

**CHAPTER 17**

**UNEMPLOYMENT BENEFIT PAYMENTS**

**Authority**

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

**Source and Effective Date**

R.1998 d.273, effective June 1, 1998 (operative July 5, 1998).  
See: 29 N.J.R. 5158(a), 30 N.J.R. 2027(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17, Unemployment Benefit Payments, expires on November 28, 2003. See: 35 N.J.R. 1527(a).

**Chapter Historical Note**

Subchapter 3, Definitions; Subchapter 4, Employer Records and Evidence Concerning Partial Unemployment; and Subchapter 5, Claim for Partial Unemployment Benefits, were filed and became effective prior to September 1, 1969. Subchapter 9, Procedures for Wage Benefit Conflicts, was adopted as new rules by R.1975 d.142, effective May 28, 1975. See: 7 N.J.R. 335(a). Subchapter 10, Determination and Demand for Refund of Unemployment Benefits, was adopted as new rules by R.1980 d.468, effective October 23, 1980. See: 12 N.J.R. 426(a), 12 N.J.R. 724(c). Subchapter 11, Offset of Unemployment Insurance Benefits by Retirement and Pension Income, was adopted as new rules by R.1980 d.561, effective January 1, 1981. See: 13 N.J.R. 102(a). Amendments to Subchapter 10 became effective March 21, 1983 as R.1983 d.83. See: 15 N.J.R. 74(a), 15 N.J.R. 447(a). Subchapter 12, Dependency Benefits, was adopted as new rules by R.1984 d.516, effective November 5, 1984. See: 16 N.J.R. 2237(a), 16 N.J.R. 3046(a). Pursuant to Executive Order No. 66(1978), Subchapter 10 expired on October 23, 1985, and new rules on the same subject were adopted as R.1985 d.657, effective January 6, 1986. See: 17 N.J.R. 2525(b), 18 N.J.R. 91(a). Pursuant to Executive Order No. 66(1978), Subchapter 11 was readopted as R.1985 d.718, effective December 30, 1985. See: 17 N.J.R. 2736(a), 18 N.J.R. 285(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Unemployment Benefit Payments, was readopted as R.1991 d.46, effective January 4, 1991. See: 22 N.J.R. 3445(a), 23 N.J.R. 310(b). Chapter 17, Unemployment Benefit Payments, was readopted as R.1996 d.25, effective December 13, 1995. See: 27 N.J.R. 4123(b), 28 N.J.R. 270(a).

Chapter 17, Unemployment Benefit Payments, was repealed and adopted as new rules by R.1998 d.273, effective June 1, 1998 (operative July 5, 1998). See: Source and Effective Date.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. PURPOSE AND SCOPE**

12:17-1.1 Purpose and scope

**SUBCHAPTER 2. DEFINITIONS**

12:17-2.1 Definitions

**SUBCHAPTER 3. REPORTING OF WAGE AND SEPARATION INFORMATION**

12:17-3.1 Instructions to workers at time of separation  
12:17-3.2 Request for separation or wage information  
12:17-3.3 Finality of benefit determinations  
12:17-3.4 Notice of failure to apply for or to accept work  
12:17-3.5 Notice of unemployment due to mass separation  
12:17-3.6 Notice of unemployment due to labor dispute

12:17-3.7 Notice of temporary separation from work

**SUBCHAPTER 4. REPORTING REQUIREMENTS TO CLAIM UNEMPLOYMENT BENEFITS AND TO REGISTER FOR WORK SEARCH ACTIVITIES**

12:17-4.1 General reporting requirements  
12:17-4.2 Reporting to file an initial or reopened claim  
12:17-4.3 Reporting requirements for in-person appointments and for claiming completed weeks of unemployment benefits  
12:17-4.4 Reporting claim information after leaving reporting status  
12:17-4.5 Proof of claimant identification and address  
12:17-4.6 Forms prescribed for filing unemployment benefit claims  
12:17-4.7 Benefit determination notice  
12:17-4.8 Refusal to cooperate with quality control reviews  
12:17-4.9 Reporting to claim benefits after one year

**SUBCHAPTER 5. MONETARY REQUIREMENTS FOR BENEFIT ELIGIBILITY**

12:17-5.1 Basic eligibility requirements  
12:17-5.2 Alternative base years  
12:17-5.3 Exceptions to the use of alternative base years  
12:17-5.4 Use of wages to qualify for benefits  
12:17-5.5 Requests for wage information and affidavits  
12:17-5.6 Alternative base years for individuals claiming benefits after a period of disability

**SUBCHAPTER 6. EMPLOYER RECORDS AND CLAIMS FOR PARTIAL UNEMPLOYMENT BENEFITS**

12:17-6.1 Records for employees receiving partial unemployment benefits  
12:17-6.2 Evidence of weekly partial unemployment  
12:17-6.3 Registration and filing claims

**SUBCHAPTER 7. DEPENDENCY BENEFITS**

12:17-7.1 Calculation of dependency payment  
12:17-7.2 Definition of dependent  
12:17-7.3 Claiming dependents  
12:17-7.4 Verification and proof of dependency status

**SUBCHAPTER 8. REDUCTION OF BENEFITS BY RETIREMENT IN PENSION INCOME AND OTHER EARNED INCOME**

12:17-8.1 Benefit reduction due to receipt of pension from base period or chargeable employers  
12:17-8.2 Amount of benefit reduction  
12:17-8.3 Lump sum pension reduction  
12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions  
12:17-8.5 Reduction of benefits due to earned income  
12:17-8.6 Disqualification for benefits for remuneration in lieu of notice  
12:17-8.7 Severance or separation pay  
12:17-8.8 Salary continuation through date of termination  
12:17-8.9 Receipt of residuals  
12:17-8.10 Vacation and holiday pay  
12:17-8.11 Sick leave pay

**SUBCHAPTER 9. CLAIM ADJUDICATION—VOLUNTARILY LEAVING WORK**

12:17-9.1 Disqualification for voluntarily leaving—general principles  
12:17-9.2 Voluntarily leaving secondary part-time employment  
12:17-9.3 Voluntary leaving for health or medical reasons  
12:17-9.4 Voluntary leaving for health or safety conditions  
12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge  
12:17-9.6 Discharge after giving notice of resignation  
12:17-9.7 Assignment of work under a union contract

- 12:17-9.8 Recall from temporary layoff
- 12:17-9.9 Loss of license needed as a condition of employment
- 12:17-9.10 Job abandonment
- 12:17-9.11 Voluntary leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence

#### SUBCHAPTER 10. CLAIMS ADJUDICATION— MISCONDUCT AND GROSS MISCONDUCT CONNECTED WITH WORK

- 12:17-10.1 Disqualification for misconduct and gross misconduct connected with work—general principles
- 12:17-10.2 Misconduct defined
- 12:17-10.3 Discharge or suspension for unauthorized absence
- 12:17-10.4 Discharge or suspension for tardiness
- 12:17-10.5 Discharge or suspension for falsification of application or other records
- 12:17-10.6 Discharge or suspension for insubordination or violation of an employer's rule
- 12:17-10.7 Discharge or suspension for unsatisfactory work performance
- 12:17-10.8 Discharge or suspension for failure to observe safety standards
- 12:17-10.9 Failing or refusing to take an employer drug test

#### SUBCHAPTER 11. CLAIMS ADJUDICATION— REFUSAL TO APPLY OR ACCEPT SUITABLE WORK

- 12:17-11.1 Disqualification period for failure to apply for or accept suitable work—general principles
- 12:17-11.2 Suitability of work defined
- 12:17-11.3 Establishing bona fide offers of work
- 12:17-11.4 Good cause for refusal of suitable work
- 12:17-11.5 Offers of new work

#### SUBCHAPTER 12. CLAIMS ADJUDICATION—OTHER BENEFIT ELIGIBILITY ISSUES

- 12:17-12.1 Corporate officers, owners and creditors
- 12:17-12.2 Labor disputes
- 12:17-12.3 Employees on leave of absence
- 12:17-12.4 School employees
- 12:17-12.5 Claimant engaged in a temporary business
- 12:17-12.6 Student disqualification for benefits
- 12:17-12.7 Limiting availability to less than full-time work

#### SUBCHAPTER 13. PROCEDURES FOR WAGE- BENEFIT CONFLICTS

- 12:17-13.1 Pre-determination notice and fact-finding
- 12:17-13.2 Fact-finding interview
- 12:17-13.3 Claimant's failure to appear

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

- 12:17-14.1 Statutory period for demanding refund
- 12:17-14.2 Waiver of recovery of benefit overpayment
- 12:17-14.3 Requirements for repaying overpaid benefits
- 12:17-14.4 Overpayment of benefits involving two determinations of entitlement

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

- 12:17-15.1 Definitions
- 12:17-15.2 Employment with temporary help service firm under a written agreement
- 12:17-15.3 Employment with temporary help service firm without a written agreement

#### SUBCHAPTER 16. PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

- 12:17-16.1 Cooperation with other states
- 12:17-16.2 Benefit rights of interstate claimants
- 12:17-16.3 Requirement to register for work
- 12:17-16.4 Reporting requirements for interstate benefit claims
- 12:17-16.5 Role of the agent state in benefit determinations
- 12:17-16.6 Appeals of benefit determinations
- 12:17-16.7 Reciprocal claims with Canada

#### SUBCHAPTER 17. CLAIMS FOR DISABILITY BENEFITS DURING UNEMPLOYMENT

- 12:17-17.1 Notice and proof of disability
- 12:17-17.2 Procedures for filing of claims for benefits
- 12:17-17.3 Waiver of registration and reporting requirements
- 12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers
- 12:17-17.5 Simultaneous unemployment and disability benefit periods
- 12:17-17.6 Eligibility for benefits during the waiting period
- 12:17-17.7 Benefit determination

#### SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM

- 12:17-18.1 Definitions
- 12:17-18.2 Self-employment assistance program
- 12:17-18.3 Eligibility requirements
- 12:17-18.4 Self-employment assistance allowance
- 12:17-18.5 Appeals
- 12:17-18.6 Overpayment of self-employment assistance allowances

#### 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
- 12:17-19.2 Transfer of withheld unemployment benefits
- 12:17-19.3 Other withholdings

#### SUBCHAPTER 20. WORKER PROFILING AND REEMPLOYMENT SERVICES

- 12:17-20.1 Purpose and scope
- 12:17-20.2 Definitions
- 12:17-20.3 Identifying claimants
- 12:17-20.4 Statistical modeling process
- 12:17-20.5 Selection
- 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 operative July 5, 1998.

