

CHAPTER 16

CONTRIBUTIONS, RECORDS AND REPORTS

Authority

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

Source and Effective Date

R.2000 d.68, effective January 27, 2000. See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 16, Contributions, Records and Reports, expires on July 26, 2005. See: 36 N.J.R. 5651(a).

Chapter Historical Note

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969.

Subchapter 20, Work Relief and Work Training Programs, was adopted as R.1987 d.102, effective February 17, 1987. See: 18 N.J.R. 1683(a), 19 N.J.R. 363(b).

Subchapter 21, Zip Code Reporting, was adopted as R.1989 d.39, effective January 17, 1989. See: 20 N.J.R. 2625(b), 21 N.J.R. 167(a).

Subchapter 10, Hearings, was repealed and Subchapter 22, Hearings, was adopted by R.1989 d.208, effective April 17, 1989. See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1990 d.217, effective March 23, 1990. See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Subchapter 23, Services Excluded from Coverage by the Unemployment Compensation Law, was adopted as R.1995 d.84, effective February 6, 1995. See: 26 N.J.R. 4730(a), 27 N.J.R. 501(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1995 d.138, effective February 9, 1995, and Subchapter 11, Excess Worker Deductions, was recodified as Subchapter 10, Subchapter 11, Special Employment Situations, was adopted as new rules, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed by R.1995 d.138, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.2000 d.68, effective January 27, 2000. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

- 12:16-1.1 Ascertainment of worker's Social Security account number
12:16-1.2 Reporting of worker's Social Security account number
12:16-1.3 Evidence of application for Social Security account number
12:16-1.4 Employer to inform worker without Social Security account number
12:16-1.5 Employer to inform worker in certain cases

SUBCHAPTER 2. RECORDS

- 12:16-2.1 Payroll records
12:16-2.2 Individual worker records
12:16-2.3 Records defined

12:16-2.4 Records retention

SUBCHAPTER 3. POWER OF ATTORNEY

12:16-3.1 Power of attorney: requirements

SUBCHAPTER 4. REMUNERATION

- 12:16-4.1 Remuneration defined
12:16-4.2 Sick leave payments
12:16-4.3 Fringe benefit payments
12:16-4.4 Section 401(k) Plans
12:16-4.5 Push payments
12:16-4.6 Officer's remuneration
12:16-4.7 Back pay, residuals, aliens
12:16-4.8 Other remuneration
12:16-4.9 Tips and gratuities
12:16-4.10 Temporary disability payments
12:16-4.11 Personal use of a company vehicle
12:16-4.12 Dependent care assistance programs
12:16-4.13 Interest on a below-market interest rate loan
12:16-4.14 Section 125 cafeteria plans

SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

- 12:16-5.1 Accrual as remuneration earned
12:16-5.2 Due dates
12:16-5.3 Bases of contribution payments
12:16-5.4 First contributions of newly subject employer
12:16-5.5 Installment payments
12:16-5.6 Voluntary payment of additional contributions
12:16-5.7 Payment in guaranteed funds
12:16-5.8 Seamen's wages
12:16-5.9 Special fringe benefit agent accounts

SUBCHAPTER 6. REIMBURSEMENT OPTION FOR NON-PROFIT ORGANIZATIONS

- 12:16-6.1 Application
12:16-6.2 Financial security requirements
12:16-6.3 Termination
12:16-6.4 Liability

SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS

- 12:16-7.1 Purpose
12:16-7.2 Definitions
12:16-7.3 Application
12:16-7.4 Finance
12:16-7.5 Use of surplus funds
12:16-7.6 Termination
12:16-7.7 Liability
12:16-7.8 Penalties

SUBCHAPTER 8. GROUP ACCOUNTS

- 12:16-8.1 Establishment
12:16-8.2 Participation
12:16-8.3 Termination
12:16-8.4 Liability
12:16-8.5 Dissolution

SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS

- 12:16-9.1 Workers' contribution-trust fund
12:16-9.2 Evidence of amounts withheld furnished workers
12:16-9.3 Reporting and paying workers' contributions

SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS

- 12:16-10.1 Excess disability deductions
12:16-10.2 Excess unemployment, health care and workforce deductions

- 12:16-10.3 Wage deduction statements
- 12:16-10.4 Refund of excess deductions
- 12:16-10.5 Assessment for governmental reimbursable employers

#### SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS

- 12:16-11.1 Real estate managing agents
- 12:16-11.2 Limited liability companies

#### SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS

- 12:16-12.1 Separate accounts
- 12:16-12.2 Common paymaster

#### SUBCHAPTER 13. REPORTS

- 12:16-13.1 Reports required
- 12:16-13.2 Force and effect of instructions relating to reports
- 12:16-13.3 Penalty for failure to file reports
- 12:16-13.4 Penalty abatement
- 12:16-13.5 Wages paid reported currently
- 12:16-13.6 Reporting wages, remuneration and other information
- 12:16-13.7 Wage reporting
- 12:16-13.8 Suspension of business
- 12:16-13.9 Transfer of business
- 12:16-13.10 Withdrawal to inactive status

#### SUBCHAPTER 14. ELECTION OF COVERAGE

- 12:16-14.1 Application for election
- 12:16-14.2 Date of filing
- 12:16-14.3 Effective date of election
- 12:16-14.4 Election subject to approval
- 12:16-14.5 Effect of election approval

#### SUBCHAPTER 15. JOINT ACCOUNTS

- 12:16-15.1 Application for a voluntary joint account
- 12:16-15.2 Eligibility for a voluntary joint account
- 12:16-15.3 Effective date; duration of a voluntary joint account
- 12:16-15.4 Maintenance of a voluntary joint account
- 12:16-15.5 Modification of a voluntary joint account
- 12:16-15.6 Dissolution of a voluntary joint account

#### SUBCHAPTER 16. NOTICE TO WORKERS

- 12:16-16.1 Unemployment compensation coverage
- 12:16-16.2 Termination of subject status

#### SUBCHAPTER 17. (RESERVED)

#### SUBCHAPTER 18. TRANSFER OF EMPLOYMENT EXPERIENCE

- 12:16-18.1 Transfer of predecessor's whole experience
- 12:16-18.2 Rate following transfer of predecessor's whole experience
- 12:16-18.3 Transfer of predecessor's experience in part
- 12:16-18.4 Rate following transfer of predecessor's experience in part

#### SUBCHAPTER 19. BENEFIT CHARGES

- 12:16-19.1 Employer's account charged; notice
- 12:16-19.2 Annual summary statement

#### SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS

- 12:16-20.1 Work relief and work training programs: exempt employment

#### SUBCHAPTER 21. ZIP CODE REPORTING

- 12:16-21.1 Scope
- 12:16-21.2 Definitions
- 12:16-21.3 Reporting requirement

#### SUBCHAPTER 22. HEARINGS

- 12:16-22.1 Scope
- 12:16-22.2 Application
- 12:16-22.3 Informal conference
- 12:16-22.4 Formal hearing
- 12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum
- 12:16-22.6 Decision

#### SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

- 12:16-23.1 Exempt services
- 12:16-23.2 Evidence of FUTA exemption

#### SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

- 12:16-24.1 Application and scope
- 12:16-24.2 Definitions
- 12:16-24.3 Initial and annual registration
- 12:16-24.4 Financial security requirements
- 12:16-24.5 Payroll tax certification
- 12:16-24.6 Workers' compensation insurance
- 12:16-24.7 Dissolution of employee leasing agreement
- 12:16-24.8 Rescission of the registration of an employee leasing company or professional employer organization
- 12:16-24.9 Dissolution of an employee leasing company or professional employee organization
- 12:16-24.10 Violations
- 12:16-24.11 Appeals

#### SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS

##### 12:16-1.1 Ascertainment of worker's Social Security account number

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

##### 12:16-1.2 Reporting of worker's Social Security account number

Each employer shall report a worker's Social Security account number in making any report required by the Department with respect to such worker.

