

**CHAPTER 16**

**CONTRIBUTIONS, RECORDS AND REPORTS**

**Authority**

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

**Source and Effective Date**

R.1995 d.138, effective February 9, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

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

Chapter 16, Contributions, Records and Reports, expires on February 9, 2000.

**Chapter Historical Note**

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969. Subchapter 10, Hearings, was amended by R.1984 d.459, effective October 15, 1984. See: 16 N.J.R. 2240(a), 16 N.J.R. 2821(a). Chapter 16 was entirely revised by R.1985 d.147, effective April 1, 1985. See: 16 N.J.R. 2488(b), 17 N.J.R. 820(b). 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 Subchapter 10 was repealed and Subchapter 22, Hearings, was adopted as R.1989 d.208, effective April 17, 1989.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 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 was readopted as R.1995 d.138. See: Source and Effective Date. As a part of R.1995 d.138, Subchapter 11 was recodified as Subchapter 10, a new Subchapter 11, Special Employment Situations, was adopted, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a). See, also, section annotations.

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**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.

4. Payment of unused sick leave made to an employee while still in employment.

(c) Those types of sick leave payments deemed benefits and therefore non-taxable are:

1. Benefits paid from the State Plan for temporary disability insurance;
2. Benefits paid by an insurance carrier under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
3. Benefits paid by a union under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
4. Benefits paid by the employer under an approved self-insured Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);
5. Benefits paid for work related injury under Workers' Compensation;
6. Benefits paid to employees in the public sector for work related illness under Sick Leave Injury (SLI);
7. Payment of sick leave made after retirement or separation from employment.

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

#### 12:16-4.3 Fringe benefit payments

(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.

(b) Taxable fringe benefits may include:

1. Vacation pay (both before and after dismissal);
2. Separation/severance pay (if made under a contractual obligation or by custom);
3. Guaranteed annual wage payments;
4. Difference between regular salary and jury duty pay;
5. Employer payments to employees' IRA;
6. Draw against future earnings (taxable when paid) unless the employer takes legal steps to recoup the overpayments;
7. Payment of employee's portion of Federal or State income tax unemployment/disability insurance taxes, or social security tax.
8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;
9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses; and

10. Expense allowances for which no accounting is made to the employer.

(c) Non-taxable fringe benefits may include:

1. Employer payments to retirement plans including, SEP-IRA plans (See (d) below);
2. Payments to hospitalization and medical/dental plans, and payments made under such plans;
3. Payments to union welfare funds;
4. Life insurance premiums;
5. Tuition reimbursements and payments.

(d) In general, the entire gross remuneration for services rendered by an employee is taxable up to the maximum yearly wage base including amounts deducted for payment into a deferred savings program that lets the employee set aside money for his or her retirement.

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): added 8-10.  
Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.4 Section 401(k) Plans

Effective January 1, 1984, employer contributions to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

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

#### 12:16-4.5 Push payments

(a) Push payments are commission or bonus type payments made by a manufacturer to sales persons for "pushing" a certain product or product lines. These may also be referred to as push money, premiums, or incentive payments. Push payments take differing formats and are made in varying manners.

1. Push payments made directly by a manufacturer to its own sales-persons are taxable.
2. Payments made by one entity to employees of another are taxable remuneration to the actual employer when made pursuant to a contractual obligation, written or oral, expressed or implied.

#### 12:16-4.6 Officer's remuneration

(a) For the purpose of the Unemployment Compensation and Temporary Disability Benefits Laws, each officer of a corporation receiving remuneration for any personal services

performed for that corporation shall be considered to be in its employ, and such payments shall be taxable.

(b) An election to report under the Small Business Corporation provisions of Section 1368 of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. Reasonable remuneration as determined through facts and circumstances, shall be considered wages for benefit and contribution purposes when paid to officers of corporations having made such an election if the officers perform any services.

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

#### 12:16-4.7 Back pay, residuals, aliens

(a) Back pay awards are taxable remuneration where the discharge from employment was held invalid and reinstatement of the job ordered. Back pay is not taxable if considered damages for an illegal act without job reinstatement.

(b) Residual payments made to entertainers for reuse of commercial recordings are taxable if the original services were performed in this State.

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number.

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

At (c) deleted all reference to Federal Regulation 31.3306(c)(18)-1, added, "All wages paid to aliens are taxable and reportable ...".  
Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.8 Other remuneration

(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from an employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employing unit for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations.

(b) The Controller or his or her designee shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. Where a money value for board and room, meals and lodging, or for any of such items, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon shall be deemed the cash value of such item or items.

2. The Controller or his or her designee shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—35 percent of the current taxable wage base divided by 52;

ii. Meals per day—20 percent of the current taxable wage base divided by 260;

(1) If less than 3 meals per day, the individual meals shall be valued as follows:

(A) Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;

(B) Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;

(C) Dinner (meals served between 4:00 P.M. and 12:00 midnight)—40 percent of meals rate; and

iii. Lodging per week—15 percent of the current taxable wage base divided by 52.

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

Amended by R.1986 d.23, effective February 3, 1986.  
See: 17 N.J.R. 2859(a), 18 N.J.R. 284(a).

