

ASSEMBLY, No. 1352

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Excludes certain district boards of election poll workers from employee wage withholding and coverage under UI, TDI, and family disability leave insurance programs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** excluding certain district boards of election poll workers
2 from employee wage withholding for contributions to, and
3 coverage in, unemployment compensation insurance, temporary
4 disability insurance, and family disability leave insurance
5 programs, amending R.S.43:21-19 and section 3 of P.L.1948,
6 c.110.

7
8 **BE IT ENACTED** *by the Senate and General Assembly of the State*
9 *of New Jersey:*

10

11 1. R.S.43:21-19 is amended to read as follows:

12 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
13 seq.), unless the context clearly requires otherwise:

14 (a) (1) "Annual payroll" means the total amount of wages paid
15 during a calendar year (regardless of when earned) by an employer
16 for employment.

17 (2) "Average annual payroll" means the average of the annual
18 payrolls of any employer for the last three or five preceding
19 calendar years, whichever average is higher, except that any year or
20 years throughout which an employer has had no "annual payroll"
21 because of military service shall be deleted from the reckoning; the
22 "average annual payroll" in such case is to be determined on the
23 basis of the prior three or five calendar years in each of which the
24 employer had an "annual payroll" in the operation of his business, if
25 the employer resumes his business within 12 months after
26 separation, discharge or release from such service, under conditions
27 other than dishonorable, and makes application to have his "average
28 annual payroll" determined on the basis of such deletion within 12
29 months after he resumes his business; provided, however, that
30 "average annual payroll" solely for the purposes of paragraph (3) of
31 subsection (e) of R.S.43:21-7 means the average of the annual
32 payrolls of any employer on which he paid contributions to the
33 State disability benefits fund for the last three or five preceding
34 calendar years, whichever average is higher; provided further that
35 only those wages be included on which employer contributions have
36 been paid on or before January 31 (or the next succeeding day if
37 such January 31 is a Saturday or Sunday) immediately preceding
38 the beginning of the 12-month period for which the employer's
39 contribution rate is computed.

40 (b) "Benefits" means the money payments payable to an
41 individual, as provided in this chapter (R.S.43:21-1 et seq.), with
42 respect to his unemployment.

43 (c) (1) "Base year" with respect to benefit years commencing on
44 or after July 1, 1986, shall mean the first four of the last five
45 completed calendar quarters immediately preceding an individual's
46 benefit year.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

 Matter underlined thus is new matter.

1 With respect to a benefit year commencing on or after July 1,
2 1995, if an individual does not have sufficient qualifying weeks or
3 wages in his base year to qualify for benefits, the individual shall
4 have the option of designating that his base year shall be the
5 "alternative base year," which means the last four completed
6 calendar quarters immediately preceding the individual's benefit
7 year; except that, with respect to a benefit year commencing on or
8 after October 1, 1995, if the individual also does not have sufficient
9 qualifying weeks or wages in the last four completed calendar
10 quarters immediately preceding his benefit year to qualify for
11 benefits, "alternative base year" means the last three completed
12 calendar quarters immediately preceding his benefit year and, of the
13 calendar quarter in which the benefit year commences, the portion
14 of the quarter which occurs before the commencing of the benefit
15 year.

16 The division shall inform the individual of his options under this
17 section as amended by P.L.1995, c.234. If information regarding
18 weeks and wages for the calendar quarter or quarters immediately
19 preceding the benefit year is not available to the division from the
20 regular quarterly reports of wage information and the division is not
21 able to obtain the information using other means pursuant to State
22 or federal law, the division may base the determination of eligibility
23 for benefits on the affidavit of an individual with respect to weeks
24 and wages for that calendar quarter. The individual shall furnish
25 payroll documentation, if available, in support of the affidavit. A
26 determination of benefits based on an alternative base year shall be
27 adjusted when the quarterly report of wage information from the
28 employer is received if that information causes a change in the
29 determination.

30 (2) With respect to a benefit year commencing on or after June
31 1, 1990 for an individual who immediately preceding the benefit
32 year was subject to a disability compensable under the provisions of
33 the "Temporary Disability Benefits Law," P.L.1948, c.110
34 (C.43:21-25 et seq.), "base year" shall mean the first four of the last
35 five completed calendar quarters immediately preceding the
36 individual's period of disability, if the employment held by the
37 individual immediately preceding the period of disability is no
38 longer available at the conclusion of that period and the individual
39 files a valid claim for unemployment benefits after the conclusion
40 of that period. For the purposes of this paragraph, "period of
41 disability" means the period defined as a period of disability by
42 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
43 c.110 (C.43:21-27). An individual who files a claim under the
44 provisions of this paragraph (2) shall not be regarded as having left
45 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

46 (3) With respect to a benefit year commencing on or after June
47 1, 1990 for an individual who immediately preceding the benefit
48 year was subject to a disability compensable under the provisions of

1 the workers' compensation law [(chapter 15 of Title 34 of the
2 Revised Statutes)] R.S.34:15-1 et seq., "base year" shall mean the
3 first four of the last five completed calendar quarters immediately
4 preceding the individual's period of disability, if the period of
5 disability was not longer than two years, if the employment held by
6 the individual immediately preceding the period of disability is no
7 longer available at the conclusion of that period and if the
8 individual files a valid claim for unemployment benefits after the
9 conclusion of that period. For the purposes of this paragraph,
10 "period of disability" means the period from the time at which the
11 individual becomes unable to work because of the compensable
12 disability until the time that the individual becomes able to resume
13 work and continue work on a permanent basis. An individual who
14 files a claim under the provisions of this paragraph (3) shall not be
15 regarded as having left work voluntarily for the purposes of
16 subsection (a) of R.S.43:21-5.

17 (d) "Benefit year" with respect to any individual means the 364
18 consecutive calendar days beginning with the day on, or as of,
19 which he first files a valid claim for benefits, and thereafter
20 beginning with the day on, or as of, which the individual next files a
21 valid claim for benefits after the termination of his last preceding
22 benefit year. Any claim for benefits made in accordance with
23 subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim"
24 for the purpose of this subsection if (1) he is unemployed for the
25 week in which, or as of which, he files a claim for benefits; and (2)
26 he has fulfilled the conditions imposed by subsection (e) of
27 R.S.43:21-4.

28 (e) (1) "Division" means the Division of Unemployment and
29 Temporary Disability Insurance of the Department of Labor and
30 Workforce Development, and any transaction or exercise of
31 authority by the director of the division thereunder, or under this
32 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by
33 the division.

34 (2) "Controller" means the Office of the Assistant
35 Commissioner for Finance and Controller of the Department of
36 Labor and Workforce Development, established by the 1982
37 Reorganization Plan of the Department of Labor.

38 (f) "Contributions" means the money payments to the State
39 Unemployment Compensation Fund, required by R.S.43:21-7.
40 "Payments in lieu of contributions" means the money payments to
41 the State Unemployment Compensation Fund by employers electing
42 or required to make payments in lieu of contributions, as provided
43 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-
44 7.3).

