

## CHAPTER 19

DEFINITIONS USED BY EMPLOYMENT SECURITY  
AGENCY AND SPECIAL EMPLOYMENT  
RELATIONSHIPS

## Authority

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

## Source and Effective Date

R.2000 d.259, effective May 26, 2000.  
See: 32 N.J.R. 1143(a), 32 N.J.R. 2244(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 19, Definitions Used by Employment Security Agency and  
Special Employment Relationships, expires on May 26, 2005.

## Chapter Historical Note

Chapter 19, General Rules, became effective prior to September 1,  
1969.

Chapter 19, General Rules, was repealed by R.1985 d.147, effective  
April 1, 1985. See: 16 N.J.R. 2488(b), 17 N.J.R. 820(b).

Chapter 19, Definitions Used by Employment Security Agency and  
Special Employment Relationships, was adopted as new rules by R.1995  
d.318, effective May 26, 1995. See: 27 N.J.R. 1518(a), 27 N.J.R.  
2408(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Definitions  
Used by Employment Security Agency and Special Employment Rela-  
tionships, was readopted as R.2000 d.259, effective May 26, 2000. See:  
Source and Effective Date.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. GENERAL PROVISIONS

- 12:19-1.1 Purpose
- 12:19-1.2 Definitions
- 12:19-1.3 Partnerships
- 12:19-1.4 Special employers

## SUBCHAPTER 1. GENERAL PROVISIONS

## 12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions  
to be used throughout N.J.A.C. 12:16 through 12:19, and to  
provide examples illustrating the definitions and, in some  
instances, exceptions to the definitions.

Amended by R.1995 d.318, effective June 19, 1995.  
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).

Corrected a citation.

## 12:19-1.2 Definitions

The following words and terms, when used throughout  
N.J.A.C. 12:16 through 12:19, shall have the following mean-  
ings unless the context clearly indicates otherwise:

“Agricultural labor” means the following activities:

1. Service performed on a farm in connection with  
cultivation of the soil; raising or harvesting any agricul-  
tural or horticultural product; raising, feeding, caring for,  
and managing livestock, bees, poultry or fur-bearing ani-  
mals; handling, packaging, or processing any agricultural  
or horticultural commodity in its unmanufactured state;  
repair and maintenance of equipment or real property  
used in the agricultural activity; and transport of agricul-  
tural or horticultural supplies or products if not in the  
usual course of a trucking business;

2. Service performed in a greenhouse or nursery if  
over 50 percent of the gross sales volume is attributable to  
products raised in the greenhouse or nursery; and

3. Service performed by a cooperative of which the  
producer of the agricultural product is a member if the  
service performed is incidental and necessary to the deliv-  
ery of the product to market in a finished state.

Agricultural labor does not include:

1. Service performed at a racetrack;
2. Service in the breeding, care, or boarding of domes-  
ticated animals of a kind normally found in a home, such  
as dogs and cats;
3. Service in a retail enterprise selling the product of  
an agricultural enterprise if the retail enterprise is not  
located on or contiguous to the site of production; or
4. Service in a retail enterprise located on or contigu-  
ous to the site of production if greater than 50 percent of  
the gross sales volume of the retail enterprise is attribut-  
able to items not produced at that site.

“Base of operations” means the place or fixed center of  
more or less permanent nature from which the employee  
starts work and customarily returns to in order to accom-  
plish any of the following:

1. Receive instructions from the employer;
2. Receive instructions from customers or other per-  
sons;
3. Replenish stocks and materials;
4. Repair equipment; or
5. Perform any other functions necessary to the exer-  
cise of a particular trade or business.

Examples: An individual reports to a New Jersey site daily to stock his or her repair truck and receive assignments for that day. The individual performs services both in New Jersey and other states. This individual must be reported by the employer to New Jersey as his or her base of operations is in New Jersey and some services are performed in New Jersey.

