

CHAPTER 19

DEFINITIONS USED BY EMPLOYMENT SECURITY
AGENCY AND SPECIAL EMPLOYMENT
RELATIONSHIPS

Authority

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

Source and Effective Date

R.2011 d.086, effective February 10, 2011.
See: 42 N.J.R. 2373(a), 43 N.J.R. 639(b).

Chapter Expiration Date

Chapter 19, Definitions Used by Employment Security Agency and Special Employment Relationships, expires on February 10, 2016.

Chapter Historical Note

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

Chapter 19, General Rules, was repealed by R.1985 d.147, effective April 1, 1985.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

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

Pursuant to Executive Order No. 66(1978), Chapter 19, Definitions Used by Employment Security Agency and Special Employment Relationships, was readopted as R.2000 d.259, effective May 26, 2000. See: 32 N.J.R. 1143(a), 32 N.J.R. 2244(a).

Chapter 19, Definitions Used by Employment Security Agency and Special Employment Relationships, was readopted by R.2005 d.340, effective September 9, 2005. See: 37 N.J.R. 2143(a), 37 N.J.R. 3836(a).

Chapter 19, Definitions Used by Employment Security Agency and Special Employment Relationships, was readopted as R.2011 d.086, effective February 10, 2011. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:19-1.1 Purpose

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

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

12:19-1.2 Definitions

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

“Agricultural labor” means the following activities:

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

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

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

Agricultural labor does not include:

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

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

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

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

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

“Controller” means the Controller of the Department of Labor and Workforce Development.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Real estate broker” means a person or entity that is licensed by the New Jersey Real Estate Commission and: