individual's claim for benefits or waiting period credit.

(c) Continued claims for benefits for unemployment shall be made on the forms prescribed by the Director, setting forth:

1. That the individual continues his claim for benefits;

2. That he is unemployed;

3. That since the last day for which he claimed unemployment insurance benefits, he has performed no services and earned no wages except as indicated; and

4. Such other information as is required.

(d) The continued claim for benefits for unemployment shall constitute both the individual's claim for benefits or waiting period credit.

(e) In isolated areas, in cases of mass separation, or unemployment due to a labor dispute, continued claims for benefits for unemployment may be filed by mail on forms prescribed by the Director if the Division finds that the reporting or filing of continued claims in person is impracticable.

Amended by R.1987 d.103, effective February 17, 1987.

See: 18 N.J.R. 1683(b), 19 N.J.R. 363(c).

Deleted (a)2 and 3, (c)3; (c)4. and 5. renumbered (c)3. and 4.

Case Notes

Claimant held liable to refund total amount of benefits received during period in which he failed to report part-time employment wages earned. *Malady v. Bd. of Review, Div. of Unemployment Security*, 159 N.J.Super. 530, 388 A.2d 982 (App.Div.1977), affirmed in part, reversed in part 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:17-2.5 Benefit determination notice

Each notice of benefit determination which the deputy is required to furnish to the claimant shall, in addition to stating the determination and its reasons, include a notice specifying the claimant's appeal rights, which shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken.

12:17-2.6 Refusal to cooperate with quality control reviews

(a) An individual shall be determined to be ineligible for unemployment insurance benefits if the individual:

1. Fails to report as directed for a quality control review interview; or
2. Fails, without good cause, to cooperate in a quality control review of his or her claim.

(b) An individual shall be determined to be ineligible as of the week in which the failure to report for an interview or the refusal to cooperate occurs, and the department shall notify the individual, in writing, of the ineligibility. The individual shall remain ineligible until such time as he or she agrees to cooperate with the review.

(c) Any employer, employing unit or agent of any employer who refuses or fails, without good cause, to cooperate with and provide wage, separation information, dates of employment, work search verification or other information required by the quality control review program will be found to have refused to provide reports deemed necessary for the administration of the unemployment compensation law, and shall be subject to the penalties set forth at N.J.S.A. 43:21-16.

New Rule, R.1988 d.373, effective August 1, 1988.
See: 20 N.J.R. 884(a), 20 N.J.R. 1949(c).

SUBCHAPTER 3. DEFINITIONS

Authority

N.J.S.A. 43:21-1 et seq. (L.1984, C.24) specifically 43:21-11.

Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. See chapter and section levels for further amendments.

12:17-3.1 Weeks with reference to unemployment defined

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

“Week of partial unemployment” means a calendar week ending at midnight Saturday in which an individual is employed not more than 80 percent of the hours normally worked in that individual’s occupation, profession, trade or industry; due to lack of work; and earns remuneration which does not exceed his weekly benefit rate plus 20 percent of such rate.

“Week of total unemployment” means a calendar week ending at midnight Saturday in which an individual performs no services and with respect to which he receives no remuneration.

As amended, R.1984 d.516, eff. November 5, 1984.
See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Deleted “Benefit weeks” and added “calendar” and “ending at midnight Saturday” to both definitions.

Amended by R.1987 d.101, effective February 17, 1987.
See: 18 N.J.R. 1684(a), 19 N.J.R. 364(a).

Amended definition “week of partial unemployment.”

Case Notes

Claimant’s employment as a commission salesman was not “full-time work” as would disqualify him from benefits. *Borromeo v. Bd. of Review*, 196 N.J.Super. 576, 483 A.2d 833 (App.Div.1984).

12:17-3.2 Week of disqualification defined

A week with respect to any disqualification arising under N.J.S.A. 43:21-5, except subsection (d) therefor, shall be a calendar week.

SUBCHAPTER 4. EMPLOYER RECORDS AND EVIDENCE CONCERNING PARTIAL UNEMPLOYMENT

Authority

N.J.S.A. 43:21-1 et seq. (L.1984, C.24), specifically 43:21-11.

Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. See chapter and section levels for further amendments.

12:17-4.1 Regular employee records

(a) In addition to the requirements set forth in N.J.A.C. 12:16-5.1 and 5.2, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each regular employee in his employ who may be eligible for partial benefits:

1. Remuneration for each calendar week ending at midnight Saturday.
2. Whether any such period was a week of less than full-time work, as determined according to the norm or custom associated with the individual’s occupation, profession, trade, or industry.
3. Time lost, if any, during such week when work was available.