A salesperson, who is a New Jersey resident, works out of his or her home for a non-New Jersey entity. The entity does not provide office space for the salesperson. The salesperson receives his or her calls, correspondence, and communication from the employer at home. The salesperson sells in a variety of states and does not perform 90 percent or more of his or her services in any state. This salesperson must be reported by the employer to New Jersey as the base of operations is his or her home, which is in New Jersey, and some services are performed in New Jersey.

“Controller” means the Controller of the Department of Labor.

“Domestic service” means service of a personal nature performed outside of a business enterprise for a household. Domestic service is normally performed in a private residence, but may be performed in other settings such as a nursing home, or a yacht. A domestic service would include, but not be limited to, the following occupations: maids, butlers, cooks, valets, gardeners, chauffeurs, personal secretaries, baby-sitters, and nurses’ aides.

“Employing unit” means an entity which has in its employ one or more individuals performing services for it within New Jersey, and includes:

1. The State of New Jersey; its instrumentalities or political subdivisions or any instrumentality of New Jersey and one or more other states or political subdivisions; individual proprietorships; partnerships; associations; trusts; estates; limited liability companies; joint stock companies; domestic or foreign insurance companies and corporations; receivers; trustees in bankruptcy and their successors; and legal representatives of deceased persons.

“Employment” means any service performed by an individual for remuneration unless specifically excluded by statute or regulation.

“Good cause” means, as used in N.J.S.A. 43:21-7(c)(7)(A) and N.J.A.C. 12:16-18.1(b), any situation over which the employer did not have control and which was so compelling that it would prevent the employer from acting in a timely manner. Good cause does not include: negligence, including that of an agent such as an accountant or attorney; or a mistake of law or fact.

“Home to home salesperson” means an individual who sells door to door in a residential area, and does not mean an individual who sells on a lead basis or an individual who sells to a business clientele.

“Merchandise” means tangible personal property which would normally be found and used in a personal residence. Merchandise does not include:

1. Capital improvements such as siding or roofing, storm windows or doors, replacement windows or doors, or concrete sidewalks, steps, or driveways; or
2. Memberships in clubs, organizations or associations.

“Motor vehicle weighing 18,000 pounds or more” means, for purposes of N.J.S.A. 43:21-19(i)7(X), the aggregate weight of the gross unloaded weight of the truck or tractor and the gross unloaded weight of an attached trailer, if the normal use of the truck or tractor would require the use of that trailer.

“New Jersey service,” as defined in N.J.S.A. 43:21-19(i)(2), means the performance of meaningful and substantial duties of a position for which an employee was hired which is:

1. Localized in New Jersey;
2. Not localized in any other state and which is partially performed in New Jersey, and the employee’s base of operations is in New Jersey;
3. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform service in any state in which the employer has a base of operations, but the place from which the employer exercises general direction and control is in New Jersey; or
4. Not localized in any other state and which is partially performed in New Jersey and the employee does not perform any services in a state in which the employer has a base of operations or place of direction and control, but the employee’s residence is in New Jersey.

“Place from which service is directed and controlled” means the place from which the employer’s basic authority and general control emanates. This is not necessarily the place at which a supervisor directly supervises the performance of services under general instructions from the place of direction and control.

Example: A consultant performs services in a variety of states. The consultant does not have a base of operations and reports directly to the job site, where he or she receives communication and directions from his or her employer. The employer’s headquarters, from which the consultant receives general direction and control, are in New Jersey. Less than 90 percent of the services are performed in any one state. This individual must be reported by the employer to New Jersey since there is no specified base of operations, the place from which he or she is directed and controlled is in New Jersey, and some services are performed in New Jersey.