##### 12:16-1.3 Evidence of application for Social Security account number

(a) If an employer has a worker engaged in employment who does not have a Social Security account number, the worker shall be requested to provide a receipt issued by an officer of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) The receipt shall be retained by the worker, but a copy or facsimile shall be retained by the employer.

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

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

#### **12:16-1.4 Employer to inform worker without Social Security account number**

An employer shall inform each worker who has not secured a Social Security account number that such number must be filed on or before the seventh day after the date on which the worker first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.

#### **12:16-1.5 Employer to inform worker in certain cases**

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

## SUBCHAPTER 2. RECORDS

### **12:16-2.1 Payroll records**

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **Case Notes**

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

### **12:16-2.2 Individual worker records**

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;
2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;
4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;
5. Such information as may be necessary to determine remuneration on a calendar week basis.
6. The number of base weeks (see N.J.S.A. 43:21-19(t)) and wages.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **Case Notes**

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

### **12:16-2.3 Records defined**

Records are defined as all books of original entry plus any summarizations or other media used to post to a general ledger or its equivalent as well as all Federal and State tax returns. Records shall also include machine sensible data media used for recording, consolidating, and summarizing accounting transactions within an employing unit's automatic data processing system.

**12:16-2.4 Records retention**

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**Case Notes**

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

**SUBCHAPTER 3. POWER OF ATTORNEY****12:16-3.1 Power of attorney: requirements**

(a) An employer may grant power of attorney to another person to represent the employer before the Employment Security Agency in all matters affecting quarterly contribution reports, experience rating, tax liability, and claims for benefits.

(b) The power of attorney document must contain the following:

1. The corporate seal unless the employer is an individual or a partnership;
2. The signature of the employer(s) or duly authorized corporate officers;
3. Specific mention of the Employment Security Agency as the entity before whom representation will be made on behalf of the employer;
4. The signature of a notary public and the expiration date of commission;
5. The signature of the representative and a statement acknowledging power of attorney authorization.

(c) If the address of record for the employer is changed to that of the representative on the status (tax) file, the benefit file, or both, the representative must accept all reports, notices, billings, and correspondence pertinent to the particular file on which the address had been changed.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**SUBCHAPTER 4. REMUNERATION****12:16-4.1 Remuneration defined**

(a) The New Jersey Unemployment Compensation Law, at N.J.S.A. 43:21-19(p), states that "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.14.

1. Sick leave payments;
2. Fringe benefit payments;
3. Section 401(k) plans;
4. Push payments;
5. Officer's remuneration;
6. Back pay awards;
7. Residuals, aliens;
8. Other remuneration;
9. Tips and gratuities;
10. Temporary disability payments;
11. Personal use of a company vehicle;
12. Dependent care assistance programs;
13. Interest on below-market interest rate loans; and
14. Section 125 Cafeteria plans.

Amended by R.1990 d.217, effective April 16, 1990.  
See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In b: changed "4.9" to "4.14."

Added (b) 10-13.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-4.2 Sick leave payments**

(a) Sick leave payments (also known as continuation pay) made by employers to employees for periods of disability are wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes.

(b) Those types of sick leave payments deemed wages and therefore taxable are:

See: 28 N.J.R. 4817(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 29 N.J.R. 4201(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 30 N.J.R. 3556(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 31 N.J.R. 3537(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 32 N.J.R. 4146(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 33 N.J.R. 3771(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 35 N.J.R. 3967(b).

#### 12:16-4.9 Tips and gratuities

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

Amended by R.1995 d.138, effective March 6, 1995.  
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.10 Temporary disability payments

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

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

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

New Rule, R.1986 d.21, effective February 3, 1986.  
 See: 17 N.J.R. 2850(b), 18 N.J.R. 284(b).

#### 12:16-4.11 Personal use of a company vehicle

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

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

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

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.12 Dependent care assistance programs

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

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

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.13 Interest on a below-market interest rate loan

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

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.14 Section 125 cafeteria plans

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

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).  
 Amended by R.1995 d.138, effective March 6, 1995.  
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

#### 12:16-5.1 Accrual as remuneration earned

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

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

Amended by R.1995 d.138, effective March 6, 1995.  
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**Cross References**

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

**Case Notes**

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

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

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

Attorney who received percentage of fees generated by other attorneys sharing office was liable for unemployment compensation benefits insurance contributions on wages of other attorneys. *Logan v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 102.

Engineer working out of his car was liable for unemployment compensation benefits insurance contributions for typist and draftsman that he occasionally employed. *Green v. Department of Labor*, 96 N.J.A.R.2d (LBR) 89.

Travel agency was required to pay unemployment compensation insurance tax for agents who booked travel arrangements out of central office. *Another World of Travel v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 17.

Employer's failure to present evidence that former employee receiving unemployment compensation benefits had customarily engaged in separate business supported assessment for employer's failure to pay unemployment insurance. *Le Fante Associates Corp. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 81.

Science equipment salespersons and consultants were not independent contractors for purposes of unemployment compensation and temporary disability insurance contributions. *Arthur Williams & Associates, Inc. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 63.

Part-time business which was not financially independent of employer warranted unemployment insurance contribution assessment. *Software Systems v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 25.

Newspaper publisher must make unemployment insurance contributions for telemarketers. *New Jersey Shield Publishing Co. v. New Jersey Department of Labor*, 96 N.J.A.R.2d (LBR) 22.

Consultant to textile producer qualifies as employee rather than as exempt independent contractor for purposes of unemployment insurance contributions. *Sullivan, Carson, Inc. v. Department of Labor*, 96 N.J.A.R.2d (LBR) 17.

Courier service must make unemployment insurance contributions for couriers who did not qualify as independently established operators. *Cardar Enterprises v. Department of Labor*, 96 N.J.A.R.2d (LBR) 14.

**12:16-5.2 Due dates**

(a) Employer's contributions shall be paid and contribution reports filed on a quarterly basis, for all employers other than domestic employers, as follows:

**Quarter Ending**

March 31  
June 30  
September 30  
December 31

**Due Date**

April 30  
July 30  
October 30  
January 30

Effective January 1, 2000, domestic employers shall pay contributions and file a contribution report on an annual basis. For the calendar year ending December 31, the payment of contributions and the filing of the contribution report would be due January 31 following the close of the calendar year.

(b) Notwithstanding (a) above, the Controller or his or her designee is authorized to require an employer or employers to file contribution reports and pay contributions on a monthly or other basis when, in his or her discretion, it is considered necessary to do so.

Amended by R.1986 d.22, effective February 3, 1986.

See: 17 N.J.R. 2851(a), 18 N.J.R. 285(a).

Due dates for July, October and January changed from "31" to "30"; (c) deleted.

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

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

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

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

Rewrote (a).

**Cross References**

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

**Case Notes**

Penalties for failing to pay employer contributions could not be reduced for cooperation. *South Jersey Drywall Co., Inc. v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 35.

**12:16-5.3 Bases of contribution payments**

(a) The payment for each reporting period shall include contributions computed with respect to wages paid for employment in all work periods (weekly, biweekly, semi-monthly, monthly) ended within the reporting period.

(b) In computing and paying employer contributions to the Unemployment Compensation Fund or the State Disability Benefits Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

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

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

**12:16-5.4 First contributions of newly subject employer**

(a) Except as to liability by election as provided in N.J.A.C. 12:16-14 (Election of Coverage), the first contribution payment of an employer who becomes newly liable in any calendar year shall be payable on or before the due date of the reporting period in which the subject status occurs.

(c) When an election to make payments in lieu of contributions is terminated, and the non-profit organization begins or resumes payments under the contribution method, it may not revert to the reimbursement option for at least two full calendar years after such termination.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-6.4 Liability

(a) If a non-profit organization's election to make payments in lieu of contributions is terminated by the Controller or his or her designee, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned during the effective period of the election.

(b) As of the effective date of the termination of an election to make payments in lieu of contributions, a non-profit organization shall become liable to pay unemployment contributions on taxable wages paid to its employees.

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

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

Public Notice: Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages during Calendar Year 2005.

See: 36 N.J.R. 4545(a).

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### SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS

#### 12:16-7.1 Purpose

The purpose of this subchapter is to outline the conditions under which a governmental employer can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment benefits may use the surplus amount remaining in an unemployment trust fund.

New Rule, R.1988 d.437, effective September 6, 1988.

See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

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

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

**12:16-7.2 Definitions**

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

“Contributory” means the method of payment by which a governmental entity or instrumentality pays unemployment contributions into an unemployment trust fund.

“Governmental entity or instrumentality” means the State of New Jersey, any instrumentality of New Jersey or any political subdivision thereof, or any instrumentality of the State and one or more other states or political subdivisions.

“Reimbursable” means the method of payment by which a governmental entity or instrumentality finances benefits by payments in lieu of contributions.

New Rule, R.1988 d.437, effective September 6, 1988.  
See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

**12:16-7.3 Application**

(a) Any governmental entity or instrumentality which is or becomes subject to the Unemployment Compensation Law and wishes to elect to pay contributions rather than to reimburse the Unemployment Trust Fund for benefits paid may do so by filing a written notice of its intention not later than 120 days immediately following the date of its subjectivity (defined at N.J.A.C. 12:16-5.4(b)) or not later than 30 days from the date such entity or instrumentality is notified of its subjectivity, whichever is the later.

(b) Any governmental entity or instrumentality which has been reimbursing the Unemployment Trust Fund and wishes to change its method of financing by electing to pay contributions as of January 1 of any year, may do so by filing a written notice of its intentions no later than February 1 of that same calendar year.

(c) The employer shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions, or other substantiating document which confirms the election of the contributory option.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.S.R. 61(a), 27 N.J.R. 919(a).

**12:16-7.4 Finance**

(a) On or before September 1 of each year, the Controller or his or her designee shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and shall recommend a contribution rate for the following calendar year to the Commissioner.

(b) The Commissioner of Labor shall establish the contribution rate for the following calendar year after considering the recommendation.

(c) Any governmental entity or instrumentality electing to pay contributions shall appropriate each year, out of its general funds, monies to pay the projected costs of contributions at the rate determined under (b) above. These funds are to be held in a trust fund by the governmental entity or instrumentality strictly for this purpose. Any surplus in the fund may be retained in reserve for payment of benefits costs for subsequent years either by contributions or payments in lieu of contributions.

Amended by R.1988 d.437, effective September 6, 1988.

See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

Substituted “contributions” for “benefits” and deleted “covered”; recodified from 4.2.

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

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

**12:16-7.5 Use of surplus funds**

(a) A governmental entity or instrumentality using the contributory method may use the surplus in its unemployment trust fund pursuant to the following conditions:

1. The governmental entity or instrumentality must request, in writing, permission to use a portion of the surplus funds. Upon written approval of the Commissioner or his or her designee, the governmental entity or instrumentality may proceed with its withdrawal of funds;
2. Worker contributions shall not be diverted from the fund;
3. In addition to worker contributions that remain in the fund, an amount equal to the highest one of the previous three years’ contribution payments must remain in the fund to cover the next year’s anticipated contributions.

(b) A governmental entity or instrumentality using the reimbursable method may not use the surplus in its unemployment fund for any purpose other than payment of benefits.

1. Governmental entities or instrumentalities which change from the reimbursable method to the contributory method pursuant to N.J.S.A. 43:21-7.3(b) may divert surplus trust funds subject to the provisions of this subchapter.

- i. Surplus trust funds may be diverted only after the governmental entity or instrumentality has received written approval from the Commissioner or his or her designee.

New Rule, R.1988 d.437, effective September 6, 1988.

See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

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

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

**12:16-7.6 Termination**

(a) Any governmental entity or instrumentality which has been paying contributions for a minimum of two calendar years and wishes to change to making payments in lieu of

contributions may do so by filing a written notice of its intention no later than February 1 of the calendar year for which the change is requested.

(b) When an election to pay contributions is terminated and the governmental entity or instrumentality resumes making payments in lieu of contributions, it may not revert to the contributory option for at least two full calendar years after such termination.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-7.7 Liability

(a) The change of financing options shall have no effect upon the liability incurred under the prior financing option.

(b) If the governmental entity or instrumentality election to pay contributions is terminated, the governmental entity or instrumentality shall remain liable for all contributions incurred during the period of its election to pay contributions.

(c) As of the effective date of the termination of an election to pay contributions, a governmental entity or instrumentality shall become liable to make payments in lieu of contributions.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-7.8 Penalties

(a) A governmental entity or instrumentality which diverts funds in violation of the provisions of this subchapter shall be required to immediately restore the amount diverted to the fund.

(b) A governmental entity or instrumentality which fails to comply with the provisions of this subchapter, shall be liable for a fine not to exceed \$50.00 per day for each day of violation.

New Rule, R.1988 d.437, effective September 6, 1988.  
See: 20 N.J.R. 1521(a), 20 N.J.R. 2300(a).

### SUBCHAPTER 8. GROUP ACCOUNTS

#### 12:16-8.1 Establishment

(a) Two or more employers liable for payments in lieu of contributions may apply for the establishment of a group account for the purpose of sharing the risk of unemployment benefit costs.

(b) The group account will be established as of the first day of any calendar quarter and will remain in effect for not less than two calendar years unless otherwise determined by the Controller or his or her designee.

(c) The request for establishment of a group account shall be filed by the designated group agent listing the names and New Jersey registration numbers assigned by the Controller or his or her designee to the employers seeking group membership. The request shall be accompanied by consent documents executed by each applicant for membership authorizing the group agent to act in its behalf for the group account. The employers shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions or other substantiating document which confirms the intent of the employer to become a member of the group.

(d) In establishing the group account, the Controller or his or her designee may modify or waive the security required of any of the group members and in lieu thereof the Controller or his or her designee may establish a security requirement of the group as a whole.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-8.2 Participation

(a) New members may be added to an established group at the request of the group. The request for the addition of a new member will require the filing of a consent document executed by the new applicant for membership authorizing the group agent to act in its behalf for the group account.

(b) No employer may become a member of a group if it has any reporting or payment delinquency.

(c) No employer may be a member of more than one group at a time.

#### 12:16-8.3 Termination

(a) Group membership will be terminated for any employer upon the cancellation of its reimbursement payment option as of the effective date of the cancellation.

(b) With the approval of the Controller or his or her designee, membership in the group will be terminated for any member at the request of that member or at the request of the group agent. The membership will be terminated at the end of the calendar quarter in which the request for termination is received.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-8.4 Liability

(a) The group account will provide risk sharing for its members only with respect to unemployment benefits liability and interest attributable thereto.

(b) Membership in the group will not relieve any member of any liability charged to its account.

(c) The group will be liable for payment of reimbursable unemployment benefits charged to its members' accounts during their period of membership in the group; plus the reimbursable unemployment benefits charged to any terminated member through the next two complete calendar quarters following the date of its membership termination.

(d) Amounts received in payment of liability payable through the group account will be applied against the outstanding liability of the group as a whole in each quarterly period, beginning with the outstanding liability in the earliest quarterly period.

**12:16-8.5 Dissolution**

(a) Request for dissolution of a group account will require the consent of two-thirds of its active members. The effective date of dissolution will be determined by the Controller or his or her designee.

(b) The group agent must advise the Controller or his or her designee of the ratio of each member's liability to the total liability of the group, if there is any group liability outstanding at the time of dissolution. Such liability will be due immediately from each employer in accordance with the balance of group liability remaining in its individual account as determined by the group agent.

(c) A group account may be dissolved by the Controller or his or her designee for reporting or payment delinquency, failure to post required bond or other security, or similar good cause.

(d) Except as required herein, the Controller or his or her designee is not a party to any agreement between the group, the group agent or any of its members.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS**

**12:16-9.1 Workers' contribution-trust fund**

(a) Every employer shall withhold workers' contributions from their wages at each time of payment of such wages.

(b) In withholding workers' contributions from their wages and in paying any contributions to the Unemployment Compensation Fund, the State Disability Benefits Fund, the Workforce Development Partnership Fund, and the Health Care Subsidy Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) The moneys so withheld, while in the possession of the employer, shall constitute a trust fund and shall be accounted for apart from employer's contributions.

(d) Such account shall be kept posted up to date by the employer so as to show at all times the amount withheld from workers, the amount of each remittance to the Controller or his or her designee, and the amount of workers' contributions withheld but not remitted to the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-9.2 Evidence of amounts withheld furnished workers**

(a) Every employer, at the time of making each payment of wages, shall furnish to each of its workers a statement showing clearly the total amount deducted for contributions for the Unemployment Compensation Fund, the State Disability Benefits Fund, the Workforce Development Partnership Fund, and the Health Care Subsidy Fund.

(b) The statements shall be such as can be delivered to workers to enable them to determine whether the total amount of their contributions is correctly computed.

(c) A notation on a paycheck or a pay envelope showing the total wages and, as a separate item, the amount deducted for contribution to the Controller or his or her designee for the said funds will constitute compliance with the provisions of this section.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-9.3 Reporting and paying workers' contributions**

(a) Every employer shall include on its contribution report the amount of contributions due and payable on behalf of its workers.

(b) Every contribution report shall be accompanied by a remittance for the amount of both the employer contributions and the contributions payable by the employer on behalf of its workers.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS**

**Case Notes**

Claimant is provided with notice and a hearing before imposition of a fine. *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978), on remand 166 N.J.Super. 523, 400 A.2d 119.

**12:16-10.1 Excess disability deductions**

If a worker receives wages from more than one employer, and the sum of the contributions required and deducted from his or her wages and deposited in the State Disability Benefits Fund, plus the contributions, if any, required and deducted from his or her wages, toward the costs of benefits under one or more plans approved under N.J.S.A. 43:21-33, or the sum of all contributions required and deducted from his or her wages toward the costs of benefits under two or more such private plans, if covered only by said plans, exceeds an amount equal to one-half of one percent of the taxable wage base in any calendar year, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

Recodified from 12:16-11.1 and amended by R.1995 d.138, effective March 6, 1995.

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

**12:16-10.2 Excess unemployment, health care and workforce deductions**

(a) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the State Unemployment Compensation Fund or in a trust fund for the purpose of repaying benefits, exceeds one-tenth of one percent of the taxable wage base for the period beginning January 1, 1998 and ending December 31, 1998, or one and one half-tenth of one percent beginning January 1, 1999 and ending December 31, 1999, or two-tenths of one percent beginning January 1, 2000 and ending December 31, 2002, or four-tenths of one percent beginning January 1, 2003, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(b) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Health Care Subsidy Fund exceeds three-tenths of one percent for the period beginning January 1, 1998 and ending December 31, 1998, or two and one half-tenths of one percent for the period beginning January 1, 1999 and ending December 31, 1999, or two-tenths of one percent for the period beginning January 1, 2000 and ending December 31, 2002, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(c) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Workforce Development Partnership Fund exceeds one-fortieth of one percent of the taxable wage base for periods beginning January 1, 1998, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

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

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

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

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

Rewrote (a) and (b); and in (c), substituted "January 1, 1998" for "January 1, 1993 and ending December 31, 1997" following "beginning".

**12:16-10.3 Wage deduction statements**

(a) Employers shall furnish to workers the following information on Form W-2:

1. The taxpayer identification number assigned by the Division of Revenue;
2. The private plan number, if any, assigned by the Bureau of Private Plans; and
3. Any amount deducted in accordance with State law.

(b) The refund of any deductions in excess of the legal maximum made from a worker's wages by an individual employer is the responsibility of the employer who made such excess deductions.

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

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

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

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

Rewrote (a)1.

**Case Notes**

Claimant is provided with notice and a hearing before imposition of a fine (citing former N.J.A.C. 12:16-10.4). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

**12:16-10.4 Refund of excess deductions**

Any worker who meets the requirements of N.J.A.C. 12:16-10.1 and 10.2 but is not required to file a New Jersey Gross Income Tax return or whose claim has been rejected by the Division of Taxation, may apply to the Controller or his or her designee for a refund of any excess unemployment, disability, health care and/or workforce contributions made from his or her wages if he or she makes a claim therefor within two calendar years after the end of the calendar year in which the wages were paid.

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

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

**Case Notes**

Claimant is provided with notice and a hearing before imposition of a fine (citing former N.J.A.C. 12:16-10.5). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

**12:16-10.5 Assessment for governmental reimbursable employers**

(a) All governmental entities who repay benefits in lieu of contributions shall be notified of the applicable portion to be repaid to the Controller or his or her designee from their trust funds for the amounts of any excess unemployment insurance deductions either refunded to their employees or credited to their employees' New Jersey State Gross Income Tax.

(b) Payment to the Controller or his or her designee shall be made within 30 days of the date of mailing of the notice. Payments received after the 30 day period shall be liable to the assessment of interest as specified in N.J.S.A. 43:21-14(b).

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**Case Notes**

Under former rules, the Division Director determined the nature and scope of the penalty to be imposed, which decision is reviewed by the Commissioner (citing former N.J.A.C. 12:16-10.6). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

**SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS****12:16-11.1 Real estate managing agents**

(a) An individual working for an agent of a property owner is an employee of the property owner, if the agent operates on a fee plus expenses basis. This type of arrangement gives the agent a fee plus reimbursement of all operating expenses on a dollar for dollar basis.

(b) An individual working for an agent of a property owner is an employee of the agent, if the agent operates on a flat fee basis. This type of arrangement gives the agent a flat fee rather than reimbursing expenses on a dollar for dollar basis.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-11.2 Limited liability companies**

(a) A limited liability company (LLC) is composed of one or more authorized persons who complete and file a certificate of formation with the Secretary of State of the State of New Jersey. An LLC must have one or more members and

may commence operations at any date or time after filing the certificate of formation.

(b) An LLC consisting of two or more members shall be classified as a partnership unless classified otherwise for Federal income tax purposes.

(c) An LLC consisting of one member shall be classified as a sole proprietorship unless the LLC elected a corporate classification for Federal income tax purposes by completing IRS Form 8832; or if the member is a corporation. In the event that the member is a corporation, and where the LLC is disregarded for Federal income tax purposes, the member shall be considered the employer with regard to all individuals performing services for the LLC.

New Rule, R.1997 d.219, effective May 19, 1997.  
See: 29 N.J.R. 834(b), 29 N.J.R. 2463(a).  
Amended by R.1999 d.439, effective December 20, 1999.  
See: 31 N.J.R. 3037(a), 31 N.J.R. 4284(b).

In (a), substituted "one" for "two" following "must have" in the second sentence; in (b), substituted a reference to LLCs consisting of two or more members for a reference to LLCs; and added (c).

**SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS****12:16-12.1 Separate accounts**

Each employer, for each calendar year in which it is subject to the Unemployment Compensation and Temporary Disability Benefits Law, is separately and distinctly liable for contributions, up to the yearly maximum taxable wage, based upon remuneration paid to each of its employees regardless of whether or not any such employees are common to other employing units which are jointly owned or controlled by the same interests.

**12:16-12.2 Common paymaster**

(a) If two or more related entities concurrently employ the same individual and compensate that individual through a common paymaster that is one of the related entities, each entity will be considered to have paid the individual the amounts that it actually dispersed.

(b) If one of the related entities actually dispersed all the wages as agent for the rest, but such wage payments were charged back to the individual entities for record keeping, income tax or other purposes, the individual related entities shall be considered to be the employer for purposes of the Unemployment Compensation and the Temporary Disability Benefits Laws.

(c) A single entity can report the wages of related companies if all the following conditions are satisfied.

1. The reporting entity has a majority interest and control over the related companies;

2. The related entities share a general system of operation and each entity is organized for a common purpose or each is a coordinated part of the entire operation; and

3. The reporting entity exercises control of central financing, common management, personnel policies, operational procedures, pricing, collections and other related operating practices.

(d) A single entity electing to report wages of any related entities must inform the Division of Employer Accounts of its intent to report related entities. Notification thereof must be received by the Division at least 30 days prior to the effective quarter in which the common reporting is to commence. All entities reported in common must be identified, including employer identification numbers, legal and trade names, business locations and the type of activity conducted by each entity.

(e) A single entity electing to report wages of related entities, must report all the employees of the related entities and reporting cannot be limited to classifications or categories of workers.

(f) A single entity electing to report wages of related entities, will result in the employment experience of the related entities being merged into the reporting entity's experience rating in order to determine an aggregate employment experience rating.

(g) In the event that a single entity elects to report wages and pay contributions of related entities, each related entity will remain jointly and severally liable for its share of the contributions.

Amended by R.2003 d.105, effective March 3, 2003.  
See: 34 N.J.R. 4019(a), 35 N.J.R. 1274(b).  
Added (c) through (g).

## SUBCHAPTER 13. REPORTS

### 12:16-13.1 Reports required

Every employer shall file such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller or his or her designee, and every employing unit shall file such reports as may be required by the Controller or his or her designee with respect to employment as shall be necessary to determine its status under the law.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### 12:16-13.2 Force and effect of instructions relating to reports

The employer shall follow and comply with all departmental instructions relating to any report or report form required or provided by a department.

### 12:16-13.3 Penalty for failure to file reports

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through the post mark date on the envelope in which the report is received by the Controller or his or her designee.

(b) If an employer or employing unit who has been granted an extension of time fails to file its report on or before the termination of the period of extension for the filing thereof, the penalty for failure to file shall be payable from the original due date as if no extension had been granted.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### 12:16-13.4 Penalty abatement

(a) The Controller or his or her designee may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. The employer makes a written request for penalty abatement consideration within one year of the date of initial notification that a penalty has been assessed;
2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department. All evidence and documentation in support of the employer's request must be submitted with the affidavit;
3. All quarterly contribution reports and employer reports of wages paid have been filed;
4. All liability, other than the penalty for which abatement is being requested, has been paid.

(b) The Department will consider the following factors in evaluating a request for penalty abatement:

1. The reason(s) for the late, inaccurate or incomplete filing;
2. The number of quarters involved;
3. The effect the late, inaccurate or incomplete filing had on the operations of the Department;
4. The employer's history of compliance;
5. Previous request(s) for abatement; and
6. Other factors brought to the attention of the Department by the employer.

(c) Penalty abatement consideration will be based upon the written submissions of the employer and the records on file in the Department, unless it is determined that a material and controlling dispute of fact exists.

(d) When abatement is granted for only a part of the penalty, the employer must make payment of all unabated penalty within 30 days of the date of notification of the decision of the Controller or his or her designee. If this condition is not met, the abatement may be rescinded.

(e) Request for reconsideration must be submitted within 30 days of receipt of the penalty abatement determination. The request must show the following:

1. New information not presented in the original application that may change the outcome, along with reasons why the information was not previously submitted; or
2. That material previously submitted was not considered.

(f) All decisions made by the Controller or his or her designee concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

Amended by R.1989 d.208, effective April 17, 1989.  
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Imposed a time limit for the filing of penalty abatement requests; (b) added, establishing Controller's decisions as final administrative deci-

sion of the Department appealable to Appellate Division of NJ Superior Court.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-13.5 Wages paid reported currently**

(a) The Controller or his or her designee may require any employer to report wages paid to every worker employed within seven days from the date of payment thereof, if the Controller or his or her designee deems it necessary for the effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law. Failure to comply will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

(b) Any employer or employing unit required to comply with N.J.A.C. 12:16-13.1 (Reports required) will be duly notified by the Department.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-13.6 Reporting wages, remuneration and other information**

(a) An employer or employing unit shall furnish the record of wages and remuneration paid to a worker, and such other information as may be required under the provisions of N.J.S.A. 43:21-6(b).

(b) Failure to comply with (a) above will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### 12:16-13.7 Wage reporting

(a) For the calendar quarter commencing July 1, 1984, and each quarter thereafter, each employer other than employers of domestic service workers shall file a report with the Controller or his or her designee within 30 days after the end of each quarter in a form and manner prescribed by the Controller or his or her designee listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns.

(b) For the purposes of this section, a "domestic service worker" is an employee in a private home of the employer, such as a babysitter, nanny, health aide, private nurse, maid, caretaker, yard worker or similar domestic employee.

(c) Effective January 1, 2001 and each year thereafter, each employer of domestic service workers shall file an annual Employer Report of Wages Paid with the Controller or his or her designee listing the name, social security number and wages paid to each employee and the number of base weeks worked each quarter during the preceding calendar year. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns. For the calendar year ending December 31, the report would be due January 31 following the close of the calendar year.

1. An employer subject to this subsection shall, within 10 days of the separation from employment of an employee in domestic service, report to the Commissioner of the Department of Labor, on a form determined by the Commissioner, wage information for all calendar quarters of employment in a manner as described in (c) above not previously reported and such other information as may be required to process an unemployment or disability compensation claim.

(d) Any employer who fails, without reasonable cause, to comply with the reporting requirements of this section shall be liable for a penalty in the following amount for each employee who is not included in the report or for whom the required information is not accurately or timely reported:

1. For the first failure for one quarter, in any eight consecutive quarters, \$5.00 for each employee;

2. For the second failure for any quarter, in any eight consecutive quarters, \$10.00 for each employee; and

3. For the third failure of any quarter, in any eight consecutive quarters, and for any failure in any eight consecutive quarters which failure is subsequent to the third failure, \$25.00 for each employee.

(e) The following pertains to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third-party payroll processors who on a quarterly basis generate and file Form WR-30 "Employer Report of Wages Paid," and Form NJ-927 "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the Controller or his or her designee, if the aggregate number of employees for all clients processed and so reported by the third-party exceeds 100 in any calendar quarter.

4. For all calendar quarters subsequent to the quarter ending December 31, 2000, all employers who would report in excess of 50 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such reports via magnetic media in a form and manner specified by the Controller or his or her designee.

5. For all calendar quarters subsequent to the quarter ending December 31, 2000, all third-party payroll processors who on a quarterly basis generate and file Form WR-30, "Employer Report of Wages Paid," and Form NJ-927, "Employer's Quarterly Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media in a form and manner specified by the Controller or his or her designee, if the aggregate number of all employees for all clients processed and so reported by the third-party exceeds 50 in any calendar quarter.

6. Employer or third-party payroll processors may have the requirements in (c)1 through 5 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the Controller or his or her designee.

7. If an employer or third-party payroll processor fails to comply with the provisions of this subsection, the penalties specified in (b) above shall apply.

Amended by R.1989 d.208, effective April 17, 1989.  
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

At (a) added language to clarify use of -0- in a column rather than to leave blank.

Amended by R.1994 d.527, effective October 17, 1994.

See: 26 N.J.R. 2863(a), 26 N.J.R. 4194(a).

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

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

Amended by R.1999 d.439, effective December 20, 1999.

