

**CHAPTER 17**

**UNEMPLOYMENT BENEFIT PAYMENTS**

**Authority**

N.J.S.A. 43:21-1.

**Source and Effective Date**

R.2003 d.276, effective June 13, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17, Unemployment Benefit Payments, expires on December 10, 2008. See: 40 N.J.R. 4289(a).

**Chapter Historical Note**

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were adopted and became effective prior to September 1, 1969.

Subchapter 9, Procedures for Wage Benefit Conflicts, was adopted as new rules by R.1975 d.142, effective May 28, 1975. See: 7 N.J.R. 335(a).

Subchapter 10, Determination and Demand for Refund of Unemployment Benefits, was adopted as new rules by R.1980 d.468, effective October 23, 1980. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c).

Subchapter 11, Offset of Unemployment Insurance Benefits by Retirement and Pension Income, was adopted as new rules by R.1980 d.561, effective January 1, 1981. See: 13 N.J.R. 102(a).

Amendments to Subchapter 10 became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a).

Subchapter 12, Dependency Benefits, was adopted as new rules by R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on October 23, 1985, and new rules on the same subject were adopted as R.1985 d.657, effective January 6, 1986. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a).

Pursuant to Executive Order No. 66(1978), Subchapter 11 was readopted as R.1985 d.718, effective December 30, 1985. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, was readopted as R.1991 d.46, effective January 4, 1991. See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b).

Chapter 17, Unemployment Benefit Payments, was readopted as R.1996 d.25, effective December 13, 1995. See: 27 N.J.R. 4123(b), 28 N.J.R. 270(a).

Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998). See: 29 N.J.R. 5158(a), 30 N.J.R. 2027(a).

Subchapter 20, Worker Profiling and Reemployment Services, and Subchapter 21, Relief from Benefit Charges, were adopted as R.1999 d.115, effective April 15, 1999. See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

Chapter 17, Unemployment Benefit Payments, was readopted as R.2003 d.276, effective June 13, 2003. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. PURPOSE AND SCOPE

##### 12:17-1.1 Purpose and scope

(a) The Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 et seq., provides income security through the payment of unemployment insurance benefits to qualified individuals who are involuntarily unemployed. The UCL establishes the Unemployment Insurance (UI) Trust Fund which is financed by worker and employer contributions.

(b) The New Jersey Department of Labor and Workforce Development is charged with the administration of the Unemployment Insurance Program. This chapter will enable the Department to meet this charge by providing for the prompt and efficient payment of benefits to eligible individuals while protecting the interests of workers and employers who contribute to the Fund.

(c) The provisions of this chapter shall be applicable to all employers and to all workers who file claims for unemployment insurance with the New Jersey Department of Labor and Workforce Development.

(d) These rules shall be considered the basis by which the statutory purposes of the Unemployment Insurance benefit payment system are carried out. The Commissioner may relax these rules for good cause on a case-by-case basis, on notice to affected parties, in order to effectuate the purpose of the Unemployment Compensation Law.

(e) These rules shall be effective July 7, 2003.

1. New and additional claims filed on or after July 7, 2003 shall be subject to these rules.

2. For claims filed prior to July 7, 2003, continued issues adjudicated on or after July 7, 2003 shall be subject to these rules.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (e), substituted references to July 7, 2003 for references to July 5, 1998 throughout.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (b) and (c), added "and Workforce Development".

#### SUBCHAPTER 2. DEFINITIONS

##### 12:17-2.1 Definitions

The following words and terms, when used in this chapter, 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 against another state.

"Benefits" means the compensation payable to an individual with respect to his or her unemployment, under the unemployment compensation law of any state.

"Controller" means the Controller of the New Jersey Department of Labor and Workforce Development.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Deputy" means a representative of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Director" means the Director of the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Division" means the Division within the New Jersey Department of Labor and Workforce Development responsible for the administration of the Unemployment Insurance Benefit Payment Program.

"Employee" means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or part-time basis.

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

"Employer-agent" means a person or entity that acts on behalf of an employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

"Employment service office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a State-controlled system of public employment offices or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998, 29 U.S.C. §§ 2801 et seq.

"Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce 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 in accordance with the Interstate Benefit Payment Plan commuting would result in excessive travel time or cost to the claimant.

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

“Maximum benefit amount” on claims with benefit years commencing on or after July 1, 1986 and before July 1, 2003, means the total benefits payable to a claimant equal to three-quarters of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Moreover, maximum benefit amount on claims with benefit years commencing on or after July 1, 2003 means the total benefits payable to a claimant equal to the number of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. Pursuant to N.J.S.A. 43:21-3(d)(2), the maximum benefit amount shall not exceed 26 times the individual’s weekly benefit rate.

“One-Stop Career Center” means one of the centers designated by the local Workforce Investment Boards and certified by the State Employment and Training Commission to provide workforce investment services.

“Remuneration” means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash, including payments “in kind” as defined at N.J.A.C. 12:16-4.8.

“State” means the states of the United States of America, the District of Columbia, the Virgin Islands or Puerto Rico.

“Unemployment” means the state of being unemployed (that is, not having a job, out of work). An individual shall be deemed “unemployed” for any week during which he or she is not engaged in full-time work and with respect to which his or her remuneration is less than the individual’s weekly benefit rate, including any week during which he or she is on vacation without pay; provided such vacation is not the result of the individual’s voluntary action. However, an officer of a corporation, or a person who has more than a five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be deemed to be unemployed in any week during the individual’s term of office or ownership in the corporation.

“Wages” means remuneration paid by employers for employment including “in kind” payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her “wages” shall also include the gratuities received, if reported in writing to the employer in accordance with regulations of the Division at N.J.A.C. 12:16-4.9. If gratuities are not reported, the individual’s “wages” shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually

received by the employee from the employer, whichever is the higher.

“Week” means the calendar week ending at midnight Saturday.

“Weekly benefit rate” means 60 percent of the claimant’s average weekly wage, subject to a maximum of 56 2/3 percent of the Statewide average weekly remuneration paid to workers by employers subject to the Unemployment Compensation Law.