1. New and additional claims filed on or after July 5, 1998 shall be subject to these rules.

2. For claims filed prior to July 5, 1998, continued issues adjudicated on or after July 5, 1998 shall be subject to these rules.

## 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.

“Interstate Benefit Payment Plan” means the plan approved by the Interstate Conference of Employment Security 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 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.

“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 56<sup>2</sup>/<sub>3</sub> 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.

### 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 or for an indefinite period, or for an expected duration of seven or more days) 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 promptly to a local unemployment claims office. Such instructions shall contain the employer’s name, complete address, and registration number.

(b) Failure to comply with this requirement may subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(c). However, it shall not relieve the claimant of the responsibility of reporting in person to the unemployment claims office to file an unemployment claim.

#### 12:17-3.2 Request for separation or wage information

(a) Upon request by the Division for information regarding wages or the reason for separation of any worker from an employment, the employer shall, within 10 calendar days after the date of mailing of the form requesting information, complete and return it to the office that initiated the request. The response shall be considered timely if it is postmarked or received by the Division within 10 calendar days after the date of mailing.

(b) Failure to comply with any request for information shall subject the employer to the penalties prescribed in N.J.S.A. 43:21-16(b)(1).

(c) If an employer fails to respond to a request for wage information within 10 calendar days after the mailing date, the Division shall rely on information from other sources, including an affidavit from the claimant certifying wages and time worked. If available, the affidavit should be supported by evidence of wages and employment including, but not limited to, payroll stubs, W-2 forms, Federal or State income tax returns, copies of pay checks, etc.

1. An individual who claims or attempts to claim benefits through false or fraudulent representation shall be subject to disqualification under N.J.S.A. 43:21-5(g) and fines and the refund of benefits under N.J.S.A. 43:21-16.

(d) Whenever an initial monetary determination is based upon information other than that supplied by an employer because the employer failed to respond to the Division’s request for information, the initial monetary determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to the employer’s account because of benefits paid prior to the close of the calendar week following the receipt of the subsequent reply. The initial monetary determination shall be redetermined if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring subsequent to the close of the calendar week following the receipt of the employer’s subsequent reply shall be paid in accordance with the redetermination.

(e) Except in the event of fraud, no refund liability shall be incurred by the claimant for any overpaid benefits resulting from information supplied on the affidavit which were paid prior to the receipt of the employer’s subsequent reply.

(f) A claimant will be liable to refund any overpaid amount resulting from receipt of benefits paid subsequent to the employer’s reply which resulted in a redetermination of the initial monetary determination.

**12:17-3.3 Finality of benefit determinations**

(a) After receiving wage and separation information, the Division shall make a determination regarding the claimant's eligibility for benefits which will be mailed to the claimant and employer. The benefit determination shall become final 10 days after the date of mailing or seven days after date of delivery unless an appeal is filed by the claimant or employer.

(b) The Division may reconsider a final determination for the following reasons:

1. Fraud, misrepresentation or misconduct of a party;
2. Newly discovered evidence not ascertainable at the time of the initial benefit determination by the exercise of reasonable diligence and the making of proper inquiry which would probably alter the determination;
3. Obvious material mistake or error which requires correction;
4. To vacate a determination which is entered without legal right and is void; or
5. The correction of inadvertent, premature, or clearly erroneous action.

**12:17-3.4 Notice of failure to apply for or to accept work**

(a) When any claimant fails to apply for, or to accept, work when offered by an employer, the employer shall, within 48 hours, complete Form BC-6 (Notice of Failure to Apply for, or to Accept, Suitable Work) setting forth the facts relating to the individual's failure to apply for, or to accept, work and forward it to the proper unemployment claims office. (See N.J.A.C. 12:17-11.4.)

(b) Whenever an employer is notified by an employment service office that an individual has been referred to the employer for work, the employer shall, within 24 hours after the appointment, advise the employment service office of the results of the referral.

**12:17-3.5 Notice of unemployment due to mass separation**

(a) For the purposes of this subchapter, the term "mass separation" means the separation of 25 or more employees in a single establishment (either permanently or for an indefinite period, or with an expected duration of seven or more days) at or about the same time and for the same reason, except where the separation or unemployment is due to a labor dispute.

(b) As soon as possible but no later than 48 hours prior to any mass separation, the employer shall file a notice thereof with the unemployment claims office located nearest the place of employment. Where the employer has no advance knowledge of the mass separation, such notice shall be filed within 24 hours after the mass separation occurs. Such notice shall contain the following information:

1. The name and address of the employer;
2. A statement of the cause of separation;
3. The number and job titles of employees affected;
4. The expected duration of the period of unemployment; and
5. Whether or not the employer will have sufficient employees to handle requests for wage information that may be issued by unemployment claims offices.

(c) The employer shall provide the Division with information relating to payments made to affected employees for vacation, sick leave, pension, remuneration in lieu of notice and severance.

(d) Where a mass separation has not occurred but is threatened or likely to occur, the employer shall submit to the Division when requested such information as may be required.

(e) The employer shall deliver Form BC-10 (Instructions for Claiming Unemployment Benefits) to each employee at the time of mass separation.

(f) Employers that have completed the notification requirements under the Federal Worker Adjustment and Retraining Notification Act contained at 10 C.F.R. Part 639 and N.J.A.C. 12:40 shall be considered in compliance with (b) above.

**12:17-3.6 Notice of unemployment due to labor dispute**

In case of unemployment due to a labor dispute, the employer shall file a notice immediately with the unemployment claims office located nearest the place of employment. Such notice shall include information concerning the existence and nature of a labor dispute, the approximate number of individuals involved and the name and address of the bargaining unit. See N.J.A.C. 12:17-12.2.

**12:17-3.7 Notice of temporary separation from work**

(a) Whenever an individual is temporarily separated for lack of work, the employer, upon request by the unemployment claims office, shall provide the expected duration of the individual's period of unemployment, the reason for separation, and the date on which the employer expects the individual to return to work.

(b) If the period of temporary unemployment is for eight weeks or less and the employer has furnished the information required in (a) above, the individual shall be entitled to benefits provided all of the conditions of benefit eligibility are met. However, the individual will not be required to actively seek work during this period.

**SUBCHAPTER 4. REPORTING REQUIREMENTS  
TO CLAIM UNEMPLOYMENT BENEFITS  
AND TO REGISTER FOR WORK SEARCH  
ACTIVITIES**

**12:17-4.1 General reporting requirements**

(a) Individuals shall report as directed by the Division as to date, time, and place in person, by telephone, by mail, or as the Division may otherwise prescribe.

(b) An individual who fails to report as directed will be ineligible for benefits unless, pursuant to a fact-finding hearing, it is determined that there is "good cause" for failing to comply. For the purposes of this subchapter, "good cause" means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from reporting as required by the Division.

(c) A claimant, who without "good cause," fails to report to a scheduled in-person appointment at an unemployment claims office or employment service office will be ineligible for benefits for the week in which he or she failed to report and until the week in which the claimant reports to the unemployment claims office in person.

**12:17-4.2 Reporting to file an initial or reopened claim**

(a) An individual shall report in person to an unemployment claims office to file an initial claim for benefits, unless another method of filing is prescribed by the Division. The effective date of an initial claim for benefits is the Sunday of the week in which the claimant first reports to claim benefits. The effective date of the initial claim establishes the period of time during which wages may be used to determine the monetary eligibility.

(b) Each claimant may reopen his or her claim any time during the 52-week period after first filing a claim, by reporting to an unemployment claims office in person or as the Division may otherwise prescribe. The effective date of a reopened claim for benefits is the Sunday of the week in which the claimant first reports to the unemployment claims office to claim benefits.

(c) A claimant who returns to full-time work for more than one calendar week and then becomes unemployed shall report in person, or as the Division may otherwise prescribe, to the unemployment claims office to reopen the claim. The claim shall be reopened as of the week in which the claimant first reports to claim benefits.

**12:17-4.3 Reporting requirements for in-person  
appointments and for claiming completed weeks  
of unemployment benefits**

(a) A claimant shall report to the unemployment claims office or employment service office for an in-person appointment on the date and at the time specified by the Division.

(b) A claimant shall be assigned a reporting method, in person, by mail, telephone or as the Division may otherwise prescribe, and shall be required to report as directed to claim completed weeks of unemployment benefits.

1. A claimant who fails to report to a scheduled in-person appointment shall report in person to the unemployment claims office within seven calendar days following the scheduled appointment date in order to be eligible for a completed, designated benefit period. However, in this case the claimant shall be ineligible for benefits for the week he or she failed to report without good cause and until he or she reports in person to the unemployment claims office.