45 (g) "Employing unit" means the State or any of its
46 instrumentalities or any political subdivision thereof or any of its
47 instrumentalities or any instrumentality of more than one of the
48 foregoing or any instrumentality of any of the foregoing and one or

1 more other states or political subdivisions or any individual or type
2 of organization, any partnership, association, trust, estate, joint-
3 stock company, insurance company or corporation, whether
4 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or
5 successor thereof, or the legal representative of a deceased person,
6 which has or subsequent to January 1, 1936, had in its employ one
7 or more individuals performing services for it within this State. All
8 individuals performing services within this State for any employing
9 unit which maintains two or more separate establishments within
10 this State shall be deemed to be employed by a single employing
11 unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each
12 individual employed to perform or to assist in performing the work
13 of any agent or employee of an employing unit shall be deemed to
14 be employed by such employing unit for all the purposes of this
15 chapter (R.S.43:21-1 et seq.), whether such individual was hired or
16 paid directly by such employing unit or by such agent or employee;
17 provided the employing unit had actual or constructive knowledge
18 of the work.

19 (h) "Employer" means:

20 (1) Any employing unit which in either the current or the
21 preceding calendar year paid remuneration for employment in the
22 amount of \$1,000.00 or more;

23 (2) Any employing unit (whether or not an employing unit at the
24 time of acquisition) which acquired the organization, trade or
25 business, or substantially all the assets thereof, of another which, at
26 the time of such acquisition, was an employer subject to this chapter
27 (R.S.43:21-1 et seq.);

28 (3) Any employing unit which acquired the organization, trade
29 or business, or substantially all the assets thereof, of another
30 employing unit and which, if treated as a single unit with such other
31 employing unit, would be an employer under paragraph (1) of this
32 subsection;

33 (4) Any employing unit which together with one or more other
34 employing units is owned or controlled (by legally enforceable
35 means or otherwise), directly or indirectly by the same interests, or
36 which owns or controls one or more other employing units (by
37 legally enforceable means or otherwise), and which, if treated as a
38 single unit with such other employing unit or interest, would be an
39 employer under paragraph (1) of this subsection;

40 (5) Any employing unit for which service in employment as
41 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
42 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
43 performed after December 31, 1977;

44 (6) Any employing unit for which service in employment as
45 defined in R.S.43:21-19 (i) (1) **[(c)]** (C) is performed after
46 December 31, 1971 and which in either the current or the preceding
47 calendar year paid remuneration for employment in the amount of
48 \$1,000.00 or more;

1 (7) Any employing unit not an employer by reason of any other
2 paragraph of this subsection (h) for which, within either the current
3 or preceding calendar year, service is or was performed with respect
4 to which such employing unit is liable for any federal tax against
5 which credit may be taken for contributions required to be paid into
6 a state unemployment fund; or which, as a condition for approval of
7 the "unemployment compensation law" for full tax credit against
8 the tax imposed by the Federal Unemployment Tax Act, is required
9 pursuant to such act to be an employer under this chapter
10 (R.S.43:21-1 et seq.);

11 (8) (Deleted by amendment; P.L.1977, c.307.)

12 (9) (Deleted by amendment; P.L.1977, c.307.)

13 (10) (Deleted by amendment; P.L.1977, c.307.)

14 (11) Any employing unit subject to the provisions of the Federal
15 Unemployment Tax Act within either the current or the preceding
16 calendar year, except for employment hereinafter excluded under
17 paragraph (7) of subsection (i) of this section;

18 (12) Any employing unit for which agricultural labor in
19 employment as defined in R.S.43:21-19 (i) (1) (I) is performed after
20 December 31, 1977;

21 (13) Any employing unit for which domestic service in
22 employment as defined in R.S.43:21-19 (i) (1) (J) is performed after
23 December 31, 1977;

24 (14) Any employing unit which having become an employer
25 under the "unemployment compensation law" (R.S.43:21-1 et seq.),
26 has not under R.S.43:21-8 ceased to be an employer; or for the
27 effective period of its election pursuant to R.S.43:21-8, any other
28 employing unit which has elected to become fully subject to this
29 chapter (R.S.43:21-1 et seq.).

30 (i) (1) "Employment" means:

31 (A) Any service performed prior to January 1, 1972, which was
32 employment as defined in the "unemployment compensation law"
33 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
34 provisions of this subsection, service performed on or after January
35 1, 1972, including service in interstate commerce, performed for
36 remuneration or under any contract of hire, written or oral, express
37 or implied.

38 (B) (i) Service performed after December 31, 1971 by an
39 individual in the employ of this State or any of its instrumentalities
40 or in the employ of this State and one or more other states or their
41 instrumentalities for a hospital or institution of higher education
42 located in this State, if such service is not excluded from
43 "employment" under paragraph (D) below.

44 (ii) Service performed after December 31, 1977, in the employ
45 of this State or any of its instrumentalities or any political
46 subdivision thereof or any of its instrumentalities or any
47 instrumentality of more than one of the foregoing or any
48 instrumentality of the foregoing and one or more other states or

1 political subdivisions, if such service is not excluded from
2 "employment" under paragraph (D) below.

3 (C) Service performed after December 31, 1971 by an individual
4 in the employ of a religious, charitable, educational, or other
5 organization, which is excluded from "employment" as defined in
6 the Federal Unemployment Tax Act, solely by reason of section
7 3306 (c)(8) of that act, if such service is not excluded from
8 "employment" under paragraph (D) below.

9 (D) For the purposes of paragraphs (B) and (C), the term
10 "employment" does not apply to services performed

11 (i) In the employ of (I) a church or convention or association of
12 churches, or (II) an organization, or school which is operated
13 primarily for religious purposes and which is operated, supervised,
14 controlled or principally supported by a church or convention or
15 association of churches;

16 (ii) By a duly ordained, commissioned, or licensed minister of a
17 church in the exercise of his ministry or by a member of a religious
18 order in the exercise of duties required by such order;

19 (iii) Prior to January 1, 1978, in the employ of a school which is
20 not an institution of higher education, and after December 31, 1977,
21 in the employ of a governmental entity referred to in R.S.43:21-19
22 (i) (1) (B), if such service is performed by an individual in the
23 exercise of duties

24 (aa) as an elected official;

25 (bb) as a member of a legislative body, or a member of the
26 judiciary, of a state or political subdivision;

27 (cc) as a member of the State National Guard or Air National
28 Guard;

29 (dd) as an employee serving on a temporary basis in case of fire,
30 storm, snow, earthquake, flood or similar emergency;

31 (ee) in a position which, under or pursuant to the laws of this
32 State, is designated as a major nontenured policy making or
33 advisory position, or a policy making or advisory position, the
34 performance of the duties of which ordinarily does not require more
35 than eight hours per week; **[or]**

36 (ff) as an election official or election worker performing
37 services pursuant to R.S.19:45-6 at elections in this State if the
38 amount of remuneration received by the individual during the
39 calendar year for services as an election official or election worker
40 is less than \$1,000; or

41 (iv) By an individual receiving rehabilitation or remunerative
42 work in a facility conducted for the purpose of carrying out a
43 program of rehabilitation of individuals whose earning capacity is
44 impaired by age or physical or mental deficiency or injury or
45 providing remunerative work for individuals who because of their
46 impaired physical or mental capacity cannot be readily absorbed in
47 the competitive labor market;

1 (v) By an individual receiving work-relief or work-training as
2 part of an unemployment work-relief or work-training program
3 assisted in whole or in part by any federal agency or an agency of a
4 state or political subdivision thereof; or

5 (vi) Prior to January 1, 1978, for a hospital in a State prison or
6 other State correctional institution by an inmate of the prison or
7 correctional institution and after December 31, 1977, by an inmate
8 of a custodial or penal institution.