“Week of disqualification” means a calendar week ending at midnight Saturday with respect to any disqualification arising under N.J.S.A. 43:21-5.

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

“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 the 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 the individual receives no remuneration.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In “Employment service office”, inserted “or One-Stop Career Centers as prescribed by the Workforce Investment Act of 1998. 29 U.S.C. §§ 2801 et seq.”; in “Interstate Benefit Payment Plan”, substituted “National Association of State Workforce Agencies” for “Interstate Conference of Employment Security Agencies”; in “Interstate claimant”, substituted “Interstate Benefit Payment Plan” for “Interstate Benefit Plan” following “in accordance with the”; added “One-Stop Career Center”.

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added “and Workforce Development” to definitions “Controller,” “Commissioner,” “Department,” “Deputy,” “Director” and “Division”; rewrote definition “Maximum benefit amount.”

### SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

#### 12:17-3.1 Instructions to workers at time of separation

(a) Whenever a worker is separated from work (permanently, temporarily, or for an indefinite period) for any reason, at the time of the separation, the employer shall deliver to the worker Form BC-10 (Instructions for Claiming Unemployment Benefits), instructing the worker to report to a Reemployment Call Center by telephone or via the Internet to file a claim for benefits. Such instructions shall contain the employer’s name, complete address, and New Jersey Employer Identification Number.

(b) Failure to comply with this requirement may subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(c). However, it shall not relieve the claimant of the responsibility of reporting to file an unemployment claim.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); in (b), deleted "in person to the unemployment claims office" in the second sentence.

### 12:17-3.2 Request for separation or wage information

(a) Upon request by the Division for information regarding wages or the reason for separation from any worker from employment, the employer shall, within 10 calendar days after the date of mailing of the form requesting information, complete and return it to the appropriate office. The response shall be considered timely if it is postmarked or received by the Division within 10 calendar days after the date of mailing.

(b) Failure to comply with any request for information shall subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(b)(1).

(c) If an employer fails to respond to a request for wage information within 10 calendar days after the mailing date, the Division shall rely on information from other sources, including an affidavit from the claimant certifying wages and time worked. If available, the affidavit should be supported by evidence of wages and employment including, but not limited to, payroll stubs, W-2 forms, Federal or State income tax returns, copies of pay checks, etc.

1. An individual who claims or attempts to claim benefits through false or fraudulent representation shall be subject to disqualification under N.J.S.A. 43:21-5(g) and fines and the refund of benefits under N.J.S.A. 43:21-16.

(d) Whenever an initial monetary determination is based upon information other than that supplied by an employer because the employer failed to respond to the Division's request for information, the initial monetary determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to the employer's account because of benefits paid prior to the close of the calendar week following the receipt of the subsequent reply. The initial monetary determination shall be redetermined if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring subsequent to the close of the calendar week following the receipt of the employer's subsequent reply shall be paid in accordance with the redetermination.

(e) Except in the event of fraud, no refund liability shall be incurred by the claimant for any overpaid benefits resulting from information supplied on the affidavit which were paid prior to the receipt of the employer's subsequent reply.

(f) A claimant will be liable to refund any overpaid amount resulting from receipt of benefits paid subsequent to

the employer's reply which resulted in a redetermination of the initial monetary determination.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "from employment," for "from an employment," preceding "the employer shall" and substituted "the appropriate office" for "the office that initiated the request" following "return it to".

### 12:17-3.3 Finality of benefit determinations

(a) After receiving wage and separation information, the Division shall make a determination regarding the claimant's eligibility for benefits which will be mailed to the claimant and employer. The benefit determination shall become final 10 days after the date of mailing or seven days after date of delivery unless an appeal is filed timely or late with good cause by the claimant or employer in accordance with N.J.A.C. 12:20-3.1.

(b) The Division may reconsider a final determination for the following reasons:

1. Fraud, misrepresentation or misconduct of a party;
2. Newly discovered evidence not ascertainable at the time of the initial benefit determination by the exercise of reasonable diligence and the making of proper inquiry which would probably alter the determination;
3. Obvious material mistake or error which requires correction;
4. To vacate a determination which is entered without legal right and is void; or
5. The correction of inadvertent, premature, or clearly erroneous action.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), rewrote the second sentence.

### 12:17-3.4 Notice of failure to apply for or to accept work

(a) When any claimant fails to apply for, or to accept, work when offered by an employer, the employer shall, within 48 hours, complete Form BC-6 (Notice of Failure to Apply for, or to Accept, Suitable Work) setting forth the facts relating to the individual's failure to apply for, or to accept, work and forward it to the appropriate office. (See N.J.A.C. 12:17-11 Claims Adjudication—Refusal to Apply for or Accept Suitable Work.)

(b) Whenever an employer is notified by a One-Stop Career Center office that an individual has been referred to the employer for work, the employer shall, within 24 hours after the appointment, advise the latter office of the results of the referral.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "appropriate" for "proper unemployment claims" preceding "office" in the first sentence, and rewrote the second sentence; in (b), substituted "a One-Stop Career Center" for "an employment

service” following “is notified by” and substituted “latter” for “employment service” following “advise the”.

### 12:17-3.5 Notice of unemployment due to mass separation

(a) For the purposes of this subchapter, the term “mass separation” means the separation of 25 or more employees in a single establishment (either permanently or for an indefinite period) at or about the same time and for the same reason, except where the separation or unemployment is due to a labor dispute.

(b) As soon as possible but not later than 48 hours prior to any mass separation, the employer shall file a notice thereof with the unemployment unit of the One-Stop Career Center located nearest the place of employment. Where the employer has no advance knowledge of the mass separation, such notice shall be filed within 24 hours after the mass separation occurs. Such notice shall contain the following information:

1. The name and address of the employer;
2. A statement of the cause of separation;
3. The number and job titles of employees affected;
4. The expected duration of the period of unemployment; and
5. Whether or not the employer will have sufficient employees to handle requests for wage information that may be issued by the Division.

(c) The employer shall provide the Division with information relating to payments made to affected employees for vacation, sick leave, pension, remuneration in lieu of notice and severance.