2. Reporting by mail to claim continued benefits requires the claimant to submit a certification form including, name, address, social security number, specific weeks claimed, eligibility questions, certification and signature for the completed, designated benefit period indicated on the form. Unless good cause is shown as defined in N.J.A.C. 12:17-4.1, an individual shall be ineligible for the designated benefit period unless the certification is post-marked or received in the unemployment claims office within seven calendar days following the designated date on the form.

3. Reporting by telephone to claim continued benefits requires the claimant to telephone the "State of New Jersey Unemployment Certification System" to claim a completed, designated, benefit period as indicated on the certification. An individual shall be ineligible for benefits unless the claimant completes a certification telephone call during the assigned week as directed by the Division.

i. A claimant who with good cause as defined in N.J.A.C. 12:17-4.1, does not call during the assigned week but who reports in person to the unemployment claims office or submits a mail claim postmarked or received in the unemployment claims office during the seven calendar days following the designated date shall have met reporting requirements for the designated benefit period.

ii. When a claimant who reports by telephone, and who, at the completion of the call, is directed to report to the unemployment claims office in person or to mail in the certification, he or she shall be ineligible for benefits unless he or she reports in person, or if so instructed, mails in the certification within the seven calendar days following the attempt to claim benefits by telephone or shows good cause as defined in N.J.A.C. 12:17-4.1 for failing to do so.

(c) In addition to reporting to the unemployment claims office by telephone or mail, an individual may be required to report in person to the unemployment claims office or employment service office to register for work and for other work search related activities. A claimant who fails to report to an in-person appointment at either the unemployment claims office or employment service office:

1. Shall report to the unemployment claims office as soon as possible; and
2. Shall also comply with the assigned telephone or mail reporting instructions.

(d) A claimant who, without “good cause,” as defined in N.J.A.C. 12:17-4.1, refuses to report for the purpose of participating in, or to complete a scheduled activity (for example, claims interview, work search etc.) at the unemployment claims office or employment service office shall be ineligible for benefits for the week in which the refusal occurred and indefinitely until such time as he or she participates.

(e) A claimant who fails to comply with reporting requirements by any method directed by the Division shall report in person to the unemployment claims office to claim benefits. Eligibility for completed weeks of benefits shall be determined as follows:

1. Unless the claimant has “good cause,” as defined in N.J.A.C. 12:17-4.1, for failing to report timely by the method directed by the Division, the claimant shall be ineligible for benefits for the designated benefit period on the certification.

2. Unless the claimant has “good cause,” as defined in N.J.A.C. 12:17-4.1, for failing to report in person to either an unemployment claims office or employment service office, the claimant will be ineligible for benefits for the week in which he or she failed to report and until the week in which the claimant reports to the unemployment claims office in person.

3. If the claimant has “good cause,” as defined in N.J.A.C. 12:17-4.1, for failing to report to a scheduled in-person appointment at an unemployment claims office or employment service office, and does not report as soon as possible after the good cause for not reporting no longer exists after the scheduled appointment, the claimant shall be ineligible for benefits for the week in which he or she failed to report until the week in which the claimant does report to the unemployment claims office in person.

4. If the claimant had “good cause,” as defined in N.J.A.C. 12:17-4.1, for not reporting, he or she shall be eligible for all or some of the completed weeks, only if the claimant reported as soon as the good cause for not reporting no longer existed and otherwise met the eligibility requirements for benefits.

#### **12:17-4.4 Reporting claim information after leaving reporting status**

(a) When the Division mails the claimant a request for information to resolve an eligibility issue which existed during a week previously claimed, the claimant’s response is timely if it is postmarked or received in the unemployment claims office within 14 days from the date the request was mailed to the claimant.

(b) If the claimant fails to respond timely to the request for information, the Division may make a determination of benefit eligibility based upon available information.

#### **12:17-4.5 Proof of claimant identification and address**

(a) Each claimant who files a claim for benefits shall present proper identification, including a valid Social Security card and other documentation showing the claimant’s legal name and address.

1. If a claimant is unable to present a valid Social Security card for the Division to verify, or if departmental records indicate any discrepancies with the Social Security number presented, the claimant shall obtain a duplicate Social Security card to resolve any discrepancies. The claimant shall be given eight weeks from the end of the week in which the request was made to present a valid Social Security card, unless “good cause,” as defined in N.J.A.C. 12:17-4.1, for extension of this time period is shown. Benefits may be paid to the claimant during this period if he or she is otherwise eligible.

2. Any claimant who refuses to cooperate with the Division in its efforts to verify the validity of the Social Security number and fails to present the required documentation within the required time frame shall be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

(b) A claimant shall provide the Division with his or her address at the time the claim is filed. The claimant shall also provide the Division with any change of address for up to one year after the expiration of the claim.

#### **12:17-4.6 Forms prescribed for filing unemployment benefit claims**

Initial and continued claims for unemployment benefits shall be made on the appropriate forms indicated below which are prescribed by and available from the Division:

##### Initial Claim Forms

BC-4A	Claim for Unemployment Benefits
BC-474	Claim for Unemployment Benefits During a Temporary Mass Layoff
BC-474A	Additional Claim for Unemployment Benefits During a Mass Layoff
BC-474P	Claim for Unemployment Benefits During Mass Layoff

##### Continued Claim Forms

BC-8M	Mail Claim for Benefits
BC-8M.1	Mail Claim for Benefits

##### Additional Claim Form

BC-4	Additional Claim for Unemployment Benefits
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#### **12:17-4.7 Benefit determination notice**

(a) A notice of monetary or benefit eligibility shall include a statement of appeal rights. Unless good cause exists, as provided in N.J.A.C. 12:20-3.1(i), all determinations shall be appealed in person or in writing within seven days from the date of receipt or 10 days from the date of



mailing of the notice. Appeal procedures are found at N.J.A.C. 12:20 and 1:12.

(b) The Division shall provide to a claimant a written determination of the information used to determine monetary eligibility and a written notice if he or she is found ineligible or disqualified for benefits.

(c) The Division shall provide to a claimant's chargeable employer a written determination including the portion of the claimant's monetary entitlement which is based on work with that employer. When an employer is an interested party to an adjudicated issue, the Division shall provide the employer with a written determination of the claimant's benefit eligibility. For the purpose of this section, an interested party is a chargeable employer on the claim or the employer from whom the claimant was most recently separated as of the date of initial claim for benefits who has information which is relevant to the adjudicated issue.

#### **12:17-4.8 Refusal to cooperate with quality control reviews**

(a) A claimant shall be determined ineligible for unemployment benefits if he or she, without "good cause," as defined in N.J.A.C. 12:17-4.1, fails to report as directed for a quality control review interview, or fails to cooperate in a quality control review of the claim.

(b) A claimant shall be determined to be ineligible as of the week in which the failure to report for a quality control review interview or the refusal to cooperate occurs, and shall remain ineligible until such time as he or she agrees to cooperate with the review.

(c) Any employer or employer's agent who, without "good cause," as defined in N.J.A.C. 12:17-4.1, refuses or fails to provide wage information, separation information, dates of employment, work search verification, or other information required by the quality control program will be found to have refused to provide reports deemed necessary for the administration of the Unemployment Compensation Law, and shall be subject to the penalties set forth at N.J.S.A. 43:21-16.

#### **12:17-4.9 Reporting to claim benefits after one year**

A request for payment of a benefit week(s) made more than one year after the claim has expired, or more than one year after a final decision of eligibility, whichever is later, shall be denied unless there is "good cause," as defined in N.J.A.C. 12:17-4.1, for a late request.

### **SUBCHAPTER 5. MONETARY REQUIREMENTS FOR BENEFIT ELIGIBILITY**

#### **12:17-5.1 Basic eligibility requirements**

(a) To be eligible for benefits, an individual during his or her base year period, consisting of the first four of the most recent five completed calendar quarters preceding the date of the claim, shall have met the following requirements:

1. Established 20 base weeks as defined at N.J.S.A. 43:21-19(t)(2) and (t)(3) as an amount equal to 20 times the State minimum hourly wage;

2. If the individual has not met the above requirement in (a)1 above, he or she must have earned an amount equal to 1,000 times the State minimum hourly wage; or

3. If the individual has not met the requirements in (a)1 or 2 above, he or she must have performed at least 770 hours of service in the production and harvesting of agricultural crops.

Amended by R.2001 d.298, effective August 20, 2001.

See: 33 N.J.R. 1849(a), 33 N.J.R. 2814(b).

Rewrote section.

#### **Case Notes**

Financial corporation liable for unemployment and temporary disability insurance assessments for computer expert hired to debug system since expert did not qualify as independent contractor. *Jonassen and Associates, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 9.

Pharmaceutical consulting firm liable for unemployment and temporary disability insurance assessments for consultants since these experts failed to qualify as independent contractors. *Kessler v. Department of Labor*, 97 N.J.A.R.2d (LBR) 7.

#### **12:17-5.2 Alternative base years**

(a) If an individual does not qualify for benefits pursuant to N.J.A.C. 12:17-5.1 during the base year, he or she may use wages paid during an alternative base year consisting of the most recent four completed calendar quarters preceding the date of the claim.

(b) If the individual does not qualify for benefits using wages paid in the alternative base year provided in (a) above, he or she may use wages paid during the current calendar quarter up to the date of the claim and the three previous completed calendar quarters.

