

- 12:17-20.6 Mandatory participation
 12:17-20.7 Exempted individuals
 12:17-20.8 Appeals

SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES

- 12:17-21.1 General provisions
 12:17-21.2 Reasons for separation
 12:17-21.3 Request for separation information
 12:17-21.4 Misrepresentation or false information
 12:17-21.5 Determination and appeals

SUBCHAPTER 1. PURPOSE AND SCOPE

12:17-1.1 Purpose and scope

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. DEFINITIONS

12:17-2.1 Definitions

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

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

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

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

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

“Department” means the New Jersey Department of Labor.

“Deputy” means a representative of the Division within the New Jersey Department of Labor responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Director” means the Director of the Division within the New Jersey Department of Labor responsible for the administration of the Unemployment Insurance Benefit Payment Program.

“Division” means the Division within the New Jersey Department of Labor responsible for the administration of the Unemployment Insurance Benefit Payment Program.

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

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

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

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

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

“Interstate claimant” means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that in accordance with the Interstate Benefit Payment Plan commuting would result in excessive travel time or cost to the claimant.

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

“Maximum benefit amount” means the total benefits payable to a claimant equal to three-quarters of the individual’s base weeks with all employers in the base year multiplied by the individual’s weekly benefit rate. This amount shall not exceed 26 times the individual’s weekly benefit rate.

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

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

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

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

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

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

“Weekly benefit rate” means 60 percent of the claimant’s average weekly wage, subject to a maximum of 56½ percent of the Statewide average weekly remuneration paid to workers by employers subject to the Unemployment Compensation Law.

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

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

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

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

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

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

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

SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION

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

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

2. "Stoppage of work" means a substantial curtailment of work which is due to a labor dispute. Justification for the labor dispute may not be considered. An employer is considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met. There is no distinction made with regard to whether the work stoppage is caused by a strike or a lockout.

(b) A claimant shall be disqualified for benefits if he or she is unemployed due to a work stoppage which occurs because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed. Separate branches of work which are commonly conducted as separate business in separate premises or are conducted in separate departments of the same premises, shall be deemed to be a separate factory, establishment, or other premises. The individual shall be disqualified if:

1. He or she is participating in, financing or directly interested in the labor dispute; and
2. Immediately before the work stoppage began, he or she belongs to a grade or class of workers employed at the premises which are participating in, financing or directly interested in the dispute.

(c) A claimant shall not be disqualified for benefits in accordance with N.J.S.A. 43:21-5(d):

1. If the claimant was separated from employment for reasons which occurred prior to the labor dispute, or was laid off due to lack of work without a definite recall date, even if the layoff was caused by a labor dispute at an industry upon which the employer is dependent;
2. From the date the claimant was discharged during the labor dispute, however, this shall not preclude a determination of disqualification under other provisions of the law; or,
3. The employer has permanently closed and ceased operations, has commenced bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Code, has sold the business and its assets or has permanently relocated.

12:17-12.3 Employees on leave of absence

(a) A voluntary and mutually agreed upon leave of absence between an employer and employee connotes a continuity of employment. An individual on an approved leave of absence is not considered unemployed under the Unemployment Compensation Law and any claim for benefits filed during this period shall be invalid except, if the leave of absence is granted in part due to disability or a projected disability of the individual, the validity of any claim filed under N.J.S.A. 43:21-4(f) shall not be effected by the leave of absence while the claimant is disabled from work.

(b) The failure of an employer to grant or extend a personal leave of absence for other than the individual's

personal health reasons does not establish good cause attributable to such work for the individual to leave such employment provided the denial was not in violation of Federal or State Laws including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. which would provide for such leave.

(c) Any request for a leave of absence for personal health reasons of an individual must be supported by competent medical certification.

(d) However, if an individual's request for a leave of absence is denied, and he or she takes the leave, any termination of employment shall be reviewed as a voluntary leaving of work issue unless the reason for the leave is related to the individual's personal health, or if the leave is covered by any Federal or State law, including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. regulation or other policy, bargaining contract or contract of hire.

