

ASSEMBLY, No. 4132

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman ADAM J. TALIAFERRO
District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Assemblywoman Jimenez

SYNOPSIS

Concerns benefits and leave provided to workers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2020)

A4132 TALIAFERRO

2

1 AN ACT concerning certain benefits and leave provided to workers,
2 and amending and supplementing various parts of the statutory
3 law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. NJ.S.11A:8-1 is amended to read as follows:

9 11A:8-1. a. A permanent employee may be laid off for economy,
10 efficiency or other related reason. A permanent employee shall
11 receive 45 days' written notice, unless in State government a greater
12 time period is ordered by the commission, which shall be served
13 personally or by certified mail, of impending layoff or demotion and
14 the reasons therefor. The requirements of this section to provide 45
15 days' written notice of a layoff shall not apply to employees who
16 have their weekly hours of work reduced and receive shared time
17 unemployment benefits under a shared work program approved
18 pursuant to the provisions of P.L.2011.c.154 (C.43:21-20.3 et seq.).
19 The notice shall expire 120 days after service unless extended by the
20 commission for good cause. At the same time the notice is served,
21 the appointing authority shall provide the commission with a list of
22 the names and permanent titles of all employees receiving the notice.
23 The Civil Service Commission shall adopt rules to implement
24 employee layoff rights consistent with the provisions of this section.
25 The commission shall consult with the advisory board representing
26 labor organizations prior to such recommendations.

27 b. Permanent employees in the service of the State or a political
28 subdivision shall be laid off in inverse order of seniority. As used in
29 this subsection, "seniority" means the length of continuous
30 permanent service in the jurisdiction, regardless of title held during
31 the period of service, except that for police and firefighting titles,
32 "seniority" means the length of continuous permanent service only in
33 the current permanent title and any other title that has lateral or
34 demotional rights to the current permanent title. Seniority for all
35 titles shall be based on the total length of calendar years, months and
36 days in continuous permanent service regardless of the length of the
37 employee's work week, work year or part-time status.

38 c. For purposes of State service, a "layoff unit" means a
39 department or autonomous agency and includes all programs
40 administered by that department or agency. For purposes of political
41 subdivision service, the "layoff unit" means a department in a county
42 or municipality, an entire autonomous agency, or an entire school
43 district, except that the commission may establish broader layoff
44 units.

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 d. For purposes of State service, "job location" means a county.
2 The commission shall assign a job location to every facility and
3 office within a State department or autonomous agency. For
4 purposes of local service, "job location" means the entire political
5 subdivision and includes any facility operated by the political
6 subdivision outside its geographic borders.

7 e. For purposes of determining lateral title rights in State and
8 political subdivision service, title comparability shall be determined
9 by the commission based upon whether the: (1) titles have
10 substantially similar duties and responsibilities; (2) education and
11 experience requirements for the titles are identical or similar; (3)
12 employees in an affected title, with minimal training and orientation,
13 could perform the duties of the designated title by virtue of having
14 qualified for the affected title; and (4) special skills, licenses,
15 certifications or registration requirements for the designated title are
16 similar and do not exceed those which are mandatory for the affected
17 title. Demotional title rights shall be determined by the commission
18 based upon the same criteria, except that the demotional title shall
19 have lower but substantially similar duties and responsibilities as the
20 affected title.

21 f. In State service, a permanent employee in a position affected
22 by a layoff action shall be provided with applicable lateral and
23 demotional title rights first, at the employee's option, within the
24 municipality in which the facility or office is located and then to the
25 job locations selected by the employee within the department or
26 autonomous agency. The employee shall select individual job
27 locations in preferential order from the list of all job locations and
28 shall indicate job locations at which the employee will accept lateral
29 and demotional title rights. In local service, a permanent employee
30 in a position affected by a layoff action shall be provided lateral and
31 demotional title rights within the layoff unit.

32 g. Following the employee's selection of job location
33 preferences, lateral and demotional title rights shall be provided in
34 the following order:

35 (1) a vacant position that the appointing authority has previously
36 indicated it is willing to fill;

37 (2) a position held by a provisional employee who does not have
38 permanent status in another title, and if there are multiple employees
39 at a job location, the specific position shall be determined by the
40 appointing authority;

41 (3) a position held by a provisional employee who has permanent
42 status in another title, and if there are multiple provisional employees
43 at a job location, the specific position shall be determined based on
44 level of the permanent title held and seniority;

45 (4) the position held by the employee serving in a working test
46 period with the least seniority;

47 (5) in State service, and in local jurisdictions having a
48 performance evaluation program approved by the commission, the

A4132 TALIAFERRO

1 position held by the permanent employee whose performance rating
2 within the most recent 12 months in the employee's permanent title
3 was significantly below standards or an equivalent rating;

4 (6) in State service, and in local jurisdictions having a
5 performance evaluation program approved by the commission, the
6 position held by the permanent employee whose performance rating
7 within the most recent 12 months in the employee's permanent title
8 was marginally below standards or an equivalent rating; and

9 (7) the position held by the permanent employee with the least
10 seniority.

11 h. A permanent employee shall be granted special reemployment
12 rights based on the employee's permanent title at the time of the
13 layoff action and the employee shall be certified for reappointment
14 after the layoff action to the same, lateral and lower related titles.
15 Special reemployment rights shall be determined by the commission
16 in the same manner as lateral and demotional rights.

17 i. Notwithstanding the provisions above, at no time shall any
18 person on a military leave of absence for active service in the Armed
19 Forces of the United States or for active service in the organized
20 militia in time of war or emergency be laid off.

21 For the purposes of this section, "organized militia" means the
22 Army and Air National Guard of New Jersey or any other state, and
23 "active service" includes National Guard active service ordered by a
24 Governor of a state.

25 (cf: P.L.2019, c.286, s.3)

26

27 2. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to read
28 as follows:

29 9. a. In order to receive any State aid pursuant to P.L.2007,
30 c.260 (C.18A:7F-43 et al.), a school district, charter school,
31 renaissance school project, county vocational school district, or
32 county special services school district shall comply with the rules and
33 standards for the equalization of opportunity which have been or may
34 hereafter be prescribed by law or formulated by the commissioner
35 pursuant to law, including those implementing P.L.1996, c.138
36 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or
37 related to the core curriculum content standards required by
38 P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with
39 any directive issued by the commissioner pursuant to section 6 of
40 P.L.1996, c.138 (C.18A:7F-6). The commissioner is hereby
41 authorized to withhold all or part of a district's State aid for failure to
42 comply with any rule, standard or directive. No State aid shall be
43 paid to any district which has not provided public school facilities for
44 at least 180 days during the preceding school year, but the
45 commissioner, for good cause shown, may remit the penalty.

46 b. Notwithstanding the provisions of subsection a. of this section
47 to the contrary, in the event that a school district is required to close
48 the schools of the district for more than three consecutive school days

1 due to a declared state of emergency, declared public health
2 emergency, or a directive by the appropriate health agency or officer
3 to institute a public health-related closure, the commissioner shall
4 allow the district to apply to the 180-day requirement established
5 pursuant to subsection a. of this section, one or more days of virtual
6 or remote instruction provided to students on the day or days the
7 schools of the district were closed if the program of virtual or remote
8 instruction meets such criteria as may be established by the
9 commissioner. A district that wants to use a program of virtual or
10 remote instruction to meet the 180-day requirement in accordance
11 with this subsection shall, with board of education approval, submit
12 its proposed program of virtual or remote instruction to the
13 commissioner within 30 days of the effective date of P.L.2020 c.27
14 and annually thereafter, provided however that if the school district
15 is unable to complete and submit its proposed program within the 30-
16 day period and the district is required to close its schools for a
17 declared state of emergency, declared public health emergency, or a
18 directive by the appropriate health agency or officer to institute a
19 public health-related closure, the commissioner may retroactively
20 approve the program.

21 A day of virtual or remote instruction, if instituted under a
22 program approved by the commissioner, shall be considered the
23 equivalent of a full day of school attendance for the purposes of
24 meeting State and local graduation requirements, the awarding of
25 course credit, and such other matters as determined by the
26 commissioner.

27 If a program of virtual or remote instruction is implemented for
28 the general education students the same educational opportunities
29 shall be provided to students with disabilities. Special education and
30 related services, including speech language services, counseling
31 services, physical therapy, occupational therapy, and behavioral
32 services, may be delivered to students with disabilities through the
33 use of electronic communication or a virtual or online platform and
34 as required by the student's Individualized Education Program (IEP),
35 to the greatest extent practicable.

36 c. In the event that the State or local health department
37 determines that it is advisable to close or mandates closure of the
38 schools of a school district due to a declared state of emergency,
39 declared public health emergency, or a directive by the appropriate
40 health agency or officer to institute a public health-related closure,
41 the superintendent of schools shall have the authority to implement
42 the school district's program of virtual or remote instruction. The
43 superintendent shall consult with the board of education prior to such
44 decision if practicable. The superintendent shall ensure that students,
45 parents, staff, and the board of education or boards of education are
46 informed promptly of the superintendent's decision.

1 d. The commissioner shall define virtual and remote instruction
2 and establish guidance for its use. The guidance shall provide school
3 districts with information on:

4 (1) providing instruction to students who may not have access to
5 a computer or to sufficient broadband, or to any technology required
6 for virtual or remote instruction;

7 (2) the required length of a virtual or remote instruction day;

8 (3) the impact of virtual or remote instruction on the school lunch
9 and school breakfast programs;

10 (4) the impact of virtual or remote instruction on the schedule for
11 administering State assessments; and

12 (5) such other topics as the commissioner deems necessary.

13 e. (1) Nothing in subsection b., c., or d. of this section shall be
14 construed to limit, supersede or preempt the rights, privileges,
15 compensation, remedies, and procedures afforded to public school
16 employees or a collective bargaining unit under federal or State law
17 or any provision of a collective bargaining agreement entered into by
18 the school district. In the event of the closure of the schools of a
19 school district due to a declared state of emergency, declared public
20 health emergency, or a directive by the appropriate health agency or
21 officer to institute a public health-related closure for a period longer
22 than three consecutive school days, public school employees covered
23 by a collective negotiations agreement shall be entitled to
24 compensation, benefits, and emoluments as provided in the collective
25 negotiations agreement as if the school facilities remained open for
26 any purpose and for any time lost as a result of school closures or use
27 of virtual or remote instruction, except that additional compensation,
28 benefits, and emoluments may be negotiated for additional work
29 performed.

30 (2) In the event of the closure of the schools of a school district
31 due to a declared state of emergency, declared public health
32 emergency, or a directive by the appropriate health agency or officer
33 to institute a public health-related closure for a period longer than
34 three consecutive school days, public school employees who are not
35 covered by a collective negotiations agreement shall be entitled to
36 any benefits, compensation, and emoluments to which they otherwise
37 would be entitled as if they had performed the work for such benefits,
38 compensation, and emoluments as if the school facilities remained
39 open for any purpose and for any time lost as a result of school
40 closures or use of virtual or remote instruction.

41 (3) If the schools of a school district are subject to a health-related
42 closure for a period longer than three consecutive school days, which
43 is the result of a declared state of emergency, declared public health
44 emergency, or a directive by the appropriate health agency or officer,
45 then the school district shall continue to make payments of benefits,
46 compensation, and emoluments pursuant to the terms of a contract
47 with a contracted service provider in effect on the date of the closure
48 as if the services for such benefits, compensation, and emoluments

1 had been provided, and as if the school facilities had remained open.
2 Payments received by a contracted service provider pursuant to this
3 paragraph shall be used to meet the payroll and fixed costs
4 obligations of the contracted service provider. A school district shall
5 make all reasonable efforts to renegotiate a contract in good faith
6 subject to this paragraph and may direct contracted service providers,
7 who are a party to a contract and receive payments from the school
8 district under this paragraph, to provide services on behalf of the
9 school district which may reasonably be provided and are within the
10 general expertise or service provision of the original contract.
11 Negotiations shall not include indirect costs such as fuel or tolls. As
12 a condition of negotiations, a contracted service provider shall reveal
13 to the school district whether the entity has insurance coverage for
14 business interruption covering work stoppages. A school district
15 shall not be liable for the payment of benefits, compensation, and
16 emoluments pursuant to the terms of a contract with a contracted
17 service provider under this paragraph for services which otherwise
18 would not have been provided had the school facilities remained
19 open. Nothing in this paragraph shall be construed to require a school
20 district to make payments to a party in material breach of a contract
21 with a contracted service provider if the breach was not due to a
22 closure resulting from a declared state of emergency, declared public
23 health emergency, or a directive by the appropriate health agency or
24 officer.