As amended, R.1984 d.516, eff. November 5, 1984.
See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Substantially amended.
Amended by R.1987 d.101, effective February 17, 1987.
See: 18 N.J.R. 1684(a), 19 N.J.R. 364(a).

Added text “, as determined according ...”

12:17-4.2 Evidence of weekly partial unemployment

(a) In cases of less than full-time work, due to lack of work, when the remuneration payable by an employer to an individual in his employ does not exceed 120 percent of the maximum weekly benefit rate, the employer not later than the time when such remuneration is payable shall issue to the individual in writing a statement (in the form of a pay envelope, pay check stub, copy of pay check, or similar pay voucher) with respect to such calendar week ending at midnight Saturday which shall show the following information:

1. The name and address of the employer;
2. The name of the worker;
3. The date of the last day of such week;
4. The amount of remuneration for such week;
5. A notation to the effect that such worker earned "less than full-time remuneration because of lack of work." Such notation is to be followed by the signature (actual or facsimile) of the employer or his authorized agent or other positive identification of the authority supplying the evidence.

(b) The number of hours which constitutes less than full-time work shall be construed to mean not more than 80 percent of the hours worked according to the norm or custom associated with the individual's occupation, profession, trade, or industry.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Added "calendar" and "ending at midnight Saturday."

Amended by R.1987 d.101, effective February 17, 1987.

See: 18 N.J.R. 1684(a), 19 N.J.R. 364(a).

(b) added.

Case Notes

Claimant's employment as a commission salesman was not "full-time work" as would disqualify him from benefits, where his work remuneration was less than the weekly benefit rate to receive partial benefits, even though claimant was working between 30 and 40 hours each week (citing former rule). *Borromeo v. Bd. of Review*, 196 N.J.Super. 576, 483 A.2d 833 (App.Div.1984).

SUBCHAPTER 5. CLAIM FOR PARTIAL UNEMPLOYMENT BENEFITS**Authority**

N.J.S.A. 43:21-1 et seq. (L.1984, C.24), specifically 43:21-11.

Historical Note

All provisions of this subchapter were filed and became effective prior to September 1, 1969. See chapter and section levels for further amendments.

12:17-5.1 Registration and filing

(a) A claim to establish a benefit week under N.J.A.C. 12:17-3.1 shall be filed by the individual in person at a local unemployment insurance claims office and shall constitute such individual's notice of unemployment, and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim.

(b) Such claim shall not be valid if filed 28 or more days after the individual has been furnished by his employer with information as to his earnings in any such week as provided in Section 4.2 (Evidence of weekly unemployment) of this Chapter, except that the Director may, at his discretion, extend the period of validity if it is found desirable.

As amended, R.1984 d.516, eff. November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

(a) substantially amended.

12:17-5.2 Extended registration period for cause

Notwithstanding the provision of Section 5.1 (Registration and filing) of this Chapter, if the Director finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in said Section 5.1 (Registration and filing) was due to failure on the part of the employer to comply with any of the provisions of Subchapter 4 (Employer Records and Evidence concerning Partial Employment) of this Chapter, or to coercion or to intimidation exercised by the employer to prevent the prompt filing of such claim or to failure by the agency to discharge its responsibilities promptly in connection with such partial unemployment, the Director shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment; provided, that such period may not extend beyond 13 weeks subsequent to the end of the actual or potential benefit year during which the week of partial unemployment occurred.

SUBCHAPTER 6. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS**12:17-6.1 Cooperation with other states**

This subchapter shall govern the Division in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

12:17-6.2 Definitions

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

“Agent state” means any state in which an individual files a claim for benefits from another state.

“Benefits” means the compensation payable to an individual with respect to his unemployment, under the unemployment compensation law of any state.

“Interstate Benefit Payment Plan” means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

“Interstate claimant” means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create undue hardship on such claimants in specified areas.

“Liable state” means state against which an individual files, through another state, a claim for benefits.

“State” includes the District of Columbia, the Virgin Islands and Puerto Rico.