9 (E) The term "employment" shall include the services of an
10 individual who is a citizen of the United States, performed outside
11 the United States after December 31, 1971 (except in Canada and in
12 the case of the Virgin Islands, after December 31, 1971) and prior
13 to January 1 of the year following the year in which the U.S.
14 Secretary of Labor approves the unemployment compensation law
15 of the Virgin Islands, under section 3304 (a) of the Internal
16 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an
17 American employer (other than the service which is deemed
18 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or
19 the parallel provisions of another state's unemployment
20 compensation law), if

21 (i) The American employer's principal place of business in the
22 United States is located in this State; or

23 (ii) The American employer has no place of business in the
24 United States, but (I) the American employer is an individual who
25 is a resident of this State; or (II) the American employer is a
26 corporation which is organized under the laws of this State; or (III)
27 the American employer is a partnership or trust and the number of
28 partners or trustees who are residents of this State is greater than the
29 number who are residents of another state; or

30 (iii) None of the criteria of divisions (i) and (ii) of this
31 subparagraph (E) is met but the American employer has elected to
32 become an employer subject to the "unemployment compensation
33 law" (R.S.43:21-1 et seq.) in this State, or the American employer
34 having failed to elect to become an employer in any state, the
35 individual has filed a claim for benefits, based on such service,
36 under the law of this State;

37 (iv) An "American employer," for the purposes of this
38 subparagraph (E), means (I) an individual who is a resident of the
39 United States; or (II) a partnership, if two-thirds or more of the
40 partners are residents of the United States; or (III) a trust, if all the
41 trustees are residents of the United States; or (IV) a corporation
42 organized under the laws of the United States or of any state.

43 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
44 after January 1, 1972 by an officer or member of the crew of an
45 American vessel or American aircraft on or in connection with such
46 vessel or aircraft, if the operating office from which the operations
47 of such vessel or aircraft operating within, or within and without,

1 the United States are ordinarily and regularly supervised, managed,
2 directed, and controlled, is within this State.

3 (G) Notwithstanding any other provision of this subsection,
4 service in this State with respect to which the taxes required to be
5 paid under any federal law imposing a tax against which credit may
6 be taken for contributions required to be paid into a state
7 unemployment fund or which as a condition for full tax credit
8 against the tax imposed by the Federal Unemployment Tax Act is
9 required to be covered under the "unemployment compensation
10 law" (R.S.43:21-1 et seq.).

11 (H) The term "United States" when used in a geographical sense
12 in subsection R.S.43:21-19 (i) includes the states, the District of
13 Columbia, the Commonwealth of Puerto Rico and, effective on the
14 day after the day on which the U.S. Secretary of Labor approves for
15 the first time under section 3304 (a) of the Internal Revenue Code
16 of 1986 (26 U.S.C. s.3304 (a)) an unemployment compensation law
17 submitted to the Secretary by the Virgin Islands for such approval,
18 the Virgin Islands.

19 (I) (i) Service performed after December 31, 1977 in
20 agricultural labor in a calendar year for an entity which is an
21 employer as defined in the "unemployment compensation law,"
22 (R.S.43:21-1 et seq.) as of January 1 of such year; or for an
23 employing unit which

24 (aa) during any calendar quarter in either the current or the
25 preceding calendar year paid remuneration in cash of \$20,000.00 or
26 more for individuals employed in agricultural labor, or

27 (bb) for some portion of a day in each of 20 different calendar
28 weeks, whether or not such weeks were consecutive, in either the
29 current or the preceding calendar year, employed in agricultural
30 labor 10 or more individuals, regardless of whether they were
31 employed at the same moment in time.

32 (ii) for the purposes of this subsection any individual who is a
33 member of a crew furnished by a crew leader to perform service in
34 agricultural labor for any other entity shall be treated as an
35 employee of such crew leader

36 (aa) if such crew leader holds a certification of registration
37 under the Migrant and Seasonal Agricultural Worker Protection
38 Act, Pub.L.97-470 (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
39 (C.34:8A-7 et seq.); or substantially all the members of such crew
40 operate or maintain tractors, mechanized harvesting or cropdusting
41 equipment, or any other mechanized equipment, which is provided
42 by such crew leader; and

43 (bb) if such individual is not an employee of such other person
44 for whom services were performed.

45 (iii) For the purposes of subparagraph (I) (i) in the case of any
46 individual who is furnished by a crew leader to perform service in
47 agricultural labor or any other entity and who is not treated as an
48 employee of such crew leader under (I) (ii)

1 (aa) such other entity and not the crew leader shall be treated as
2 the employer of such individual; and
3 (bb) such other entity shall be treated as having paid cash
4 remuneration to such individual in an amount equal to the amount
5 of cash remuneration paid to such individual by the crew leader
6 (either on his own behalf or on behalf of such other entity) for the
7 service in agricultural labor performed for such other entity.
8 (iv) For the purpose of subparagraph (I)(ii), the term "crew
9 leader" means an individual who
10 (aa) furnishes individuals to perform service in agricultural
11 labor for any other entity;
12 (bb) pays (either on his own behalf or on behalf of such other
13 entity) the individuals so furnished by him for the service in
14 agricultural labor performed by them; and
15 (cc) has not entered into a written agreement with such other
16 entity under which such individual is designated as an employee of
17 such other entity.
18 (J) Domestic service after December 31, 1977 performed in the
19 private home of an employing unit which paid cash remuneration of
20 \$1,000.00 or more to one or more individuals for such domestic
21 service in any calendar quarter in the current or preceding calendar
22 year.
23 (2) The term "employment" shall include an individual's entire
24 service performed within or both within and without this State if:
25 (A) The service is localized in this State; or
26 (B) The service is not localized in any state but some of the
27 service is performed in this State, and (i) the base of operations, or,
28 if there is no base of operations, then the place from which such
29 service is directed or controlled, is in this State; or (ii) the base of
30 operations or place from which such service is directed or
31 controlled is not in any state in which some part of the service is
32 performed, but the individual's residence is in this State.
33 (3) Services performed within this State but not covered under
34 paragraph (2) of this subsection shall be deemed to be employment
35 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not
36 required and paid with respect to such services under an
37 unemployment compensation law of any other state or of the federal
38 government.
39 (4) Services not covered under paragraph (2) of this subsection
40 and performed entirely without this State, with respect to no part of
41 which contributions are required and paid under an unemployment
42 compensation law of any other state or of the federal government,
43 shall be deemed to be employment subject to this chapter
44 (R.S.43:21-1 et seq.) if the individual performing such services is a
45 resident of this State and the employing unit for whom such
46 services are performed files with the division an election that the
47 entire service of such individual shall be deemed to be employment
48 subject to this chapter (R.S.43:21-1 et seq.).