25 (4) If the schools of a school district are subject to a health-related
26 closure for a period longer than three consecutive school days, which
27 is the result of a declared state of emergency, declared public health
28 emergency, or a directive by the appropriate health agency or officer,
29 the school district shall be obligated to make payments for benefits,
30 compensation, and emoluments and all payments required pursuant
31 to P.L.1968, c.243 (C.18A:6-51 et seq.), to an educational services
32 commission, county special services school district, and a jointure
33 commission, and under any shared services agreement and
34 cooperative contract entered into with any other public entity. An
35 educational services commission, county special services school
36 district, and jointure commission shall continue to make payments of
37 benefits, compensation, and emoluments pursuant to the terms of a
38 contract with a contracted service provider or a shared services
39 agreement in effect on the date of the closure as if the services for
40 such benefits, compensation, and emoluments had been provided,
41 and as if the school facilities had remained open. Payments received
42 by a contracted service provider or public entity pursuant to this
43 paragraph shall be used to meet the payroll and fixed costs
44 obligations of the contracted service provider or public entity. An
45 educational services commission, county special services school
46 district, jointure commission or any lead school district under a
47 shared services agreement or cooperative contract, shall make all
48 reasonable efforts to renegotiate a contract in good faith subject to

1 this paragraph and may direct contracted service providers or public
2 entities, who are a party to a contract and receive payments under this
3 paragraph, to provide services which may reasonably be provided
4 and are within the general expertise or service provision of the
5 original contract. Negotiations shall not include indirect costs such
6 as fuel or tolls. As a condition of negotiations, a contracted service
7 provider or public entity shall reveal whether the entity has insurance
8 coverage for business interruption covering work stoppages.

9 (5) The provisions of this subsection e. shall not apply to any
10 employee whose weekly hours of work are reduced, and to whom
11 unemployment benefits are provided, pursuant to a shared work
12 program approved pursuant to the provisions of P.L.2011.c.154
13 (C.43:21-20.3 et seq.).

14 f. For purposes of subsections b., c., d., and e. of this section,
15 "school district" shall include a charter school and a renaissance
16 school project.

17 (cf: P.L.2020, c.27, s.1)

18
19 3. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to read
20 as follows:

21 3. As used in this act:

22 a. "Child" means a biological, adopted, foster child, or resource
23 family child, stepchild, legal ward, or child of a parent, including a
24 child who becomes the child of a parent pursuant to a valid written
25 agreement between the parent and a gestational carrier.

26 b. "Director" means the Director of the Division on Civil Rights.

27 c. "Division" means the Division on Civil Rights in the
28 Department of Law and Public Safety.

29 d. "Employ" means to suffer or permit to work for
30 compensation, and includes ongoing, contractual relationships in
31 which the employer retains substantial direct or indirect control over
32 the employee's employment opportunities or terms and conditions of
33 employment.

34 e. "Employee" means a person who is employed for at least 12
35 months by an employer, with respect to whom benefits are sought
36 under this act, for not less than 1,000 base hours during the
37 immediately preceding 12-month period. Any time, up to a
38 maximum of 90 calendar days, during which a person is laid off or
39 furloughed by an employer due to that employer curtailing operations
40 because of a state of emergency declared after October 22, 2012,
41 shall be regarded as time in which the person is employed for the
42 purpose of determining eligibility for leave time under this act. In
43 making the determination, the base hours per week during the layoff
44 or furlough shall be deemed to be the same as the average number of
45 hours worked per week during the rest of the 12-month period.

46 f. "Employer" means a person or corporation, partnership,
47 individual proprietorship, joint venture, firm or company or other

1 similar legal entity which engages the services of an employee and
2 which:

3 (1) (Deleted by amendment, P.L.2019, c.37);

4 (2) (Deleted by amendment, P.L.2019, c.37);

5 (3) **【**With respect to the period of time from the 1,095th day
6 following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.)
7 through June 30, 2019, employs 50 or more employees for each
8 working day during each of 20 or more calendar workweeks in the
9 then current or immediately preceding calendar year; and **】** (Deleted
10 by amendment, P.L. , c.) (pending before the Legislature as this
11 bill)

12 (4) With respect to any period of time **【on or after】** from June 30,
13 2019 until the effective date of P.L. c. (pending before the
14 Legislature as this bill), employs 30 or more employees for each
15 working day during each of 20 or more calendar workweeks in the
16 then current or immediately preceding calendar year; and

17 (5) With respect to any period of time after the effective date of
18 P.L. c. (pending before the Legislature as this bill), employs one
19 or more employees for each working day during each of 20 or more
20 calendar workweeks in the then current or immediately preceding
21 calendar year.

22 "Employer" includes the State, any political subdivision thereof,
23 and all public offices, agencies, boards or bodies.

24 g. "Employment benefits" means all benefits and policies
25 provided or made available to employees by an employer, and
26 includes group life insurance, health insurance, disability insurance,
27 sick leave, annual leave, pensions, or other similar benefits.

28 h. "Parent" means a person who is the biological parent,
29 adoptive parent, foster parent, resource family parent, step-parent,
30 parent-in-law or legal guardian, having a "parent-child relationship"
31 with a child as defined by law, or having sole or joint legal or physical
32 custody, care, guardianship, or visitation with a child, or who became
33 the parent of the child pursuant to a valid written agreement between
34 the parent and a gestational carrier.

35 i. "Family leave" means leave from employment so that the
36 employee may provide care made necessary by reason of:

37 (1) the birth of a child of the employee, including a child born
38 pursuant to a valid written agreement between the employee and a
39 gestational carrier;

40 (2) the placement of a child into foster care with the employee or
41 in connection with adoption of such child by the employee;

42 (3) the serious health condition of a family member of the
43 employee; or.

44 (4) in the event of a state of emergency declared by the Governor,
45 or when indicated to be needed by the Commissioner of Health or
46 other public health authority, an epidemic of a communicable
47 disease, a known or suspected exposure to the communicable disease,
48 or efforts to prevent spread of a communicable disease, which:

1 (a) requires in-home care or treatment of a child due to the closure
2 of the school or place of care of the child of the employee, by order
3 of a public official due to the epidemic or other public health
4 emergency;

5 (b) prompts the issuance by a public health authority of a
6 determination, including by mandatory quarantine, requiring or
7 imposing responsive or prophylactic measures as a result of illness
8 caused by an epidemic of a communicable disease or known or
9 suspected exposure to the communicable disease because the
10 presence in the community of a family member in need of care by the
11 employee, would jeopardize the health of others; or

12 (c) results in the recommendation of a health care provider or
13 public health authority, that a family member in need of care by the
14 employee voluntarily undergo self-quarantine as a result of suspected
15 exposure to a communicable disease because the presence in the
16 community of that family member in need of care by the employee,
17 would jeopardize the health of others.

18 j. "Family member" means a child, parent, parent-in-law,
19 sibling, grandparent, grandchild, spouse, domestic partner, or one
20 partner in a civil union couple, or any other individual related by
21 blood to the employee, and any other individual that the employee
22 shows to have a close association with the employee which is the
23 equivalent of a family relationship.

24 k. "Reduced leave schedule" means leave scheduled for fewer
25 than an employee's usual number of hours worked per workweek but
26 not for fewer than an employee's usual number of hours worked per
27 workday, unless agreed to by the employee and the employer.

28 l. "Serious health condition" means an illness, injury,
29 impairment, or physical or mental condition which requires:

30 (1) inpatient care in a hospital, hospice, or residential medical
31 care facility; or

32 (2) continuing medical treatment or continuing supervision by a
33 health care provider.

34 m. "State of emergency" means a natural or man-made disaster
35 or emergency for which a state of emergency has been declared by
36 the President of the United States or the Governor, or for which a
37 state of emergency has been declared by a municipal emergency
38 management coordinator.

39 n. "Health care provider" means a duly licensed health care
40 provider or other health care provider deemed appropriate by the
41 director.

42 (cf: P.L.2020, c.23, s.1)

43

44 4. R.S.43:21-3 is amended to read as follows:

45 43:21-3. Benefits.

46 (a) Payment of benefits.

47 All benefits shall be promptly paid from the fund in accordance
48 with such regulations as may be prescribed hereunder.

1 (b) Weekly benefits for unemployment.

2 (1) With respect to an individual's benefit year commencing on
3 or after July 1, 1961 and before June 1, 2020, such individual, if
4 eligible and unemployed (as defined in subsection (m) of R.S.43:21-
5 19), shall be paid an amount (except as to final payment) equal to his
6 weekly benefit rate less any remuneration, other than remuneration
7 from self-employment paid to an individual who is receiving a self-
8 employment assistance allowance, paid or payable to him for such
9 week in excess of 20% of his weekly benefit rate (fractional part of a
10 dollar omitted) or \$5.00, whichever is the greater; provided that such
11 amount shall be computed to the next lower multiple of \$1.00 if not
12 already a multiple thereof.

13 (2) With respect to an individual's benefit year commencing on
14 or after June 1, 2020, such individual, if eligible and unemployed (as
15 defined in subsection (m) of R.S.43:21-19), shall be paid an amount
16 (except as to final payment) equal to his weekly benefit rate less any
17 remuneration, other than remuneration from self-employment paid to
18 an individual who is receiving a self-employment assistance
19 allowance, paid or payable to him for such week in excess of 40% of
20 his weekly benefit rate (fractional part of a dollar omitted) or \$5.00,
21 whichever is the greater; provided that such amount shall be
22 computed to the next lower multiple of \$1.00 if not already a multiple
23 thereof.

24 (c) Weekly benefit rate.

25 (1) With respect to an individual whose benefit year commences
26 after September 30, 1984, his weekly benefit rate under each
27 determination shall be 60% of his average weekly wage, subject to a
28 maximum of $56 \frac{2}{3}$ % of the Statewide average weekly remuneration
29 paid to workers by employers subject to this chapter (R.S.43:21-1 et
30 seq.), as determined and promulgated by the Commissioner of Labor
31 and Workforce Development; provided, however, that such
32 individual's weekly benefit rate shall be computed to the next lower
33 multiple of \$1.00 if not already a multiple thereof.

34 (2) Dependency benefits.

35 (A) With respect to an individual whose benefit year commences
36 after September 30, 1984, the individual's weekly benefit rate as
37 determined in paragraph (1) of this subsection (c) will be increased
38 by 7% for the first dependent and 4% each for the next two
39 dependents (up to a maximum of three dependents), computed to the
40 next lower multiple of \$1.00 if not already a multiple thereof, except
41 that the maximum weekly benefit rate payable for an individual
42 claiming dependency benefits shall not exceed the maximum amount
43 determined under paragraph (1) of this subsection (c).

44 (B) For the purposes of this paragraph (2), a dependent is defined
45 as an individual's unemployed spouse or an unemployed unmarried
46 child (including a stepchild or a legally adopted child) under the age
47 of 19 or an unemployed unmarried child, who is attending an
48 educational institution as defined in subsection (y) of R.S.43:21-19

1 on a full-time basis and is under the age of 22. If an individual's
2 spouse is employed during the week the individual files an initial
3 claim for benefits, this paragraph (2) shall not apply. If both spouses
4 establish a claim for benefits in accordance with the provisions of
5 this chapter (R.S.43:21-1 et seq.), only one shall be entitled to
6 dependency benefits as provided in this paragraph (2).

7 (C) Any determination establishing dependency benefits under
8 this paragraph (2) shall remain fixed for the duration of the
9 individual's benefit year and shall not be increased or decreased
10 unless it is determined by the division that the individual wrongfully
11 claimed dependency benefits as a result of false or fraudulent
12 representation.

13 (D) Notwithstanding the provisions of any other law, the division
14 shall use every available administrative means to insure that
15 dependency benefits are paid only to individuals who meet the
16 requirements of this paragraph (2). These administrative actions may
17 include, but shall not be limited to, the following:

18 (i) All married individuals claiming dependents under this
19 paragraph (2) shall be required to provide the social security number
20 of the individual's spouse. If the individual indicates that the spouse
21 is unemployed, the division shall match the social security number of
22 the spouse against available wage records to determine whether
23 earnings were reported on the last quarterly earnings report filed by
24 employers under R.S.43:21-14. If earnings were reported, the
25 division shall contact in writing the last employer to determine
26 whether the spouse is currently employed.

27 (ii) Where a child is claimed as a dependent by an individual
28 under this paragraph (2), the individual shall be required to provide
29 to the division the most recent federal income tax return filed by the
30 individual to assist the division in verifying the claim.

31 (3) For the purposes of this subsection (c), the "Statewide average
32 weekly remuneration paid to workers by employers" shall be
33 computed and determined by the Commissioner of Labor and
34 Workforce Development on or before September 1 of each year on
35 the basis of one-fifty-second of the total remuneration reported for
36 the preceding calendar year by employers subject to this chapter,
37 divided by the average of the number of workers reported by such
38 employers, and shall be effective as to benefit determinations in the
39 calendar year following such computation and determination.

40 (d) Maximum total benefits.

41 (1) (A) (Deleted by amendment, P.L.2003, c.107).

42 (B) (i) With respect to an individual for whom benefits shall be
43 payable for benefit years commencing on or after July 1, 1986, and
44 before July 1, 2003 as provided in this section, the individual shall
45 be entitled to receive a total amount of benefits equal to three-
46 quarters of the individual's base weeks with all employers in the base
47 year multiplied by the individual's weekly benefit rate; but the
48 amount of benefits thus resulting under that determination shall be

1 adjusted to the next lower multiple of \$1.00 if not already a multiple
2 thereof. With respect to an individual for whom benefits shall be
3 payable for benefit years commencing on or after July 1, 2003 as
4 provided in this section, the individual shall be entitled to receive a
5 total amount of benefits equal to the number of the individual's base
6 weeks with all employers in the base year multiplied by the
7 individual's weekly benefit rate; but the amount of benefits thus
8 resulting under that determination shall be adjusted to the next lower
9 multiple of \$1.00 if not already a multiple thereof.

10 (ii) Except as provided pursuant to paragraph (1) of subsection (c)
11 of R.S.43:21-7, benefits paid to an individual for benefit years
12 commencing on or after July 1, 1986 shall be charged against the
13 accounts of the individual's base year employers in the following
14 manner:

15 Each week of benefits paid to an eligible individual shall be
16 charged against each base year employer's account in the same
17 proportion that the wages paid by each employer to the individual
18 during the base year bear to the wages paid by all employers to that
19 individual during the base year.

20 (iii) (Deleted by amendment, P.L.1997, c.255.)

21 (2) No such individual shall be entitled to receive benefits under
22 this chapter (R.S.43:21-1 et seq.) in excess of 26 times his weekly
23 benefit rate in any benefit year under either of subsections (c) and (f)
24 of R.S. 43:21-4. In the event that any individual qualifies for benefits
25 under both of said subsections during any benefit year, the maximum
26 total amount of benefits payable under said subsections combined to
27 such individual during the benefit year shall be one and one-half
28 times the maximum amount of benefits payable under one of said
29 subsections.

30 (3) (Deleted by amendment, P.L.1984, c.24.)

31 (cf: P.L.2004, c.45, s.1)

32

33 5. R.S.43:21-4 is amended to read as follows:

34 43:21-4. Benefit eligibility conditions. An unemployed
35 individual shall be eligible to receive benefits with respect to any
36 week eligible only if:

37 (a) The individual has filed a claim at an unemployment
38 insurance claims office and thereafter continues to report at an
39 employment service office or unemployment insurance claims office,
40 as directed by the division in accordance with such regulations as the
41 division may prescribe, except that the division may, by regulation,
42 waive or alter either or both of the requirements of this subsection as
43 to individuals attached to regular jobs, and as to such other types of
44 cases or situations with respect to which the division finds that
45 compliance with such requirements would be oppressive, or would
46 be inconsistent with the purpose of this act; provided that no such
47 regulation shall conflict with subsection (a) of R.S.43:21-3.

1 (b) The individual has made a claim for benefits in accordance
2 with the provisions of subsection (a) of R.S.43:21-6.

3 (c) (1) The individual is able to work, and is available for work,
4 and has demonstrated to be actively seeking work, except as
5 hereinafter provided in this subsection or in subsection (f) of this
6 section.

7 (2) The director may modify the requirement of actively seeking
8 work if such modification of this requirement is warranted by
9 economic conditions.

10 (3) No individual, who is otherwise eligible, shall be deemed
11 ineligible, or unavailable for work, because the individual is on
12 vacation, without pay, during said week, if said vacation is not the
13 result of the individual's own action as distinguished from any
14 collective action of a collective bargaining agent or other action
15 beyond the individual's control.

16 (4) (A) Subject to such limitations and conditions as the division
17 may prescribe, an individual, who is otherwise eligible, shall not be
18 deemed unavailable for work or ineligible because the individual is
19 attending a training program approved for the individual by the
20 division to enhance the individual's employment opportunities or
21 because the individual failed or refused to accept work while
22 attending such program.

23 (B) For the purpose of this paragraph (4), any training program
24 shall be regarded as approved by the division for the individual if the
25 program and the individual meet the following requirements:

26 (i) The training is for a labor demand occupation and is likely to
27 enhance the individual's marketable skills and earning power, except
28 that the training may be for an occupation other than a labor demand
29 occupation if the individual is receiving short-time benefits pursuant
30 to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.) and the
31 training is necessary to prevent a likely loss of jobs;

32 (ii) The training is provided by a competent and reliable private
33 or public entity approved by the Commissioner of Labor and
34 Workforce Development pursuant to the provisions of section 8 of
35 the "1992 New Jersey Employment and Workforce Development
36 Act," P.L.1992, c.43 (C.34:15D-8);

37 (iii) The individual can reasonably be expected to complete the
38 program, either during or after the period of benefits;

39 (iv) The training does not include on the job training or other
40 training under which the individual is paid by an employer for work
41 performed by the individual during the time that the individual
42 receives benefits; and

43 (v) The individual enrolls in vocational training, remedial
44 education or a combination of both on a full-time basis, except that
45 the training or education may be on a part-time basis if the individual
46 is receiving short-time benefits pursuant to the provisions of
47 P.L.2011, c.154 (C.43:21-20.3 et al.).

1 (C) If the requirements of subparagraph (B) of this paragraph (4)
2 are met, the division shall not withhold approval of the training
3 program for the individual for any of the following reasons:

4 (i) The training includes remedial basic skills education
5 necessary for the individual to successfully complete the vocational
6 component of the training;

7 (ii) The training is provided in connection with a program under
8 which the individual may obtain a college degree, including a post-
9 graduate degree;

10 (iii) The length of the training period under the program; or

11 (iv) The lack of a prior guarantee of employment upon
12 completion of the training.

13 (D) For the purpose of this paragraph (4), "labor demand
14 occupation" means an occupation for which there is or is likely to be
15 an excess of demand over supply for adequately trained workers,
16 including, but not limited to, an occupation designated as a labor
17 demand occupation by the Center for Occupational Employment
18 Information pursuant to the provisions of subsection d. of section 27
19 of P.L.2005, c.354 (C.34:1A-86).

20 (5) An unemployed individual, who is otherwise eligible, shall
21 not be deemed unavailable for work or ineligible solely by reason of
22 the individual's attendance before a court in response to a summons
23 for service on a jury.

24 (6) An unemployed individual, who is otherwise eligible, shall
25 not be deemed unavailable for work or ineligible solely by reason of
26 the individual's attendance at the funeral of an immediate family
27 member, provided that the duration of the attendance does not extend
28 beyond a two-day period.

29 For purposes of this paragraph, "immediate family member"
30 includes any of the following individuals: father, mother, mother-in-
31 law, father-in-law, grandmother, grandfather, grandchild, spouse,
32 child, child placed by the Division of Youth and Family Services in
33 the Department of Children and Families, sister or brother of the
34 unemployed individual and any relatives of the unemployed
35 individual residing in the unemployed individual's household.

36 (7) No individual, who is otherwise eligible, shall be deemed
37 ineligible or unavailable for work with respect to any week because,
38 during that week, the individual fails or refuses to accept work while
39 the individual is participating on a full-time basis in self-employment
40 assistance activities authorized by the division, whether or not the
41 individual is receiving a self-employment allowance during that
42 week.

43 (8) Any individual who is determined to be likely to exhaust
44 regular benefits and need reemployment services based on
45 information obtained by the worker profiling system shall not be
46 eligible to receive benefits if the individual fails to participate in
47 available reemployment services to which the individual is referred

1 by the division or in similar services, unless the division determines
2 that:

- 3 (A) The individual has completed the reemployment services; or
4 (B) There is justifiable cause for the failure to participate, which
5 shall include participation in employment and training, self-
6 employment assistance activities or other activities authorized by the
7 division to assist reemployment or enhance the marketable skills and
8 earning power of the individual and which shall include any other
9 circumstance indicated pursuant to this section in which an individual
10 is not required to be available for and actively seeking work to
11 receive benefits.

12 (9) An unemployed individual, who is otherwise eligible, shall
13 not be deemed unavailable for work or ineligible solely by reason of
14 the individual's work as a board worker for a county board of
15 elections on an election day.

16 (10) An individual who is employed by a shared work employer
17 and is otherwise eligible for benefits shall not be deemed ineligible
18 for short-time benefits because the individual is unavailable for work
19 with employers other than the shared work employer, so long as:

20 (A) The individual is able to work and is available to work the
21 individual's normal full-time hours for the shared work employer; or

22 (B) The individual is attending a training program which is in
23 compliance with the provisions of paragraph (4) of subsection (c) of
24 this section and the agreements and certifications required pursuant
25 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

26 (d) With respect to any benefit year commencing before January
27 1, 2002, the individual has been totally or partially unemployed for a
28 waiting period of one week in the benefit year which includes that
29 week. When benefits become payable with respect to the third
30 consecutive week next following the waiting period, the individual
31 shall be eligible to receive benefits as appropriate with respect to the
32 waiting period. No week shall be counted as a week of
33 unemployment for the purposes of this subsection:

34 (1) If benefits have been paid, or are payable with respect thereto;
35 provided that the requirements of this paragraph shall be waived with
36 respect to any benefits paid or payable for a waiting period as
37 provided in this subsection;

38 (2) If it has constituted a waiting period week under the
39 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
40 et al.);

41 (3) Unless the individual fulfills the requirements of subsections
42 (a) and (c) of this section;

43 (4) If with respect thereto, claimant was disqualified for benefits
44 in accordance with the provisions of subsection (d) of R.S.43:21-5.

45 The waiting period provided by this subsection shall not apply to
46 benefit years commencing on or after January 1, 2002. An individual
47 whose total benefit amount was reduced by the application of the
48 waiting period to a claim which occurred on or after January 1, 2002

1 and before the effective date of P.L.2002, c.13, shall be permitted to
2 file a claim for the additional benefits attributable to the waiting
3 period in the form and manner prescribed by the division, but not
4 later than the 180th day following the effective date of P.L.2002, c.13
5 unless the division determines that there is good cause for a later
6 filing.

7 (e) (1) (Deleted by amendment, P.L.2001, c.17).

8 (2) (Deleted by amendment, P.L.2008, c.17).

9 (3) (Deleted by amendment, P.L.2008, c.17).

10 (4) With respect to benefit years commencing on or after January
11 7, 2001 and before June 1, 2020, except as otherwise provided in
12 paragraph (5) of this subsection, the individual has, during his base
13 year as defined in subsection (c) of R.S.43:21-19:

14 (A) Established at least 20 base weeks as defined in paragraphs
15 (2) and (3) of subsection (t) of R.S.43:21-19; or

16 (B) If the individual has not met the requirements of subparagraph
17 (A) of this paragraph (4), earned remuneration not less than an
18 amount 1,000 times the minimum wage in effect pursuant to section
19 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
20 year preceding the calendar year in which the benefit year
21 commences, which amount shall be adjusted to the next higher
22 multiple of \$100 if not already a multiple thereof.

23 (5) With respect to benefit years commencing on or after January
24 7, 2001 and before June 1, 2020, notwithstanding the provisions of
25 paragraph (4) of this subsection, an unemployed individual claiming
26 benefits on the basis of service performed in the production and
27 harvesting of agricultural crops shall, subject to the limitations of
28 subsection (i) of R.S.43:21-19, be eligible to receive benefits if
29 during his base year, as defined in subsection (c) of R.S.43:21-19, the
30 individual:

31 (A) Has established at least 20 base weeks as defined in
32 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

33 (B) Has earned remuneration not less than an amount 1,000 times
34 the minimum wage in effect pursuant to section 5 of P.L.1966, c.113
35 (C.34:11-56a4) on October 1 of the calendar year preceding the
36 calendar year in which the benefit year commences, which amount
37 shall be adjusted to the next higher multiple of \$100 if not already a
38 multiple thereof; or

39 (C) Has performed at least 770 hours of service in the production
40 and harvesting of agricultural crops.

41 (6) With respect to benefit years commencing on or after June 1,
42 2020, the individual, during his base year as defined in subsection (c)
43 of R.S.43:21-19:

44 (A) Has established at least 20 base weeks as defined in
45 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

46 (B) Has, if the individual has not met the requirements of
47 subparagraph (A) of this paragraph (6), earned remuneration not less
48 than an amount 500 times the minimum wage in effect pursuant to

1 section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the
2 calendar year preceding the calendar year in which the benefit year
3 commences, which amount shall be adjusted to the next higher
4 multiple of \$100 if not already a multiple thereof; or

5 (C) Has, if the individual has not met the requirements of
6 subparagraph (A) or subparagraph (B) of this paragraph (6),
7 performed at least 770 hours of service in the production and
8 harvesting of agricultural crops, subject to the limitations of
9 subparagraph (I) of paragraph (1) of subsection (i) of R.S.43:21-19.

10 (7) The individual applying for benefits in any successive benefit
11 year has earned at least six times his previous weekly benefit amount
12 and has had four weeks of employment since the beginning of the
13 immediately preceding benefit year. This provision shall be in
14 addition to the earnings requirements specified in paragraph [(4) or]
15 (5) or (6) of this subsection, as applicable.

16 (f) (1) The individual has suffered any accident or sickness not
17 compensable under the workers' compensation law, R.S.34:15-1 et
18 seq. and resulting in the individual's total disability to perform any
19 work for remuneration, and would be eligible to receive benefits
20 under this chapter (R.S.43:21-1 et seq.) (without regard to the
21 maximum amount of benefits payable during any benefit year) except
22 for the inability to work and has furnished notice and proof of claim
23 to the division, in accordance with its rules and regulations, and
24 payment is not precluded by the provisions of R.S.43:21-3(d);
25 provided, however, that benefits paid under this subsection (f) shall
26 be computed on the basis of only those base year wages earned by
27 the claimant as a "covered individual," as defined in subsection (b)
28 of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that
29 no benefits shall be payable under this subsection to any individual:

30 (A) For any period during which such individual is not under the
31 care of a legally licensed physician, dentist, optometrist, podiatrist,
32 practicing psychologist, advanced practice nurse, or chiropractor,
33 who, when requested by the division, shall certify within the scope
34 of the practitioner's practice, the disability of the individual, the
35 probable duration thereof, and, where applicable, the medical facts
36 within the practitioner's knowledge;

37 (B) (Deleted by amendment, P.L.1980, c.90.)

38 (C) For any period of disability due to willfully or intentionally
39 self-inflicted injury, or to injuries sustained in the perpetration by the
40 individual of a crime of the first, second or third degree;

41 (D) For any week with respect to which or a part of which the
42 individual has received or is seeking benefits under any
43 unemployment compensation or disability benefits law of any other
44 state or of the United States; provided that if the appropriate agency
45 of such other state or the United States finally determines that the
46 individual is not entitled to such benefits, this disqualification shall
47 not apply;

1 (E) For any week with respect to which or part of which the
2 individual has received or is seeking disability benefits under the
3 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
4 25 et al.);

5 (F) For any period of disability commencing while such
6 individual is a "covered individual," as defined in subsection (b) of
7 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
8 c.110 (C.43:21-27).

9 (2) The individual is taking family temporary disability leave to
10 provide care for a family member with a serious health condition or
11 to be with a child during the first 12 months after the child's birth or
12 placement of the child for adoption or as a foster child with the
13 individual, and the individual would be eligible to receive benefits
14 under R.S.43:21-1 et seq. (without regard to the maximum amount of
15 benefits payable during any benefit year) except for the individual's
16 unavailability for work while taking the family temporary disability
17 leave, and the individual has furnished notice and proof of claim to
18 the division, in accordance with its rules and regulations, and
19 payment is not precluded by the provisions of R.S.43:21-3(d)
20 provided, however, that benefits paid under this subsection (f) shall
21 be computed on the basis of only those base year wages earned by
22 the claimant as a "covered individual," as defined in subsection (b)
23 of section 3 of P.L.1948, c.110 (C.43:21-27); provided further that
24 no benefits shall be payable under this subsection to any individual:

25 (A) For any week with respect to which or a part of which the
26 individual has received or is seeking benefits under any
27 unemployment compensation or disability benefits law of any other
28 state or of the United States; provided that if the appropriate agency
29 of such other state or the United States finally determines that the
30 individual is not entitled to such benefits, this disqualification shall
31 not apply;

32 (B) For any week with respect to which or part of which the
33 individual has received or is seeking disability benefits for a
34 disability of the individual under the "Temporary Disability Benefits
35 Law," P.L.1948, c.110 (C.43:21-25 et al.);

36 (C) For any period of family temporary disability leave
37 commencing while the individual is a "covered individual," as
38 defined in subsection (b) of section 3 of the "Temporary Disability
39 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

40 (D) For any period of family temporary disability leave for a
41 serious health condition of a family member of the claimant during
42 which the family member is not receiving inpatient care in a hospital,
43 hospice, or residential medical care facility and is not subject to
44 continuing medical treatment or continuing supervision by a health
45 care provider, who, when requested by the division, shall certify
46 within the scope of the provider's practice, the serious health
47 condition of the family member, the probable duration thereof, and,
48 where applicable, the medical facts within the provider's knowledge.

1 (3) Benefit payments under this subsection (f) shall be charged to
2 and paid from the State disability benefits fund established by the
3 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
4 25 et al.), and shall not be charged to any employer account in
5 computing any employer's experience rate for contributions payable
6 under this chapter.

7 (g) Benefits based on service in employment defined in
8 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable in
9 the same amount and on the terms and subject to the same conditions
10 as benefits payable on the basis of other service subject to the
11 "unemployment compensation law"; except that, notwithstanding
12 any other provisions of the "unemployment compensation law":

13 (1) With respect to service performed after December 31, 1977,
14 in an instructional, research, or principal administrative capacity for
15 an educational institution, benefits shall not be paid based on such
16 services for any week of unemployment commencing during the
17 period between two successive academic years, or during a similar
18 period between two regular terms, whether or not successive, or
19 during a period of paid sabbatical leave provided for in the
20 individual's contract, to any individual if such individual performs
21 such services in the first of such academic years (or terms) and if
22 there is a contract or a reasonable assurance that such individual will
23 perform services in any such capacity for any educational institution
24 in the second of such academic years or terms;

25 (2) With respect to weeks of unemployment beginning after
26 September 3, 1982, on the basis of service performed in any other
27 capacity for an educational institution, benefits shall not be paid on
28 the basis of such services to any individual for any week which
29 commences during a period between two successive academic years
30 or terms if such individual performs such services in the first of such
31 academic years or terms and there is a reasonable assurance that such
32 individual will perform such services in the second of such academic
33 years or terms, except that if benefits are denied to any individual
34 under this paragraph (2) and the individual was not offered an
35 opportunity to perform these services for the educational institution
36 for the second of any academic years or terms, the individual shall be
37 entitled to a retroactive payment of benefits for each week for which
38 the individual filed a timely claim for benefits and for which benefits
39 were denied solely by reason of this clause;

40 (3) With respect to those services described in paragraphs (1) and
41 (2) above, benefits shall not be paid on the basis of such services to
42 any individual for any week which commences during an established
43 and customary vacation period or holiday recess if such individual
44 performs such services in the period immediately before such
45 vacation period or holiday recess, and there is a reasonable assurance
46 that such individual will perform such services in the period
47 immediately following such period or holiday recess;

1 (4) With respect to any services described in paragraphs (1) and
2 (2) above, benefits shall not be paid as specified in paragraphs (1),
3 (2), and (3) above to any individual who performed those services in
4 an educational institution while in the employ of an educational
5 service agency, and for this purpose the term "educational service
6 agency" means a governmental agency or governmental entity which
7 is established and operated exclusively for the purpose of providing
8 those services to one or more educational institutions.

9 (5) With respect to services performed after the effective date of
10 P.L. , c. (pending before the legislature as this bill), as used in
11 this subsection:

12 "Established and customary vacation period or holiday recess"
13 includes those breaks scheduled during fall, winter, and spring
14 recesses when those vacation periods occur within a term or
15 semester. "Established and customary vacation period or holiday
16 recess" does not include the summer term or semester, unless, based
17 on objective criteria including enrollment and staffing, the summer
18 is not in fact a part of the academic year for a particular institution.

19 "Reasonable assurance" means a written, verbal, or implied
20 agreement that the employee will perform services in the same
21 capacity during the ensuing academic year or term as in the first
22 academic year or term. A person shall not be deemed to be
23 performing services "in the same capacity" unless those services are
24 rendered under the same terms or conditions of employment in the
25 ensuing year as in the first academic year or term.

26 An individual who is tenured or holds tenure track status is
27 considered to have reasonable assurance, unless advised otherwise.
28 For the purposes of this subsection, tenure track status means a
29 probationary faculty employee having an opportunity to be reviewed
30 for tenure.

31 A person is presumed not to have reasonable assurance under an
32 offer that is conditioned on enrollment, funding, program changes, or
33 other circumstances under the control of the employer. It is the
34 employer's burden to provide sufficient documentation to overcome
35 this presumption. Reasonable assurance shall be determined on a
36 case-by-case basis considering the totality of circumstances rather
37 than on the existence of any one factor. For an individual to be
38 regarded as having reasonable assurance of employment, the totality
39 of circumstances must show that it is highly probable that there is a
40 job available for the employee in the following academic year or
41 term. If any contingencies in the employment offer are within the
42 employer's control, the claimant shall not be regarded as having a
43 reasonable assurance of employment. Contingencies within the
44 employer's control include, but are not limited to, enrollment,
45 funding, including appropriations and the allocation of funding,
46 program changes, final course offering, and facility availability.

47 (h) Benefits shall not be paid to any individual on the basis of any
48 services, substantially all of which consist of participating in sports

1 or athletic events or training or preparing to so participate, for any
2 week which commences during the period between two successive
3 sports seasons (or similar periods) if such individual performed such
4 services in the first of such seasons (or similar periods) and there is
5 a reasonable assurance that such individual will perform such
6 services in the later of such seasons (or similar periods).

7 (i) (1) Benefits shall not be paid on the basis of services
8 performed by an alien unless such alien is an individual who was
9 lawfully admitted for permanent residence at the time the services
10 were performed and was lawfully present for the purpose of
11 performing the services or otherwise was permanently residing in the
12 United States under color of law at the time the services were
13 performed (including an alien who is lawfully present in the United
14 States as a result of the application of the provisions of section
15 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and Nationality
16 Act (8 U.S.C. s.1101 et seq.)); provided that any modifications of the
17 provisions of section 3304(a)(14) of the Federal Unemployment Tax
18 Act (26 U.S.C. s. 3304 (a) (14)) **【as provided by Pub.L.94-566】**,
19 which specify other conditions or other effective dates than stated
20 herein for the denial of benefits based on services performed by
21 aliens and which modifications are required to be implemented under
22 State law as a condition for full tax credit against the tax imposed by
23 the Federal Unemployment Tax Act, shall be deemed applicable
24 under the provisions of this section.

25 (2) Any data or information required of individuals applying for
26 benefits to determine whether benefits are not payable to them
27 because of their alien status shall be uniformly required from all
28 applicants for benefits.

29 (3) In the case of an individual whose application for benefits
30 would otherwise be approved, no determination that benefits to such
31 individual are not payable because of alien status shall be made
32 except upon a preponderance of the evidence.

33 (j) Notwithstanding any other provision of this chapter, the
34 director may, to the extent that it may be deemed efficient and
35 economical, provide for consolidated administration by one or more
36 representatives or deputies of claims made pursuant to subsection (f)
37 of this section with those made pursuant to Article III (State plan) of
38 the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-
39 25 et al.).

40 (cf: P.L.2019, c.37, s.5)

41

42 6. R.S.43:21-6 is amended to read as follows:

43 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
44 accordance with such regulations as the Director of the Division of
45 Unemployment and Temporary Disability Insurance of the
46 Department of Labor and Workforce Development of the State of
47 New Jersey may approve. Each employer shall post and maintain on
48 his premises printed notices of his subject status, of such design, in

1 such numbers and at such places as the director of the division may
2 determine to be necessary to give notice thereof to persons in the
3 employer's service. Each employer shall give to each individual at
4 the time he becomes unemployed, for any reason, whether the
5 unemployment is permanent or temporary, or, if the employer
6 provides the individual an advanced notification of a layoff, at the
7 time of that notification, a printed copy of benefit instructions. The
8 benefit instructions given to the individual shall include, but not be
9 limited to, the following information: (A) the date upon which the
10 individual becomes unemployed, and, in the case that the
11 unemployment is temporary, to the extent possible, the date upon
12 which the individual is expected to be recalled to work; and (B) that
13 the individual may lose some or all of the benefits to which he is
14 entitled if he fails to file a claim in a timely manner. Both the
15 aforesaid notices and instructions, including information detailing
16 the time sensitivity of filing a claim, shall be supplied by the division
17 to employers without cost to them. Nothing in this section shall be
18 construed so as to require an employer to re-hire an individual
19 formerly in the employer's service.

20 (2) Any claimant may choose to certify, cancel or close his claim
21 for unemployment insurance benefits at any time, 24 hours a day and
22 seven days a week, via the Internet on a website developed by the
23 division; however, any claim that is certified, cancelled or closed
24 after 7:00 PM will not be processed by the division until the next
25 scheduled posting date.

26 (3) If an employer provides advanced notification of a layoff
27 pursuant to paragraph (1) of this subsection a., the notified individual
28 may file for benefits at the time of the notification, and the division,
29 upon finding that the claim is valid, shall pay the benefit upon the
30 commencement of the period of unemployment.

31 (b) (1) Procedure for making initial determinations with respect
32 to benefit years commencing on or after January 1, 1953.

33 A representative or representatives designated by the director of
34 the division and hereafter referred to as a "deputy" shall promptly
35 examine the claim, and shall notify the most recent employing unit
36 and, successively as necessary, each employer in inverse
37 chronological order during the base year. Such notification shall
38 require said employing unit and employer to furnish such information
39 to the deputy as may be necessary to determine the claimant's
40 eligibility and his benefit rights with respect to the employer in
41 question.

42 In his discretion, the director may appoint special deputies to make
43 initial or subsequent determinations under subsection (f) of
44 R.S.43:21-4 and subsection (d) of R.S.43:21-5.

45 If any employer or employing unit fails to respond to the request
46 for information within 10 days after the mailing, or communicating
47 by electronic means, of such request, the deputy shall rely entirely on
48 information from other sources, including an affidavit to the best of

1 the knowledge and belief of the claimant with respect to his wages
2 and time worked. Except in the event of fraud, if it is determined that
3 any information in such affidavit is erroneous, no penalty shall be
4 imposed on the claimant.

5 The deputy shall make an initial determination contingent upon
6 the receipt of all necessary information and notify the claimant no
7 later than three weeks from the date on which the division received
8 the claim for benefits. If an initial determination cannot be made due
9 to the lack of documentation, notification will be sent to the claimant
10 providing a status of the claim. The division will then have an
11 additional two weeks to obtain the missing information in order to
12 make the initial determination and advise the claimant accordingly.
13 The initial determination shall show the weekly benefit amount
14 payable, the maximum duration of benefits with respect to the
15 employer to whom the determination relates, and the ratio of benefits
16 chargeable to the employer's account for benefit years commencing
17 on or after July 1, 1986, and also shall show whether the claimant is
18 ineligible or disqualified for benefits under the initial determination.
19 The employer whose account may be charged for benefits payable
20 pursuant to said determination shall be promptly notified thereof.

21 Whenever an initial determination is based upon information other
22 than that supplied by an employer because such employer failed to
23 respond to the deputy's request for information, such initial
24 determination and any subsequent determination thereunder shall be
25 incontestable by the noncomplying employer, as to any charges to his
26 employer's account because of benefits paid prior to the close of the
27 calendar week following the receipt of his reply. Such initial
28 determination shall be altered if necessary upon receipt of
29 information from the employer, and any benefits paid or payable with
30 respect to weeks occurring subsequent to the close of the calendar
31 week following the receipt of the employer's reply shall be paid in
32 accordance with such altered initial determination.

33 The deputy shall issue a separate initial benefit determination with
34 respect to each of the claimant's base year employers, starting with
35 the most recent employer and continuing as necessary in the inverse
36 chronological order of the claimant's last date of employment with
37 each such employer. If an appeal is taken from an initial
38 determination, as hereinafter provided, by any employer other than
39 the first chargeable base year employer or for benefit years
40 commencing on or after July 1, 1986, that employer from whom the
41 individual was most recently separated, then such appeal shall be
42 limited in scope to include only one or more of the following matters:

43 (A) The correctness of the benefit payments authorized to be made
44 under the determination;

45 (B) Fraud in connection with the claim pursuant to which the
46 initial determination is issued;

47 (C) The refusal of suitable work offered by the chargeable
48 employer filing the appeal;

1 (D) Gross misconduct as provided in subsection (b) of R.S.43:21-
2 5.

3 The amount of benefits payable under an initial determination may
4 be reduced or canceled if necessary to avoid payment of benefits for
5 a number of weeks in excess of the maximum specified in subsection
6 (d) of R.S.43:21-3.

7 Unless the claimant or any interested party, within seven calendar
8 days after delivery of notification of an initial determination or within
9 10 calendar days after such notification was mailed to his or their
10 last-known address and addresses, files an appeal from such decision,
11 such decision shall be final and benefits shall be paid or denied in
12 accordance therewith, except for such determinations as may be
13 altered in benefit amounts or duration as provided in this paragraph.
14 Benefits payable for periods pending an appeal and not in dispute
15 shall be paid as such benefits accrue; provided that insofar as any
16 such appeal is or may be an appeal from a determination to the effect
17 that the claimant is disqualified under the provisions of R.S.43:21-5
18 or any amendments thereof or supplements thereto, benefits pending
19 determination of the appeal shall be withheld only for the period of
20 disqualification as provided for in said section, and notwithstanding
21 such appeal, the benefits otherwise provided by this act shall be paid
22 for the period subsequent to such period of disqualification; and
23 provided, also, that if there are two determinations of entitlement,
24 benefits for the period covered by such determinations shall be paid
25 regardless of any appeal which may thereafter be taken, but no
26 employer's account shall be charged with benefits so paid, if the
27 decision is finally reversed.

28 (2) Procedure for making initial determinations in certain cases
29 of concurrent employment, with respect to benefit years commencing
30 on or after January 1, 1953 and prior to benefit years commencing on
31 or after July 1, 1986.

32 Notwithstanding any other provisions of this Title, if an individual
33 shows to the satisfaction of the deputy that there were at least 13
34 weeks in his base period in each of which he earned wages from two
35 or more employers totaling \$30.00 or more but in each of which there
36 was no single employer from whom he earned as much as \$100.00,
37 then such individual's claim shall be determined in accordance with
38 the special provisions of this paragraph. In such case, the deputy
39 shall determine the individual's eligibility for benefits, his average
40 weekly wage, weekly benefit rate and maximum total benefits as if
41 all his base year employers were a single employer. Such
42 determination shall apportion the liability for benefit charges
43 thereunder to the individual's several base year employers so that
44 each employer's maximum liability for charges thereunder bears
45 approximately the same relation to the maximum total benefits
46 allowed as the wages earned by the individual from each employer
47 during the base year bears to his total wages earned from all
48 employers during the base year. Such initial determination shall also

1 specify the individual's last date of employment within the base year
2 with respect to each base year employer, and such employers shall be
3 charged for benefits paid under said initial determination in the
4 inverse chronological order of such last date of employment.

5 (3) Procedure for making subsequent determinations with respect
6 to benefit years commencing on or after January 1, 1953. The deputy
7 shall make determinations with respect to claims for benefits
8 thereafter in the course of the benefit year, in accordance with any
9 initial determination allowing benefits, and under which benefits
10 have not been exhausted, and each notification of a benefit payment
11 shall be a notification of an affirmative subsequent determination.
12 The allowance of benefits by the deputy on any such determination,
13 or the denial of benefits by the deputy on any such determination,
14 shall be appealable in the same manner and under the same
15 limitations as is provided in the case of initial determinations.

16 (c) Appeals. Unless such appeal is withdrawn, an appeal tribunal,
17 after affording the parties reasonable opportunity for fair hearing,
18 shall affirm or modify the findings of fact and the determination. The
19 parties shall be duly notified of such tribunal's decision, together with
20 its reasons therefor, which shall be deemed to be the final decision of
21 the board of review, unless further appeal is initiated pursuant to
22 subsection (e) of this section within 10 days after the date of
23 notification or mailing of the decision for any decision made on or
24 before December 1, 2010, or within 20 days after the date of
25 notification or mailing of such decision for any decision made after
26 December 1, 2010.

27 (d) Appeal tribunals. To hear and decide disputed benefit claims,
28 including appeals from determinations with respect to demands for
29 refunds of benefits under subsection (d) of R.S.43:21-16, the director
30 with the approval of the Commissioner of Labor and Workforce
31 Development shall establish impartial appeal tribunals consisting of
32 a salaried body of examiners under the supervision of a Chief
33 Appeals Examiner, all of whom shall be appointed pursuant to the
34 provisions of Title 11A of the New Jersey Statutes, Civil Service and
35 other applicable statutes.

36 (e) Board of review. The board of review may on its own motion
37 affirm, modify, or set aside any decision of an appeal tribunal on the
38 basis of the evidence previously submitted in such case, or direct the
39 taking of additional evidence, or may permit any of the parties to such
40 decision to initiate further appeals before it. The board of review shall
41 permit such further appeal by any of the parties interested in a
42 decision of an appeal tribunal which is not unanimous and from any
43 determination which has been overruled or modified by any appeal
44 tribunal. The board of review may remove to itself or transfer to
45 another appeal tribunal the proceedings on any claim pending before
46 an appeal tribunal. Any proceedings so removed to the board of
47 review shall be heard by a quorum thereof in accordance with the
48 requirements of subsection (c) of this section. The board of review

1 shall promptly notify the interested parties of its findings and
2 decision.