See: 31 N.J.R. 3037(a), 31 N.J.R. 4284(b).

In (c), rewrote 3, inserted new 4 and 5, recodified former 4 and 5 as 6 and 7, and changed an internal reference in the new 6.

Amended by R.2001 d.476, effective December 17, 2001.

See: 33 N.J.R. 3403(b), 33 N.J.R. 4379(b).

In (a), inserted "other than employers of domestic service workers" preceding "shall file a report"; inserted new (b) and (c), and recodified former (b) and (c) as new (d) and (e).

### 12:16-13.8 Suspension of business

(a) Where a suspension of the business operations of any employer occurs in this State, such employer shall give advance notice thereof to the Controller or his or her designee. In the event that it is impracticable to give such advance notice, the employer shall notify the Controller or his or her designee within 48 hours after such suspension.

(b) Such notice shall be filed with the Controller or his or her designee and shall contain the following information:

1. The name and address of the employer;
2. The expected date or date of suspension of business operations;
3. The reason(s) for such action;
4. Whether such suspension of operations is permanent or temporary;
5. Whether wage and separation information will be available for a period of one year from date of suspension of business operations;
6. The name and address of the person or organization from whom such information will be obtainable.

(c) Upon receipt and examination of the notice required in (a) and (b) above, the Department shall determine whether or not the employer shall be required to furnish wage and separation reports.

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

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

### 12:16-13.9 Transfer of business

(a) When a transfer, in whole or in part, of the business operations of any employer occurs in this State it shall be the responsibility of the acquiring unit to notify the Controller or his or her designee of such acquisition within 30 days of the transfer.

(b) The successor shall supply the Controller or his or her designee with the name, address and, if possible, the registration number of the acquired unit.

(c) This notification, if possible, should be made on Form UC-1; otherwise, a letter will be acceptable.

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

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

### 12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have its account withdrawn to an inactive status upon written application to the Controller or his or her designee.

1. The inactivity date shall not be earlier than the last day of the preceding calendar quarter.

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

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

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

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

## SUBCHAPTER 14. ELECTION OF COVERAGE

### 12:16-14.1 Application for election

(a) An employing unit desiring to elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Laws may request from the Controller or his or her designee forms for voluntary election to become an employer, or to extend its coverage to individuals performing services which do not constitute employment.

(b) The forms for voluntary election to become an employer under the Unemployment Compensation and Temporary Disability Benefits Laws or to extend coverage shall be prescribed by the Controller or his or her designee. Election of coverage shall be made in writing, on the forms and in the manner prescribed by the Controller or his or her designee. The payment of contributions does not constitute an application for the election of coverage for otherwise exempt services. Any payment of contributions for an otherwise exempt individual shall be reimbursed to the employer for a period of up to not more than two years from the date of payment.

(c) The employing unit making application for voluntary election of subject status must, at the time of making such application, be exempt and have at least one individual, not a member of his or her immediate family, in employment who would be affected by the voluntary election.

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

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

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

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

In (b), added the second through fourth sentences.

### 12:16-14.2 Date of filing

The date of filing a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the Controller or his or her designee.

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

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

**12:16-14.3 Effective date of election**

In cases where claims for benefits against an employing unit are known to be pending, no retroactive voluntary election shall be approved for an effective date prior to the first day of the calendar quarter in which such claims were filed, unless contributions were actually paid for prior quarter(s) before the date(s) of claim for benefits.

**12:16-14.4 Election subject to approval**

(a) Any written election for a period prior to the date of filing shall become binding upon approval by the Controller or his or her designee, and notification of the approval shall be forwarded to the employer.

(b) If for any reason the Controller or his or her designee does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-14.5 Effect of election approval**

(a) Each approval of an election shall state the date upon which the approval becomes effective.

(b) The first contribution payment, of any employing unit which elects to become an employer, shall become due and shall be paid on or before the due date (see N.J.A.C. 12:16-5.2) of the reporting period during which the conditions of becoming an employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval.

(c) Such first payment shall also include workers' contributions with respect to all wages paid for employment occurring after the date when the employing unit satisfied all the conditions of becoming an employer by election.

**SUBCHAPTER 15. JOINT ACCOUNTS****12:16-15.1 Application for a voluntary joint account**

(a) Two or more employers desiring to have their accounts joined for the purpose of N.J.S.A. 43:21-7 of the Unemployment Compensation Law may request from the Controller or his or her designee forms for making application therefor.

(b) Such forms shall be completed and filed jointly by all the employers desiring to have their accounts joined into one account.

(c) The form of application for the establishment of a joint account shall be prescribed by the Controller or his or her designee.

(d) This rule is not to be construed to make available joint accounts for Temporary Disability Insurance contributions.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-15.2 Eligibility for a voluntary joint account**

(a) A joint account shall be established only after it has been shown to the satisfaction of the Controller or his or her designee that the conditions of eligibility have been met as indicated below:

1. The employers desiring to have their accounts joined shall have filed with the Controller or his or her designee Form UC-38 Application for Establishment of a Joint Account not later than May 31 of such calendar year;
2. At the time of application, all the employers requesting such joint account have employment covered by the New Jersey Unemployment Compensation Law and are owned or controlled directly or indirectly by the same interests;
3. None of such employers or their predecessors, if any, were participating in another joint account throughout the preceding calendar year;
4. The requirements of paragraphs (3) and (4) of N.J.S.A. 43:21-7(c) of the Unemployment Compensation Law have been met by all such employers;
5. Such employers intend to maintain the common ownership or control for at least three calendar years and will notify the Controller or his or her designee promptly of any change in such ownership or control; and
6. All contributions, interest, penalties and assessments which have become due from such employers on or before the date of application have been paid.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-15.3 Effective date: duration of a voluntary joint account**

(a) A voluntary joint account shall be established only as of the first day of any calendar year and shall become effective after approval by the Controller or his or her designee.

(b) The voluntary joint account so established shall remain in force for not less than three full calendar years, subject to the provisions of N.J.A.C. 12:16-15.5 (Modifications) and 12:16-15.6 (Dissolution).

(c) Contribution rates based on such voluntary joint accounts shall become effective for the fiscal year which begins on the first day of July of each calendar year following the approval of the application.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-15.4 Maintenance of a voluntary joint account**

(a) Separate accounts shall be maintained for each employer participating in a voluntary joint account.

(b) At the beginning of each calendar year the separate accounts shall be combined for the purpose of computing a joint contribution rate.

(c) Such joint rate shall be the contribution rate for each employer participating in the voluntary joint account.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-15.5 Modification of a voluntary joint account**

(a) Another employer may be added to an existing voluntary joint account if all the employers involved jointly make application for a new voluntary joint account and comply with the requirements of this subchapter.

(b) If during any calendar year an employing unit participating in a voluntary joint account ceases to be an employer under the New Jersey Unemployment Compensation Law, or ceases to be owned or controlled by the same interests, such employing unit shall be separated from the voluntary joint accounts as of the first day of such calendar year, but shall continue for the current fiscal year with the contribution rate computed under the voluntary joint account.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-15.6 Dissolution of a voluntary joint account**

(a) Voluntary joint accounts may be dissolved as of January 1 of any calendar year under any one of the conditions set forth below:

1. If at any time the Controller or his or her designee finds that with respect to such calendar year any one of the eligibility conditions set forth in N.J.A.C. 12:16-15.2 (Eligibility) with respect to employment, contributions, interest, penalties and assessments, and ownership or control, no longer exists and that it would not be in the best interest of the State to continue the voluntary joint account; or

2. Upon written application of one or more of the employers whose accounts have been joined, if such application is filed with the Controller or his or her designee on or before January 31 of such calendar year and the Controller or his or her designee finds that the voluntary joint account has been in existence for at least three calendar years. The form of application for dissolution of a voluntary joint account shall be prescribed by the Controller or his or her designee.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### **SUBCHAPTER 16. NOTICE TO WORKERS**

#### **12:16-16.1 Unemployment compensation coverage**

(a) Every employer subject to the provisions of the Unemployment Compensation Law of New Jersey (including every employer who has elected to become subject pursuant to N.J.S.A. 43:21-8) shall post and maintain printed notices to its employees informing them that they are covered by the Unemployment Compensation Law of New Jersey, and that the employer has been so registered by the Controller or his or her designee.

