

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-1.4 Employer to inform worker without Social Security account number

An employer shall inform each worker who has not secured a Social Security account number that such number

must be filed on or before the seventh day after the date on which the worker first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.

12:16-1.5 Employer to inform worker in certain cases

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

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

SUBCHAPTER 2. RECORDS**12:16-2.1 Payroll records**

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;

2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;

3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;

4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;

5. Such information as may be necessary to determine remuneration on a calendar week basis.

6. The number of base weeks (see N.J.S.A. 43:21-19(t)) and wages.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

12:16-2.3 Records defined

Records are defined as all books of original entry plus any summarizations or other media used to post to a general ledger or its equivalent as well as all Federal and State tax returns. Records shall also include machine sensible data media used for recording, consolidating, and summarizing accounting transactions within an employing unit's automatic data processing system.

12:16-2.4 Records retention

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

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

Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

SUBCHAPTER 3. POWER OF ATTORNEY

12:16-3.1 Power of attorney: requirements

(a) An employer may grant power of attorney to another person to represent the employer before the Employment Security Agency in all matters affecting quarterly contribution reports, experience rating, tax liability, and claims for benefits.

(b) The power of attorney document must contain the following:

1. The corporate seal unless the employer is an individual or a partnership;
2. The signature of the employer(s) or duly authorized corporate officers;
3. Specific mention of the Employment Security Agency as the entity before whom representation will be made on behalf of the employer;
4. The signature of a notary public and the expiration date of commission;
5. The signature of the representative and a statement acknowledging power of attorney authorization.

(c) If the address of record for the employer is changed to that of the representative on the status (tax) file, the benefit file, or both, the representative must accept all reports, notices, billings, and correspondence pertinent to the particular file on which the address had been changed.

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

SUBCHAPTER 4. REMUNERATION

12:16-4.1 Remuneration defined

(a) The New Jersey Unemployment Compensation Law, at N.J.S.A. 43:21-19(p), states that "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.14.

1. Sick leave payments;
2. Fringe benefit payments;
3. Section 401(k) plans;
4. Push payments;
5. Officer's remuneration;
6. Back pay awards;
7. Residuals, aliens;
8. Other remuneration;
9. Tips and gratuities;
10. Temporary disability payments;
11. Personal use of a company vehicle;
12. Dependent care assistance programs;
13. Interest on below-market interest rate loans; and
14. Section 125 Cafeteria plans.

Amended by R.1990 d.217, effective April 16, 1990.
See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).
In b: changed "4.9" to "4.14."

Added (b) 10-13.
Amended by R.1995 d.138, effective March 6, 1995.
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

12:16-4.2 Sick leave payments

(a) Sick leave payments (also known as continuation pay) made by employers to employees for periods of disability are wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes.

(b) Those types of sick leave payments deemed wages and therefore taxable are:

1. Continuation of pay during periods of sickness or injury;
2. Payment of the difference between temporary disability benefits paid under the State Plan or an approved Private Plan and full salary;
3. Payment of the difference between Workers' Compensation benefits and full salary;

Case Notes

Claimant is provided with notice and a hearing before imposition of a fine (citing former N.J.A.C. 12:16-10.5). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

12:16-10.5 Assessment for governmental reimbursable employers

(a) All governmental entities who repay benefits in lieu of contributions shall be notified of the applicable portion to be repaid to the Controller or his or her designee from their

trust funds for the amounts of any excess unemployment insurance deductions either refunded to their employees or credited to their employees' New Jersey State Gross Income Tax.

(b) Payment to the Controller or his or her designee shall be made within 30 days of the date of mailing of the notice. Payments received after the 30 day period shall be liable to the assessment of interest as specified in N.J.S.A. 43:21-14(b).

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

Case Notes

Under former rules, the Division Director determined the nature and scope of the penalty to be imposed, which decision is reviewed by the Commissioner (citing former N.J.A.C. 12:16-10.6). *Malady v. Bd. of Review, Div. of Employment Security*, 76 N.J. 527, 388 A.2d 947 (1978) on remand 166 N.J.Super. 523, 400 A.2d 119.

SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS

12:16-11.1 Real estate managing agents

(a) An individual working for an agent of a property owner is an employee of the property owner, if the agent operates on a fee plus expenses basis. This type of arrangement gives the agent a fee plus reimbursement of all operating expenses on a dollar for dollar basis.

(b) An individual working for an agent of a property owner is an employee of the agent, if the agent operates on a flat fee basis. This type of arrangement gives the agent a flat fee rather than reimbursing expenses on a dollar for dollar basis.

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

12:16-11.2 Limited liability companies

(a) A limited liability company (LLC) is composed of one or more authorized persons who complete and file a certificate of formation with the Secretary of State of the State of New Jersey. An LLC must have one or more members and may commence operations at any date or time after filing the certificate of formation.