3 (f) Procedure. The manner in which disputed benefit claims, and
4 appeals from determinations with respect to (1) claims for benefits
5 and (2) demands for refunds of benefits under subsection (d) of
6 R.S.43:21-16 shall be presented, the reports thereon required from
7 the claimant and from employers, and the conduct of hearings and
8 appeals shall be in accordance with rules prescribed by the board of
9 review for determining the rights of the parties, whether or not such
10 rules conform to common law or statutory rules of evidence and other
11 technical rules of procedure. A full and complete record shall be kept
12 of all proceedings in connection with a disputed claim. All testimony
13 at any hearing upon a disputed claim shall be recorded, but need not
14 be transcribed unless the disputed claim is further appealed.

15 (g) Witness fees. Witnesses subpoenaed pursuant to this section
16 shall be allowed fees at a rate fixed by the director. Such fees and all
17 expenses of proceedings involving disputed claims shall be deemed
18 a part of the expense of administering this chapter (R.S.43:21-1 et
19 seq.).

20 (h) Court review. Any decision of the board of review shall
21 become final as to any party upon the mailing of a copy thereof to
22 such party or to his attorney, or upon the mailing of a copy thereof to
23 such party at his last-known address. The Division of Unemployment
24 and Temporary Disability Insurance and any party to a proceeding
25 before the board of review may secure judicial review of the final
26 decision of the board of review. Any party not joining in the appeal
27 shall be made a defendant; the board of review shall be deemed to be
28 a party to any judicial action involving the review of, or appeal from,
29 any of its decisions, and may be represented in any such judicial
30 action by any qualified attorney, who may be a regular salaried
31 employee of the board of review or has been designated by it for that
32 purpose, or, at the board of review's request, by the Attorney General.

33 (i) Failure to give notice. The failure of any public officer or
34 employee at any time heretofore or hereafter to give notice of
35 determination or decision required in subsections (b), (c) and (e) of
36 this section, as originally passed or amended, shall not relieve any
37 employer's account of any charge by reason of any benefits paid,
38 unless and until that employer can show to the satisfaction of the
39 director of the division that the said benefits, in whole or in part,
40 would not have been charged or chargeable to his account had such
41 notice been given. Any determination hereunder by the director shall
42 be subject to court review.

43 (j) With respect to benefit payments made on or after October 22,
44 2013, an employer's account shall not be relieved of charges related
45 to a benefit payment that was made erroneously from the division if
46 it is determined that:

47 (1) The erroneous benefit payment was made because the
48 employer, or an agent of the employer, failed to respond in a timely

1 or adequate manner to a request from the division for information
2 related to the claim for benefits; and

3 (2) The employer, or an agent of the employer, has established a
4 pattern of failing to respond in a timely or adequate manner to
5 requests from the division for information related to claims for
6 benefits.

7 Determinations of the division prohibiting the relief of charges
8 pursuant to this subsection shall be subject to appeal in the same
9 manner as other determinations of the division related to the charging
10 of employer accounts.

11 For purposes of subsection (j) of this section:

12 "Erroneous benefit payment" means a benefit payment that, except
13 for the failure by the employer, or an agent of the employer, to
14 respond in a timely or adequate manner to a request from the division
15 for information with respect to the claim for benefits, would not have
16 been made; and

17 "Pattern of failing" means repeated documented failure on the part
18 of the employer, or an agent of the employer, to respond to requests
19 from the division to the employer or employer's agent for information
20 related to a claim for benefits, except that an employer, or an agent
21 of an employer, shall not be determined to have engaged in a "pattern
22 of failing" if the number of failures to respond to requests from the
23 division for information related to claims for benefits during the
24 previous 365 calendar days is less than three, or if the number of
25 failures is less than two percent of the number of requests from the
26 division, whichever is greater.

27 (k) The Department of Labor and Workforce Development shall
28 establish and maintain a procedure by which personnel access rights
29 to the department's primary system for unemployment claims receipt
30 and processing are comprehensively reviewed every calendar
31 quarter. The procedure shall include an evaluation of access needs
32 to the primary unemployment claims receipt and processing system
33 for all department personnel and the adjustment, addition, or deletion
34 of access rights for department personnel based on the quarterly
35 review.

36 (cf: P.L.2017, c.163, s.1)

37

38 7. R.S.43:21-19 is amended to read as follows:

39 43:21-19. Definitions. As used in this chapter (R.S.43:21-
40 1 et seq.), unless the context clearly requires otherwise:

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

44 (2) "Average annual payroll" means the average of the annual
45 payrolls of any employer for the last three or five preceding calendar
46 years, whichever average is higher, except that any year or years
47 throughout which an employer has had no "annual payroll" because
48 of military service shall be deleted from the reckoning; the "average

1 annual payroll" in such case is to be determined on the basis of the
2 prior three or five calendar years in each of which the employer had
3 an "annual payroll" in the operation of his business, if the employer
4 resumes his business within 12 months after separation, discharge or
5 release from such service, under conditions other than dishonorable,
6 and makes application to have his "average annual payroll"
7 determined on the basis of such deletion within 12 months after he
8 resumes his business; provided, however, that "average annual
9 payroll" solely for the purposes of paragraph (3) of subsection (e) of
10 R.S.43:21-7 means the average of the annual payrolls of any
11 employer on which he paid contributions to the State disability
12 benefits fund for the last three or five preceding calendar years,
13 whichever average is higher; provided further that only those wages
14 be included on which employer contributions have been paid on or
15 before January 31 (or the next succeeding day if such January 31 is a
16 Saturday or Sunday) immediately preceding the beginning of the 12-
17 month period for which the employer's contribution rate is computed.

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

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

25 With respect to a benefit year commencing on or after July 1,
26 1995, if an individual does not have sufficient qualifying weeks or
27 wages in his base year to qualify for benefits, the individual shall
28 have the option of designating that his base year shall be the
29 "alternative base year," which means the last four completed calendar
30 quarters immediately preceding the individual's benefit year; except
31 that, with respect to a benefit year commencing on or after October
32 1, 1995, if the individual also does not have sufficient qualifying
33 weeks or wages in the last four completed calendar quarters
34 immediately preceding his benefit year to qualify for benefits,
35 "alternative base year" means the last three completed calendar
36 quarters immediately preceding his benefit year and, of the calendar
37 quarter in which the benefit year commences, the portion of the
38 quarter which occurs before the commencing of the benefit year.

39 The division shall inform the individual of his options under this
40 section as amended by P.L.1995, c.234. If information regarding
41 weeks and wages for the calendar quarter or quarters immediately
42 preceding the benefit year is not available to the division from the
43 regular quarterly reports of wage information and the division is not
44 able to obtain the information using other means pursuant to State or
45 federal law, the division may base the determination of eligibility for
46 benefits on the affidavit of an individual with respect to weeks and
47 wages for that calendar quarter. The individual shall furnish payroll
48 documentation, if available, in support of the affidavit. A

1 determination of benefits based on an alternative base year shall be
2 adjusted when the quarterly report of wage information from the
3 employer is received if that information causes a change in the
4 determination.

5 (2) With respect to a benefit year commencing on or after June 1,
6 1990 for an individual who immediately preceding the benefit year
7 was subject to a disability compensable under the provisions of the
8 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
9 et seq.), "base year" shall mean the first four of the last five
10 completed calendar quarters immediately preceding the individual's
11 period of disability, if the employment held by the individual
12 immediately preceding the period of disability is no longer available
13 at the conclusion of that period and the individual files a valid claim
14 for unemployment benefits after the conclusion of that period. For
15 the purposes of this paragraph, "period of disability" means the
16 period defined as a period of disability by section 3 of the
17 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27).
18 An individual who files a claim under the provisions of this
19 paragraph (2) shall not be regarded as having left work voluntarily
20 for the purposes of subsection (a) of R.S.43:21-5.

21 (3) With respect to a benefit year commencing on or after June 1,
22 1990 for an individual who immediately preceding the benefit year
23 was subject to a disability compensable under the provisions of the
24 workers' compensation law (chapter 15 of Title 34 of the Revised
25 Statutes), "base year" shall mean the first four of the last five
26 completed calendar quarters immediately preceding the individual's
27 period of disability, if the period of disability was not longer than two
28 years, if the employment held by the individual immediately
29 preceding the period of disability is no longer available at the
30 conclusion of that period and if the individual files a valid claim for
31 unemployment benefits after the conclusion of that period. For the
32 purposes of this paragraph, "period of disability" means the period
33 from the time at which the individual becomes unable to work
34 because of the compensable disability until the time that the
35 individual becomes able to resume work and continue work on a
36 permanent basis. An individual who files a claim under the
37 provisions of this paragraph (3) shall not be regarded as having left
38 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

39 (d) "Benefit year" with respect to any individual means the 364
40 consecutive calendar days beginning with the day on, or as of, which
41 he first files a valid claim for benefits, and thereafter beginning with
42 the day on, or as of, which the individual next files a valid claim for
43 benefits after the termination of his last preceding benefit year. Any
44 claim for benefits made in accordance with subsection (a) of
45 R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
46 this subsection if (1) he is unemployed for the week in which, or as
47 of which, he files a claim for benefits; and (2) he has fulfilled the
48 conditions imposed by subsection (e) of R.S.43:21-4.

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

7 (2) "Controller" means the Office of the Assistant Commissioner
8 for Finance and Controller of the Department of Labor and
9 Workforce Development, established by the 1982 Reorganization
10 Plan of the Department of Labor.

11 (f) "Contributions" means the money payments to the State
12 Unemployment Compensation Fund, required by R.S.43:21-7.
13 "Payments in lieu of contributions" means the money payments to the
14 State Unemployment Compensation Fund by employers electing or
15 required to make payments in lieu of contributions, as provided in
16 section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

17 (g) "Employing unit" means the State or any of its
18 instrumentalities or any political subdivision thereof or any of its
19 instrumentalities or any instrumentality of more than one of the
20 foregoing or any instrumentality of any of the foregoing and one or
21 more other states or political subdivisions or any individual or type
22 of organization, any partnership, association, trust, estate, joint-stock
23 company, insurance company or corporation, whether domestic or
24 foreign, or the receiver, trustee in bankruptcy, trustee or successor
25 thereof, or the legal representative of a deceased person, which has
26 or subsequent to January 1, 1936, had in its employ one or more
27 individuals performing services for it within this State. All
28 individuals performing services within this State for any employing
29 unit which maintains two or more separate establishments within this
30 State shall be deemed to be employed by a single employing unit for
31 all the purposes of this chapter (R.S.43:21-1 et seq.). Each individual
32 employed to perform or to assist in performing the work of any agent
33 or employee of an employing unit shall be deemed to be employed
34 by such employing unit for all the purposes of this chapter
35 (R.S.43:21-1 et seq.), whether such individual was hired or paid
36 directly by such employing unit or by such agent or employee;
37 provided the employing unit had actual or constructive knowledge of
38 the work.

