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CHAPTER 19

DEFINITIONS FOR DIVISION OF EMPLOYMENT SECURITY AND SPECIAL EMPLOYMENT RELATIONSHIPS

Authority

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

Source and Effective Dates

R.1990 d.337, effective July 2, 1990.
See: 22 N.J.R. 605(a), 22 N.J.R. 2020(a).

Executive Order No. 66(1978) Expiration Date

Chapter 19, Definitions for Division of Employment Security and Special Employment Relationships expires on July 2, 1995.

Historical Note

Chapter 19, General Rules, became effective prior to September 1, 1969. A repeal became effective April 1, 1985 as R.1985 d.147. See: 16 N.J.R. 2488(b), 17 N.J.R. 820(b). See Source and Effective Date for further rulemaking.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

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

SUBCHAPTER 1. GENERAL PROVISIONS

12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions to be used throughout N.J.A.C. 12:15 through 12:19, and to provide examples illustrating the definitions and, in some instances, exceptions to the definitions.

12:19-1.2 Definitions

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

“Agricultural labor” means the following activities:

1. Service performed on a farm in connection with cultivation of the soil; raising or harvesting any agricultural or horticultural product; raising, feeding, caring for, and managing livestock, bees, poultry or fur-bearing animals; handling, packaging, or processing any agricultural or horticultural commodity in its unmanufactured state; repair and maintenance of equipment or real property used in the agricultural activity; and transport of agricul-

tural or horticultural supplies or products if not in the usual course of a trucking business;

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

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

Agricultural labor does not include:

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

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

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

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

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

home, which is in New Jersey, and some services are performed in New Jersey.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Real estate salesperson” means an individual who:

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

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

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

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

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

12:19-1.3 Partnerships

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

1. Each separate partnership joins in such a request to the Controller or the Controller determines that individual reporting is appropriate;

2. A separate written partnership agreement exists for each partnership;
3. The accounting records for each partnership are separately maintained; and
4. There is no commingling of the employment of the two or more partnerships.

12:19-1.4 Special employers

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

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:

- i. The agreement between the farmer and the crew leader complies with all Federal and State laws and regulations, including the payment of applicable employment taxes and minimum wage;

- ii. The crew leader has completed and submitted, to the office of the Controller, form UC-1CL, “Status Report of Crew Leader Employing Unit”; and

- iii. The crew leader has met all the requirements of the Federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 et seq., and the New Jersey Crew Leader Registration Act, N.J.S.A. 34:8A-7 et seq.

2. The entity for whom the services of the crew are performed shall be considered the employer of both the crew leader and the crew if the registration of the crew leader under the Federal Migrant and Seasonal Agricultural Worker Protection Act and the New Jersey Crew Leader Registration Act is revoked. The entity will be considered the employer from the first day on which services were performed following revocation.

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

- i. Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the Controller’s Chief Auditor for a determination as to its status under N.J.S.A. 43:21-1 et seq.