(d) 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.

(e) The employer shall deliver Form BC-10 (Instructions for Claiming Unemployment Benefits) to each employee at the time of mass separation.

(f) Employers that have completed the notification requirements under the Federal Worker Adjustment and Retraining Notification Act contained at 20 C.F.R. Part 639 and N.J.A.C. 12:40 shall be considered in compliance with (b) above.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted “, or with an expected duration of seven or more days” following “an indefinite period”; in (b), substituted “unit of the One-Stop Career Center” for “claims office” in the first sentence of the introductory paragraph and substituted “the Division” for “unemployment claims offices” in 5.

Administrative correction.  
See: 38 N.J.R. 2834(b).

### 12:17-3.6 Notice of unemployment due to labor dispute

In case of unemployment due to a labor dispute, the employer shall file a notice immediately with the unemployment unit of the One-Stop Career Center located nearest the place of employment. Such notice shall include information concerning the existence and nature of a labor dispute, the approximate number of individuals involved and the name and address of the bargaining unit. See N.J.A.C. 12:17-12.2.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Substituted “unit of the One-Stop Career Center” for “claims office” in the first sentence.

### 12:17-3.7 Notice of temporary separation from work

(a) Whenever an individual is temporarily separated for lack of work, the employer, upon request by the Division, shall provide the expected duration of the individual’s period of unemployment, the reason for separation, and the date on which the employer expects the individual to return to work.

(b) If the period of temporary unemployment is for eight weeks or less and the employer has furnished the information required in (a) above, the individual shall be entitled to benefits provided all of the conditions of benefit eligibility are met. However, the individual will not be required to actively seek work during this period.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted “Division” for “unemployment claims office” preceding “, shall provide”.

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## SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES

### 12:17-4.1 General reporting requirements

(a) Individuals shall report as directed by the Division as to date, time, and place in person, by telephone, by mail, via an Internet application or as the Division may otherwise prescribe.

(b) An individual who fails to report as directed will be ineligible for benefits unless, pursuant to a fact-finding hearing, it is determined that there is “good cause” for failing to comply. For the purposes of this subchapter, “good cause” means any situation which was substantial and prevented the claimant from reporting as required by the Division.

(b) The number of hours which constitutes less than full-time work shall 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 during the week of unemployment.

(c) Any employer or agent of any employer who refuses or fails, without good cause, to cooperate with and provide information required by this subchapter shall be subject to penalties set forth at N.J.S.A. 43:21-16. For purposes of this section good cause means any situation over which the employer or agent did not have control and which was so compelling as to prevent the employer from reporting the information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), deleted "be construed to" following "full-time work shall" and inserted "during the week of unemployment" following "or industry".

### 12:17-6.3 Registration and filing claims

(a) An individual claiming partial unemployment benefits shall file a bi-weekly benefit claim as required by N.J.A.C. 12:17-4.3(a), and shall provide for each week, the gross remuneration amount, number of hours worked, and, if so instructed, the employer's name, address, and telephone number.

(b) Notwithstanding the provisions of N.J.A.C. 12:17-6.1, concerning regular employee records, the claim for a week of partial unemployment shall be filed within four weeks after the employer provides the individual with the wage information required in N.J.A.C. 12:17-6.2(a). The Division may for good cause as defined in N.J.A.C. 12:17-4.1(b) extend the time period for filing a claim for a week of partial unemployment. In the absence of an extension, no claim for partial benefits shall be accepted after the four week time period and the claimant shall be ineligible for benefits.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Rewrote (a); in (b), inserted "in" preceding "N.J.A.C. 12:17-4.1(b)".

## SUBCHAPTER 7. DEPENDENCY BENEFITS

### 12:17-7.1 Calculation of dependency payment

(a) A claimant's weekly benefit rate shall be increased by seven percent for the first dependent and four percent each for the next two dependents, up to a maximum of three dependents, except that the maximum weekly benefit rate payable for an individual claiming dependency benefits shall not exceed the maximum amount determined in N.J.A.C. 12:15-1.3 which delineates the maximum weekly benefit rate. If an individual's spouse is employed during the week

the individual files an initial claim for benefits, this section shall not apply.

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

(c) 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.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "employed" for "not unemployed".

### 12:17-7.2 Definition of dependent

(a) "Dependent" means an individual who is unemployed during the calendar week in which the claimant files an initial or transitional claim, and is limited to the claimant's:

1. Unemployed spouse, that is, a person to whom the claimant is legally married; and is a dependent; and/or
2. Dependent unemployed unmarried child, that is, a son, daughter, stepson, stepdaughter, legally adopted son or legally adopted daughter under the age of 19, or under the age of 22 and attending an educational institution as defined in N.J.S.A. 43:21-19(y) on a full-time basis.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "on a full-time basis" following the N.J.A.C. reference in 2.

### 12:17-7.3 Claiming dependents

(a) An individual shall declare in writing on an application form or as otherwise prescribed by the Division, dependents claimed within six weeks of the date of claim. The individual shall also provide proof of those dependents claimed in a form and manner prescribed by the Division in accordance with N.J.A.C. 12:17-7.4.

(b) If both unemployed spouses establish initial or transitional claims with benefit years or benefit rights which are concurrent in any part, only one of those claimants may receive dependency allowance benefits.

(c) If an individual is ineligible to receive dependency benefits because he or she is entitled to the maximum weekly benefit rate, the individual's spouse may declare the same dependent(s) on a claim for benefits.

(d) The death of a claimant during the benefit year of a claim which includes a dependency allowance shall constitute termination for the assignment of eligible dependent(s) to that claim as of the date of the claimant's death. An unemployed spouse of the deceased claimant may claim a dependency allowance for eligible dependent(s) provided

the individual complies with the provisions of this subchapter.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. ().

In (a), rewrote the first sentence.