#### **12:17-5.3 Exceptions to the use of alternative base years**

Alternative base year periods may be used to qualify for benefits only when an individual cannot qualify for benefits due to insufficient base weeks and/or wages during the regular base year period. An alternative base year period may not be used when an individual's ineligibility is caused by a wage credit reduction due to his or her disqualification for gross misconduct. Similarly, an alternative base year may not be used when an individual's ineligibility for benefits is caused by the individual's corporate officer or ownership status, or the individual's employment with an educational institution.

#### **12:17-5.4 Use of wages to qualify for benefits**

(a) If wages from a base year or an alternative base year are required to establish a valid claim, those wages cannot be used again to establish any future claim(s).

(b) If wages are required from the most recent completed calendar quarter, all the wages paid in that quarter shall be used.



(c) If wages are required from the quarter in which the claim was filed, only those wages paid prior to the date of the claim shall be used; any subsequent wages earned from the date of the claim in that quarter may be used to establish eligibility for future claims.

#### **12:17-5.5 Requests for wage information and affidavits**

(a) When wage information regarding base weeks and wages is not available in the Division's records, the Division shall request only that information from employers needed to determine the claimant's eligibility for benefits.

(b) If necessary, the Division shall request base week and wage information from all employers that the claimant identifies up to the date of claim. This information may be used in any of the alternative base years in order to reduce the number of contacts to employers to determine eligibility. The Division shall also request information about the claimant's separation from work.

(c) If the wage information is not received by the Division within 10 calendar days of mailing, the Division may accept an affidavit of wages and time worked from the claimant. The claimant shall be advised to present appropriate documentation, including payroll stubs, W-2 forms, Federal and State income tax returns, etc., if available. A determination of benefits based on an alternative base year shall be adjusted when the quarterly wage report from the employer is received if that information causes a change in the determination.

1. Except in the event of fraud, if it is determined that any information provided by the claimant on an affidavit is erroneous, no penalty or refund of benefits shall be imposed on the claimant for periods prior to the calendar week in which an employer provides subsequent wage information.

2. When a benefit determination is based on information provided by the claimant on an affidavit because the employer failed to reply to the Division's request for information, the employer shall not be relieved of excess charges to the employer's account because of benefits paid prior to the close of the calendar week following the receipt of the employer's subsequent reply.

#### **12:17-5.6 Alternative base years for individuals claiming benefits after a period of disability**

(a) An individual, who files a claim for benefits immediately after a period of disability compensable under the provisions of the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq. or compensable under the Workers' Compensation Law, N.J.S.A. 34:1-1 et seq. may have the option of using an alternative base year consisting of the first four of the most recent five completed calendar quarters preceding the date his or her disability began, to establish eligibility for, or increase entitlement for unemployment benefits. If the previous position is available, but the individual is no longer able to perform the duties of the position, the alternative base year provisions of this section shall not apply. If the individual does not qualify for benefits pursuant to N.J.A.C. 12:17-5.1 during this base year, he or she may use wages paid during the alternate base years prescribed in N.J.A.C. 12:17-5.2.

1. This section applies only to those individuals whose employment is not available at the conclusion of the disability period, provided the individual files his or her claim within four weeks of recovery, except where he or she has shown good cause as defined at N.J.A.C. 12:17-4.1 for filing a claim after four weeks.

2. This section applies to individuals receiving Workers' Compensation for a period not to exceed two years.

(b) An individual who files a claim under the provisions of this section shall not be disqualified for benefits for voluntarily leaving work, provided the individual contacts the employer and his or her employment is not available.

### **SUBCHAPTER 6. EMPLOYER RECORDS AND CLAIMS FOR PARTIAL UNEMPLOYMENT BENEFITS**

#### **12:17-6.1 Records for employees receiving partial unemployment benefits**

(a) In addition to the requirements set forth in N.J.A.C. 12:16-2 concerning employer records, each employer shall keep payroll records in such form that it is possible from an inspection thereof to determine whether a regular employee may be eligible for partial benefits including:

1. Remuneration for each calendar week ending at midnight Saturday.
2. Whether any such period was a week of less than full-time work, as determined according to the norm or custom associated with the individual's occupation, profession, trade, or industry; and
3. Time lost, if any, during such week when work was available.

#### **12:17-6.2 Evidence of weekly partial unemployment**

(a) For each week of partial unemployment the employer shall provide the individual with a written statement (that is, pay envelope, pay check stub, copy of pay check or similar voucher) which provides the following information:

1. The name and address of the employer;
2. The name of the employee;
3. The date of the last day of such week; and
4. The amount of remuneration for such week;
5. A notation that the individual earned "less than full-time remuneration because of lack of work," signed by the employer or the authorized agent supplying the information.

(b) The number of hours which constitutes less than full-time work shall be construed to mean not more than 80 percent of the hours worked according to the norm or custom associated with the individual's occupation, profession, trade, or industry.

(c) Any employer or agent of any employer who refuses or fails, without good cause, to cooperate with and provide information required by this subchapter shall be subject to penalties set forth at N.J.S.A. 43:21-16. For purposes of this section good cause means any situation over which the employer or agent did not have control and which was so compelling as to prevent the employer from reporting the information as required by the Division.

### 12:17-6.3 Registration and filing claims

(a) An individual claiming partial unemployment benefits under this subchapter shall complete Form BC-8M (Mail Claim for Benefits), which includes the name, address, social security number, amount of remuneration for each week, employer certification and claimant and employer signatures.

(b) Notwithstanding the provisions of N.J.A.C. 12:17-6.1, concerning regular employee records, the claim for a week of partial unemployment shall be filed within four weeks after the employer provides the individual with the wage information required in N.J.A.C. 12:17-6.2(a). The Division may for good cause as defined N.J.A.C. 12:17-4.1(b) extend the time period for filing a claim for a week of partial unemployment. In the absence of an extension, no claim for partial benefits shall be accepted after the four week time period and the claimant shall be ineligible for benefits.

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## SUBCHAPTER 7. DEPENDENCY BENEFITS

### 12:17-7.1 Calculation of dependency payment

(a) A claimant's weekly benefit rate shall be increased by seven percent for the first dependent and four percent each for the next two dependents, up to a maximum of three dependents, except that the maximum weekly benefit rate payable for an individual claiming dependency benefit shall not exceed the maximum amount determined in N.J.A.C. 12:15-1.3 which delineates the maximum weekly benefit rate. If an individual's spouse is not unemployed during the week the individual files an initial claim for benefits, this section shall not apply.

(b) The claimant shall not be paid dependency benefits for any week for which no regular or extended unemployment benefits are payable.

(c) If a claimant is eligible for partial unemployment benefits for a week claimed, the benefit payment shall equal the difference between 120 percent of the established weekly benefit rate (which includes any determined dependency allowance) and the individual's remuneration earned during the week claimed.

### 12:17-7.2 Definition of dependent

(a) "Dependent" means an individual who is unemployed during the calendar week in which the claimant files an initial or transitional claim, and is limited to the claimant's:

1. Unemployed spouse, that is, a person to whom the claimant is legally married; and is a dependent; and/or
2. Dependent unemployed unmarried child, that is, a son, daughter, stepson, stepdaughter, legally adopted son or legally adopted daughter under the age of 19, or under the age of 22 and attending an educational institution as defined in N.J.S.A. 43:21-19(y).

### 12:17-7.3 Claiming dependents

(a) An individual shall declare in writing on an application form or as otherwise prescribed by the Division, dependents claimed on the date that the individual files an initial or transitional claim to establish a benefit year. The individual shall also provide proof of those dependents claimed in a form and manner prescribed by the Division in accordance with N.J.A.C. 12:17-7.4.

(b) If both unemployed spouses establish initial or transitional claims with benefit years or benefit rights which are concurrent in any part, only one of those claimants may receive dependency allowance benefits.

(c) If an individual is ineligible to receive dependency benefits because he or she is entitled to the maximum weekly benefit rate, the individual's spouse may declare the same dependent(s) on a claim for benefits.

(d) The death of a claimant during the benefit year of a claim which includes a dependency allowance shall constitute termination for the assignment of eligible dependent(s) to that claim as of the date of the claimant's death. An unemployed spouse of the deceased claimant may claim a dependency allowance for eligible dependent(s) provided the individual complies with the provisions of this subchapter.

### 12:17-7.4 Verification and proof of dependency status

(a) An individual who claims a dependent for allowance purposes shall provide to the Division within six weeks from the date of the claim appropriate verification and proof of the declared dependency status, which shall be evidenced by the Federal or State income tax return(s) filed for the tax year immediately preceding the filing of the application for dependency allowance. If the tax return is not a joint return, the individual tax return for the spouse being claimed as a dependent shall be submitted. In the case that the income tax return is not available or insufficient to prove current dependency status, the Division may consider a combination of the following documents to verify the status of claimed dependents: birth, baptismal, or marriage certificate(s) or certified copies thereof; certified divorce, child support, annulment or adoption order(s) or any other legal documents which verify the status of claimed dependents. The presentation of a birth or baptismal document shall not in and of itself be sufficient to establish dependency status.

(b) If married claimant declares an unemployed spouse as a dependent, the spouse's Social Security number shall be provided to the unemployment claims office no later than six weeks from the date of claim for the purpose of ascertaining whether the spouse is, in fact, unemployed.

(c) An individual who is eligible for unemployment compensation benefits and who has not yet submitted the required verification and proof of declared dependency status shall be paid only the determined weekly benefit rate, which does not include the dependency allowance based on the declared number of eligible dependents, until the verification and proof requirement has been met.