“Week of unemployment” includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

12:17-6.3 Registration for work

(a) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

12:17-6.4 Benefit rights of interstate claimants

(a) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(b) For the purposes of this subchapter, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated or postponed for an indefinite period or for the entire period in which benefits would

otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

12:17-6.5 Claims for benefits

(a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

1. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

2. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

12:17-6.6 Determination of claims

(a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

12:17-6.7 Appellate procedure

(a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

12:17-6.8 Extension to Canadian claims

This subchapter shall apply in all its provisions to claims taken in and for Canada.

SUBCHAPTER 7. DISCLOSURE OF INFORMATION
12:17-7.1 Administration of New Jersey Unemployment Compensation and Temporary Disability Benefits Law

No disclosure of information obtained at any time from, and identifiable to, specific workers, employers or other persons in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

Amended by R.1986 d.420, effective October 20, 1986.

See: 18 N.J.R. 1447(a), 18 N.J.R. 2127(a).

Substantially amended.

Amended by R.1989 d.327, effective June 19, 1989.

See: 21 N.J.R. 975(a), 21 N.J.R. 1709(b).

Disclosure of information provision applicable to information identifiable to specific workers, employers or other persons.

12:17-7.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law may be authorized in the following cases for the following purposes:

1. To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other employment service functions;

2. To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the Federal government, or of a state or territorial government, or of a foreign government with which reciprocal arrangements have been made, or to his or her duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his or her claim;

i. Requests for claim-related information received directly from a claimant, in writing, in person or by telephone are to be honored once the identity of the claimant has been verified and provided that the intended use of such information does not conflict with the provisions of N.J.S.A. 43:21-11(g).

ii. Telephone, informal, or written requests from an attorney or other individual who states that he or she is the claimant's representative are not to be honored unless the claimant provides the Department with a signed and dated authorization for the release of the specified information.

3. To claimants, employers, and the public, disclosure of the names, geographic location and standard industrial classification (SIC) of employers. Such release shall not include employment wages, taxes or any other data identifiable to individual employers or employees;

4. To officers or employees of any agency of the Federal government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with the administration of an unemployment compensation or readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law.

i. Requests by law enforcement agents for the release of Departmental information must be made in writing, and the identity of the requester must be verified prior to the release of information by the showing of a badge, warrant, written and signed request on agency letterhead, or some other similar indication of official purpose.

(1) Information which may be released includes the claimant's name(s), current address, current or most recent employer, and the next scheduled reporting date; and

(2) A request for surveillance or photography in connection with an investigation must be approved in writing by the Director of the Division of Unemployment and Disability Insurance.

ii. Public employees must certify that the information requested is to be used in furtherance of their public duties and must certify in writing that the confidentiality of the disclosed information will be maintained.

(1) Telephone inquiries from legislators or the Office of the Public Advocate may be answered verbally, provided that the identity of the caller can be verified; and

(2) Written requests by State or Federal legislators on official letterhead shall be honored, provided that the information will be used in furtherance of their public duty or provided that the claimant has requested that the information be released.

5. To officers or administrators of public or private organizations such as colleges, universities, or foundations to perform research or engage in public service activities, which can be expected to benefit the residents of New Jersey by improving or promoting their health, safety, economic or social well-being, provided that the benefit of such research or public service activity to New Jersey residents is certified in writing by the administrator of a New Jersey municipal, county or State executive agency, or his or her designated representative, and provided that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law, and provided that the officer or administrator of the agency engaged in research or other public service activities certifies in writing that the confidentiality of the disclosed information will be maintained.

Amended by R.1986 d.420, effective October 20, 1986.

See: 18 N.J.R. 1447(a), 18 N.J.R. 2127(a).

(a)3.-6. deleted and new (a)3.-4. added.

Amended by R.1989 d.327, effective June 19, 1989.

See: 21 N.J.R. 975(a), 21 N.J.R. 1709(b).

More specific provisions regarding the release of information added at (a)2i, ii, 4i and 5.

12:17-7.3 Unauthorized disclosure of information

Nothing contained in this subchapter shall, or shall be construed to, contravene 20 C.F.R. § 401.1 et seq. (1987) relating to the disclosure of official records and information.

Amended by R.1989 d.327, effective June 19, 1989.

See: 21 N.J.R. 975(a), 21 N.J.R. 1709(b).

Citation to "Social Security Administration Regulation No. 1" changed to "20 C.F.R. § 401.1 et seq. (1987)".