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

In (d), substituted "However, if" for "If" preceding "an individual's request".

12:17-12.4 School employees

(a) An employee of an educational institution shall be ineligible for benefits for any week that begins during the period between academic years or terms and during vacation periods and holiday recesses, if the employee has reasonable assurance of returning to work in any such capacity, during the succeeding academic year or term or after the vacation period or holiday recesses.

1. The term "reasonable assurance" of returning to work means a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year, term, or remainder of a term. "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

2. Reasonable assurance of recall does not exist when an individual performs full-time services under an annual contract and during the next academic year or term is offered day-to-day substitute work.

3. An employee who is employed for all or part of a term in a day-to-day substitute position has reasonable assurance of recall if he or she is placed on a substitute list for the next academic year or term.

(b) Where reasonable assurance is subsequently given to the individual between school years or terms, any ineligibility under this section begins the first calendar week following the date the individual received reasonable assurance of recall. If such assurance is given on a Sunday, that Sunday would be the first day of ineligibility.

(c) Where reasonable assurance of recall exists, claims involving both school and non-school wage credits shall be processed as follows:

1. Initially a monetary determination shall be made using all covered base year employment wages.

2. If a claimant is determined to be ineligible for benefits and if he or she has sufficient non-school employment and earnings to establish a valid claim, an adjusted monetary determination shall be made solely on the non-school base year employment. Benefits would be payable under this adjusted monetary determination.

3. Benefits claimed and paid for prior to or subsequent to any denial periods shall be paid to eligible claimants at the initial monetary rate determined in (c)1 above.

(d) If a claimant employed in a non-professional capacity is denied benefits, solely because he or she had reasonable assurance of returning to work, the claimant may receive benefits retroactively if the educational institution subsequently does not offer him or her an opportunity to return to work and the following requirements are met:

1. The claimant complied with continued claims reporting requirements provided in N.J.A.C. 12:17-4; and

2. The claimant is otherwise eligible for benefits.

(e) An individual who is employed under a 12-month contract and offered a 10-month contract in the next academic year of term shall not be ineligible under these provisions.

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

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

In (b), rewrote the first sentence.

12:17-12.5 Claimant engaged in a temporary business

(a) A claimant who seeks to augment his or her income through a temporary business may be eligible to receive unemployment benefits only if he or she is available for work, actively seeking employment and otherwise meets the eligibility requirements set forth in the Unemployment Compensation Law. "Temporary business" means any work performed by an unemployed person for the purpose of augmenting his or her unemployment benefits while actively seeking employment.

(b) In determining if an individual is available for work and eligible for benefits, the following criteria shall be considered:

1. Income received from the temporary business measured against both the prior salary the individual received and the salary sought in the work search;

2. The hours dedicated to the temporary business versus the efforts expended to seeking work in outside employment on the general labor market;

3. The continued availability of the individual to a broad range of employment appropriate to his or her skills, training and work experience; and

4. The accouterments (that is, furnishings, equipment and other investments) of permanent business established by the claimant.

(c) The fact that substantial income may not have been received during the start-up period of the individual's temporary business is not a determining factor in deciding whether the individual is available for work.

(d) The income received from a temporary, unincorporated business is not considered wages for unemployment benefit and contribution purposes.

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

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

In (d), inserted ", unincorporated" following "temporary".

12:17-12.6 Student disqualification for benefits

(a) An individual, who is a student in full-time attendance at, or on vacation from, an educational institution, is disqualified for benefits, unless:

1. The individual is attending a training program approved by the Division to enhance the individual's earning power and/or employability; or

2. During the claimant's base year, the individual, who during periods other than established and customary vacation periods or holiday recesses at the educational institution, has earned in employment sufficient wages while in full or part-time attendance at an educational institution to establish a claim for benefits.