(d) If the verification and proof requirement is not satisfied within six weeks of the date of claim (eight weeks for interstate claims) the claimant shall be ineligible to receive the dependency allowance benefits for the duration of the claim.

(e) Any individual who is determined by the Division to have illegally received or attempted to receive dependency benefits as a result of any false or fraudulent representation shall be subject to the disqualification and penalty provisions of N.J.S.A. 43:21-5(g) and 43:21-16.

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## SUBCHAPTER 8. REDUCTION OF BENEFITS BY RETIREMENT IN PENSION INCOME AND OTHER EARNED INCOME

### 12:17-8.1 Benefit reduction due to receipt of pension from base period or chargeable employers

(a) When a pension is received from a base period or chargeable employer, benefits shall be reduced if the pension, retirement or retired pay, annuity, or other similar payment is under a plan maintained or contributed to by such employer.

(b) If the remuneration for services performed for the chargeable employer by the individual does not affect eligibility for, or increase the amount of, the pension, retirement or retired pay, annuity, or similar payment then the individual's unemployment benefits shall not be reduced by the amount of the pension.

### 12:17-8.2 Amount of benefit reduction

(a) The amount of the benefit reduction shall be determined by taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment. The following schedule will apply:

1. If such payment is made under a plan to which the individual did not contribute, the weekly and maximum amount of benefits payable to the individual shall be

reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

2. If such payment is made under a plan to which the employer and individual contributed, the amount of benefits payable to the individual for any week will be reduced by an amount equal to 50 percent of the amount of the pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

3. If such payment is made under a plan to which the individual contributed 100 percent, the amount of benefits payable to the individual for any week shall not be reduced.

4. No reduction in benefits shall be made if the pension, retirement or retired pay, annuity or other similar periodic payment received by the individual is from the Social Security pension to which the individual has made any contribution.

### 12:17-8.3 Lump sum pension reduction

(a) In those cases where an individual is the recipient of a lump sum payment from his or her employer in lieu of a periodic payment of a pension, retired or retirement payment, including 401K plans, annuity or other similar periodic payment, the calculation for the reduction of benefits shall be made, consistent with the provisions of N.J.A.C. 12:17-8.1 and 8.2, by prorating the dollar value of the payment over the life expectancy of the individual at the time of separation from the employer using approved actuarial tables.

(b) The lump sum pension payable to an individual, who is involuntarily and permanently separated from employment prior to the date at which the individual may retire without penalty to his or her pension rights, shall be assigned to the week in which the individual receives the lump sum payment or, at the claimant's option, may be prorated pursuant to (a) above.

### 12:17-8.4 Constructive receipt of pension, retroactive receipt of pension and rollovers of pension distributions

(a) A reduction in benefits shall be made as of the first calendar week commencing after the claimant is given constructive receipt of a retirement pension award. Constructive receipt occurs when an individual has applied for a payment or benefit covered by section 3304(a)(15) of the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq. and is notified in writing that it has been determined by responsible authorities that he or she is entitled to such

payment or benefit in specified amounts for the same period that unemployment compensation is payable.

(b) An individual who receives a retroactive pension payment shall be subject to benefit reduction from the effective date of pension entitlement as provided in this subchapter for any week he or she also received unemployment benefits and shall be liable to refund any resulting overpayment of benefits.

(c) There will be no reduction of benefits where there is a transfer of an eligible rollover distribution from a qualified trust to an eligible retirement plan (as defined under section 402(c)(8) of the Internal Revenue Code of 1986), if all the requirements of section 402 of the Internal Revenue Code are met within 60 days of receipt by the individual.

#### **12:17-8.5 Reduction of benefits due to earned income**

(a) An individual's eligibility for weekly benefits shall be reduced by an amount equal to any wages or remuneration, including remuneration from casual work, received in excess of 20 percent of the individual's weekly benefit rate.

(b) For purposes of the subchapter, "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 rules of the Division at N.J.A.C. 12:17-4.9. 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 higher.

(c) "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, including "in kind" payments as provided N.J.A.C. 12:16-4.8.

#### **12:17-8.6 Disqualification for benefits for remuneration in lieu of notice**

(a) An individual receiving remuneration in lieu of notice is disqualified for benefits and the claim for benefits is invalid because the claimant is considered not unemployed. Notwithstanding any provision of this subsection, an individual who receives remuneration in lieu of notice for a period less than a calendar week may be eligible for partial benefits for such week.

(b) An individual shall be disqualified for benefits for any week for which he or she receives remuneration in lieu of notice. Such payment shall be deemed to be in lieu of notice if:

1. The remuneration, in fact, is in place of the employer's giving notice to the employee that he or she is being terminated and the employer is legally required or has an established custom of providing such payment, or

2. The payments are made to individuals in accordance with the Federal Worker Adjustment and Retraining Notification Act.

#### **12:17-8.7 Severance or separation pay**

(a) For the purposes of this subchapter, "severance or separation pay" shall mean any lump sum payment or periodic payment made to an individual by an employer at termination under contract or obligation or by custom which is based on past services performed for the employer.

(b) The receipt of severance or separation pay in periodic payments or in a lump sum shall not be a bar to eligibility for unemployment benefits. However, the payments do not extend the individual's employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

#### **12:17-8.8 Salary continuation through date of termination**

(a) An employer may elect to continue wage or salary payments and forego the services normally performed by the employee through the date of termination provided for by contract or other agreement. A claim filed by an individual receiving such payments shall be invalid and he or she shall be ineligible for benefits through the date of termination of contract or other agreement. However, salary continuation payments may be used to establish a claim for benefits after the period for which the individual has received such payments.

(b) An employee who receives a lump sum payment shall be considered to be employed and ineligible for benefits through the date of termination of contract or other agreement in accordance with (a) above.

#### **Case Note**

Unemployment workers' compensation claimant was not entitled to unemployment benefits for period of time, pursuant to agreement with employer, during which her employment relationship had ended, but she still continued to be on active payroll status, in lieu of separation pay; unemployment compensation system was not designed to benefit someone who, though formally being paid for work previously performed or for past services, was continued on active payroll status and received her same pay and benefits in order to achieve a vested pension. *Helen T. Darby v. Board of Review*, 359 N.J.Super. 479, 820 A.2d 666.

#### **12:17-8.9 Receipt of residuals**

"Residuals" are deferred payments or commissions usually made to individuals for the reuse of commercial recordings. The receipt of residuals shall not be a bar to eligibility for unemployment benefits. These payments do not extend the individual's employment period and such weeks and payments may not be used to establish or increase his or her monetary eligibility for benefits for any claim filed after the period for which they are made.

**12:17-8.10 Vacation and holiday pay**

(a) An individual who voluntarily takes a vacation is ineligible for benefits as the individual is unavailable for

work. "Vacation" means a period of absence from work taken voluntarily by the employee with the employer's consent and with the intention of not working.



(b) Where a union or employment contract calls for a vacation or holiday period with pay and permits the employer to close its operations for a specified period, the employees shall be ineligible for benefits. However, any employee who does not receive pay for the contractual vacation period or any part thereof may receive unemployment benefits if otherwise eligible.

(c) The receipt of a lump sum payment at termination representing unused accrued vacation leave is not a bar to the receipt of unemployment benefits.

#### 12:17-8.11 Sick leave pay

(a) An individual who receives periodic sick leave payments from an employer is considered employed and is ineligible for unemployment benefits because the claim is invalid.

(b) When an individual's employment is terminated, any lump sum payment of unused accrued sick leave is not a bar to the receipt of unemployment benefits.

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### SUBCHAPTER 9. CLAIM ADJUDICATION— VOLUNTARILY LEAVING WORK

#### 12:17-9.1 Disqualification for voluntarily leaving—general principles

(a) An individual shall be disqualified for benefits for the week in which he or she has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment, which may include employment for the Federal government, and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case. See N.J.S.A. 43:21-5(a).

(b) For the purpose of this subchapter, "good cause attributable to such work" means a reason related directly to the individual's employment, which was so compelling as to give the individual no choice but to leave the employment.

(c) The burden of proof is on the claimant to establish good cause attributable to such work for leaving.

(d) An individual who leaves work for several reasons, one of which constitutes good cause attributable to such work, shall not be disqualified for benefits.

(e) An individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for the following reasons including, but not limited to:

1. Lack of transportation;

2. Care of children or other relatives;
3. School attendance;
4. Self-employment;
5. Lack of housing;
6. Relocating to another area for personal reasons;
7. Relocating to another area to accompany a spouse or other relatives;
8. Voluntary retirement;
9. To accept other work; or
10. Incarceration.

#### Case Notes

Employer's inappropriate request for lie detector test good cause for voluntarily leaving work. In the Matter of J.C., 97 N.J.A.R.2d (UCC) 45.

#### 12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time work and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as defined in N.J.A.C. 12:17-9.1(b). The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount.

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.
2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

(b) A worker who is employed by two or more employers on a part-time basis and who leaves one employer voluntarily without good cause attributable to such work, shall be subject to disqualification for voluntarily leaving work.

#### 12:17-9.3 Voluntary leaving for health or medical reasons

(a) An individual who leaves work because of a disability which has a work-connected origin is not subject to disqualification for voluntarily leaving work, provided there was no

other suitable work available which the individual could have performed within the limits of the disability.

(b) An individual who leaves a job due to a physical and/or mental condition or state of health which does not have a work-connected origin but is aggravated by working conditions will not be disqualified for benefits for voluntarily leaving work without good cause "attributable to such work," provided there was no other suitable work available which the individual could have performed within the limits of the disability. When a non-work connected physical and/or mental condition makes it necessary for an individual to leave work due to an inability to perform the job, the individual shall be disqualified for benefits for voluntarily leaving work.