SUBCHAPTER 8. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

12:17-8.1 Waiver of registration and reporting requirements

The giving of notice of disability, and the filing of proof of claim for benefits, under N.J.S.A. 43:21-4(f), shall dispense with the requirements of Subsection (a) of said Section 4 with respect to registering for work and reporting at a local employment service office for the period covered by such claim.

12:17-8.2 Time for filing proof and claim for disability benefits

(a) A written notice of disability on which a claim for disability benefits is based, must be filed within 30 days from the date of the commencement of the disability.

(b) The notice need not be on any prescribed form but shall state the claimant's full name, address and Social Security account number, as well as the date on which the claimant was too sick (or disabled) to work.

(c) The Director may, for good cause shown, extend the time for filing the required notice and grant credit, subject to the waiting period requirement, from the commencement of the disability.

(d) If the required notice is not filed within 30 days after the commencement of the period of disability and good cause for such failure is not shown, the claim shall be limited to the period commencing 30 days prior to the receipt of the required notice, subject to the waiting period requirement.

12:17-8.3 Payment of disability for nonstatutory employer

Where an individual becomes ill or disabled and his most recent employing unit was not an employer as defined by the Unemployment Compensation Law, disability benefits shall be paid to such individual under N.J.S.A. 43:21-4(f), if otherwise eligible.

12:17-8.4 Simultaneous unemployment and disability

Where, during a week of unemployment, an individual would be eligible for benefits under N.J.S.A. 43:21-4(c) except for his inability to work because of illness or disability during a portion of such week, disability benefits shall be paid to such an individual under N.J.S.A. 43:21-4(f), provided he is otherwise eligible and out of employment for at least two weeks.

12:17-8.5 Payment of benefits for waiting period

When benefits become payable under subsections (c) or (f) of N.J.S.A. 43:21-4, or a combination of both subsections, with respect to the third consecutive week next following the waiting period, a claimant shall be eligible to receive benefits as appropriate with respect to the waiting period.

SUBCHAPTER 9. PROCEDURES FOR WAGE BENEFIT CONFLICTS

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 43:21-1 et seq. and were filed and became effective May 28, 1975, as R.1975 d.142. See: 7 N.J.R. 335(a).

Case Notes

Claimant was denied due process in penalty imposition where he received no prior notice of Division's intention to impose penalty and was not afforded an opportunity to be heard regarding its imposition. *Malady v. Bd. of Review, Div. of Employment Security*, 166 N.J. Super. 523, 400 A.2d 119 (App.Div.1979).

12:17-9.1 Hearing required

Where the Division of Unemployment and Disability Insurance has evidence that a claimant may have been employed during a period or periods for which he has received unemployment benefits, the division will afford the claimant a hearing before any determination is made with respect to the alleged wage-benefit conflict.

Case Notes

Notice that unemployment compensation was to be repaid failed to meet requirements. *Agresta v. Board of Review*, New Jersey Dept. of Labor, 232 N.J.Super. 56, 556 A.2d 360 (A.D.1989).

Unemployment compensation claimant had procedural due process rights to notice and opportunity for fair hearing on repayment liability. *Agresta v. Board of Review*, New Jersey Dept. of Labor, 232 N.J.Super. 56, 556 A.2d 360 (A.D.1989).

12:17-9.2 Scheduling of hearing

(a) The local unemployment insurance claims office will schedule the hearing as soon as possible after the receipt of notification that a wage-benefit conflict may exist.

(b) If the claimant is in active reporting status, every effort will be made to schedule the fact-finding hearing on his next reporting date.

(c) A notice will be mailed to the claimant advising claimant of the necessity for a fact-finding hearing and listing the time and place thereof, and setting forth the times, periods and employers involved in the alleged wage-benefit conflict.

(d) If the hearing is scheduled after the claimant's next assigned reporting date, the notice will indicate the cancellation of the assigned reporting date appointment. If the claimant still reports on the date so cancelled, the hearing will be held at the time he reports.

12:17-9.3 Determination on failure to appear

If the claimant fails to report for the hearing, the local office will complete a written determination thereon, and mail a copy thereof to the claimant.

12:17-9.4 Deputy to conduct hearing

(a) If the claimant reports, the hearing will be conducted by a local office deputy.

(b) At the outset of the hearing, the deputy will inform the claimant that the division has information that the claimant has claimed and received unemployment benefits for weeks during which the claimant was employed.

(c) Form B-98B (Claimant's benefit payment and employment record) will be shown to the claimant as the basis for the allegations.