3. For purposes of this section, full-time attendance is defined as:

i. Consisting of not less than 20 hours per week of classroom work and structured assignments for individuals in attendance at an educational institution other than an institution of higher education;

ii. Consisting of not less than 12 credit hours for individuals pursuing a degree at an institution of higher education; or

iii. Consisting of a minimum of nine credit hours for individuals pursuing a post-graduate degree at an institution of higher education.

12:17-12.7 Limiting availability to less than full-time work

(a) An individual who limits his or her availability to part-time work shall be ineligible for benefits unless the following conditions are met:

1. The individual has worked in part-time work during a substantial portion of the individual's base year. A "substantial portion" of the individual's base year is defined as earning sufficient wage credits in part-time employment to establish a claim for benefits;

2. There is good cause for such limitation. For the purposes of this subsection, the term "good cause" is defined as substantial circumstances which prevent the individual from accepting full-time employment, including, but not limited to, childcare, eldercare, ill health, need to care for ill or disabled family member, and school attendance;

3. There is sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and

4. The individual is available for enough weekly hours to be able to earn remuneration equal to at least the individual's weekly benefit amount.

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
In (a), rewrote 2.

SUBCHAPTER 13. PROCEDURES FOR WAGE-BENEFIT CONFLICTS

12:17-13.1 Pre-determination notice and fact-finding

(a) Where there is evidence that a claimant may have been employed during a period(s) for which he or she received unemployment benefits and/or temporary disability benefits, the Division shall afford the claimant an opportunity for a fact-finding interview before any determination is made with respect to the alleged wage-benefit conflict.

(b) The Division shall mail a pre-determination notice to the claimant's last known address of record, that evidence exists of a possible wage-benefit conflict as soon as possible after the evidence is discovered.

(c) The pre-determination notice shall specify the benefit periods at issue and the employer(s) involved. It shall provide the claimant with the opportunity to rebut or confirm the possible wage-benefit conflict, and offer the claimant an opportunity for a fact-finding interview to review and/or rebut the information.

12:17-13.2 Fact-finding interview

(a) Upon receipt of a claimant's request for a fact-finding interview, the Division will schedule a fact-finding interview before a deputy. The Division shall notify the claimant by mail of the date, time and place of the fact-finding interview.

(b) The claimant may be represented at the fact-finding interview by himself or herself, an attorney or a non-attorney representative at the claimant's expense.

(c) Upon conclusion of the fact-finding interview, the Bureau of Benefit Payment Control shall issue a written determination and may refer the matter to the Attorney General for criminal prosecution.

(d) The written determination shall advise the claimant and other interested parties of appeal rights.

12:17-13.3 Claimant's failure to appear

If the claimant fails to report or to otherwise respond to the pre-determination notice within 10 days, or fails to report for any fact-finding interview subsequently scheduled, the Division shall issue a written determination on the facts available, and mail a copy thereof to the claimant. The written determination shall advise the claimant and other interested parties of appeal rights in accordance with N.J.A.C. 12:20 and 1:12.

SUBCHAPTER 14. DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT BENEFIT PAYMENTS

12:17-14.1 Statutory period for demanding refund

The Division shall issue a demand for refund of unemployment benefits in each case when a determination of overpayment is made. Except in the case of fraud, an individual shall be notified of the demand for refund within four years after benefits were received. Notification is accomplished when the demand of refund is mailed to the claimant's last known address. In case of fraud, the matter may be forwarded to the Attorney General for investigation and criminal prosecution.