(b) Such notices shall be displayed in prominent and conspicuous places at each worksite.

(c) No such notice shall be posted by any person, employing unit or employer who has not complied with the provisions of the Unemployment Compensation Law and to whom an unemployment compensation registration number has not been assigned by the Controller or his or her designee, or who, in accordance with the provisions of the law, has ceased to be an employer as defined in the law.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### **12:16-16.2 Termination of subject status**

Every employing unit which has ceased to be a subject employer, pursuant to the provisions of N.J.S.A. 43:21-8 of the Unemployment Compensation Law, shall post and maintain notice of such fact on forms supplied by the Controller or his or her designee, in order to inform its workers that they are not in covered employment and are not liable for contributions.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

1. The employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy;

2. Qualifications for the jobs take into account as indispensable factors the economic status, that is, the standing conferred by income and assets, of the applicants;

3. The products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

(b) In order to qualify as an exempt unemployment work-relief or work-training program, it must also have one or more of the following characteristics:

1. The wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

2. The jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

3. The services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors;

4. The jobs do not displace regularly employed workers or impair existing contracts for services.

## SUBCHAPTER 21. ZIP CODE REPORTING

### 12:16-21.1 Scope

This subchapter is applicable to all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

### 12:16-21.2 Definitions

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

“Commissioner” means the Commissioner of the New Jersey Department of Labor.

“Department” means the New Jersey Department of Labor.

“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 regular part-time basis.

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

### 12:16-21.3 Reporting requirement

(a) Every employer shall report, on an annual basis, the Zip Code of the following:

1. The residence of each employee; and
2. The location where the employee regularly works.

(b) The information specified in (a) above is required only for employees who are employed by the employer at the time of receipt of the report form.

(c) The employer shall submit the information required under this section, on a form prescribed by the Commissioner, to the Department of Transportation. An envelope imprinted with the address of the Department of Transportation shall be provided to the employer with the information form.

(d) Any questions concerning the provisions of this subchapter may be addressed to:

Department of Transportation  
1035 Parkway Avenue  
PO Box 600  
Trenton, New Jersey 08625-0600

Amended by R.2000 d.68, effective February 22, 2000.  
See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

## SUBCHAPTER 22. HEARINGS

### 12:16-22.1 Scope

All hearings involving any question of coverage, status, liability for contributions, reporting, refunds, or rates of contribution shall be conducted according to the procedure outlined in this subchapter.

### 12:16-22.2 Application

(a) Any written notice of determination by a representative of the Department as to any question of coverage, status, liability for contributions, reporting, refunds, or rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing on the prescribed form within 30 days after the date of the notice.

(b) The form to be used for application for hearing is entitled “Request for Hearing” and is normally supplied with the written confirmation letter sent by the Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the

“Request for Hearing” form may be secured by making a written request for the form to the Chief Auditor.

(c) All completed requests shall be returned to the Chief Auditor within the required 30 days.

(d) If a party determined by the Department to be an employer asserts that it acted as an agent for another party pursuant to N.J.S.A. 43:21-19(g), or the nature of the business evidences an agency relationship may exist, the Department shall name both the agent and principal as parties to the administrative proceedings.

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

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

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d).

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

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

In (a) and (c), substituted references to 30 days for references to 15 days.

### 12:16-22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

(d) An employer may be represented by him or herself or by an attorney at the informal conference, or may be assisted by a non-attorney at the conference.

(e) If an employer fails to appear at an informal conference and fails to respond to the Division's notice granting the employer 10 days to contact the Division to reschedule the conference, the Department shall consider the employer to have withdrawn his or her request for hearing and to be liable for the unemployment and temporary disability assessment.

Amended by R.1996 d.221, effective May 5, 1996.

See: 28 N.J.R. 1183(a), 28 N.J.R. 2392(a).

Added (d) and (e).

### 12:16-22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### 12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad

testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

New Rule, R.1995 d.138, effective March 6, 1995.

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

### 12:16-22.6 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

Recodified from 12:16-22.5 by R.1995 d.138, effective March 6, 1995.

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

## SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW

### 12:16-23.1 Exempt services

(a) Persons who perform services and receive remuneration are employees under the Unemployment Compensation Law unless the services meet the Unemployment Compensation Law definition of independence set forth in N.J.S.A. 43:21-19(i)(6).

(b) The Unemployment Compensation Law lists certain categories of services as being exempt from Unemployment Compensation coverage. However, these services are exempt only if there is a corresponding exemption under the Federal Unemployment Tax Act ("FUTA") or the services are otherwise not subject to tax or coverage under FUTA.

1. If an employing unit pays remuneration for services not specifically listed as exempt under the provisions of FUTA and seeks an exemption under this section, the employing unit has the burden of proof to show that the services are either exempt under FUTA or otherwise not subject to the tax imposed by FUTA.

2. The Division of Unemployment Insurance/Disability Insurance Financing will hold such class of individuals or type of service in covered employment pending receipt of proof of exemption under N.J.A.C. 12:16-23.2 below and determination of exemption.

### 12:16-23.2 Evidence of FUTA exemption

(a) Evidence that services are not covered under FUTA may include among other things:

1. Private letter ruling(s) from the Internal Revenue Service;

2. An employment tax audit conducted by the Internal Revenue Service after 1987 which determined that there was to be no assessment of employment taxes for the services in question; however, the determination must not have been the result of the application of Section 530 of the Revenue Act of 1978;

3. Determination letter(s) from the Internal Revenue Service; and/or

4. Documentation of responses to the 20 tests required by the Internal Revenue Service to meet its criteria for independence. These tests are enumerated in IRS Revenue Rule 87-41.

(b) The Division reserves the right to examine the circumstances surrounding the relationship between the parties to determine if the conditions of the relationship with the employer have changed.

## SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

### Authority

N.J.S.A. 34:8-67 et seq., specifically 34:8-78.

### Source and Effective Date

R.2002 d.294, effective September 3, 2002.  
See: 34 N.J.R. 1892(a), 34 N.J.R. 3089(a).

### 12:16-24.1 Application and scope

(a) The rules in this subchapter set forth the requirements and methodology by which an employee leasing company, also known as a professional employer organization (“PEO”), shall register with the Commissioner of Labor, pursuant to P.L. 2001, c.260, N.J.S.A. 34:8-67 et seq.

(b) The provisions of this subchapter apply to all employee leasing companies as defined in N.J.A.C. 12:16-24.2.

### 12:16-24.2 Definitions

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

“Benefit experience” means the relationship between an employer’s contributions paid on his or her own behalf with respect to employment occurring during a specified period and benefits paid with respect to unemployment and temporary disability and charged against the account of the employer in whose employment such individual established base weeks constituting the basis of such benefits. Benefit experience for temporary disability purposes shall also take into account contributions paid by the employer’s workers.

“Client company” means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees performing services in New Jersey by the employee leasing company.

“Commissioner” means the Commissioner of Labor.

“Covered employee” means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

“Department” means the Department of Labor.

“Division of Revenue” means that unit of New Jersey State Government within the Department of Treasury which is responsible for the registration of employers for the payment of gross income taxes, unemployment and temporary disability contributions, and other State taxes.

“Employee leasing agreement” or “professional employer agreement” means an arrangement, under written contract, whereby:

1. An employee leasing company and a client company co-employ covered employees; and

2. The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company’s work force.

“Employee leasing company” or “professional employer organization” means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in N.J.S.A. 34:8-68.