1 (5) Service shall be deemed to be localized within a state if:

2 (A) The service is performed entirely within such state; or

3 (B) The service is performed both within and without such state,
4 but the service performed without such state is incidental to the
5 individual's service within the state; for example, is temporary or
6 transitory in nature or consists of isolated transactions.

7 (6) Services performed by an individual for remuneration shall
8 be deemed to be employment subject to this chapter (R.S.43:21-1 et
9 seq.) unless and until it is shown to the satisfaction of the division
10 that:

11 (A) Such individual has been and will continue to be free from
12 control or direction over the performance of such service, both
13 under his contract of service and in fact; and

14 (B) Such service is either outside the usual course of the
15 business for which such service is performed, or that such service is
16 performed outside of all the places of business of the enterprise for
17 which such service is performed; and

18 (C) Such individual is customarily engaged in an independently
19 established trade, occupation, profession or business.

20 (7) Provided that such services are also exempt under the
21 Federal Unemployment Tax Act, as amended, or that contributions
22 with respect to such services are not required to be paid into a state
23 unemployment fund as a condition for a tax offset credit against the
24 tax imposed by the Federal Unemployment Tax Act, as amended,
25 the term "employment" shall not include:

26 (A) Agricultural labor performed prior to January 1, 1978; and
27 after December 31, 1977, only if performed in a calendar year for
28 an entity which is not an employer as defined in the "unemployment
29 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
30 calendar year; or unless performed for an employing unit which

31 (i) during a calendar quarter in either the current or the
32 preceding calendar year paid remuneration in cash of \$20,000.00 or
33 more to individuals employed in agricultural labor, or

34 (ii) for some portion of a day in each of 20 different calendar
35 weeks, whether or not such weeks were consecutive, in either the
36 current or the preceding calendar year, employed in agricultural
37 labor 10 or more individuals, regardless of whether they were
38 employed at the same moment in time;

39 (B) Domestic service in a private home performed prior to
40 January 1, 1978; and after December 31, 1977, unless performed in
41 the private home of an employing unit which paid cash
42 remuneration of \$1,000.00 or more to one or more individuals for
43 such domestic service in any calendar quarter in the current or
44 preceding calendar year;

45 (C) Service performed by an individual in the employ of his
46 son, daughter or spouse, and service performed by a child under the
47 age of 18 in the employ of his father or mother;

1 (D) Service performed prior to January 1, 1978, in the employ
2 of this State or of any political subdivision thereof or of any
3 instrumentality of this State or its political subdivisions, except as
4 provided in R.S.43:21-19 (i) (1) (B) above, and service in the
5 employ of the South Jersey Port Corporation or its successors;

6 (E) Service performed in the employ of any other state or its
7 political subdivisions or of an instrumentality of any other state or
8 states or their political subdivisions to the extent that such
9 instrumentality is with respect to such service exempt under the
10 Constitution of the United States from the tax imposed under the
11 Federal Unemployment Tax Act, as amended, except as provided in
12 R.S.43:21-19 (i) (1) (B) above;

13 (F) Service performed in the employ of the United States
14 Government or of any instrumentality of the United States exempt
15 under the Constitution of the United States from the contributions
16 imposed by the "unemployment compensation law," except that to
17 the extent that the Congress of the United States shall permit states
18 to require any instrumentalities of the United States to make
19 payments into an unemployment fund under a state unemployment
20 compensation law, all of the provisions of this act shall be
21 applicable to such instrumentalities, and to service performed for
22 such instrumentalities, in the same manner, to the same extent and
23 on the same terms as to all other employers, employing units,
24 individuals and services; provided that if this State shall not be
25 certified for any year by the Secretary of Labor of the United States
26 under section 3304 of the federal Internal Revenue Code of 1986
27 (26 U.S.C. s.3304), the payments required of such instrumentalities
28 with respect to such year shall be refunded by the division from the
29 fund in the same manner and within the same period as is provided
30 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
31 or collected by the division;

32 (G) Services performed in the employ of fraternal beneficiary
33 societies, orders, or associations operating under the lodge system
34 or for the exclusive benefit of the members of a fraternity itself
35 operating under the lodge system and providing for the payment of
36 life, sick, accident, or other benefits to the members of such society,
37 order, or association, or their dependents;

38 (H) Services performed as a member of the board of directors, a
39 board of trustees, a board of managers, or a committee of any bank,
40 building and loan, or savings and loan association, incorporated or
41 organized under the laws of this State or of the United States, where
42 such services do not constitute the principal employment of the
43 individual;

44 (I) Service with respect to which unemployment insurance is
45 payable under an unemployment insurance program established by
46 an Act of Congress;

47 (J) Service performed by agents of mutual fund brokers or
48 dealers in the sale of mutual funds or other securities, by agents of

1 insurance companies, exclusive of industrial insurance agents or by
2 agents of investment companies, if the compensation to such agents
3 for such services is wholly on a commission basis;

4 (K) Services performed by real estate salesmen or brokers who
5 are compensated wholly on a commission basis;

6 (L) Services performed in the employ of any veterans'
7 organization chartered by Act of Congress or of any auxiliary
8 thereof, no part of the net earnings of which organization, or
9 auxiliary thereof, inures to the benefit of any private shareholder or
10 individual;

11 (M) Service performed for or in behalf of the owner or operator
12 of any theater, ballroom, amusement hall or other place of
13 entertainment, not in excess of 10 weeks in any calendar year for
14 the same owner or operator, by any leader or musician of a band or
15 orchestra, commonly called a "name band," entertainer, vaudeville
16 artist, actor, actress, singer or other entertainer;

17 (N) Services performed after January 1, 1973 by an individual
18 for a labor union organization, known and recognized as a union
19 local, as a member of a committee or committees reimbursed by the
20 union local for time lost from regular employment, or as a part-time
21 officer of a union local and the remuneration for such services is
22 less than \$1,000.00 in a calendar year;

23 (O) Services performed in the sale or distribution of merchandise
24 by home-to-home salespersons or in-the-home demonstrators whose
25 remuneration consists wholly of commissions or commissions and
26 bonuses;