12:17-14.2 Waiver of recovery of benefit overpayment

(a) The claimant or the claimant's representative may request full waiver of recovery of an overpayment of benefits. Such waiver may be granted by the Director, with the Controller's concurrence providing the claimant did not misrepresent or withhold any material fact in obtaining benefits and the recovery of the overpayment, as determined by the Director, would be patently contrary to principles of equity. A claimant who is overpaid benefits shall be liable to refund the amount overpaid unless a request is made that the Director waive the right to recover the overpayment, and:

1. The overpayment did not occur due to a claimant's willful misrepresentation or nondisclosure to the Division; or

2. The claimant is deceased or permanently disabled and no longer able to work.

(b) In determining fault, the Director shall consider the capacity of the particular claimant to recognize the error resulting in the overpayment. The claimant will not be considered at fault if the benefits were retained because of the claimant's reasonable good faith reliance on the Division. A claimant who negligently reports or fails to report information, which results in an overpayment, is at fault and is liable for repayment.

1. A claimant's current receipt of Social Security disability benefits may be deemed evidence of current permanent disability, which may constitute a waiver. The Director may also accept a diagnosis of permanent disability from the claimant's physician. In addition, the Director has the discretion to require the claimant to submit to an impartial physical examination by a legally-licensed physician at the expense of the State.

(c) Any appeal from a denial of a waiver of recovery will be in accordance with N.J.A.C. 1:12, the rules governing unemployment benefit cases.

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

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

Rewrote (a); added a new (b); recodified former (b) as (c).

12:17-14.3 Requirements for repaying overpaid benefits

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

12:17-14.4 Overpayment of benefits involving two determinations of entitlement

(a) A determination of entitlement is defined to mean determinations that state that a claimant is both eligible and not disqualified.

(b) If there are two determinations of entitlement, benefits for such period of entitlement shall be paid regardless of the outcome of any appeal which may be taken.

(c) If benefits are paid under (b) above, no claimant shall be required to repay such benefits to the Division and no employer's account shall be charged with benefits so paid through the completed calendar week prior to the date of the appeal hearing, if the decision is finally reversed.

SUBCHAPTER 15. BENEFIT ELIGIBILITY FOR CLAIMANTS EMPLOYED BY TEMPORARY HELP SERVICE FIRMS

12:17-15.1 Definitions

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

"Continuing employment" means employment offered no later than the next business day following the end of the last assignment, within the scope of a written agreement or, if no written agreement exists, under similar terms and conditions of the last assignment; and with a definite starting date of no more than four weeks from the end date of the last assignment.

"Temporary help service firm" means a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary, excess or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, pays Federal Social Security taxes and State and Federal unemployment insurance taxes and carries workers' compensation insurance as required by State law. A temporary help service firm is required to comply with the provision of N.J.S.A. 56:8-1 et seq.

"Written agreement" means a signed understanding between a temporary help service firm and the employee which outlines the scope of employment and includes the general type of work to be performed, salary parameters, and acceptable commuting distance for assignments. The agreement shall require that the employee contact the temporary help service firm upon completion of an assignment and state that unemployment benefits may be denied for failure to fulfill this obligation.

12:17-15.2 Employment with temporary help service firm under a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing work, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these reviews shall be imposed during the week the work was to begin. If otherwise eligible, benefits will be payable until the start date of the disqualification.

(b) An individual's claim which is based on employment with a temporary help service firm shall be reviewed as a voluntary leaving of work issue if the individual fails to contact the temporary help service firm for reassignment by the end of the next business day after completion of the last assignment unless a greater time period is specified in the written agreement.

12:17-15.3 Employment with temporary help service firm without a written agreement

(a) If an individual whose claim is based on employment with a temporary help service firm is offered an assignment which constitutes continuing employment and fails to accept such work, the refusal of work shall be reviewed as a voluntary leaving work issue. If the assignment offered does not constitute continuing employment, then any refusal of such work shall be reviewed as a refusal of suitable work issue. Any disqualification which may result from these

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

(b) An individual's claim which is based on employment with a temporary help service firm shall be reviewed as an available for work issue if the individual fails to contact the firm for reassignment by the end of the next business day after completion of the last assignment and there is no written agreement between the temporary help service firm and the individual.