(d) The deputy will prepare the claimant's statement or any rebuttal or confirmation of the allegations.

(e) Any additional evidence presented by the claimant will be fully documented by the deputy.

(f) The claimant will be asked to read the statement and to sign it if it is acceptable to him.

Case Notes

N.J.A.C. 12:17-9.4(c) form cited as part of fraud investigation; trial court findings of intentional or knowing misrepresentation and concealment of true employment status upheld. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:17-9.5 Benefits continued where investigation necessary and claimant meets eligibility requirements

If the claimant is currently receiving benefits on an active claim and has presented evidence which the deputy believes warrants further investigation, the local office will continue to pay benefits, if all other eligibility requirements are met; explain to the claimant that further investigation will be made and the reasons why further investigation appears necessary; and forward all related material to the Fraud Inspection Section, Bureau of Unemployment Benefits, where further action will be taken.

12:17-9.6 Determination on active claim

(a) If claimant is currently receiving benefits on an active claim and admits that the allegations are true or denies the allegations but offers no evidence that warrants further investigation, the deputy will complete a written determination and the reasons therefor and issue same to the claimant.

(b) If the determination is adverse to the claimant, the deputy will explain to the claimant his appeal rights and will also discuss the various methods of repayment with the claimant.

(c) If any compensable weeks paid on the claim fall within the 17-week disqualification period set forth in N.J.S.A. 43:21-5(g)(1), the deputy will prepare a written determination and deliver a copy thereof to the claimant.

12:17-9.7 Determination and referral on noncurrent claim

(a) If claimant is not currently receiving benefits and has presented evidence that warrants further investigation, the deputy will explain to the claimant that further investigation will be made, list the reasons why further investigation appears to be necessary and forward all related material to the Fraud Inspection Section, Bureau of Unemployment Benefits, where further action will be taken.

(b) If claimant is not currently receiving benefits and admits that the allegations are true or is unable to offer evidence warranting further investigation, the deputy will explain to the claimant that a determination will be mailed to him.

12:17-9.8 Hearing if criminal prosecution is warranted

If the director of the division determines that criminal prosecution of a claimant may be warranted, claimant will be afforded an opportunity for a hearing before a deputy specially designated by the director and at the outset of the hearing claimant will be advised that any statements made by him may be used against him if the matter is referred for criminal prosecution.

12:17-9.9 No suspension, termination or reduction of benefits without opportunity for hearing

No benefits will be suspended, terminated or reduced under this subchapter unless claimant has been afforded an opportunity to appear at a hearing as set forth therein.

SUBCHAPTER 10. DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT BENEFITS

Subchapter Historical Note

All provisions of this subchapter became effective October 23, 1980 as R.1980 d.468. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c). Amendments became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a). This subchapter expired on October 23, 1985 pursuant to Executive Order 66(1978) and a new rule was adopted effective January 6, 1986 as R.1985 d.657. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a). See chapter and section levels for further amendments.

Case Notes

Former rules upheld as not in conflict with the purpose of unemployment compensation law as not incompatible with law requiring Director's discretion in ordering repayment of benefit overpayments. *Vasquez v. Horn*, 181 N.J.Super. 529, 438 A.2d 570 (App.Div.1981), certification denied 91 N.J. 196, 450 A.2d 530 (1982).

12:17-10.1 Issuance of demand for refund

A demand for refund of unemployment benefits will be issued in each case when a determination of overpayment is made.

Case Notes

Notice that claimant was liable to repay unemployment compensation received during period of ineligibility did not comply with requirement to give prior notice of liability for refund and order for refund. *Agresta v. Board of Review*, New Jersey Dept. of Labor, 232 N.J.Super. 56, 556 A.2d 360 (A.D.1989).

Unemployment compensation claimant had procedural due process rights to notice and opportunity for fair hearing on repayment liability. *Agresta v. Board of Review*, New Jersey Dept. of Labor, 232 N.J.Super. 56, 556 A.2d 360 (A.D.1989).

12:17-10.2 Full waiver of recovery of overpayment

(a) Upon application by the claimant or the executor (or administrator) of the claimant's estate full waiver of recovery of overpayments will be granted by the director if it can be demonstrated to the satisfaction of the director that the following conditions have been met.