#### 12:17-7.4 Verification and proof of dependency status

(a) An individual who claims a dependent for allowance purposes shall provide to the Division within six weeks from the date of the claim appropriate verification and proof of the declared dependency status, which shall be evidenced by the 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 shall be submitted. In the case that the income tax return is not available or insufficient to prove current dependency status, the Division may consider a combination of the following documents to verify the status of claimed dependents: birth, baptismal, or marriage certificate(s) or certified copies thereof; certified divorce, child support, annulment or adoption order(s) or any other legal documents which verify the status of claimed dependents. The presentation of a birth or baptismal document shall not in and of itself be sufficient to establish dependency status.

(b) If a married claimant declares an unemployed spouse as a dependent, the spouse's Social Security number shall be provided to the appropriate office no later than six weeks from the date of claim for the purpose of ascertaining whether the spouse is, in fact, unemployed.

(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 only the determined weekly benefit rate, which does not include the dependency allowance based on the declared number of eligible dependents, until the verification and proof requirement has been met.

(d) If the verification and proof requirement is not satisfied within six weeks of the date of claim (eight weeks for interstate claims) the claimant shall be ineligible to receive the dependency allowance benefits for the duration of the claim.

(e) Any individual who is determined by the Division to have illegally received or attempted to receive dependency benefits as a 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.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), inserted "a" preceding "married claimant" and substituted "appropriate" for "unemployment claims" following "provided to the".

## SUBCHAPTER 8. REDUCTION OF BENEFITS BY RETIREMENT IN PENSION INCOME AND OTHER EARNED INCOME

### 12:17-8.1 Benefit reduction due to receipt of pension from base period or chargeable employers

(a) When a pension is received from a base period or chargeable employer, benefits shall be reduced if the pension, retirement or retired pay, annuity, or other similar payment is under a plan maintained or contributed to by such employer.

(b) If the remuneration for services performed for the chargeable employer by the individual does not affect eligibility for, or increase the amount of, the pension, retirement or retired pay, annuity, or similar payment then the individual's unemployment benefits shall not be reduced by the amount of the pension.

### 12:17-8.2 Amount of benefit reduction

(a) The amount of the benefit 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 weekly and maximum amount of benefits payable to the individual shall be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount shall 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 employer and individual contributed, the amount of benefits payable to the individual for any week will be reduced by an amount equal to 50 percent of the amount of the pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

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

4. 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 the Social Security pension to which the individual has made any contribution.

**12:17-8.3 Lump sum pension reduction**

(a) 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, including 401K plans, 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. 12:17-8.1 and 8.2, 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.

(b) The lump sum pension payable to an individual, who is involuntarily and permanently separated from employment prior to the date at which the individual may retire with full pension rights, shall be assigned to the week in which the individual receives the lump sum payment or, at the claimant's option, may be prorated pursuant to (a) above.

1. For purposes of this subsection, the term "involuntarily," when used to describe an individual's separation from employment, shall mean both those instances when an individual has been discharged from employment and those instances when an individual has left work voluntarily with good cause attributable to such work, as the phrase "good cause attributable to such work" is used within N.J.S.A. 43:21-5.

2. For purposes of this subsection, the phrase "date at which the individual may retire with full pension rights" shall mean the date upon which the claimant has attained the age at which the Internal Revenue Code provides that an individual's receipt of a distribution from a qualified retirement plan is not subject to a 10 percent additional early distribution tax as defined in 26 U.S.C. §72(t)(2)(A)(i).

Amended by R.2006 d.43, effective January 17, 2006.  
See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

In (b), substituted "with full pension rights" for "without penalty to his or her pension rights" and added (b)1 and 2.

**12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions**

(a) A reduction in benefits shall be made as of the first calendar week commencing after the claimant is given constructive receipt of a retirement pension award. Constructive receipt occurs when an individual has applied for a payment or benefit covered by section 3304(a)(15) of the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq. and is notified in writing that it has been determined by responsible authorities that he or she is entitled to such payment or benefit in specified amounts for the same period that unemployment compensation is payable.

(b) Notwithstanding (a) above, an individual who receives a retroactive pension payment shall be subject to benefit reduction as of the first calendar week commencing after the effective date of pension entitlement as provided in this

subchapter for any week he or she also received unemployment benefits and shall be liable to refund any resulting overpayment of benefits.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "Notwithstanding (a) above, an" for "A" preceding "individual who receives" and substituted "as of the first calendar week commencing after" for "from" preceding "the effective date".

Amended by R.2006 d.43, effective January 17, 2006.

See: 37 N.J.R. 3545(a), 38 N.J.R. 819(a).

Deleted (c).

**12:17-8.5 Reduction of benefits due to earned income**

(a) An individual's eligibility for weekly benefits shall be reduced by an amount equal to any wages or remuneration, including remuneration from casual work, received in excess of 20 percent of the individual's weekly benefit rate.

(b) For purposes of the subchapter, "wages" means remuneration paid by employers for employment, including "in kind" payments as provided in N.J.A.C. 12:16-4.8. If a worker receives gratuities regularly in the course of employment from other than the employer, his or her wages shall also include the gratuities received if reported in writing to the employer in accordance with rules of the Division at N.J.A.C. 12:17-4.9. If gratuities are not reported, the individual's "wages" shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from the employer, whichever is higher.

(c) "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, including "in kind" payments as provided N.J.A.C. 12:16-4.8.

**12:17-8.6 Disqualification for benefits for remuneration in lieu of notice**

(a) An individual receiving remuneration in lieu of notice is disqualified for benefits and the claim for benefits is invalid because the claimant is considered not unemployed. Notwithstanding any provision of this subsection, an individual who receives remuneration in lieu of notice for a period less than a calendar week may be eligible for partial benefits for such week.

(b) An individual shall be disqualified for benefits for any week for which he or she receives remuneration in lieu of notice. Such payment shall be deemed to be in lieu of notice if:

1. The remuneration, in fact, is in place of the employer's giving notice to the employee that he or she is being terminated and the employer is legally required or has an established custom of providing such payment, or

2. The payments are made to individuals in accordance with the Federal Worker Adjustment and Retraining Notification Act.

#### 12:17-8.7 Severance or separation pay

(a) For the purposes of this subchapter, “severance or separation pay” shall mean any lump sum payment or periodic payment made to an individual by an employer at termination under contract or obligation or by custom which is based on past services performed for the employer.

(b) The receipt of severance or separation pay in periodic payments or in a lump sum shall not be a bar to eligibility for unemployment benefits. However, the payments do not extend the individual’s employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

#### 12:17-8.8 Salary continuation through date of termination

(a) An employer may elect to continue wage or salary payments and forego the services normally performed by the employee through the date of termination provided for by contract or other agreement. A claim filed by an individual receiving such payments shall be invalid and he or she shall be ineligible for benefits through the date of termination of contract or other agreement. However, salary continuation payments may be used to establish a claim for benefits after the period for which the individual has received such payments.

(b) An employee who receives a lump sum payment shall be considered to be employed and ineligible for benefits through the date of termination of contract or other agreement in accordance with (a) above.

#### Case Note

Unemployment workers’ compensation claimant was not entitled to unemployment benefits for period of time, pursuant to agreement with employer, during which her employment relationship had ended, but she still continued to be on active payroll status, in lieu of separation pay; unemployment compensation system was not designed to benefit someone who, though formally being paid for work previously performed or for past services, was continued on active payroll status and received her same pay and benefits in order to achieve a vested pension. *Helen T. Darby v. Board of Review*, 359 N.J.Super. 479, 820 A.2d 666.

#### 12:17-8.9 Receipt of residuals

“Residuals” are deferred payments or commissions usually made to individuals for the reuse of commercial recordings. The receipt of residuals shall not be a bar to eligibility for unemployment benefits. These payments do not extend the individual’s employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

#### 12:17-8.10 Vacation and holiday pay

(a) An individual who voluntarily takes a vacation is ineligible for benefits as the individual is unavailable for work. “Vacation” means a period of absence from work taken voluntarily by the employee with the employer’s consent and with the intention of not working.

(b) Where a union or employment contract calls for a vacation or holiday period with pay and permits the employer to close its operations for a specified period, the employees shall be ineligible for benefits. However, any employee who does not receive pay for the contractual vacation period or any part thereof may receive unemployment benefits if otherwise eligible.

(c) The receipt of a lump sum payment at termination representing unused accrued vacation leave is not a bar to the receipt of unemployment benefits.

#### 12:17-8.11 Sick leave pay

(a) An individual who receives periodic sick leave payments from an employer is considered employed and is ineligible for unemployment benefits because the claim is invalid.

(b) When an individual’s employment is terminated, any lump sum payment of unused accrued sick leave is not a bar to the receipt of unemployment benefits.

#### 12:17-8.12 Pay for work as a board worker for a county board of elections on an election day

(a) For the purposes of eligibility for unemployment insurance benefits, an unemployed individual, who is otherwise eligible for benefits, shall not be deemed unavailable for work or ineligible solely by reason of the individual’s work as a board worker for a county board of election on an election day.

(b) An individual’s eligibility for unemployment insurance benefits shall not be affected, and the amount of benefits received by the individual shall not be reduced, as result of election day work at the polls.

New Rule, R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

### SUBCHAPTER 9. CLAIM ADJUDICATION— VOLUNTARILY LEAVING WORK

#### 12:17-9.1 Disqualification for voluntarily leaving— general principles

(a) An individual shall be disqualified for benefits for the week in which he or she has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works

four weeks in employment, which may include employment for the Federal government, and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case. See N.J.S.A. 43:21-5(a).

(b) For the purpose of this subchapter, "good cause attributable to such work" means a reason related directly to

the individual's employment, which was so compelling as to give the individual no choice but to leave the employment.

(c) The burden of proof is on the claimant to establish good cause attributable to such work for leaving.

(d) An individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified for benefits.

(e) An individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for the following reasons including, but not limited to:

1. Lack of transportation;
2. Care of children or other relatives;
3. School attendance;
4. Self-employment;
5. Lack of housing;
6. Relocating to another area for personal reasons;
7. Relocating to another area to accompany a spouse or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

#### Case Notes

Where the undisputed facts supported the conclusion that the claimant resigned from the employer's business for work-related transportation problems rather than for personal reasons, the claimant was entitled to statutory unemployment benefits. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified from unemployment benefits. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

When commuting problems arise solely from the personal circumstances of the worker, unrelated to an alteration in the terms or conditions of employment, the worker who voluntarily quits the job cannot show good cause qualifying the worker for unemployment benefits. However, there could be circumstances in which the employer set in motion a chain of events that led to a worker's inability to get to work, thus qualifying that employee for unemployment benefits, such as a sudden change in employment circumstances greatly increasing the commuting distance from home to job. *Utley v. Board of Review*, Dep't of Labor, 194 N.J. 534, 946 A.2d 1039, 2008 N.J. LEXIS 424 (2008).

Employer's inappropriate request for lie detector test good cause for voluntarily leaving work. In the Matter of J.C., 97 N.J.A.R.2d (UCC) 45.

#### 12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time work and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as

defined in N.J.A.C. 12:17-9.1(b). The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount. The partial disqualification shall remain in effect until the individual becomes reemployed and works four weeks in employment, which may include employment for the Federal government, and he or she has earned in employment six times the individual's weekly benefit rate, as determined in each case.

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.

2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

(b) A worker who is employed by two or more employers on a part-time basis and who leaves one employer voluntarily without good cause attributable to such work, shall be subject to disqualification for voluntarily leaving work.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), added the last sentence in the introductory paragraph.

#### 12:17-9.3 Voluntary leaving for health or medical reasons

(a) An individual who leaves work because of a disability which has a work-connected origin is not subject to disqualification for voluntarily leaving work, provided there was no other suitable work available which the individual could have performed within the limits of the disability.

(b) An individual who leaves a job due to a physical and/or mental condition or state of health which does not have a work-connected origin but is aggravated by working conditions will not be disqualified for benefits for voluntarily leaving work without good cause "attributable to such work," provided there was no other suitable work available which the individual could have performed within the limits of the disability. When a non-work connected physical and/or mental condition makes it necessary for an individual to leave work due to an inability to perform the job, the individual shall be disqualified for benefits for voluntarily leaving work.