39 (h) "Employer" means:

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

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

- 1 (3) Any employing unit which acquired the organization, trade or
2 business, or substantially all the assets thereof, of another employing
3 unit and which, if treated as a single unit with such other employing
4 unit, would be an employer under paragraph (1) of this subsection;
- 5 (4) Any employing unit which together with one or more other
6 employing units is owned or controlled (by legally enforceable means
7 or otherwise), directly or indirectly by the same interests, or which
8 owns or controls one or more other employing units (by legally
9 enforceable means or otherwise), and which, if treated as a single unit
10 with such other employing unit or interest, would be an employer
11 under paragraph (1) of this subsection;
- 12 (5) Any employing unit for which service in employment as
13 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
14 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed
15 after December 31, 1977;
- 16 (6) Any employing unit for which service in employment as
17 defined in R.S.43:21-19 (i) (1) ~~[(c)]~~ (C) is performed after December
18 31, 1971 and which in either the current or the preceding calendar
19 year paid remuneration for employment in the amount of \$1,000.00
20 or more;
- 21 (7) Any employing unit not an employer by reason of any other
22 paragraph of this subsection (h) for which, within either the current
23 or preceding calendar year, service is or was performed with respect
24 to which such employing unit is liable for any federal tax against
25 which credit may be taken for contributions required to be paid into
26 a state unemployment fund; or which, as a condition for approval of
27 the "unemployment compensation law" for full tax credit against the
28 tax imposed by the Federal Unemployment Tax Act, is required
29 pursuant to such act to be an employer under this chapter (R.S.43:21-
30 1 et seq.);
- 31 (8) (Deleted by amendment; P.L.1977, c.307.)
- 32 (9) (Deleted by amendment; P.L.1977, c.307.)
- 33 (10) (Deleted by amendment; P.L.1977, c.307.)
- 34 (11) Any employing unit subject to the provisions of the Federal
35 Unemployment Tax Act within either the current or the preceding
36 calendar year, except for employment hereinafter excluded under
37 paragraph (7) of subsection (i) of this section;
- 38 (12) Any employing unit for which agricultural labor in
39 employment as defined in R.S.43:21-19 (i) (1) (I) is performed after
40 December 31, 1977;
- 41 (13) Any employing unit for which domestic service in
42 employment as defined in R.S.43:21-19 (i) (1) (J) is performed after
43 December 31, 1977;
- 44 (14) Any employing unit which having become an employer
45 under the "unemployment compensation law" (R.S.43:21-1 et seq.),
46 has not under R.S.43:21-8 ceased to be an employer; or for the
47 effective period of its election pursuant to R.S.43:21-8, any other

1 employing unit which has elected to become fully subject to this
2 chapter (R.S.43:21-1 et seq.).

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

4 (A) Any service performed prior to January 1, 1972, which was
5 employment as defined in the "unemployment compensation law"
6 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
7 provisions of this subsection, service performed on or after January
8 1, 1972, including service in interstate commerce, performed for
9 remuneration or under any contract of hire, written or oral, express
10 or implied.

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

17 (ii) Service performed after December 31, 1977, in the employ of
18 this State or any of its instrumentalities or any political subdivision
19 thereof or any of its instrumentalities or any instrumentality of more
20 than one of the foregoing or any instrumentality of the foregoing and
21 one or more other states or political subdivisions, if such service is
22 not excluded from "employment" under paragraph (D) below.

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

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

31 (i) In the employ of (I) a church or convention or association of
32 churches, or (II) an organization, or school which is operated
33 primarily for religious purposes and which is operated, supervised,
34 controlled or principally supported by a church or convention or
35 association of churches;

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

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

44 (aa) as an elected official;

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

47 (cc) as a member of the State National Guard or Air National
48 Guard;

- 1 (dd) as an employee serving on a temporary basis in case of fire,
2 storm, snow, earthquake, flood or similar emergency;
- 3 (ee) in a position which, under or pursuant to the laws of this
4 State, is designated as a major nontenured policy making or advisory
5 position, or a policy making or advisory position, the performance of
6 the duties of which ordinarily does not require more than eight hours
7 per week; or
- 8 (iv) By an individual receiving rehabilitation or remunerative
9 work in a facility conducted for the purpose of carrying out a program
10 of rehabilitation of individuals whose earning capacity is impaired by
11 age or physical or mental deficiency or injury or providing
12 remunerative work for individuals who because of their impaired
13 physical or mental capacity cannot be readily absorbed in the
14 competitive labor market;
- 15 (v) By an individual receiving work-relief or work-training as
16 part of an unemployment work-relief or work-training program
17 assisted in whole or in part by any federal agency or an agency of a
18 state or political subdivision thereof; or
- 19 (vi) Prior to January 1, 1978, for a hospital in a State prison or
20 other State correctional institution by an inmate of the prison or
21 correctional institution and after December 31, 1977, by an inmate of
22 a custodial or penal institution.
- 23 (E) The term "employment" shall include the services of an
24 individual who is a citizen of the United States, performed outside
25 the United States after December 31, 1971 (except in Canada and in
26 the case of the Virgin Islands, after December 31, 1971) and prior to
27 January 1 of the year following the year in which the U.S. Secretary
28 of Labor approves the unemployment compensation law of the Virgin
29 Islands, under section 3304 (a) of the Internal Revenue Code of 1986
30 (26 U.S.C. s.3304 (a)) in the employ of an American employer (other
31 than the service which is deemed employment under the provisions
32 of R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another
33 state's unemployment compensation law), if
- 34 (i) The American employer's principal place of business in the
35 United States is located in this State; or
- 36 (ii) The American employer has no place of business in the United
37 States, but (I) the American employer is an individual who is a
38 resident of this State; or (II) the American employer is a corporation
39 which is organized under the laws of this State; or (III) the American
40 employer is a partnership or trust and the number of partners or
41 trustees who are residents of this State is greater than the number who
42 are residents of another state; or
- 43 (iii) None of the criteria of divisions (i) and (ii) of this
44 subparagraph (E) is met but the American employer has elected to
45 become an employer subject to the "unemployment compensation
46 law" (R.S.43:21-1 et seq.) in this State, or the American employer
47 having failed to elect to become an employer in any state, the

1 individual has filed a claim for benefits, based on such service, under
2 the law of this State;

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

9 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
10 after January 1, 1972 by an officer or member of the crew of an
11 American vessel or American aircraft on or in connection with such
12 vessel or aircraft, if the operating office from which the operations
13 of such vessel or aircraft operating within, or within and without, the
14 United States are ordinarily and regularly supervised, managed,
15 directed, and controlled, is within this State.

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

24 (H) The term "United States" when used in a geographical sense
25 in subsection R.S.43:21-19 (i) includes the states, the District of
26 Columbia, the Commonwealth of Puerto Rico and, effective on the
27 day after the day on which the U.S. Secretary of Labor approves for
28 the first time under section 3304 (a) of the Internal Revenue Code of
29 1986 (26 U.S.C. s.3304 (a)) an unemployment compensation law
30 submitted to the Secretary by the Virgin Islands for such approval,
31 the Virgin Islands.

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

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

39 (bb) for some portion of a day in each of 20 different calendar
40 weeks, whether or not such weeks were consecutive, in either the
41 current or the preceding calendar year, employed in agricultural labor
42 10 or more individuals, regardless of whether they were employed at
43 the same moment in time.

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

1 (aa) if such crew leader holds a certification of registration under
2 the Migrant and Seasonal Agricultural Worker Protection Act,
3 **【Pub.L.97-470】** (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
4 (C.34:8A-7 et seq.); or substantially all the members of such crew
5 operate or maintain tractors, mechanized harvesting or cropdusting
6 equipment, or any other mechanized equipment, which is provided
7 by such crew leader; and

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

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

14 (aa) such other entity and not the crew leader shall be treated as
15 the employer of such individual; and

16 (bb) such other entity shall be treated as having paid cash
17 remuneration to such individual in an amount equal to the amount of
18 cash remuneration paid to such individual by the crew leader (either
19 on his own behalf or on behalf of such other entity) for the service in
20 agricultural labor performed for such other entity.

21 (iv) For the purpose of subparagraph (I)(ii), the term "crew
22 leader" means an individual who

23 (aa) furnishes individuals to perform service in agricultural labor
24 for any other entity;

25 (bb) pays (either on his own behalf or on behalf of such other
26 entity) the individuals so furnished by him for the service in
27 agricultural labor performed by them; and

28 (cc) has not entered into a written agreement with such other
29 entity under which such individual is designated as an employee of
30 such other entity.

31 (J) Domestic service after December 31, 1977 performed in the
32 private home of an employing unit which paid cash remuneration of
33 \$1,000.00 or more to one or more individuals for such domestic
34 service in any calendar quarter in the current or preceding calendar
35 year.

36 (2) The term "employment" shall include an individual's entire
37 service performed within or both within and without this State if:

38 (A) The service is localized in this State; or

39 (B) The service is not localized in any state but some of the
40 service is performed in this State, and (i) the base of operations, or,
41 if there is no base of operations, then the place from which such
42 service is directed or controlled, is in this State; or (ii) the base of
43 operations or place from which such service is directed or controlled
44 is not in any state in which some part of the service is performed, but
45 the individual's residence is in this State.

46 (3) Services performed within this State but not covered under
47 paragraph (2) of this subsection shall be deemed to be employment
48 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not

1 required and paid with respect to such services under an
2 unemployment compensation law of any other state or of the federal
3 government.

4 (4) Services not covered under paragraph (2) of this subsection
5 and performed entirely without this State, with respect to no part of
6 which contributions are required and paid under an unemployment
7 compensation law of any other state or of the federal government,
8 shall be deemed to be employment subject to this chapter (R.S.43:21-
9 1 et seq.) if the individual performing such services is a resident of
10 this State and the employing unit for whom such services are
11 performed files with the division an election that the entire service of
12 such individual shall be deemed to be employment subject to this
13 chapter (R.S.43:21-1 et seq.).

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

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

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

20 (6) Services performed by an individual for remuneration shall be
21 deemed to be employment subject to this chapter (R.S.43:21-
22 1 et seq.) unless and until it is shown to the satisfaction of the
23 division that:

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

27 (B) Such service is either outside the usual course of the business
28 for which such service is performed, or that such service is performed
29 outside of all the places of business of the enterprise for which such
30 service is performed; and

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

33 (7) Provided that such services are also exempt under the Federal
34 Unemployment Tax Act, as amended, or that contributions with
35 respect to such services are not required to be paid into a state
36 unemployment fund as a condition for a tax offset credit against the
37 tax imposed by the Federal Unemployment Tax Act, as amended, the
38 term "employment" shall not include:

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

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

47 (ii) for some portion of a day in each of 20 different calendar
48 weeks, whether or not such weeks were consecutive, in either the

1 current or the preceding calendar year, employed in agricultural labor
2 10 or more individuals, regardless of whether they were employed at
3 the same moment in time;

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

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

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

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

25 (F) Service performed in the employ of the United States
26 Government or of any instrumentality of the United States exempt
27 under the Constitution of the United States from the contributions
28 imposed by the "unemployment compensation law," except that to
29 the extent that the Congress of the United States shall permit states
30 to require any instrumentalities of the United States to make
31 payments into an unemployment fund under a state unemployment
32 compensation law, all of the provisions of this act shall be applicable
33 to such instrumentalities, and to service performed for such
34 instrumentalities, in the same manner, to the same extent and on the
35 same terms as to all other employers, employing units, individuals
36 and services; provided that if this State shall not be certified for any
37 year by the Secretary of Labor of the United States under section
38 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C.
39 s.3304), the payments required of such instrumentalities with respect
40 to such year shall be refunded by the division from the fund in the
41 same manner and within the same period as is provided in R.S.43:21-
42 14 (f) with respect to contributions erroneously paid to or collected
43 by the division;

44 (G) Services performed in the employ of fraternal beneficiary
45 societies, orders, or associations operating under the lodge system or
46 for the exclusive benefit of the members of a fraternity itself
47 operating under the lodge system and providing for the payment of

1 life, sick, accident, or other benefits to the members of such society,
2 order, or association, or their dependents;

3 (H) Services performed as a member of the board of directors, a
4 board of trustees, a board of managers, or a committee of any bank,
5 building and loan, or savings and loan association, incorporated or
6 organized under the laws of this State or of the United States, where
7 such services do not constitute the principal employment of the
8 individual;

9 (I) Service with respect to which unemployment insurance is
10 payable under an unemployment insurance program established by
11 an Act of Congress;

12 (J) Service performed by agents of mutual fund brokers or dealers
13 in the sale of mutual funds or other securities, by agents of insurance
14 companies, exclusive of industrial insurance agents or by agents of
15 investment companies, if the compensation to such agents for such
16 services is wholly on a commission basis;