“Real estate broker” means a person or entity that:

1. Lists for sale, sells, exchanges, buys or rents, or offers to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein; or
2. Collects or attempts to collect rent for the use of real estate; or
3. Negotiates or offers to negotiate a loan secured or to be secured by a mortgage or other encumbrance; or
4. Conducts a public or private competitive sale of lands or any interest in lands; or
5. Sells lots or parcels of real estate on behalf of the owners of such real estate; and
6. Is licensed by the New Jersey Real Estate Commission.

“Real estate salesperson” means an individual who:

1. Is employed by and operates under the supervision of a licensed real estate broker; or
2. Sells or offers to sell, or buys or offers to buy or negotiate the purchase, sale or exchange of real estate; or
3. Solicits for prospective purchasers or lessees of real estate; or
4. Sells or offers to sell lots or other parcels of real estate; and
5. Is licensed by the New Jersey Real Estate Commission.

“Residence” means the principal place of abode for an individual as determined for a particular calendar year.

Example: A management consultant, who is a resident of New Jersey, performs consulting work for an entity in a variety of states, including New Jersey, at varying job sites. Less than 90 percent of his or her services are performed in any one state. The management consultant has no base of operations since he or she receives instruction from the employer at varying job sites. He or she performs no consulting services in the state from which direction and control is provided. This individual must be reported by the employer to New Jersey although there is no base of operations in New Jersey; this individual does not perform services in the state from which direction and control is provided, but this individual does live in New Jersey and has provided some services in New Jersey.

“Wholly commissioned” means an individual who receives a draw against commission where:

1. Any excess of draw over commission earned in an individual’s draw account is not forgiven upon separation from service, whether voluntary or not; and
2. A settlement of the draw account must be made at least once in each calendar year with a repayment to the

employing unit by the commissioned individual if the draw exceeds commissions earned.

Amended by R.1995 d.318, effective June 19, 1995.  
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).  
Neutralized gender.

### 12:19-1.3 Partnerships

(a) A separate registration number and experience rating shall be assigned to each partnership that is composed of identical partners with identical interests, if all of the following conditions are met:

1. Each separate partnership joins in such a request to the Controller or the Controller’s designee or the Controller or the Controller’s designee determines that individual reporting is appropriate;
2. A separate written partnership agreement exists for each partnership;
3. The accounting records for each partnership are separately maintained; and
4. There is no commingling of the employment of the two or more partnerships.

Amended by R.1995 d.318, effective June 19, 1995.  
See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).

In (a) substituted “that is” for “of a group of two or more partnerships”; and extended (a)1 to the Controller’s designee.

### 12:19-1.4 Special employers

(a) The following situations outline special employment relationships which exist for tax purposes:

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:
  - i. The agreement between the farmer and the crew leader complies with all Federal and State laws and regulations, including the payment of applicable employment taxes and minimum wage;
  - ii. The crew leader has completed and submitted Department of Labor Form UC-1CL, “Status Report of Crew Leader Employing Unit”; and
  - iii. The crew leader has met all the requirements of the Federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 et seq., and the New Jersey Crew Leader Registration Act, N.J.S.A. 34:8A-7 et seq.
2. The entity for whom the services of the crew are performed shall be considered the employer of both the crew leader and the crew if the registration of the crew leader under the Federal Migrant and Seasonal Agricultural Worker Protection Act and the New Jersey Crew Leader Registration Act is revoked. The entity will be considered the employer from the first day on which services were performed following revocation.

(b) For purposes of N.J.S.A. 34:8-24 et seq., an employment agency is not an “employer,” but maintaining a license as an employment agency in no way precludes the Commissioner of Labor from determining that the employment agency is an “employer” for purposes of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

1. Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the Department of Labor for a determination as to their status under N.J.S.A. 43:21-1 et seq.

Amended by R.1995 d.318, effective June 19, 1995.

See: 27 N.J.R. 1518(a), 27 N.J.R. 2408(a).

In (a)1.ii renamed the form; renumbered (a)3 as (b) and (a)3.i as (b)1; and in (b)1 substituted “Department of Labor” for “Controller’s Chief Auditor”.