(c) Notwithstanding (b) above, an individual who has been absent because of a personal illness or physical and/or mental condition shall not be subject to disqualification for voluntarily leaving work if the individual has made a reasonable effort to preserve his or her employment, but has still been terminated by the employer. A reasonable effort is evidenced by the employee's notification to the employer, requesting a leave of absence or having taken other steps to protect his or her employment.

(d) When an individual leaves work for health or medical reasons, medical certification shall be required to support a finding of good cause attributable to work.

#### **12:17-9.4 Voluntary leaving for health or safety conditions**

An individual shall not be disqualified for benefits for voluntarily leaving work if he or she can establish that working conditions are so unsafe, unhealthful, or dangerous as to constitute good cause attributable to such work.

#### **12:17-9.5 Voluntary leaving work prior to imminent layoff or discharge**

(a) If an individual leaves work after he or she is notified by the employer of an impending layoff or discharge, he or she shall be subject to disqualification for benefits unless the individual will be separated within four weeks. For purposes of this section, imminent layoff or discharge is one in which the individual will be separated within four weeks.

(b) An individual who leaves due to an imminent layoff or discharge shall be considered to have withheld his or her services from the employer and shall be deemed unavailable for work and ineligible for benefits for such period.

#### **12:17-9.6 Discharge after giving notice of resignation**

(a) When an individual gives the employer notice of resignation and the employer subsequently terminates the individual's employment prior to the effective date of the notice, the individual's separation shall be reviewed as a voluntarily leaving work issue as of the effective date of the resignation. However, the individual may receive benefits up to the date of resignation, if otherwise eligible.

(b) If the discharge in (a) above was the result of misconduct connected with the work, in addition to the voluntary leaving disqualification, the claimant will be subject to disqualification for misconduct connected with the work.

#### **12:17-9.7 Assignment of work under a union contract**

If a union contract provides that a worker may be assigned other work when there is a lack of work in the worker's usual occupation, such assignment does not constitute an offer of new work since this change in duties is covered by the terms of the existing contract. If separated from employment for this reason, the employee shall be disqualified for benefits for voluntarily leaving work without good cause attributable to such work.

#### **12:17-9.8 Recall from temporary layoff**

If an unemployed individual is on a temporary layoff of up to 10 weeks and has a definite date of recall to work with a former employer and fails to return to such work, he or she shall be subject to disqualification for benefits for voluntarily leaving work.

#### **12:17-9.9 Loss of license needed as a condition of employment**

(a) If an individual is discharged due to the loss of a prerequisite license which is necessary to perform the duties of his or her employment, such discharge shall subject the individual to disqualification for benefits for voluntarily leaving work if he or she engaged in an act which resulted in the loss of the license.

(b) If an individual fails to apply for or renew a prerequisite license which is needed to perform the duties of his or her employment, and he or she is separated from work for not possessing the required license, the separation from work shall be considered a voluntary leaving of work and the individual shall be disqualified for benefits.

(c) If an individual is separated from work by the employer due to the individual's failure to pass a licensing or other qualifying examination, the separation from work shall be considered a discharge.

#### **12:17-9.10 Job abandonment**

(a) An employee who is absent from work for five or more consecutive work days and who without good cause fails to notify the employer of the reasons for his or her absence shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work. 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 employee from notifying the employer of the absence.

(b) An employee who has not returned to work following an approved leave of absence pursuant to the employer's written policy, union contract or business custom and who has not notified the employer of the reasons for failing to return to work within five consecutive work days shall be considered to have abandoned his or her employment. Such job abandonment shall subject the employee to disqualification for benefits for voluntarily leaving work without good cause attributable to such work.

**12:17-9.11 Voluntary leaving work or discharge due to circumstances resulting from the individual being the victim of domestic violence**

(a) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in N.J.S.A. 2C:25-19.

(b) No employer's account shall be charged for the payment of benefits to an individual who left work due to circumstances resulting from the individual being a victim of domestic violence.

(c) For the purposes of this section, the individual shall be treated as being a victim of domestic violence if the individual provides one or more of the following:

1. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
2. A police record documenting the domestic violence;
3. Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in N.J.S.A. 2C:25-19;
4. Medical documentation of the domestic violence issued by a licensed medical practitioner;
5. Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or
6. Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

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

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Youth and Family Services in the Department of Human Services and is under contract with the Division for the express purpose of providing such services.

New Rule, R.2000 d.326, effective August 7, 2000.  
See: 32 N.J.R. 1699(a), 32 N.J.R. 2907(a).

**SUBCHAPTER 10. CLAIMS ADJUDICATION—  
MISCONDUCT AND GROSS MISCONDUCT  
CONNECTED WITH WORK**

**12:17-10.1 Disqualification for misconduct and gross misconduct connected with work—general principles**

(a) An individual shall be disqualified for benefits for the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the five weeks which immediately follow that week. (See N.J.S.A. 43:21-5(b).)

(b) Unless a final discharge is changed to a suspension for misconduct connected with the work, if the discharge is rescinded by the employer voluntarily or as a result of mediation or arbitration, this section shall not apply. However, an individual who is restored to employment with back pay shall return any benefits received for any week of unemployment for which the individual is subsequently compensated by the employer.

(c) If the individual's discharge was for gross misconduct connected with the work because he or she committed an act punishable as a crime of the first, second, third or fourth degree under the "New Jersey Code of Criminal Justice," N.J.S.A. 2C:1-1 et seq., the individual shall be disqualified for benefits for the week in which he or she was discharged and for each week thereafter until the individual becomes reemployed and works four weeks in employment and has earned at least six times the individual's weekly benefit rate. The individual will have no benefit rights based upon wages from that employer for services rendered prior to the day upon which he or she was discharged.

(d) An individual who is suspended for gross misconduct connected with the work shall be disqualified for benefits in the same manner as an individual who has been finally discharged for gross misconduct connected with the work.

**Case Notes**

Implementation of employment settlement no bar to employee's unemployment benefits. *Robinson v. Camden County Health Services Center*, 97 N.J.A.R.2d (CSV) 669.

**12:17-10.2 Misconduct defined**

(a) For an act to constitute misconduct, it must be improper, intentional, connected with one's work, malicious, within the individual's control, a deliberate violation of the employer's rules, or a disregard of standards of behavior which the employer has the right to expect of an employee.

(b) To sustain disqualification under this section, the burden of proof is on the employer to show that the employee's actions constitute misconduct. However, in the case of gross misconduct, the following apply:

1. Where an employer provides sufficient evidence to establish that a claimant was discharged for gross misconduct connected with the work, prosecution or conviction shall not be required to sustain that the claimant has engaged in gross misconduct.

2. If an individual has been convicted of a crime of the first, second, third or fourth degree under the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., in a court of competent jurisdiction, such conviction shall be conclusive as to a finding of gross misconduct.

(c) "Connected with the work" means not only misconduct that occurs in the course of employment during working hours, but includes any conduct which occurs after working hours or off the employer's premises where there is substantial evidence that the conduct adversely impacts the employer or the individual's ability to perform the duties of his or her job.

**12:17-10.3 Discharge or suspension for unauthorized absence**

(a) An individual shall be disqualified for benefits for misconduct connected with the work, if he or she did not have good cause for being absent from work, or failed without justification to take steps necessary to notify the employer of the absence and the reason therefor.

(b) For the purpose of this section, "good cause" means any compelling personal circumstance, including illness, which would normally prevent a reasonable person under the same conditions from reporting to work.

(c) An unauthorized absence for five or more consecutive work days may constitute job abandonment and subject an individual to disqualification for benefits for voluntarily leaving work without good cause under N.J.A.C. 12:17-9.10.

**12:17-10.4 Discharge or suspension for tardiness**

(a) Tardiness shall constitute misconduct if it was:

1. Chronic or excessive and is repeated after verbal and/or written warnings from the employer; and

2. Without reasonable excuse, or could have been anticipated by the individual and he or she failed without justification to take necessary steps to notify the employer of the expected tardiness.

**12:17-10.5 Discharge or suspension for falsification of application or other records**

An individual shall be considered to have committed an act of willful misconduct when it is established that he or she falsified an employment application or other records required by the employer, or omitted information which created a material misrepresentation of his or her qualifications or suitability for the job.

**12:17-10.6 Discharge or suspension for insubordination or violation of an employer's rule**

(a) An individual shall be considered to have committed an act of misconduct where it is established that he or she:

1. Refused to comply with instructions from the employer, which were lawful, reasonable, and did not require the individual to perform services beyond the scope of his or her customary job duties.

2. Acted beyond the expressed or implied authority granted to the individual by the employer; or

3. Violated a reasonable rule of the employer which the individual knew or should have known was in effect.

**12:17-10.7 Discharge or suspension for unsatisfactory work performance**

An individual's failure to meet the employer's standard(s) relating to quantity or quality of work shall be considered misconduct if it is established that he or she deliberately performed below the standard(s), and that the standard(s) was reasonable.

**12:17-10.8 Discharge or suspension for failure to observe safety standards**

Where an individual has violated a reasonable safety standard imposed by the employer, such violation shall constitute an act of misconduct even though the violation has not endangered the safety or property of the individual, employer, fellow employees or the general public.