### 12:16-24.3 Initial and annual registration

(a) An employee leasing company or professional employer organization, as defined in N.J.A.C. 12:16-24.2, shall register with the Commissioner or his or her designee. This registration is separate from, and in addition to, any statutory requirements to register as an employer in this State or to conduct business in this State.

1. The form for the initial registration of an employee leasing company or professional employer organization shall be prescribed by the Commissioner or his or her designee, and is available on the Department website at: [www.state.nj.us/labor/admin/forms.htm](http://www.state.nj.us/labor/admin/forms.htm), or may be requested by contacting the Department directly, by calling the Labor hotline at (609) 633-6400. This form requires the business to record its beginning date, the name of the business incorporation information, the names, social security numbers and home addresses of the owners, partners or responsible corporate officers, and relevant wage, salary and commission information, as well as indicating the status of the business in regard to various State and Federal contributory programs (for example, Unemployment Compensation).

2. An employee leasing company or professional employer organization shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.

3. The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of mailing. If the registration form is completed on the Department of Labor website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.

(b) After initial registration, an employee leasing company or professional employer organization shall register annually on a form prescribed by the Commissioner or his or her designee.

(c) The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

**12:16-24.4 Financial security requirements**

(a) An employee leasing company or professional employer organization shall submit a reviewed financial statement to the Commissioner or his or her designee with the initial registration and also with each annual registration on or before the dates detailed in N.J.A.C. 12:16-24.3(a)3 and (c).

1. Each reviewed financial statement shall incorporate a certification that it was prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of the initial or the annual registration or with a certification by the independent certified public accountant in accordance with generally accepted accounting principles stating that it is the most recent financial statement and that they have reviewed the financial statement within six months prior to the date of the initial or the annual registration and certify that there have been no adverse effects negatively impacting the minimum net worth of \$100,000.

2. Each reviewed financial statement shall demonstrate that the employee leasing company or professional employer organization has a minimum net worth of \$100,000.

(b) An employee leasing company or professional employer organization, which is not in compliance with (a) above, shall file with the Commissioner or his or her designee a security bond or deposit of securities with a current market value of \$75,000 on or before the dates detailed in N.J.A.C. 12:16-24.3(a)2 and 3.

1. The Commissioner or his or her designee may make a periodic review of the adequacy of the security furnished by the employee leasing company or profession-

al employer organization to determine if any adjustment may be necessary.

2. The Commissioner or his or her designee may sell the securities so deposited to the extent necessary to satisfy any unpaid unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee. The employee leasing company or professional employer organization will be notified of the sale of such securities and the amount used.

3. The Commissioner or his or her designee may also require the bond or deposit of securities described in (b) above if he or she finds that the employee leasing company or professional employer organization has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any Federal or State payroll taxes or unemployment and/or disability contributions when due, or for other good cause.

4. An employee leasing company or professional employer organization which has had its security reduced to satisfy any unemployment and/or disability taxes, interest, penalties and/or assessments or any wages, benefits or other entitlement due a covered employee, and has not had its registration rescinded, shall file with the Commissioner or his or her designee an additional security bond or deposit of securities which when combined with any unused portion of the prior security bond or securities will equal a current market value of \$75,000. Such additional securities must be received no later than 60 days after the notification of sale of such securities as set forth in (b)2 above.

5. The Commissioner or his or her designee may extend for good cause the date for complying with the security requirement for a period of up to 30 days beyond the original due date.

**12:16-24.5 Payroll tax certification**

(a) An employee leasing company or professional employer organization shall provide the Commissioner or his or her designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant on a form prescribed by the Commissioner or his or her designee that all applicable Federal and State payroll taxes have been paid on a timely basis.

(b) The payroll certification form shall be filed quarterly by the following dates:

<u>Quarter Ending</u>		<u>Due Date</u>	
March	31	May	30
June	30	August	29
September	30	November	29
December	31	March	1

(c) The Commissioner or his or her designee shall notify the client companies reported on the most recent registration form if an employee leasing company or professional employer organization fails to file its quarterly payroll tax certification within 10 days of the mailing of the notice of delinquency in accordance with N.J.S.A. 34:8-71.

#### **12:16-24.6 Workers' compensation insurance**

(a) It is the obligation of the employee leasing company to provide workers' compensation insurance for their covered employees. Policies may be issued by any insurance carrier licensed by the State of New Jersey. Policies shall indicate that the employee leasing company is the labor contractor for each client company, by name.

#### **12:16-24.7 Dissolution of employee leasing agreement**

(a) When one or more employee leasing agreements are to be dissolved, the employee leasing company or professional employer organization shall give advance notice of dissolution to the Commissioner or his or her designee. In the event that it is impracticable to give such advance notice, the employee leasing company or professional employer organization shall notify the Commissioner or his or her designee within 10 business days of such dissolution.

(b) Such notice shall contain the following information:

1. The name, address, and taxpayer identification number of the employee leasing company or professional employer organization;
2. The expected or actual date of dissolution; and
3. The name, address, and taxpayer identification number or Federal employer identification number of each client company for whom an employee leasing agreement is or will be dissolved.

(c) For each client company that leased its total workforce, or any part thereof, from the employee leasing company or professional employer organization for a period of less than two full calendar years, such notice shall include the names and social security numbers of the leased employees and the amount of taxable wages, employer unemployment and disability contributions and unemployment and disability benefit charges attributable to the client company during the duration of the leasing agreement.

#### **12:16-24.8 Rescission of the registration of an employee leasing company or professional employer organization**

(a) The registration of an employee leasing company or professional employer organization may be rescinded by the Commissioner, or his or her designee, for violations as set forth in N.J.S.A. 34:8-67 through 78 and for non-compliance with this subchapter. The rescission shall be effective as of the first day of the next calendar quarter.

(b) After the registration of an employee leasing company or professional employer organization has been rescinded, all of the client companies will be notified by the Commissioner or his or her designee that they are required to file reports and submit payment of contributions on their own behalf effective with the date of the rescission. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(c) A client company of an employee leasing company which has had its registration rescinded shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

#### **12:16-24.9 Dissolution of an employee leasing company or professional employer organization**

(a) Upon the dissolution of an employee leasing company or professional employer organization, all of the client companies shall file reports and submit payment of contributions on their own behalf effective with the date of dissolution. The rates assigned to the individual client companies shall be calculated in accordance with the terms of N.J.S.A. 34:8-73(b)(1) through (5).

(b) A client company which has dissolved its employee leasing arrangement shall register its business with the Division of Revenue, if such registration was not in effect prior to entering into the leasing agreement.

#### **12:16-24.10 Violations**

(a) If an employee leasing company knowingly and willfully fails to file a contribution or wage report by the due date, the Commissioner, or his or her designee, shall consider such failure as a separate violation for each client with whom the leasing company has an employee leasing agreement.

(b) If an employee leasing company fails to file a contribution or wage report or fails to remit payment within 15 days of the due date, the Commissioner, or his or her designee, shall consider such failure as egregious violations under N.J.S.A. 34:8-76c and shall result in rescission.

(c) In determining if rescission is an appropriate remedy, the Commissioner may also consider the following factors:

1. The record of previous violations by the employee leasing company;
2. The significance or scale of the violations;
3. The existence of outstanding reports or failure to pay;
4. Failure to respond to a request to produce records, documents, or proof of payment;

5. Submission of falsified or altered records, forms, documents, or proof of payment;
6. Whether the violations were willful or knowing; and
7. Good faith efforts by the employee leasing company to remedy any violations.

**12:16-24.11 Appeals**

The Commissioner, or his or her designee, shall notify the employee leasing company or professional employer organization in writing of the reason for rescission which notice shall include a "Request for Hearing" as provided for in N.J.A.C. 12:16-22.