(b) An LLC consisting of two or more members shall be classified as a partnership unless classified otherwise for Federal income tax purposes.

(c) An LLC consisting of one member shall be classified as a sole proprietorship unless the LLC elected a corporate classification for Federal income tax purposes by completing IRS Form 8832; or if the member is a corporation. In the event that the member is a corporation, and where the LLC is disregarded for Federal income tax purposes, the member shall be considered the employer with regard to all individuals performing services for the LLC.

New Rule, R.1997 d.219, effective May 19, 1997.
See: 29 N.J.R. 834(b), 29 N.J.R. 2463(a).
Amended by R.1999 d.439, effective December 20, 1999.
See: 31 N.J.R. 3037(a), 31 N.J.R. 4284(b).

In (a), substituted "one" for "two" following "must have" in the second sentence; in (b), substituted a reference to LLCs consisting of two or more members for a reference to LLCs; and added (c).

SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS

12:16-12.1 Separate accounts

Each employer, for each calendar year in which it is subject to the Unemployment Compensation and Temporary Disability Benefits Law, is separately and distinctly liable for contributions, up to the yearly maximum taxable wage, based upon remuneration paid to each of its employees regardless of whether or not any such employees are common to other employing units which are jointly owned or controlled by the same interests.

12:16-12.2 Common paymaster

(a) If two or more related entities concurrently employ the same individual and compensate that individual through a common paymaster that is one of the related entities, each entity will be considered to have paid the individual the amounts that it actually dispersed.

(b) If one of the related entities actually dispersed all the wages as agent for the rest, but such wage payments were charged back to the individual entities for record keeping, income tax or other purposes, the individual related entities shall be considered to be the employer for purposes of the Unemployment Compensation and the Temporary Disability Benefits Laws.

SUBCHAPTER 13. REPORTS

12:16-13.1 Reports required

Every employer shall file such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller or his or her designee, and every employing unit shall file such reports as may be required by the Controller or his or her designee with respect to employment as shall be necessary to determine its status under the law.

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

12:16-13.2 Force and effect of instructions relating to reports

The employer shall follow and comply with all departmental instructions relating to any report or report form required or provided by a department.

12:16-13.3 Penalty for failure to file reports

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through

the post mark date on the envelope in which the report is received by the Controller or his or her designee.

(b) If an employer or employing unit who has been granted an extension of time fails to file its report on or before the termination of the period of extension for the filing thereof, the penalty for failure to file shall be payable from the original due date as if no extension had been granted.

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

12:16-13.4 Penalty abatement

(a) The Controller or his or her designee may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. The employer makes a written request for penalty abatement consideration within one year of the date of initial notification that a penalty has been assessed;
2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department. All evidence and documentation in support of the employer's request must be submitted with the affidavit;
3. All quarterly contribution reports and employer reports of wages paid have been filed;
4. All liability, other than the penalty for which abatement is being requested, has been paid.

(b) The Department will consider the following factors in evaluating a request for penalty abatement:

1. The reason(s) for the late, inaccurate or incomplete filing;
2. The number of quarters involved;
3. The effect the late, inaccurate or incomplete filing had on the operations of the Department;
4. The employer's history of compliance;
5. Previous request(s) for abatement; and
6. Other factors brought to the attention of the Department by the employer.

(c) Penalty abatement consideration will be based upon the written submissions of the employer and the records on file in the Department, unless it is determined that a material and controlling dispute of fact exists.

(d) When abatement is granted for only a part of the penalty, the employer must make payment of all unabated penalty within 30 days of the date of notification of the decision of the Controller or his or her designee. If this condition is not met, the abatement may be rescinded.

(e) Request for reconsideration must be submitted within 30 days of receipt of the penalty abatement determination. The request must show the following:

1. New information not presented in the original application that may change the outcome, along with reasons why the information was not previously submitted; or
2. That material previously submitted was not considered.

(f) All decisions made by the Controller or his or her designee concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

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

Imposed a time limit for the filing of penalty abatement requests; (b) added, establishing Controller's decisions as final administrative decision of the Department appealable to Appellate Division of NJ Superior Court.

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

12:16-13.5 Wages paid reported currently

(a) The Controller or his or her designee may require any employer to report wages paid to every worker employed within seven days from the date of payment thereof, if the Controller or his or her designee deems it necessary for the effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law. Failure to comply will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

(b) Any employer or employing unit required to comply with N.J.A.C. 12:16-13.1 (Reports required) will be duly notified by the Department.

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

12:16-13.6 Reporting wages, remuneration and other information

(a) An employer or employing unit shall furnish the record of wages and remuneration paid to a worker, and such other information as may be required under the provisions of N.J.S.A. 43:21-6(b).

(b) Failure to comply with (a) above will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).