1. The claimant did not misrepresent or withhold any material fact in obtaining benefits; and
2. The claimant is deceased or permanently disabled and no longer able to work. A claimant's current receipt of social security disability benefits will be deemed conclusive proof of current permanent disability. In the absence of such proof the director may accept a diagnosis of permanent disability from the claimant's physician. At the discretion of the director, the claimant shall submit to an impartial physical examination by a legally-licensed physician at the expense of the State.

(b) The demand for refund will advise the claimant of the right to waiver of recovery in the situations described above.

Case Notes

Regulation did not limit scope of director's authority to waive repayment and require compliance with repayment demand. *Hopkins v. Board of Review*, 249 N.J.Super. 84, 591 A.2d 1371 (A.D.1991).

Appeal Tribunal's reference to rule in denying temporary disability benefits and demanding refund of payments made was misplaced. *Ross v. Bd. of Review Dep't of Labor*, 212 N.J.Super. 467, 515 A.2d 794 (App.Div.1984).

12:17-10.3 Repayment of unemployment benefits

All overpayments for which waiver or recovery are not granted pursuant to N.J.A.C. 12:17-10.2 must be repaid in full. The Division may use any means of collection provided by law to satisfy the debt including, but not limited to, offsets permitted under P.L. 1981, Chapter 239, N.J.S.A. 54A:9-8.1 and 8.2. Any individual with an outstanding overpayment who subsequently becomes entitled to benefits shall have such benefits offset by the debt until the debt is repaid in its entirety. However, for any claimant whose overpayment is determined to be the result of Agency error, the offset amount shall be limited to 50 percent of the claimant's weekly benefit rate for each week of benefits subsequently claimed.

SUBCHAPTER 11. OFFSET OF UNEMPLOYMENT INSURANCE BENEFITS BY RETIREMENT AND PENSION INCOME

Subchapter Historical Note

All provisions of this subchapter became effective January 1, 1981 as R.1980 d.561. See: 13 N.J.R. 102(a). This subchapter was readopted pursuant to Executive Order 66(1978) effective December 30, 1985 as R.1985 d.718. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b). See chapter and section levels for further amendments.

12:17-11.1 Base period or chargeable employer

(a) For weeks of unemployment beginning on or after January 1, 1981, the requirements of Section 1, of Chapter 13, P.L. 1980, shall apply only where such pension, retirement or retired pay, annuity, or other similar payment is under a plan maintained or contributed to by a base period or chargeable employer as determined under N.J.S.A. 43:21-1 et seq.

(b) In the case of such a payment, not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) which do not affect eligibility for, or increase the amount of such pension, retirement or retired pay, annuity, or similar payment shall not cause any reduction in the amount of benefits payable to such individual.

12:17-11.2 Amount of reduction

(a) For weeks of unemployment beginning on or after January 1, 1981, the amount of any such reduction shall be determined by taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment. The following schedule will apply.

1. If such payment is made under a plan to which the individual did not contribute, the amount of benefits payable to such individual for any week will be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount will be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

2. If such payment is made under a plan to which the individual contributed (but less than 100 percent), the amount of benefits payable to such individual for any week will be reduced by an amount equal to 50 percent of the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount will be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

3. No reduction in benefits shall be made if the pension, retirement or retired pay, annuity or other similar periodic payment received by the individual is from an Old Age Social Security pension to which the individual has made any contribution.

4. If such payment is made under a plan to which the individual contributed 100 percent, the amount of benefits payable to such individual for any week shall not be reduced.

As amended, R.1984 d.516, effective November 5, 1984.

See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

"lower" substituted for "higher".

Amended by R.1985 d.718, effective February 3, 1986.

See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Added "not" to (a)3.

Amended by R.1993 d.590, effective November 15, 1993.

See: 25 N.J.R. 3923(a), 25 N.J.R. 5352(a).

Law Review and Journal Commentaries

Unemployment Compensation—Retirement. Steven P. Bann, 135 N.J.L.J. No. 13, 58 (1993).

12:17-11.3 Lump sum pension reduction

For weeks of unemployment beginning on or after the effective date of this section, in those cases where an individual is the recipient of a lump sum payment from his or her employer in lieu of a periodic payment of a pension, retired or retirement payment, annuity or other similar periodic payment, the calculation for the reduction of benefits shall be made, consistent with the provisions of N.J.A.C. 12:17-11.1 and 12:17-11.2, by prorating the dollar value of the payment over the life expectancy of the individual at the time of separation from the employer using approved actuarial tables.

R.1983 d.602, effective January 3, 1984.

See: 15 N.J.R. 1436(a), 16 N.J.R. 51(a).