27 (P) Service performed in the employ of a foreign government,
28 including service as a consular, nondiplomatic representative, or
29 other officer or employee;

30 (Q) Service performed in the employ of an instrumentality
31 wholly owned by a foreign government if (i) the service is of a
32 character similar to that performed in foreign countries by
33 employees of the United States Government or of an instrumentality
34 thereof, and (ii) the division finds that the United States Secretary
35 of State has certified to the United States Secretary of the Treasury
36 that the foreign government, with respect to whose instrumentality
37 exemption is claimed, grants an equivalent exemption with respect
38 to similar services performed in the foreign country by employees
39 of the United States Government and of instrumentalities thereof;

40 (R) Service in the employ of an international organization
41 entitled to enjoy the privileges, exemptions and immunities under
42 the International Organizations Immunities Act (22 U.S.C. s.288 et
43 seq.);

44 (S) Service covered by an election duly approved by an agency
45 charged with the administration of any other state or federal
46 unemployment compensation or employment security law, in
47 accordance with an arrangement pursuant to R.S.43:21-21 during
48 the effective period of such election;

1 (T) Service performed in the employ of a school, college, or
2 university if such service is performed (i) by a student enrolled at
3 such school, college, or university on a full-time basis in an
4 educational program or completing such educational program
5 leading to a degree at any of the severally recognized levels, or (ii)
6 by the spouse of such a student, if such spouse is advised at the time
7 such spouse commences to perform such service that (I) the
8 employment of such spouse to perform such service is provided
9 under a program to provide financial assistance to such student by
10 such school, college, or university, and (II) such employment will
11 not be covered by any program of unemployment insurance;

12 (U) Service performed by an individual who is enrolled at a
13 nonprofit or public educational institution which normally
14 maintains a regular faculty and curriculum and normally has a
15 regularly organized body of students in attendance at the place
16 where its educational activities are carried on, as a student in a full-
17 time program, taken for credit at such institution, which combines
18 academic instruction with work experience, if such service is an
19 integral part of such program, and such institution has so certified
20 to the employer, except that this subparagraph shall not apply to
21 service performed in a program established for or on behalf of an
22 employer or group of employers;

23 (V) Service performed in the employ of a hospital, if such
24 service is performed by a patient of the hospital; service performed
25 as a student nurse in the employ of a hospital or a nurses' training
26 school by an individual who is enrolled and regularly attending
27 classes in a nurses' training school approved under the laws of this
28 State; and service performed as an intern in the employ of a hospital
29 by an individual who has completed a four-year course in a medical
30 school approved pursuant to the laws of this State;

31 (W) Services performed after the effective date of this
32 amendatory act by agents of mutual benefit associations if the
33 compensation to such agents for such services is wholly on a
34 commission basis;

35 (X) Services performed by operators of motor vehicles weighing
36 18,000 pounds or more, licensed for commercial use and used for
37 the highway movement of motor freight, who own their equipment
38 or who lease or finance the purchase of their equipment through an
39 entity which is not owned or controlled directly or indirectly by the
40 entity for which the services were performed and who were
41 compensated by receiving a percentage of the gross revenue
42 generated by the transportation move or by a schedule of payment
43 based on the distance and weight of the transportation move;

44 (Y) (Deleted by amendment, P.L.2009, c.211.)

45 (Z) Services performed, using facilities provided by a travel
46 agent, by a person, commonly known as an outside travel agent,
47 who acts as an independent contractor, is paid on a commission
48 basis, sets his own work schedule and receives no benefits, sick

1 leave, vacation or other leave from the travel agent owning the
2 facilities.

3 (8) If one-half or more of the services in any pay period
4 performed by an individual for an employing unit constitutes
5 employment, all the services of such individual shall be deemed to
6 be employment; but if more than one-half of the service in any pay
7 period performed by an individual for an employing unit does not
8 constitute employment, then none of the service of such individual
9 shall be deemed to be employment. As used in this paragraph, the
10 term "pay period" means a period of not more than 31 consecutive
11 days for which a payment for service is ordinarily made by an
12 employing unit to individuals in its employ.

13 (9) Services performed by the owner of a limousine franchise
14 (franchisee) shall not be deemed to be employment subject to the
15 "unemployment compensation law," R.S.43:21-1 et seq., with
16 regard to the franchisor if:

17 (A) The limousine franchisee is incorporated;

18 (B) The franchisee is subject to regulation by the Interstate
19 Commerce Commission;

20 (C) The limousine franchise exists pursuant to a written
21 franchise arrangement between the franchisee and the franchisor as
22 defined by section 3 of P.L.1971, c.356 (C.56:10-3); and

23 (D) The franchisee registers with the Department of Labor and
24 Workforce Development and receives an employer registration
25 number.

26 (10) Services performed by a legal transcriber, or certified court
27 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
28 shall not be deemed to be employment subject to the
29 "unemployment compensation law," R.S.43:21-1 et seq., if those
30 services are provided to a third party by the transcriber or reporter
31 who is referred to the third party pursuant to an agreement with
32 another legal transcriber or legal transcription service, or certified
33 court reporter or court reporting service, on a freelance basis,
34 compensation for which is based upon a fee per transcript page, flat
35 attendance fee, or other flat minimum fee, or combination thereof,
36 set forth in the agreement.

37 For purposes of this paragraph (10): "legal transcription service"
38 and "legal transcribing" mean making use, by audio, video or voice
39 recording, of a verbatim record of court proceedings, depositions,
40 other judicial proceedings, meetings of boards, agencies,
41 corporations, or other bodies or groups, and causing that record to
42 be printed in readable form or produced on a computer screen in
43 readable form; and "legal transcriber" means a person who engages
44 in "legal transcribing."

45 (j) "Employment office" means a free public employment
46 office, or branch thereof operated by this State or maintained as a
47 part of a State-controlled system of public employment offices.

48 (k) (Deleted by amendment, P.L.1984, c.24.)

- 1 (l) "State" includes, in addition to the states of the United States
- 2 of America, the District of Columbia, the Virgin Islands and Puerto
- 3 Rico.
- 4 (m) "Unemployment."
- 5 (1) An individual shall be deemed "unemployed" for any week
- 6 during which:
- 7 (A) The individual is not engaged in full-time work and with
- 8 respect to which his remuneration is less than his weekly benefit
- 9 rate, including any week during which he is on vacation without
- 10 pay; provided such vacation is not the result of the individual's
- 11 voluntary action, except that for benefit years commencing on or
- 12 after July 1, 1984, an officer of a corporation, or a person who has
- 13 more than a 5% equitable or debt interest in the corporation, whose
- 14 claim for benefits is based on wages with that corporation shall not
- 15 be deemed to be unemployed in any week during the individual's
- 16 term of office or ownership in the corporation; or
- 17 (B) The individual is eligible for and receiving a self-
- 18 employment assistance allowance pursuant to the requirements of
- 19 P.L.1995, c.394 (C.43:21-67 et al.).
- 20 (2) The term "remuneration" with respect to any individual for
- 21 benefit years commencing on or after July 1, 1961, and as used in
- 22 this subsection, shall include only that part of the same which in
- 23 any week exceeds 20% of his weekly benefit rate (fractional parts
- 24 of a dollar omitted) or \$5.00, whichever is the larger, and shall not
- 25 include any moneys paid to an individual by a county board of
- 26 elections for work as a board worker on an election day.
- 27 (3) An individual's week of unemployment shall be deemed to
- 28 commence only after the individual has filed a claim at an
- 29 unemployment insurance claims office, except as the division may
- 30 by regulation otherwise prescribe.
- 31 (n) "Unemployment compensation administration fund" means
- 32 the unemployment compensation administration fund established by
- 33 this chapter (R.S.43:21-1 et seq.), from which administrative
- 34 expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.
- 35 (o) "Wages" means remuneration paid by employers for
- 36 employment. If a worker receives gratuities regularly in the course
- 37 of his employment from other than his employer, his "wages" shall
- 38 also include the gratuities so received, if reported in writing to his
- 39 employer in accordance with regulations of the division, and if not
- 40 so reported, his "wages" shall be determined in accordance with the
- 41 minimum wage rates prescribed under any labor law or regulation
- 42 of this State or of the United States, or the amount of remuneration
- 43 actually received by the employee from his employer, whichever is
- 44 the higher.
- 45 (p) "Remuneration" means all compensation for personal
- 46 services, including commission and bonuses and the cash value of
- 47 all compensation in any medium other than cash.

1 (q) "Week" means for benefit years commencing on or after
2 October 1, 1984, the calendar week ending at midnight Saturday, or
3 as the division may by regulation prescribe.

4 (r) "Calendar quarter" means the period of three consecutive
5 calendar months ending March 31, June 30, September 30, or
6 December 31.

7 (s) "Investment company" means any company as defined in
8 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

9 (t) (1) (Deleted by amendment, P.L.2001, c.17).

10 (2) "Base week," commencing on or after January 1, 1996 and
11 before January 1, 2001, means:

12 (A) Any calendar week during which the individual earned in
13 employment from an employer remuneration not less than an
14 amount which is 20% of the Statewide average weekly
15 remuneration defined in subsection (c) of R.S.43:21-3 which
16 amount shall be adjusted to the next higher multiple of \$1.00 if not
17 already a multiple thereof, except that if in any calendar week an
18 individual subject to this subparagraph (A) is in employment with
19 more than one employer, the individual may in that calendar week
20 establish a base week with respect to each of the employers from
21 whom the individual earns remuneration equal to not less than the
22 amount defined in this subparagraph (A) during that week; or

23 (B) If the individual does not establish in his base year 20 or
24 more base weeks as defined in subparagraph (A) of this paragraph
25 (2), any calendar week of an individual's base year during which the
26 individual earned in employment from an employer remuneration
27 not less than an amount 20 times the minimum wage in effect
28 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
29 1 of the calendar year preceding the calendar year in which the
30 benefit year commences, which amount shall be adjusted to the next
31 higher multiple of \$1.00 if not already a multiple thereof, except
32 that if in any calendar week an individual subject to this
33 subparagraph (B) is in employment with more than one employer,
34 the individual may in that calendar week establish a base week with
35 respect to each of the employers from whom the individual earns
36 remuneration not less than the amount defined in this subparagraph
37 (B) during that week.

38 (3) "Base week," commencing on or after January 1, 2001,
39 means any calendar week during which the individual earned in
40 employment from an employer remuneration not less than an
41 amount 20 times the minimum wage in effect pursuant to [section 5
42 of P.L.1966, c.113 (C.34:11-56a4)] Article I, paragraph 23 of the
43 State Constitution on October 1 of the calendar year preceding the
44 calendar year in which the benefit year commences, which amount
45 shall be adjusted to the next higher multiple of \$1.00 if not already
46 a multiple thereof, except that if in any calendar week an individual
47 subject to this paragraph (3) is in employment with more than one
48 employer, the individual may in that calendar week establish a base

1 week with respect to each of the employers from whom the
2 individual earns remuneration equal to not less than the amount
3 defined in this paragraph (3) during that week.

4 (u) "Average weekly wage" means the amount derived by
5 dividing an individual's total wages received during his base year
6 base weeks (as defined in subsection (t) of this section) from that
7 most recent base year employer with whom he has established at
8 least 20 base weeks, by the number of base weeks in which such
9 wages were earned. In the event that such claimant had no employer
10 in his base year with whom he had established at least 20 base
11 weeks, then such individual's average weekly wage shall be
12 computed as if all of his base week wages were received from one
13 employer and as if all his base weeks of employment had been
14 performed in the employ of one employer.

15 For the purpose of computing the average weekly wage, the
16 monetary alternative in subparagraph (B) of paragraph (2) of
17 subsection (e) of R.S.43:21-4 shall only apply in those instances
18 where the individual did not have at least 20 base weeks in the base
19 year. For benefit years commencing on or after July 1, 1986,
20 "average weekly wage" means the amount derived by dividing an
21 individual's total base year wages by the number of base weeks
22 worked by the individual during the base year; provided that for the
23 purpose of computing the average weekly wage, the maximum
24 number of base weeks used in the divisor shall be 52.

25 (v) "Initial determination" means, subject to the provisions of
26 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
27 measured by an eligible individual's base year employment with a
28 single employer covering all periods of employment with that
29 employer during the base year.

30 (w) "Last date of employment" means the last calendar day in
31 the base year of an individual on which he performed services in
32 employment for a given employer.

33 (x) "Most recent base year employer" means that employer with
34 whom the individual most recently, in point of time, performed
35 service in employment in the base year.

36 (y) (1) "Educational institution" means any public or other
37 nonprofit institution (including an institution of higher education):

38 (A) In which participants, trainees, or students are offered an
39 organized course of study or training designed to transfer to them
40 knowledge, skills, information, doctrines, attitudes or abilities from,
41 by or under the guidance of an instructor or teacher;

42 (B) Which is approved, licensed or issued a permit to operate as
43 a school by the State Department of Education or other government
44 agency that is authorized within the State to approve, license or
45 issue a permit for the operation of a school; and

46 (C) Which offers courses of study or training which may be
47 academic, technical, trade, or preparation for gainful employment in
48 a recognized occupation.

1 (2) "Institution of higher education" means an educational
2 institution which:

3 (A) Admits as regular students only individuals having a
4 certificate of graduation from a high school, or the recognized
5 equivalent of such a certificate;

6 (B) Is legally authorized in this State to provide a program of
7 education beyond high school;

8 (C) Provides an educational program for which it awards a
9 bachelor's or higher degree, or provides a program which is
10 acceptable for full credit toward such a degree, a program of post-
11 graduate or post-doctoral studies, or a program of training to
12 prepare students for gainful employment in a recognized
13 occupation; and

14 (D) Is a public or other nonprofit institution.

15 Notwithstanding any of the foregoing provisions of this
16 subsection, all colleges and universities in this State are institutions
17 of higher education for purposes of this section.

18 (z) "Hospital" means an institution which has been licensed,
19 certified or approved under the law of this State as a hospital.

20 (cf: P.L.2009, c.211, s.1)

21

22 2. Section 3 of P.L.1948, c.110 (C.43:21-27) is amended to
23 read as follows:

24 Definitions.

25 3. As used in this act, unless the context clearly requires
26 otherwise:

27 (a) (1) "Covered employer" means, with respect to whether an
28 employer is required to provide benefits during an employee's own
29 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
30 individual or type of organization, including any partnership,
31 association, trust, estate, joint-stock company, insurance company
32 or corporation, whether domestic or foreign, or the receiver, trustee
33 in bankruptcy, trustee or successor thereof, or the legal
34 representative of a deceased person, who is an employer subject to
35 the "unemployment compensation law" (R.S.43:21-1 et seq.),
36 except the State, its political subdivisions, and any instrumentality
37 of the State unless such governmental entity elects to become a
38 covered employer pursuant to paragraph (2) of this subsection (a);
39 provided, however, that commencing with the effective date of this
40 act, the State of New Jersey, including Rutgers, The State
41 University and the New Jersey Institute of Technology, shall be
42 deemed a covered employer, as defined herein.

43 "Covered employer" means, after June 30, 2009, with respect to
44 whether the employer is an employer whose employees are eligible
45 for benefits during periods of family temporary disability leave
46 pursuant to P.L.1948, c.110 (C.43:21-25 et al.), and, after December
47 31, 2008, whether employees of the employer are required to make
48 contributions pursuant to R.S.43:21-7(d)(1)(G)(ii), any individual

1 or type of organization, including any partnership, association,
2 trust, estate, joint-stock company, insurance company or domestic
3 or foreign corporation, or the receiver, trustee in bankruptcy, trustee
4 or successor thereof, or the legal representative of a deceased
5 person, who is an employer subject to the "unemployment
6 compensation law" (R.S.43:21-1 et seq.), including any
7 governmental entity or instrumentality which is an employer under
8 R.S.43:21-19(h)(5), notwithstanding that the governmental entity or
9 instrumentality has not elected to be a covered employer pursuant to
10 paragraph (2) of this subsection (a).

11 (2) Any governmental entity or instrumentality which is an
12 employer under R.S.43:21-19(h)(5) may, with respect to the
13 provision of benefits during an employee's own disability pursuant
14 to P.L.1948, c.110 (C.43:21-25 et al.), elect to become a "covered
15 employer" under this subsection beginning with the date on which
16 its coverage under R.S.43:21-19(h)(5) begins or as of January 1 of
17 any year thereafter by filing written notice of such election with the
18 division within at least 30 days of the effective date. Such election
19 shall remain in effect for at least two full calendar years and may be
20 terminated as of January 1 of any year thereafter by filing with the
21 division a written notice of termination at least 30 days prior to the
22 termination date.

23 (b) (1) "Covered individual" means, with respect to whether an
24 individual is eligible for benefits during an individual's own
25 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
26 person who is in employment, as defined in the "unemployment
27 compensation law" (R.S.43:21-1 et seq.), for which the individual is
28 entitled to remuneration from a covered employer, or who has been
29 out of such employment for less than two weeks, except that a
30 "covered individual" who is employed by the State of New Jersey,
31 including Rutgers, The State University or the New Jersey Institute
32 of Technology, or by any governmental entity or instrumentality
33 which elects to become a "covered employer" pursuant to this
34 amendatory act, shall not be eligible to receive any benefits under
35 the "Temporary Disability Benefits Law" until such individual has
36 exhausted all sick leave accumulated as an employee in the
37 classified service of the State or accumulated under terms and
38 conditions similar to classified employees or accumulated under the
39 terms and conditions pursuant to the laws of this State or as the
40 result of a negotiated contract with any governmental entity or
41 instrumentality which elects to become a "covered employer."

42 "Covered individual" shall not mean, with respect to whether an
43 individual is eligible for benefits during an individual's own
44 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.), any
45 member of the Division of State Police in the Department of Law
46 and Public Safety.

47 "Covered individual" shall not mean, with respect to whether an
48 individual is eligible for temporary disability leave pursuant to

1 P.L.1948, c.110 (C.43:21-25 et al.), any individual who performs
2 services as an election official or election worker pursuant to
3 R.S.19:45-6 at elections in this State, if the amount of remuneration
4 received by the individual during the calendar year for services as
5 an election official or election worker is less than \$1,000.

6 (2) "Covered individual" means, with respect to whether an
7 individual is eligible for benefits during the individual's period of
8 family temporary disability leave pursuant to P.L.1948, c.110
9 (C.43:21-25 et al.), any individual who is in employment, as
10 defined in the "unemployment compensation law" (R.S.43:21-1 et
11 seq.), for which the individual is entitled to remuneration from a
12 covered employer, or who has been out of that employment for less
13 than two weeks.

14 "Covered individual" shall not mean, with respect to whether an
15 individual is eligible for family temporary disability leave, pursuant
16 to P.L.2008, c.17 (C.43:21-39.1 et al.), any individual who performs
17 services as an election official or election worker pursuant to
18 R.S.19:45-6 at elections in this State, if the amount of remuneration
19 received by the individual during the calendar year for services as
20 an election official or election worker is less than \$1,000.

21 (c) "Division" or "commission" means the Division of
22 Temporary Disability Insurance of the Department of Labor and
23 Workforce Development, and any transaction or exercise of
24 authority by the director of the division shall be deemed to be
25 performed by the division.

26 (d) "Day" shall mean a full calendar day beginning and ending
27 at midnight.

28 (e) "Disability" shall mean such disability as is compensable
29 under section 5 of P.L.1948, c.110 (C.43:21-29).

30 (f) "Disability benefits" shall mean any cash payments which
31 are payable to a covered individual for all or part of a period of
32 disability pursuant to P.L.1948, c.110 (C.43:21-25 et al.).

33 (g) "Period of disability" with respect to any covered individual
34 shall mean:

35 (1) The entire period of time during which the covered
36 individual is continuously and totally unable to perform the duties
37 of the covered individual's employment because of the covered
38 individual's own disability, except that two periods of disability due
39 to the same or related cause or condition and separated by a period
40 of not more than 14 days shall be considered as one continuous
41 period of disability; provided the individual has earned wages
42 during such 14-day period with the employer who was the
43 individual's last employer immediately preceding the first period of
44 disability; and

45 (2) On or after July 1, 2009, the entire period of family
46 temporary disability leave taken from employment by the covered
47 individual.

1 (h) "Wages" shall mean all compensation payable by covered
2 employers to covered individuals for personal services, including
3 commissions and bonuses and the cash value of all compensation
4 payable in any medium other than cash.

5 (i) (1) (Deleted by amendment, P.L.2001, c.17).

6 (2) (Deleted by amendment, P.L.2001, c.17).

7 (3) "Base week" with respect to periods of disability
8 commencing on or after October 1, 1985 and before January 1,
9 2001, means any calendar week during which a covered individual
10 earned in employment from a covered employer remuneration equal
11 to not less than 20% of the Statewide average weekly wage
12 determined under subsection (c) of R.S.43:21-3, which shall be
13 adjusted to the next higher multiple of \$1.00 if not already a
14 multiple thereof.

15 (4) "Base week" with respect to periods of disability
16 commencing on or after January 1, 2001, means any calendar week
17 of a covered individual's base year during which the covered
18 individual earned in employment from a covered employer
19 remuneration not less than an amount 20 times the minimum wage
20 in effect pursuant to **section 5 of P.L.1966, c.113 (C.34:11-56a4)**
21 Article I, paragraph 23 of the State Constitution on October 1 of the
22 calendar year preceding the calendar year in which the benefit year
23 commences, which amount shall be adjusted to the next higher
24 multiple of \$1.00 if not already a multiple thereof, except that if in
25 any calendar week an individual subject to this paragraph is in
26 employment with more than one employer, the covered individual
27 may in that calendar week establish a base week with respect to
28 each of the employers from whom the covered individual earns
29 remuneration equal to not less than the amount defined in this
30 paragraph during that week.

31 (j) (1) "Average weekly wage" means the amount derived by
32 dividing a covered individual's total wages earned from the
33 individual's most recent covered employer during the base weeks in
34 the eight calendar weeks immediately preceding the calendar week
35 in which a period of disability commenced, by the number of such
36 base weeks.

37 (2) If the computation in paragraph (1) of this subsection (j)
38 yields a result which is less than the individual's average weekly
39 earnings in employment with all covered employers during the base
40 weeks in such eight calendar weeks, then the average weekly wage
41 shall be computed on the basis of earnings from all covered
42 employers during the base weeks in the eight calendar weeks
43 immediately preceding the week in which the period of disability
44 commenced.

45 (3) For periods of disability commencing on or after July 1,
46 2009, if the computations in paragraphs (1) and (2) of this
47 subsection (j) both yield a result which is less than the individual's
48 average weekly earnings in employment with all covered employers

1 during the base weeks in the 26 calendar weeks immediately
2 preceding the week in which the period of disability commenced,
3 then the average weekly wage shall, upon a written request to the
4 department by the individual on a form provided by the department,
5 be computed by the department on the basis of earnings from all
6 covered employers of the individual during the base weeks in those
7 26 calendar weeks, and, in the case of a claim for benefits from a
8 private plan, that computation of the average weekly wage shall be
9 provided by the department to the individual and the individual's
10 employer.

11 When determining the "average weekly wage" with respect to a
12 period of family temporary disability leave for an individual who
13 has a period of family temporary disability immediately after the
14 individual has a period of disability for the individual's own
15 disability, the period of disability is deemed to have commenced at
16 the beginning of the period of disability for the individual's own
17 disability, not the period of family temporary disability.

18 (k) "Child" means a biological, adopted, or foster child,
19 stepchild or legal ward of a covered individual, child of a domestic
20 partner of the covered individual, or child of a civil union partner of
21 the covered individual, who is less than 19 years of age or is 19
22 years of age or older but incapable of self-care because of mental or
23 physical impairment.

24 (l) "Domestic partner" means a domestic partner as defined in
25 section 3 of P.L.2003, c.246 (C.26:8A-3).

26 (m) "Civil union" means a civil union as defined in section 2 of
27 P.L.2006, c.103 (C.37:1-29).

28 (n) "Family member" means a child, spouse, domestic partner,
29 civil union partner or parent of a covered individual.

30 (o) "Family temporary disability leave" means leave taken by a
31 covered individual from work with an employer to (1) participate in
32 the providing of care, as defined in the "Family Leave Act,"
33 P.L.1989, c.261 (C.34:11B-1 et seq.) and regulations adopted
34 pursuant to that act, for a family member of the individual made
35 necessary by a serious health condition of the family member; or (2)
36 be with a child during the first 12 months after the child's birth, if
37 the individual, or the domestic partner or civil union partner of the
38 individual, is a biological parent of the child, or the first 12 months
39 after the placement of the child for adoption with the individual.
40 "Family temporary disability leave" does not include any period of
41 time in which a covered individual is paid benefits pursuant to
42 P.L.1948, c.110 (C.43:21-25 et al.) because the individual is unable
43 to perform the duties of the individual's employment due to the
44 individual's own disability.

45 (p) "Health care provider" means a health care provider as
46 defined in the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et
47 seq.), and any regulations adopted pursuant to that act.

1 (q) "Parent of a covered individual" means a biological parent,
2 foster parent, adoptive parent, or stepparent of the covered
3 individual or a person who was a legal guardian of the covered
4 individual when the covered individual was a child.

5 (r) "Placement for adoption" means the time when a covered
6 individual adopts a child or becomes responsible for a child pending
7 adoption by the covered individual.

8 (s) "Serious health condition" means an illness, injury,
9 impairment or physical or mental condition which requires:
10 inpatient care in a hospital, hospice, or residential medical care
11 facility; or continuing medical treatment or continuing supervision
12 by a health care provider.

13 (t) "12-month period" means, with respect to an individual who
14 establishes a valid claim for disability benefits during a period of
15 family temporary disability leave, the 365 consecutive days that
16 begin with the first day that the individual first establishes the
17 claim.

18 (u) "Election official or election worker" means an individual
19 hired by the State or a local government unit, including as a
20 member of a district board of election, to monitor, preside over,
21 officiate, or assist in public elections pursuant to R.S.19:45-6. An
22 election official or election worker is only employed during the
23 conducting of a public election, earns compensation set forth in
24 R.S.19:45-6 for each election, and may be called to perform
25 services set for in that section.

26 (cf: P.L.2012, c.45, s.125)

27

28 3. This act shall take effect immediately.

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STATEMENT

32

33 This bill excludes from unemployment compensation insurance,
34 temporary disability insurance, and family disability leave
35 insurance programs certain election day workers who serve as
36 district boards of elections workers performing duties performed at
37 elections in this State earning less than \$1,000 per year for such
38 duties. Depending on their specific polling place duties, election
39 day workers are paid about \$200 for services performed at each
40 general, primary and special election. The limited compensation for
41 these important but short-term services should not be diminished by
42 the wage deduction contributions for these employment security
43 programs. Also, the public policy purposes of these employment
44 security programs are not germane to this type of limited work
45 performed just a few times a year.