

(b) 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 sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and
3. The individual is available for enough weekly hours to be able to earn remuneration equal to at least the individual's weekly benefit amount.

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

In (a), rewrote 2.

Amended by R.2005 d.385, effective November 7, 2005.
See: 37 N.J.R. 1123(a), 37 N.J.R. 4274(a).

Added new (a); recodified former (a) as (b) and rewrote the subsection.

SUBCHAPTER 13. PROCEDURES FOR WAGE-BENEFIT CONFLICTS

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

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

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

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

12:17-13.2 Fact-finding interview

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

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

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

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

12:17-13.3 Claimant's failure to appear

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

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

12:17-14.1 Statutory period for demanding refund

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

12:17-14.2 Waiver of recovery of benefit overpayment

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

1. The overpayment did not occur due to a claimant's willful misrepresentation or nondisclosure to the Division; or
2. The claimant is deceased or permanently disabled and no longer able to work.

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

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

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

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

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

12:17-14.3 Requirements for repaying overpaid benefits

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

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

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

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

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

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

12:17-15.1 Definitions

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

"Continuing employment" means employment offered no later than the next business day following the end of the last assignment, within the scope of a written agreement or, if no

written agreement exists, under similar terms and conditions of the last assignment; and with a definite starting date of no more than four weeks from the end date of the last assignment.

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

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

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

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

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

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

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