(c) Notwithstanding (b) above, an individual who has been absent because of a personal illness or physical and/or mental condition shall not be subject to disqualification for voluntarily leaving work if the individual has made a reasonable effort to preserve his or her employment, but has still been terminated by the employer. A reasonable effort is evidenced by the employee's notification to the employer, requesting a

leave of absence or having taken other steps to protect his or her employment.

(d) When an individual leaves work for health or medical reasons, medical certification shall be required to support a finding of good cause attributable to work.

#### **12:17-9.4 Voluntary leaving for health or safety conditions**

An individual shall not be disqualified for benefits for voluntarily leaving work if he or she can establish that working conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work.

#### **12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge**

If an individual leaves work after he or she is notified by the employer of an impending layoff or discharge, he or she shall be subject to disqualification for benefits unless the individual will be separated within 60 days. For purposes of this section, imminent layoff or discharge is one in which the individual will be separated within 60 days.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In former (a), deleted the designation and substituted "60 days" for "four weeks" throughout; deleted former (b).

#### **Case Notes**

Former employee was not disqualified from receiving unemployment compensation benefits under N.J.S.A. 43:21-5(a) for voluntarily leaving her position as a veterinarian as she established that she was compelled to resign because of a real, imminent, and substantial risk of losing her job after being advised by the employer to leave. The employer's advisement that her continued employment was no longer desired conveyed a very strong likelihood of imminent discharge, subject to the parties' contractual agreement to provide 60 days notice before termination. *Shuster v. Bd. of Review*, 396 N.J. Super. 240, 933 A.2d 641, 2007 N.J. Super. LEXIS 332, Unemployment Ins. Rep. (CCH) P8658 (App.Div. 2007).

#### **12:17-9.6 Voluntary layoff and/or early retirement incentive policy or program**

(a) Notwithstanding any other provision of this subchapter, when an employer has a written voluntary layoff and/or early retirement incentive policy or program in effect during a reduction-in-force that permits or induces an employee to leave work so that another employee may continue to work, the following applies:

1. The individual who participates in the program will not be subject to disqualification for voluntarily leaving work in accordance with N.J.S.A. 43:21-5(a); and

2. The individual must otherwise meet all of the other eligibility requirements of the Unemployment Compensation Law to be eligible to receive unemployment insurance benefits.

New Rule, R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.6, Discharge after giving notice of resignation, recodified to N.J.A.C. 12:17-9.7.

#### **12:17-9.7 Discharge after giving notice of resignation**

(a) When an individual gives the employer notice of resignation and the employer subsequently terminates the individual's employment prior to the effective date of the notice, the individual's separation shall be reviewed as a voluntarily leaving work issue as of the effective date of the resignation. However, the individual may receive benefits up to the date of resignation, if otherwise eligible.

(b) If the discharge in (a) above was the result of misconduct connected with the work, in addition to the voluntary leaving disqualification, the claimant will be subject to disqualification for misconduct connected with the work.

Recodified from N.J.A.C. 12:17-9.6 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.7, Assignment of work under a union contract, recodified to N.J.A.C. 12:17-9.8.

#### **12:17-9.8 Assignment of work under a union contract**

If a union contract provides that a worker may be assigned other work when there is a lack of work in the worker's usual occupation, such assignment does not constitute an offer of new work since this change in duties is covered by the terms of the existing contract. If separated from employment for this reason, the employee shall be disqualified for benefits for voluntarily leaving work without good cause attributable to such work.

Recodified from N.J.A.C. 12:17-9.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.8, Recall from temporary layoff, recodified to N.J.A.C. 12:17-9.9.

#### **12:17-9.9 Recall from temporary layoff**

If an unemployed individual is on a temporary layoff of up to 10 weeks and has a definite date of recall to work with a former employer and fails to return to such work, he or she shall be subject to disqualification for benefits for voluntarily leaving work.

Recodified from N.J.A.C. 12:17-9.8 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.9, Loss of license needed as a condition of employment, recodified to N.J.A.C. 12:17-9.10.

#### **12:17-9.10 Loss of license needed as a condition of employment**

(a) If an individual is discharged due to the loss of a prerequisite license which is necessary to perform the duties of his or her employment, such discharge shall subject the individual to disqualification for benefits for voluntarily leaving work if he or she engaged in an act which resulted in the loss of the license.

(b) If an individual fails to apply for or renew a prerequisite license which is needed to perform the duties of his or her employment, and he or she is separated from work for not possessing the required license, the separation from work shall be considered a voluntary leaving of work and the individual shall be disqualified for benefits.

(c) If an individual is separated from work by the employer due to the individual's failure to pass a licensing or other qualifying examination, the separation from work shall be considered a discharge.

Recodified from N.J.A.C. 12:17-9.9 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-9.10, Job abandonment, recodified to N.J.A.C. 12:17-9.11.

#### **12:17-9.11 Job abandonment**

(a) An employee who is absent from work for five or more consecutive work days and who without good cause fails to notify the employer of the reasons for his or her absence shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work. 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 employee from notifying the employer of the absence.

reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual's claim which is based on employment with a temporary help service firm shall be reviewed as an

available for work issue if the individual fails to contact the firm for reassignment by the end of the next business day after completion of the last assignment and there is no written agreement between the temporary help service firm and the individual.

ELIGIBILITY CONDITIONS FOR TEMPORARY HELP SERVICE FIRM CLAIMANTS

	<u>Failure to Contact for Reassignment</u>	<u>Refusal of New Assignment</u>	
Separate with signed Agreement	Voluntary Leaving Issue (N.J.S.A. 43:21-5(a))	Voluntary Leaving issue if: —within scope of agreement and; —starts within four weeks and; —offered at end of assignment (N.J.S.A. 43:21-5(a))	Refusal of Suitable Work issue if: —not within scope of agreement or; —starts in more than four weeks or; —offered after end of the current assignment (N.J.S.A. 43:21-5(c))
Separation without signed Agreement	Availability Issue (N.J.S.A. 43:21-4(c))	Voluntary Leaving issue if: —new job similar in terms and conditions to last assignment and; —starts within four weeks and; —offered at end of current Assignment (N.J.S.A. 43:21-5(a))	Refusal of Suitable Work issue if: —terms and conditions of new job are not similar to last assignment or; —starts in more than four weeks or; —offered after end of current assignment (N.J.S.A. 43:21-5(c))

SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

12:17-16.1 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.