Remuneration rates raised.

Amended by R.1989 d.303, effective June 5, 1989.  
See: 21 N.J.R. 690, 21 N.J.R. 1576(a).

Full board and room, meals and lodging rates changed from dollar amounts to percentages of the current taxable wage base divided by 52, in (c). Method of computation of dollar amounts added at (d). Public notice specifying dollar amounts for categories in (c).  
See: 21 N.J.R. 3564(c).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 22 N.J.R. 3057(c); 23 N.J.R. 2787(a); 24 N.J.R. 3182(a); 25 N.J.R. 6067(a); 26 N.J.R. 4228(c).

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.

See: 28 N.J.R. 4121(b).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

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).

**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 deter-

mined 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).

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**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) 87.

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 as follows:

Quarter Ending	Due Date
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

(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).

### 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.

(b) The first payment of such an employer becoming liable in the course of a calendar year shall include employer contributions with respect to all wages paid for employment from the first day of subjectivity in the calendar year. Subjectivity is defined as the employer's contribution date as determined by the Controller or his or her designee. (See N.J.A.C. 12:16-5.2 with respect to due dates.)

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

### 12:16-5.5 Installment payments

The Controller or his or her designee may permit the payment of liability in installments, but if any installment is not paid on or before the due date, the total amount of the unpaid liability shall become payable upon notice and demand 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).

### 12:16-5.6 Voluntary payment of additional contributions

(a) A voluntary payment of an additional contribution must be made within 30 days after the date of mailing of the Form AC-174.1, Notice of Employer Contribution Rate, unless, for good cause, the date of payment has been extended by the Controller or his or her designee for not more than an additional 60 days or October 28, whichever is earlier. A request for an extension for good cause must be made in writing to the Controller or his or her designee within the initial 30 day period.

(b) No payment forwarded as an additional contribution will be applied to the recomputation of an employer's rate for the current tax year (July 1–June 30) if the employer has any reporting or payment delinquency as to any period prior to the current tax year. In such case, the remittance will be first applied to the past indebtedness and the balance, if any, will be considered as an additional contribution.

(c) Any adjustment resulting from the payment of an additional contribution shall be made only in the form of a credit against accrued or future contributions.

(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 five-eighths of one percent of the taxable wage base for periods prior to January 1, 1993 and after December 31, 1997 or six-tenths of one percent for periods beginning January 1, 1996 and ending December 31, 1997, 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 six-tenths of one percent for periods beginning January 1, 1993 and ending December 31, 1995, 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, 1993 and ending December 31, 1997, 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).

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

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

1. The employer registration number assigned by the Controller or his or her designee;
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).

**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).

### 12:16-13.7 Wage reporting

(a) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer 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) 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.

(c) 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.

### 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.

(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).

#### 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**

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

**12:16-15.1 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.

**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;

1. Either the predecessor or successor in interest shall report the transfer and acquisition and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file form UC-47 within 30 days from the date of mailing thereof.

3. The employment experience of the predecessor employer with respect to the portion of the organization, trade or business, or assets to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) The predecessor and successor in interest may choose to have the employment experience transferred either on an actual or percentage basis.

1. Under the first option, the actual portion of the organization, trade or business, or assets which have been transferred is both distinguishable and identifiable and can be supported through the furnishing by the predecessor and successor in interest of all of the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer.

2. Under the second option, the portion of employment experience to be transferred, which is both distinguishable and identifiable from the predecessor to the successor in interest, is determined by taking a percentage of the number of employees transferred from the predecessor to the successor in interest as of the date of acquisition.

3. Only one of the options may be selected to transfer contributions, benefit charges, three and five year taxable wage average and final experience rate from the predecessor to the successor in interest.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).  
Formerly "Rate following acquisition".

#### Case Notes

Law firm no longer entitled to certain unemployment credits after partial transfer of business to new entity. *Rubin v. Department of Labor*, 96 N.J.A.R.2d (LBR) 1.

#### 12:16-18.4 Rate following transfer of predecessor's experience in part

(a) A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of transfer to the following July 1.

(b) The transfer of a portion of employment experience from a predecessor to a successor in interest will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective the following July 1.

Repeal and New Rule, R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Formerly "Assignment of contribution rates for interim periods".

### SUBCHAPTER 19. BENEFIT CHARGES

#### 12:16-19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to whom such determination relates, and when the benefit payment is made, the Department shall send notification to the employer against whose account the benefits are to be charged on a quarterly basis.

Amended by R.1987 d.104, effective February 17, 1987.  
See: 18 N.J.R. 1682(a), 19 N.J.R. 363(a).  
Defined who should send notification.  
Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-19.2 Annual summary statement

All employers shall be furnished an annual summary statement of benefits charged to their accounts.

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

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

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

(a) In order to qualify for the exemption provided by N.J.S.A. 43:21-19(i)(1)(D)(v), an unemployment work-relief or work-training program that is financed or assisted in whole or in part by any Federal agency or an agency of a state or political subdivision of a State, must have as a minimum the following characteristics:

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  
CN 600  
Trenton, New Jersey 08625-0600

## 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 15 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 15 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).

### 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).

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## 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.