Case Notes

Rule found valid and consistent with legislative policy, although neither challenged nor necessarily controlling in this case. *Schuene-mann v. Bd. of Review*, 208 N.J.Super. 48, 504 A.2d 1204 (App.Div. 1986).

SUBCHAPTER 12. DEPENDENCY BENEFITS**Subchapter Historical Note**

This subchapter was adopted as R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a). See also Chapter Historical Note.

12:17-12.1 Definitions

"Dependent" means an individual who is unemployed during the calendar week in which the claimant files an initial or transitional claim, and is eligible to be claimed as a dependent under provisions of Federal and State income tax law, and is the claimant's:

1. Spouse, that is, a person to whom the claimant is legally married; and is a dependent; or

2. Dependent unmarried child, that is, son, daughter, stepson, stepdaughter, legally adopted son or legally adopted daughter under the age of 19, or under the age of 22 and is attending an educational institution as defined in N.J.S.A. 43:21-19(y).

12:17-12.2 Declaration of dependents

(a) An individual shall declare in writing, on an application form prescribed by the Division of Unemployment and Temporary Disability Insurance dependents claimed in accordance with N.J.S.A. 43:21-3(c)(2) on the date that the individual files an initial or transitional claim to establish a benefit year. In accordance with N.J.A.C. 12:17-12.3, the individual shall agree to provide proof of those dependents claimed in a form and manner prescribed by the Division.

(b) If both unemployed spouses establish initial or transitional claims on or after September 30, 1984, with benefit years or benefit rights which are concurrent in any part, only one of those claimants may receive dependency allowance benefits even though the total number of dependents of the claimant may exceed three.

(c) If an individual is ineligible to receive dependency benefits in any amount because covered earnings in the base year entitle the individual to the maximum weekly benefit rate payable under N.J.S.A. 43:21-3(c)(1), the individual's spouse may declare the same dependent(s) on an initial or transitional claim the spouse may establish during the benefit year of the individual.

(d) The death of a claimant during the benefit of a claim which includes a dependency allowance shall constitute termination of the assignment of eligible dependent(s) to that claim as of the date of the claimant's death.

12:17-12.3 Verification and proof of dependency status

(a) An individual who claims a dependent for allowance purposes shall provide to the Division within 28 days (42 days for those individuals filing interstate claims with New Jersey as the liable State and for those individuals filing claims for disability benefits during unemployment) from the date of the claim appropriate verification and proof of the declared dependency status, which may include but is not limited to: Federal or State income tax return(s) filed for the tax year immediately preceding the filing of the application for dependency allowance; (if the tax return is not a joint return, the individual tax return for the spouse being claimed as a dependent will be submitted); birth, baptismal, or marriage certificate(s) or certified copies thereof; divorce, annulment or adoption decree(s) or certified copies thereof; divorce, annulment or adoption de-

cre(s) or certified orders or any other legal documents which verify the status of claimed dependents.

(b) If a married claimant declares an unemployed spouse as a dependent, the spouse's social security number shall be provided to the unemployment claims office no later than 28 days from the date of claim.

(c) An individual who is eligible for unemployment compensation benefits and who has not yet submitted the required verification and proof of declared dependency status shall be paid the determined weekly benefit rate, which includes the dependency allowance based on the declared number of eligible dependents, until the prescribed period for satisfying the verification and proof requirement has elapsed.

(d) If the verification and proof requirement is not satisfied in a timely manner, the claimant's entitlement to dependency allowance benefits for weeks paid on the claim shall be redetermined, and the claimant shall be liable for full reimbursement to the Division of benefits paid based on the unverified dependency status. The Division shall use all methods provided by law to recover these overpayments. Such methods shall include, but not be limited to, deducting the overpaid amount from any future benefits which may be otherwise due the claimant.

(e) Any individual who is determined by the Division to have illegally received or attempted to receive dependency benefits as the result of any false or fraudulent representation shall be subject to the disqualification and penalty provisions of N.J.S.A. 43:21-5(g) and 43:21-16.

12:17-12.4 Payment

(a) The claimant shall not be paid dependency benefits for any week for which no regular or extended unemployment benefits are payable.

(b) If a claimant is eligible for partial unemployment benefits for a week claimed, the benefit payment shall equal the difference between 120 percent of the established weekly benefit rate (which includes any determined dependency allowance) and the individual's remuneration earned during the week claimed.