ELIGIBILITY CONDITIONS FOR TEMPORARY HELP SERVICE FIRM CLAIMANTS

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

SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

12:17-16.1 Cooperation with other states

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

12:17-16.3 Requirement to register for work

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

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

12:17-16.2 Benefit rights of interstate claimants

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

12:17-16.4 Reporting requirements for interstate benefit claims

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

(b) For the purpose of this subchapter, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a restriction that prohibits the payment of benefits to an individual employed in a seasonal industry during the off season.

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

(c) With respect to claims for weeks of unemployment in which an individual was not working for his or her regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim which is filed late. If a claimant files more than one reporting

Amended by R.2003 d.276, effective July 7, 2003.
See: 35 N.J.R. 1527(a), 35 N.J.R. 2874(b).
In (b), substituted "to an individual" for "to individual" following "the payment of benefits".

period late without "good cause" as defined under N.J.A.C. 12:17-4.1(b), an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

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

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

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

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

12:17-16.6 Appeals of benefit determinations

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

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

12:17-16.7 Reciprocal claims with Canada

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

SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

12:17-17.1 Notice and proof of disability

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

(b) Proof of disability on which a claim for benefits under the disability during unemployment program is based shall be furnished by any claimant who expects to be or has been totally unable to perform any work and is under the care of a licensed physician, dentist, podiatrist, chiropractor, practicing psychologist or optometrist. Such proof may also be furnished by the claimant's authorized representative. Additional medical certification shall be filed as proof of continued disability, when requested by the Division.

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

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

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

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

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

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

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

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

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

12:17-18.5 Appeals

(a) Denials of grants under the SEA Program may be appealed in accordance with N.J.A.C. 12:23-3.7 concerning appeal procedures for the denial of training grants.

(b) Denials of claims for SEA allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

(c) Denials of grants in combination with denials of Self-Employment Assistance allowances may be appealed in accordance with N.J.A.C. 1:12 concerning unemployment compensation cases.

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

12:17-18.6 Overpayment of self-employment assistance allowances

Overpayment of SEA allowances improperly paid for any reason shall be recovered by the Department by offset of future unemployment benefits or in any other manner as provided in N.J.S.A. 43:21-1 et seq.

SUBCHAPTER 19. VOLUNTARY WITHHOLDING OF FEDERAL INCOME TAX FROM UNEMPLOYMENT BENEFITS
12:17-19.1 Notice to claimants of voluntary withholding of Federal income tax from unemployment benefits

(a) An individual receiving unemployment benefits shall be notified at the time he or she files a claim for benefits that unemployment benefits are subject to Federal income tax, the requirements pertaining to estimated tax payments and that the individual may elect to have Federal income tax deducted and withheld from his or her unemployment benefit payment at the amount specified in the Internal Revenue Code.

(b) The individual may change a previously elected withholding status once during the benefit year of a claim by written request to the Division.

Amended by R.2001 d.458, effective December 3, 2001.
See: 33 N.J.R. 3303(a), 33 N.J.R. 4128(a).

In (a), substituted "at the" for "in an" following "unemployment benefit payment", and deleted "equal to 15 percent of the payment as" preceding "specified in".

12:17-19.2 Transfer of withheld unemployment benefits

Amounts deducted and withheld from unemployment benefits shall remain in the unemployment fund until transferred to the Federal taxing authority as a payment of income tax. The Commissioner shall follow all procedures specified by the United States Department of Labor and the

Internal Revenue Service pertaining to the deducting and withholding of income tax.

12:17-19.3 Other withholdings

(a) Amounts shall be deducted and withheld under this subchapter only after amounts are deducted and withheld for any overpayments of unemployment benefits, child support obligations or any other amounts required to be deducted and withheld under the New Jersey Unemployment Compensation Law or Federal law.

(b) Amounts deducted and withheld for overpayments of unemployment benefits, child support obligations or any other reason are considered paid to the claimant.

SUBCHAPTER 20. WORKER PROFILING AND REEMPLOYMENT SERVICES
12:17-20.1 Purpose and scope

(a) All new claimants who file for regular unemployment compensation shall be profiled in accordance with Federal requirements set forth at 42 U.S.C. § 503(j), incorporated herein by reference, as amended and supplemented.