**12:17-10.9 Failing or refusing to take an employer drug test**

(a) Where a drug-free workplace and/or drug testing is a prerequisite of employment, an employee who tests positive for illegal drugs on a bona fide drug test of the employer or refuses to provide a test sample for the employer violates a condition of employment. If separated from employment for this reason, the employee shall be disqualified for benefits for misconduct connected with such work.

(b) In order for the disqualification for benefits in (a) above to apply, the employer shall have a written drug test policy which has been conveyed to the employees.

**SUBCHAPTER 11. CLAIMS ADJUDICATION—  
REFUSAL TO APPLY OR ACCEPT  
SUITABLE WORK**

**12:17-11.1 Disqualification period for failure to apply for  
or accept suitable work—general principles**

An individual shall be disqualified for benefits if it is found that the individual has failed, without good cause, either to apply for available, suitable work when directed by the employment service office or the Director, or to accept suitable work when it is offered. The disqualification shall continue for the week in which the failure to apply occurred and for the three weeks which immediately follow that week. This disqualification for failure to accept suitable work shall be imposed during the week in which the individual refused the work or, if there is a definite starting date, the week in which the work is to begin. (See N.J.S.A. 43:21-5(c).)

**12:17-11.2 Suitability of work defined**

(a) In determining whether or not the work is suitable, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

1. For a position to be considered suitable, all of the factors in (a) above must be judged with respect to the particular individual involved.

2. For purposes of this subchapter, and restricted to those offers of work made during an individual's benefit year, suitability in terms of wages means:

i. Eighty percent of the claimant's average weekly wage (including the value of employee benefits) during the base year if the offer made is during the first 20 consecutive weeks of unemployment benefits;

ii. Seventy percent of the claimant's average weekly wage (including the value of the employee benefits) during the base year after the twentieth consecutive week of unemployment benefits.

3. Notwithstanding any other provisions of this subchapter an offer of work at a rate of pay less than provided by the State minimum hourly wage shall be unsuitable.

(b) No work may be deemed suitable, and an individual will not be disqualified for benefits because of his or her refusal to accept work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable than those prevailing for similar work in the labor market area; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

**12:17-11.3 Establishing bona fide offers of work**

(a) An individual shall not be disqualified for benefits pursuant to this subchapter unless it has been established that there was a bona fide offer of work or referral to work which he or she refused. An employer should document offers of work and should contact the Division if unable to reach the claimant. In order for a bona fide offer or referral to exist it must be shown that:

1. There was an offer of work to a specific job evidenced by details of the job including job duties, rate of pay, hours of work; and

2. The offer was conveyed in writing or verbally to the individual.

(b) If an individual prevents the details of the job from being relayed by refusing the job or the referral at the beginning of the interview, the offer is still considered bona fide.

**12:17-11.4 Good cause for refusal of suitable work**

For purposes of this subchapter, "good cause" means any situation over which the claimant did not have control or which was so compelling as to prevent the claimant from accepting work. In order to establish good cause, the claimant must have made a reasonable attempt to remove the restrictions pertaining to the refusal.

**12:17-11.5 Offers of new work**

(a) An individual shall be subject to disqualification for benefits if he or she fails to accept or apply for suitable new work. For purposes of this subchapter, "new work" means:

1. An offer of work made to an unemployed individual by an employer with whom he or she has never worked;

2. An offer of reemployment made to an unemployed individual by any former employer, following an indefinite layoff with no recall date; or

3. An offer of work made by an individual's present employer of substantially different duties, terms or conditions of employment from those he or she agreed to perform in his or her existing contract of hire. Examples of factors which may be weighed when considering whether there is a substantial change in the terms or conditions of employment which constitute "new work" include, but are not limited to, the employer's change of hours or shift, job duties, location, salary, benefits, work environment and health and safety conditions.

(b) An individual who accepts suitable work, even for a brief period, and voluntarily leaves such work for reasons not attributable to the work, shall be disqualified for bene-

fits for voluntarily leaving work as opposed to for refusing suitable work.

## SUBCHAPTER 12. CLAIMS ADJUDICATION— OTHER BENEFIT ELIGIBILITY ISSUES

### 12:17-12.1 Corporate officers, owners and creditors

(a) An officer of a corporation and/or a person who has more than five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be considered unemployed in any week during the individual's term of office or ownership in the corporation and the claim shall be determined invalid.

1. An equitable interest in the corporation is defined as the ownership of the corporate stock.
2. A debt interest in the corporation is defined as being a creditor of the corporation.
3. A corporation is considered viable unless it has been dissolved in accordance with the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq.; or has filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.

#### Case Notes

Before denying petition for unemployment compensation, Board of Review was required to consider petitioner's contention that he had divested himself of his ownership interest in the corporation that had employed him. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Owner of 25% equity share in corporation was not entitled to unemployment benefits after his employment with corporation was terminated, where corporation had not been formally dissolved, regardless of the reason corporation had not been formally dissolved. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Under statute and regulation, an officer of a corporation and/or a person who has more than a 5% equitable or debt interest in the corporation is ineligible for unemployment compensation benefits while that person still holds his or her stock or office or debt interest, and the corporation has neither been dissolved nor filed for bankruptcy. *Rudbart v. Bd. of Review*, 770 A.2d 1273 (2001).

Claimant, who was corporate treasurer and a 25% shareholder, was not "unemployed" and was precluded from receiving unemployment benefits even though restaurant (employer) had ceased operating; owner remained active for collection of debts. *Fernicola v. Board of Review*, 335 N.J.Super. 523 (A.D. 2001).

### 12:17-12.2 Labor disputes

(a) The following words and terms, as used in this section, shall have the following meanings:

1. "Labor dispute" means any controversy concerning wages, hours, working conditions or terms of employment between an employer and a bargaining unit or a group of employees.

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) 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.

#### 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) 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.

#### 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 business is not considered wages for unemployment benefit and contribution purposes.

#### 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. The term "good cause" is defined as compelling circumstances which prevent the individual from accepting full-time employment;
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.

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### 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.

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## 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 shall be granted by the Director, with the Controller's concurrence, if it can be demonstrated to the satisfaction of the Director that the following conditions have been met:

1. The claimant did not misrepresent or withhold any material fact in obtaining benefits; and
2. The claimant is deceased or permanently disabled and no longer able to work. A claimant's current receipt of Social Security disability benefits may be deemed evidence of current permanent disability. 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.

(b) 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.

### 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.

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## 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.

**12:17-16.2 Benefit rights of interstate claimants**

(a) If a claimant files a claim against any state, which determines that the claimant has available benefits 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.

(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 individual employed in a seasonal industry during the off season.

### **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.

### **12:17-16.4 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) 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 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.

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## **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 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 purpose 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.

#### **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 designed 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.

#### **12:17-17.3 Waiver of registration and reporting requirements**

The giving of notice of disability and the filing of proof of a claim for disability benefits during unemployment shall dispense with the requirements of N.J.A.C. 12:17-4 concerning registering for work and reporting to an unemployment claims office for the period covered by the claim.

#### **12:17-17.4 Payment of disability benefits during unemployment for individuals working for exempt employers**

(a) This section provides that weeks and wages earned by an individual employed by an employer that is not covered under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., out-of-State or by the Federal government, shall be excluded from benefit calculations under the Disability During Unemployment Program.

(b) Where an individual becomes ill or disabled and his or her most recent employing unit was not an employer covered by the Temporary Disability Benefits Law, disability benefits during unemployment shall be paid to the individual under N.J.S.A. 43:21-4(f), provided he or she has sufficient weeks and wages as a covered individual during the base year to establish a valid claim and is otherwise eligible.

(c) A claim for disability benefits during unemployment which was previously established as a valid unemployment claim based wholly or in part on wages from employment that is not with a covered employer shall be redetermined. Eligibility for disability benefits during unemployment shall be based solely on wages earned as a covered individual during the base year to establish a valid claim for benefits.

#### **12:17-17.5 Simultaneous unemployment and disability benefit periods**

(a) Where, during a week of unemployment, an individual would be eligible for unemployment benefits except for his or her inability to work because of illness or disability during a portion of such week, a claim for disability benefits during unemployment may be filed and benefits paid to such an individual, provided he or she is otherwise eligible and any of the following conditions apply:

1. If the simultaneous benefit period occurs immediately prior to the disability, the claimant must file a claim in accordance with N.J.A.C. 12:17-17.1.
2. If the simultaneous benefit period occurs at the end of the disability, the claimant must assert his or her ability to work by reporting to the unemployment office during the calendar week of his or her recovery or in the calendar week immediately following; or
3. If the claimant returns to work during the calendar week of his or her recovery or in the calendar week immediately following.

#### **12:17-17.6 Eligibility for benefits during the waiting period**

A claimant shall be eligible to receive benefits for the waiting period, when benefits become payable due to unemployment benefits or disability during unemployment or a combination of both, with respect to the third consecutive week following the waiting period.

**12:17-17.7 Benefit determination**

A claimant shall be given written notice of any determination on his or her claim and of the reason for any denial of his or her claim. A copy of the determination and the probable duration for which benefits will be paid, shall be mailed to the claimant. The claimant's appeal rights shall also be clearly stated on the determination.

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**SUBCHAPTER 18. SELF-EMPLOYMENT ASSISTANCE AND ENTREPRENEURIAL TRAINING PROGRAM**

**12:17-18.1 Definitions**

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

"Full-time basis," with respect to the amount of time spent in participating in self-employment assistance activities and efforts to establish a business, means a minimum of 35 hours per week.

"Peer group" means a group of not more than 20 participating individuals who provide mutual assistance and support for each other's efforts to establish businesses and become self-employed entrepreneurs.