12:17-16.2 Benefit rights of interstate claimants

(a) If a claimant files a claim against any state, which determines that the claimant has available benefit credits in such state, then a claim 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 credits.

(b) For the purpose 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 restriction that prohibits the payment of benefits to an individual employed in a seasonal industry during the off season.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "to an individual" for "to individual" following "the payment of benefits".

12:17-16.3 Requirement to register for work

(a) Each interstate claimant shall be registered for work, through any employment service 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.

12:17-16.4 Reporting requirements for interstate benefit claims

(a) Claims for benefits or waiting periods shall be filed by interstate claimants on uniform interstate claim forms or by telephone and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be dated in accordance with the agent state's definition of week of 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 employment service offices, or at an itinerant point, by mail or by telephone.

(c) With respect to claims for weeks of unemployment in which an individual was not working for his or her regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim which is filed late. If a claimant files more than one reporting period late without "good cause" as defined under N.J.A.C. 12:17-4.1(b), an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to his or her regular employer, the liable state shall accept any claim which is filed within the

time period applicable to such claims under the law of the agent state.

#### **12:17-16.5 Role of the agent state in benefit determinations**

(a) In connection with each claim filed by an interstate claimant, the agent state shall 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.

#### **12:17-16.6 Appeals of benefit determinations**

(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 period 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.

#### **12:17-16.7 Reciprocal claims with Canada**

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

### **SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT**

#### **12:17-17.1 Notice and proof of disability**

(a) A written notice of disability on which a claim for disability benefits during unemployment is based shall, within 30 days after the commencement of the period of disability for which benefits are claimed, be furnished to the Division of Temporary Disability Insurance within the Department of Labor and Workforce Development by the claimant or an authorized representative. The notice shall state the claimant's full name, address and Social Security number, as well as the date on which the claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) accompanied by the certification of the attending licensed physician, dentist, podiatrist, chiropractor, practicing psychologist or optometrist as required hereinafter, shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the disability during unemployment program is based shall be furnished by any claimant who expects to be or has been totally unable to perform any work and is under the care of a licensed physician, dentist, podiatrist, chiropractor, practicing

psychologist or optometrist. Such proof may also be furnished by the claimant's authorized representative. Additional medical certification shall be filed as proof of continued disability, when requested by the Division.

(c) The failure to furnish a written notice of or proof of disability within the 30-day time period required by (a) above shall not invalidate or reduce any claim, if the Division determines that there was good cause for late filing. If a notice or proof is furnished after 30 days and the claimant does not have good cause for failing to submit the notice of proof in a timely manner, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt or postmark of the notice of proof of disability, subject to the waiting period requirement. 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 filing his claim within the prescribed period.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (c), substituted "proof in a timely manner" for "proof timely manner" following "submit the notice of".

Amended by R.2005 d.385, effective November 7, 2005.

See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

In (a), added "and Workforce Development."

#### **12:17-17.2 Procedures for filing of claims for benefits**

(a) All claims and other required documents relating to a claim for disability benefits during unemployment may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete as of the postmarked date unless the claimant can provide evidence of an earlier date of mailing.

(b) Disability benefits shall be payable to a claimant residing in another state or in Canada, provided he or she complies with the requirements of the Unemployment Compensation Law and this subchapter. In such cases, the attending physician, dentist, chiropractor, podiatrist, practicing psychologist or optometrist shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

(c) If an independent medical examination of a claimant is required, the Division shall authorize such examination to be made by a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. The payment of examination fees shall be consistent with those fees established in N.J.A.C. 12:18-3.1(g) concerning temporary disability examination fees.

(d) If a claimant refuses to submit to an independent medical examination by a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist, or optometrist designated by the Division, he or she shall be disqualified for receiving all benefits for the period of disability in question, except for benefits already paid.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (d), substituted "designated" for "designed" following "optometrist".

### 12:17-17.3 Waiver of registration and reporting requirements

The giving of notice of disability and the filing of proof of a claim for disability benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:17-4 concerning registering for work and reporting to the Division for the period covered by the claim.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Substituted "the Division" for "an unemployment claims office" preceding "for the period covered by the claim".

### 12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers

(a) This section provides that weeks and wages earned by an individual employed by an employer that is not covered under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., out-of-State or by the Federal government, shall be excluded from benefit calculations under the Disability During Unemployment Program.

(b) Where an individual becomes ill or disabled and his or her most recent employing unit was not an employer covered by the Temporary Disability Benefits Law, disability benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f), provided he or she has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for disability benefits during unemployment which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for disability benefits during unemployment shall be based solely on wages earned as a covered individual during the base year to establish a valid claim for benefits.

### 12:17-17.5 Simultaneous unemployment and disability benefit periods

(a) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work because of illness or disability during a portion of such week, a claim for disability benefits during unemployment may be filed and benefits paid to such an individual, provided he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the disability, the claimant must file a claim in accordance with N.J.A.C. 12:17-17.1.

2. If the simultaneous benefit period occurs at the end of the disability, the claimant must assert his or her ability

to work by reporting to the Division during the calendar week of his or her recovery or in the calendar week immediately following; or

3. If the claimant returns to work during the calendar week of his or her recovery or in the calendar week immediately following.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), substituted "Division" for "unemployment office" preceding "during the calendar week" in 2.

### 12:17-17.6 Benefit determination

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

Recodified from N.J.A.C. 12:17-17.7 by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

Former N.J.A.C. 12:17-17.6, Eligibility for benefits during the waiting period, repealed.

## SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM

### 12:17-18.1 Definitions

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

"Full-time basis," with respect to the amount of time spent in participating in self-employment assistance activities and efforts to establish a business, means a minimum of 35 hours per week.

"Peer group" means a group of not more than 20 participating individuals who provide mutual assistance and support for each other's efforts to establish businesses and become self-employed entrepreneurs.