(b) Profiling is a system that:

1. Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
2. Refers identified claimants early in the claims series to reemployment services;
3. Collects follow-up information relative to the services provided to such claimants and the employment outcome for such claimants; and
4. Meets other such requirements as the U.S. Secretary of Labor determines are appropriate.

12:17-20.2 Definitions

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

"Early in the claims series" means no later than the fifth week from the date of claim.

"New claimant" means any individual who files an initial or additional claim for benefits, and receives a first payment early in the claims series.

"Reemployment services" means job search assistance and job placement services, such as counseling, occupational testing, providing occupational and labor market information, assessment, job search workshops, job clubs, referrals

to employers, entrepreneurial training, business counseling, and other similar services, and does not mean vocational skills and/or education training.

“Regular compensation” means compensation payable under any state unemployment compensation law, other than extended compensation and additional compensation. This includes Unemployment Compensation for Ex-service members (UCX), Unemployment Compensation for Federal Employees (UCFE) and Combined Wage Claims (CWC).

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

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

In “Reemployment services”, deleted “and” following “testing”, “skills” following “information,” and “and” following “clubs”.

12:17-20.3 Identifying claimants

(a) All claimants receiving full first payments within 35 days after the date of their claim will be placed in a potential profiling pool. The following individuals will be screened out of the pool:

1. Claimants who receive first payments that are for partial unemployment;
2. Claimants with a definite recall date or in a seasonal industry with a strong likelihood of recall;
3. Claimants who seek work through an approved union hiring hall; and
4. Claimants who have an interstate claim. (Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.)

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

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

Rewrote the section.

12:17-20.4 Statistical modeling process

(a) Claimants who are not excluded by the factors specified in N.J.A.C. 12:17-20.3 shall be passed through a statistical modeling process developed by the Division of Program Planning, Analysis and Evaluation within the New Jersey Department of Labor, to determine their probability of exhausting benefits based on coefficients assigned to non-discriminatory variables, which shall include industry and/or occupation and may include, but are not limited to, the following:

1. Education;
2. Job tenure; and
3. Local area unemployment rate.

(b) Identified individuals shall be assigned a profiling score and ranked in order of probability of benefit exhaustion on a daily basis.

(c) The following characteristics shall not be used in the profiling system:

1. Age;
2. Race or ethnic group;
3. Gender;
4. Color;
5. National origin;
6. Disability;
7. Religion;
8. Political affiliation; and
9. Citizenship.

12:17-20.5 Selection

(a) The highest ranked individuals shall be selected to attend an orientation session where the reemployment service program and the various services available shall be explained.

(b) Selection for participation in reemployment and other services shall be done on a weekly basis.

(c) The number of individuals selected to attend the orientation sessions shall be dependent upon the ability of the service provider to provide reemployment services.

(d) Individuals not selected for the orientation shall be returned to a candidate pool for as long as the selection date equals or is within 35 days of the date of claim.

12:17-20.6 Mandatory participation

(a) Unless exempted under N.J.A.C. 12:17-20.7, claimants scheduled for an orientation session shall attend and claimants referred for services shall participate in the services offered in order to maintain eligibility for unemployment benefits. However, no individual shall involuntarily be required to attend or participate in vocational skills and/or education training.

(b) The eligibility for unemployment benefits of an individual who fails to participate as requested shall be adjudicated under N.J.A.C. 12:17-4.

(c) Interstate claimants shall be exempted from participation until the United States Department of Labor develops procedures for including them in worker profiling.

12:17-20.7 Exempted individuals

(a) Individuals shall be exempted from reemployment services required under this subchapter if they:

1. Were incorrectly profiled (that is, an error was made on initial claim or in data entry);
2. Have returned or are returning to full-time work;
3. Are receiving similar reemployment services at the time of profiling;