

(b) If 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 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.

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 without penalty to his or her 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.

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) An individual who receives a retroactive pension payment shall be subject to benefit reduction from 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.

(c) There will be no reduction of benefits where there is a transfer of an eligible rollover distribution from a qualified trust to an eligible retirement plan (as defined under section 402(c)(8) of the Internal Revenue Code of 1986), if all the requirements of section 402 of the Internal Revenue Code are met within 60 days of receipt by the individual.

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.

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.