"Reemployment services" means job search assistance and job placement services, including counseling, testing, assessment, job search workshops, job clubs, referrals to employers and providing occupational and labor market information.

"Regular benefits" means benefits payable to an individual under the Unemployment Compensation Law, including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 U.S.C. § 85. Regular benefits do not include extended benefits payable under N.J.S.A. 43:21-24.12 et seq. or any other State or Federal program which would provide benefits beyond the duration of regular benefits or additional benefits for training payable pursuant to the Workforce Development Partnership (WDP) Act as provided at N.J.S.A. 43:21-57 et seq.

"Self-employment assistance activities" means activities, approved by the Division, in which an individual participates for the purpose of establishing a business and becoming self-employed.

"Self-employment assistance allowance" means an allowance, payable in lieu of regular benefits from the Unemployment Insurance Trust Fund, to an individual participating in self-employment assistance activities who meets the requirements of N.J.S.A. 43:21-67 et seq.

"Self-employment assistance services" means services provided to an individual, including entrepreneurial training, business counseling and technical assistance, to help the individual to develop a business plan, establish a business and become self-employed.

"Worker profiling system" means the worker profiling system established pursuant to the Unemployment Compensation Law at N.J.S.A. 43:21-4.1 and N.J.A.C. 12:17-20. The system identifies unemployment benefit claimants who are most likely to exhaust benefits, using a computerized series of screens and a statistical model to develop a numerical ranking of claimants.

"Workforce Development Partnership Program" means the program created pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:14D-1 et seq.

**12:17-18.2 Self-employment assistance program**

(a) The Self-Employment Assistance Program (SEA), established pursuant to N.J.S.A. 43:21-67 et seq. provides for the following:

1. An individual participating in the SEA Program (activities and services which assist an individual in establishing a business and becoming self-employed) may receive an allowance, in lieu of unemployment benefits for which he or she would have qualified;
2. An individual need not actively seek work while he or she is engaged in self-employment activities;
3. Counseling and technical assistance including assistance in developing a business plan; and
4. A training grant for entrepreneurial training and assistance approved by a WDP counselor in an amount not to exceed \$400.00, or, if the grant is for training provided by any public institution of higher education under N.J.S.A. 18A:62-1 which governs public higher education institutions, not to exceed \$1,500.

**12:17-18.3 Eligibility requirements**

(a) To be eligible for selection to participate in the SEA Program and to receive allowances, an individual shall meet all of the following requirements:

1. Be a dislocated worker who has been determined through the worker profiling system to be likely to exhaust benefits. The Division shall give priority to those individuals who, through the profiling system, have received scores which indicate the highest probability of exhausting unemployment benefits since the maximum number of individuals receiving SEA allowance may not exceed one percent of the number of claimants receiving regular unemployment benefits;
2. Be eligible to receive benefits on his or her unemployment insurance claim;

3. Have a viable business plan approved by a qualified job counselor pursuant to the Workforce Development Partnership Act, N.J.S.A. 34:15D-1;

4. Be willing to work full-time in developing the business;

5. Participate in full-time entrepreneurial training and/or counseling in combination with other business activities as required by the Division; and

6. Have the financial resources needed to start and sustain the business until it becomes self-supporting.

#### 12:17-18.4 Self-employment assistance allowance

(a) SEA allowances are paid to eligible participants "in lieu of" unemployment benefits in an amount equal to the individual's weekly benefit rate and maximum benefit amount.

(b) Weekly SEA allowances shall not be reduced by any income generated from the individual's business. However, the weekly benefit rate shall be reduced by any earnings from other employment which the individual may have.

(c) The total payment of a combination of unemployment benefits and SEA allowances shall not exceed the maximum benefit amount of the claim for regular unemployment benefits.

(d) Individuals who terminate participation in the SEA Program shall be disqualified for SEA allowances and shall not be reinstated in the program. However, such individuals may be eligible to receive regular unemployment benefits.

(e) Individuals determined eligible for SEA allowances shall not be eligible to receive extended benefits or additional benefits during training pursuant to the Workforce Development Partnership Act. Individuals who temporarily suspend participation in the SEA Program may receive regular benefits with respect to the benefit year if otherwise eligible until the total amount of regular benefits and SEA allowances paid to the individual equals the maximum benefit amount. Such individuals may also be paid extended benefits if otherwise eligible. Whether such individuals shall be eligible to receive benefits under other Federal or State extended benefit programs is subject to the statute providing for such extensions.

#### 12:17-18.5 Appeals

(a) Denials of grant 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.

#### 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.

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### 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

### Authority

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

### Source and Effective Date

R.1999 d.115, effective April 5, 1999.  
See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

### 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, and providing occupational and labor market information, skills assessment, job search workshops, job clubs and 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).

### 12:17-20.3 Identifying claimants

(a) The following factors are used to ensure that new claimants identified are permanently laid off and are likely to exhaust their regular unemployment compensation:

1. Receipt of a first payment for full unemployment benefits;
2. No definite recall date and not in a seasonal industry with a strong likelihood of recall; and
3. Does not exclusively use an approved union hiring hall to find work in their current occupation.

(b) New claimants who have not received their first payment for full unemployment benefits early in the claims series, or have definite recall expectations, or secure work through a hiring hall shall not be identified as likely to exhaust their compensation.

### 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 to work;
3. Are working part-time;
4. Are receiving similar reemployment services at the time of profiling;
5. Have recently completed similar reemployment services;
6. Are attending or registered to attend training at the time of profiling;
7. Have become a member of an approved union hiring hall;
8. Are returning to work with a definite starting date;

9. Have received a definite date of recall from a former employer;

10. Are self-enrolled in UI approved training;

11. Are job ready for existing openings; or

12. Have moved and are now filing on an interstate basis, unless arrangements have been made for profiling and referring interstate claimants.

**12:17-20.8 Appeals**

Appeals from denials of or ineligibility for benefits under this subchapter shall be decided in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.

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**SUBCHAPTER 21. RELIEF FROM BENEFIT CHARGES**
**Authority**

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

**Source and Effective Date**

R.1999 d.115, effective April 5, 1999.  
See: 30 N.J.R. 4313(a), 31 N.J.R. 878(a).

**12:17-21.1 General provisions**

(a) Whenever a claimant is paid unemployment benefits, his or her former employers' experience rating accounts shall be charged for the amount of benefits paid to the claimant. These charges shall be made in proportion to the wages paid by the employer during the base year of the claimant as compared with the total wages paid by all of his or her employers during the same period.

(b) An employer may impact the determination of the contribution rate by maintaining necessary records and information and providing some to the Division of Employer Accounts. Such information shall enable the Division of Employer Accounts to charge employer accounts properly and relieve charges under certain conditions.

(c) This subchapter shall apply to claims filed on or after January 4, 1998.

(d) This subchapter does not apply to governmental entities, whose benefit financing provisions are set forth in N.J.S.A. 43:21-7.3 and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in N.J.S.A. 43:21-7.2. This subchapter also does not apply to unemployment benefits paid to Federal employees and ex-service members which are fully financed by Federal funds.



**12:17-21.2 Reasons for separation**

(a) A base year employer may obtain relief from the charges for benefits paid to a former employee if the claimant was separated from his or her work with such employer due to any one of the following reasons:

1. The claimant has left work without good cause attributable to his or her employment;
2. The claimant was discharged for willful misconduct or gross misconduct connected with the work;
3. The claimant has failed, without good cause, to apply for or accept suitable work;
4. The claimant would be disqualified for benefits because he or she has simultaneously claimed benefits against another state or Federal government;
5. The claimant would be disqualified for receiving benefits for the illegal receipt or attempted receipt of benefits as a result of any false or fraudulent representation; or
6. The claimant is in training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. § 2296(a)(1)) or when the claimant leaves work to enter this training as provided by N.J.S.A. 43:21-5(h).

**12:17-21.3 Request for separation information**

(a) For an employer to obtain relief of benefit charges, he or she shall complete Form BC-3E, Notice to Employer of Monetary Determination and Request for Separation Information, and additional requests for separation information, where determined necessary by the Division. The separation information shall include a comprehensive statement of facts surrounding the separation from work. The Form BC-3E and shall be completed and returned to the office that initiated the request within 10 calendar days after the date upon which the form requesting information was mailed. Any additional separation information requested by the Division shall be completed and returned to the office that initiated the request within 21 calendar days after the date upon which the request was mailed.

(b) Relief of benefit charges shall not be granted if either the Form BC-3E is not received by the local claims office or postmarked within 10 calendar days after the date upon which the form requesting information was mailed, or if any additional separation information requested by the Division is not received by the local claims office or postmarked with 21 calendar days after the date upon which the request for additional information was mailed, unless the employer shows good cause for failing to do so.

(c) For purposes of this section, "good cause" means any situation over which the employer did not have control and which was so compelling as to prevent the employer from providing information as required by the Division.

**12:17-21.4 Misrepresentation or false information**

(a) An employer or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to N.J.S.A. 43:21-7(c)(1), shall be liable for a fine of \$1,000 to be recovered in an action at law in the name of the Division or as provided in N.J.S.A. 43:21-14(e).

1. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal, shall constitute a separate offense.
2. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in N.J.S.A. 43:21-1 et seq.

**12:17-21.5 Determination and appeals**

The Division shall notify employers in writing of the determinations made regarding their requests for relief from charges within a reasonable time period. Such notice shall include a statement of the right of the employer to appeal the determination in accordance with N.J.A.C. 1:12 and 12:20 concerning appeals to the Appeal Tribunal and Board of Review for unemployment benefit determinations.