"Reemployment services" means job search assistance and job placement services, including counseling, testing, assessment, job search workshops, job clubs, referrals to employers and providing occupational and labor market information.

"Regular benefits" means benefits payable to an individual under the Unemployment Compensation Law, including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 U.S.C. § 85. Regular benefits do not include extended benefits payable under N.J.S.A. 43:21-24.12 et seq. or any other State or Federal program

which would provide benefits beyond the duration of regular benefits or additional benefits for training payable pursuant to the Workforce Development Partnership (WDP) Act as provided at N.J.S.A. 43:21-57 et seq.

“Self-employment assistance activities” means activities, approved by the Division, in which an individual participates for the purpose of establishing a business and becoming self-employed.

“Self-employment assistance allowance” means an allowance, payable in lieu of regular benefits from the Unemployment Insurance Trust Fund, to an individual participating in self-employment assistance activities who meets the requirements of N.J.S.A. 43:21-67 et seq.

“Self-employment assistance services” means services provided to an individual, including entrepreneurial training, business counseling and technical assistance, to help the individual to develop a business plan, establish a business and become self-employed.

“Worker profiling system” means the worker profiling system established pursuant to the Unemployment Compensation Law at N.J.S.A. 43:21-4.1 and N.J.A.C. 12:17-20. The system identifies unemployment benefit claimants who are most likely to exhaust benefits, using a computerized series of screens and a statistical model to develop a numerical ranking of claimants.

“Workforce Development Partnership Program” means the program created pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:14D-1 et seq.

#### 12:17-18.2 Self-employment assistance program

(a) The Self-Employment Assistance Program (SEA), established pursuant to N.J.S.A. 43:21-67 et seq. provides for the following:

1. An individual participating in the SEA Program (activities and services which assist an individual in establishing a business and becoming self-employed) may receive an allowance, in lieu of unemployment benefits for which he or she would have qualified;
2. An individual need not actively seek work while he or she is engaged in self-employment activities;
3. Counseling and technical assistance including assistance in developing a business plan; and
4. A training grant for entrepreneurial training and assistance approved by a WDP counselor in an amount not to exceed \$400.00, or, if the grant is for training provided by any public institution of higher education under N.J.S.A. 18A:62-1 which governs public higher education institutions, not to exceed \$1,500.

#### 12:17-18.3 Eligibility requirements

(a) To be eligible for selection to participate in the SEA Program and to receive allowances, an individual shall meet all of the following requirements:

1. Be a dislocated worker who has been determined through the worker profiling system to be likely to exhaust benefits. The Division shall give priority to those individuals who, through the profiling system, have received scores which indicate the highest probability of exhausting unemployment benefits since the maximum number of individuals receiving SEA allowance may not exceed one percent of the number of claimants receiving regular unemployment benefits;
2. Be eligible to receive benefits on his or her unemployment insurance claim;
3. Have a viable business plan approved by a qualified job counselor pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:15D-1;
4. Be willing to work full-time in developing the business;
5. Participate in full-time entrepreneurial training and/or counseling in combination with other business activities as required by the Division; and
6. Have the financial resources needed to start and sustain the business until it becomes self-supporting.

#### 12:17-18.4 Self-employment assistance allowance

(a) SEA allowances are paid to eligible participants “in lieu of” unemployment benefits in an amount equal to the individual’s weekly benefit rate and maximum benefit amount.

(b) Weekly SEA allowances shall not be reduced by any income generated from the individual’s business. However, the weekly benefit rate shall be reduced by any earnings from other employment which the individual may have.

(c) The total payment of a combination of unemployment benefits and SEA allowances shall not exceed the maximum benefit amount of the claim for regular unemployment benefits.

(d) Individuals who terminate participation in the SEA Program shall be disqualified for SEA allowances and shall not be reinstated in the program. However, such individuals may be eligible to receive regular unemployment benefits.

(e) Individuals determined eligible for SEA allowances shall not be eligible to receive extended benefits or additional benefits during training pursuant to the Workforce Development Partnership Act. Individuals who temporarily suspend participation in the SEA Program may receive regular benefits with respect to the benefit year if otherwise eligible until the total amount of regular benefits and SEA allowances paid to the individual equals the maximum benefit amount. Such individuals may also be paid extended benefits if otherwise eligible. Whether such individuals shall be eligible to receive benefits under other Federal or State extended benefit programs is subject to the statute providing for such extensions.

4. Have recently completed similar reemployment services;
5. Are attending or registered to attend training at the time of profiling;
6. Are job-ready for existing job openings; or
7. Have become a member of an approved union hiring hall, have moved and are now filing on an interstate basis, or have received a definite recall date from the former employer.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).  
Rewrote the section.

#### 12:17-20.8 Appeals

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

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## SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

#### 12:17-21.1 General provisions

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing same to the Division. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (b), substituted "providing same to the Division" for "providing some to the Division of Employer Accounts" in the first sentence.

#### 12:17-21.2 Reasons for separation

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct or gross misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;
5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or
6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) as amended by the Trade Act of 2002, P.L. 107-210, or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

Amended by R.2003 d.276, effective July 7, 2003.  
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), inserted "as amended by the Trade Act of 2002, P.L. 107-210," preceding "or when the claimant leaves work" in 6.

#### 12:17-21.3 Request for separation information

(a) For an employer to obtain relief of benefit charges, he or she shall complete Form BC-3E, Notice to Employer of Monetary Determination and Request for Separation Information, and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Form BC-3E shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Form BC-3E is not received by the Division or post-marked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received or postmarked with 21 calendar days after the date upon which the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, "good cause" means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

Amended by R.2003 d.276, effective July 7, 2003.

See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).

In (a), deleted "and" following "Form BC-3E" in the third sentence; in (b), substituted "Division" for "local claims office" preceding "or postmarked within 10 calendar days" and deleted "by the local claims office" preceding "or postmarked within 21 calendar days".

#### **12:17-21.4 Misrepresentation or false information**

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.

2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

#### **12:17-21.5 Determination and appeals**

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.