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

19 (L) Services performed in the employ of any veterans'
20 organization chartered by Act of Congress or of any auxiliary thereof,
21 no part of the net earnings of which organization, or auxiliary thereof,
22 inures to the benefit of any private shareholder or individual;

23 (M) Service performed for or in behalf of the owner or operator of
24 any theater, ballroom, amusement hall or other place of
25 entertainment, not in excess of 10 weeks in any calendar year for the
26 same owner or operator, by any leader or musician of a band or
27 orchestra, commonly called a "name band," entertainer, vaudeville
28 artist, actor, actress, singer or other entertainer;

29 (N) Services performed after January 1, 1973 by an individual for
30 a labor union organization, known and recognized as a union local,
31 as a member of a committee or committees reimbursed by the union
32 local for time lost from regular employment, or as a part-time officer
33 of a union local and the remuneration for such services is less than
34 \$1,000.00 in a calendar year;

35 (O) Services performed in the sale or distribution of merchandise
36 by home-to-home salespersons or in-the-home demonstrators whose
37 remuneration consists wholly of commissions or commissions and
38 bonuses;

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

42 (Q) Service performed in the employ of an instrumentality wholly
43 owned by a foreign government if (i) the service is of a character
44 similar to that performed in foreign countries by employees of the
45 United States Government or of an instrumentality thereof, and (ii)
46 the division finds that the United States Secretary of State has
47 certified to the United States Secretary of the Treasury that the
48 foreign government, with respect to whose instrumentality

1 exemption is claimed, grants an equivalent exemption with respect to
2 similar services performed in the foreign country by employees of
3 the United States Government and of instrumentalities thereof;

4 (R) Service in the employ of an international organization entitled
5 to enjoy the privileges, exemptions and immunities under the
6 International Organizations Immunities Act
7 (22 U.S.C. s.288 et seq.);

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

13 (T) Service performed in the employ of a school, college, or
14 university if such service is performed (i) by a student enrolled at
15 such school, college, or university on a full-time basis in an
16 educational program or completing such educational program leading
17 to a degree at any of the severally recognized levels, or (ii) by the
18 spouse of such a student, if such spouse is advised at the time such
19 spouse commences to perform such service that (I) the employment
20 of such spouse to perform such service is provided under a program
21 to provide financial assistance to such student by such school,
22 college, or university, and (II) such employment will not be covered
23 by any program of unemployment insurance;

24 (U) Service performed by an individual who is enrolled at a
25 nonprofit or public educational institution which normally maintains
26 a regular faculty and curriculum and normally has a regularly
27 organized body of students in attendance at the place where its
28 educational activities are carried on, as a student in a full-time
29 program, taken for credit at such institution, which combines
30 academic instruction with work experience, if such service is an
31 integral part of such program, and such institution has so certified to
32 the employer, except that this subparagraph shall not apply to service
33 performed in a program established for or on behalf of an employer
34 or group of employers;

35 (V) Service performed in the employ of a hospital, if such service
36 is performed by a patient of the hospital; service performed as a
37 student nurse in the employ of a hospital or a nurses' training school
38 by an individual who is enrolled and regularly attending classes in a
39 nurses' training school approved under the laws of this State;

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

43 (X) Services performed by operators of motor vehicles weighing
44 18,000 pounds or more, licensed for commercial use and used for the
45 highway movement of motor freight, who own their equipment or
46 who lease or finance the purchase of their equipment through an
47 entity which is not owned or controlled directly or indirectly by the
48 entity for which the services were performed and who were

1 compensated by receiving a percentage of the gross revenue
2 generated by the transportation move or by a schedule of payment
3 based on the distance and weight of the transportation move;

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

5 (Z) Services performed, using facilities provided by a travel
6 agent, by a person, commonly known as an outside travel agent, who
7 acts as an independent contractor, is paid on a commission basis, sets
8 his own work schedule and receives no benefits, sick leave, vacation
9 or other leave from the travel agent owning the facilities.

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

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

24 (A) The limousine franchisee is incorporated;

25 (B) The franchisee is subject to regulation by the Interstate
26 Commerce Commission;

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

30 (D) The franchisee registers with the Department of Labor and
31 Workforce Development and receives an employer registration
32 number.

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

43 For purposes of this paragraph (10): "legal transcription service"
44 and "legal transcribing" mean making use, by audio, video or voice
45 recording, of a verbatim record of court proceedings, depositions,
46 other judicial proceedings, meetings of boards, agencies,
47 corporations, or other bodies or groups, and causing that record to be
48 printed in readable form or produced on a computer screen in

1 readable form; and "legal transcriber" means a person who engages
2 in "legal transcribing."

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

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

7 (l) "State" includes, in addition to the states of the United States
8 of America, the District of Columbia, the Virgin Islands and Puerto
9 Rico.

10 (m) "Unemployment."

11 (1) An individual shall be deemed "unemployed" for any week
12 during which:

13 (A) The individual is not engaged in full-time work and with
14 respect to which his remuneration is less than his weekly benefit rate,
15 including any week during which he is on vacation without pay;
16 provided such vacation is not the result of the individual's voluntary
17 action, except that for benefit years commencing on or after July 1,
18 1984, an officer of a corporation, or a person who has more than a
19 5% equitable or debt interest in the corporation, whose claim for
20 benefits is based on wages with that corporation shall not be deemed
21 to be unemployed in any week during the individual's term of office
22 or ownership in the corporation; or

23 (B) The individual is eligible for and receiving a self-employment
24 assistance allowance pursuant to the requirements of P.L.1995, c.394
25 (C.43:21-67 et al.).

26 (2) The term "remuneration" with respect to any individual for
27 benefit years commencing on or after July 1, 1961, and as used in
28 this subsection, shall include only that part of the same which in any
29 week exceeds 20% of his weekly benefit rate (fractional parts of a
30 dollar omitted) or \$5.00, whichever is the larger, and shall not include
31 any moneys paid to an individual by a county board of elections for
32 work as a board worker on an election day.

33 (3) An individual's week of unemployment shall be deemed to
34 commence only after the individual has filed a claim at an
35 unemployment insurance claims office, except as the division may
36 by regulation otherwise prescribe.

37 (n) "Unemployment compensation administration fund" means
38 the unemployment compensation administration fund established by
39 this chapter (R.S.43:21-1 et seq.), from which administrative
40 expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.

41 (o) "Wages" means remuneration paid by employers for
42 employment. If a worker receives gratuities regularly in the course
43 of his employment from other than his employer, his "wages" shall
44 also include the gratuities so received, if reported in writing to his
45 employer in accordance with regulations of the division, and if not
46 so reported, his "wages" shall be determined in accordance with the
47 minimum wage rates prescribed under any labor law or regulation of
48 this State or of the United States, or the amount of remuneration

1 actually received by the employee from his employer, whichever is
2 the higher.

3 (p) "Remuneration" means all compensation for personal
4 services, including commission and bonuses and the cash value of all
5 compensation in any medium other than cash.

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

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

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

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

15 (2) ["Base week," commencing on or after January 1, 1996 and
16 before January 1, 2001, means:

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

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

44 (3) "Base week," commencing on or after January 1, 2001 and
45 before January 1, 2020, means any calendar week during which the
46 individual earned in employment from an employer remuneration not
47 less than an amount 20 times the minimum wage in effect pursuant
48 to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the

1 calendar year preceding the calendar year in which the benefit year
2 commences, which amount shall be adjusted to the next higher
3 multiple of \$1.00 if not already a multiple thereof, except that if in
4 any calendar week an individual subject to this paragraph (3) is in
5 employment with more than one employer, the individual may in that
6 calendar week establish a base week with respect to each of the
7 employers from whom the individual earns remuneration equal to not
8 less than the amount defined in this paragraph (3) during that week.

9 (4) "Base week," commencing on or after January 1, 2020, means
10 any calendar week during which the individual earned in employment
11 from an employer remuneration not less than an amount 10 times the
12 minimum wage in effect pursuant to section 5 of P.L.1966, c.113
13 (C.34:11-56a4) on October 1 of the calendar year preceding the
14 calendar year in which the benefit year commences, which amount
15 shall be adjusted to the next higher multiple of \$1.00 if not already a
16 multiple thereof, except that if in any calendar week an individual
17 subject to this paragraph (4) is in employment with more than one
18 employer, the individual may in that calendar week establish a base
19 week with respect to each of the employers from whom the individual
20 earns remuneration equal to not less than the amount defined in this
21 paragraph (4) during that week.

22 (u) "Average weekly wage" means the amount derived by
23 dividing an individual's total wages received during his base year
24 base weeks (as defined in subsection (t) of this section) from that
25 most recent base year employer with whom he has established at least
26 20 base weeks, by the number of base weeks in which such wages
27 were earned. In the event that such claimant had no employer in his
28 base year with whom he had established at least 20 base weeks, then
29 such individual's average weekly wage shall be computed as if all of
30 his base week wages were received from one employer and as if all
31 his base weeks of employment had been performed in the employ of
32 one employer.

33 For the purpose of computing the average weekly wage, the
34 monetary alternative in subparagraph (B) of paragraph **[(2)]** (4) of
35 subsection (e) of R.S.43:21-4 shall only apply in those instances
36 where the individual did not have at least 20 base weeks in the base
37 year. For benefit years commencing on or after July 1, 1986,
38 "average weekly wage" means the amount derived by dividing an
39 individual's total base year wages by the number of base weeks
40 worked by the individual during the base year; provided that for the
41 purpose of computing the average weekly wage, the maximum
42 number of base weeks used in the divisor shall be 52.

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

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

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

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

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

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

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

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

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

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

27 (C) Provides an educational program for which it awards a
28 bachelor's or higher degree, or provides a program which is
29 acceptable for full credit toward such a degree, a program of post-
30 graduate or post-doctoral studies, or a program of training to prepare
31 students for gainful employment in a recognized occupation; and

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

33 Notwithstanding any of the foregoing provisions of this
34 subsection, all colleges and universities in this State are institutions
35 of higher education for purposes of this section.

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

38 (cf: P.L.2017, c.230, s.1)

39

40 8. (New section) Sections 8 through 11 of this act shall be known
41 and may be cited as the "Employee Job-Sharing Furlough Protection
42 Act."

43

44 9. (New section) To facilitate the providing of the maximum
45 possible benefits for employees and savings for employers in the
46 State from the federal financing of unemployment benefits provided
47 in connection with short-time compensation programs pursuant to
48 section 2108 of the "Coronavirus Aid, Relief, and Economic Security

1 Act,” Pub. Law 116-136 and from federal financing of emergency
2 increases in unemployment benefits under section 2104 of that act,
3 the division shall, during the period from the effective date of this act
4 until December 31, 2020, undertake the following actions:

5 a. Make available to all employers who may be eligible to
6 participate in a shared work program pursuant to P.L.2011, c.154
7 (C.43:21-20.3 et seq.) for which full federal funding of short-time
8 unemployment benefits is available pursuant to section 2108 of the
9 “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law
10 116-136, a guidance document which explains:

11 (1) what the employer is required to do to establish, pursuant to
12 P.L.2011, c.154 (C.43:21-20.3 et seq.), shared work programs
13 eligible for the federal funding, including providing certification to
14 the division that any union representing employees in collective
15 bargaining has entered into a written agreement regarding the terms
16 of the program and certification that the employer will continue
17 providing any current health insurance and pension coverage, paid
18 time off and other benefits in the manner required by P.L.2011, c.154
19 (C.43:21-20.3 et seq.);

20 (2) procedures for an employer to make an application for
21 approval of a shared work program, including an explanation of how
22 the employer may make preliminary calculations of benefits to be
23 paid to participating employees to expedite the commencement of the
24 payment of the benefits in the shortest possible time;

25 b. Provide any eligible employer with any assistance requested by
26 the employer in making an application;

27 c. Permit an application for approval of a shared work program to
28 be submitted to, and approved by, the division in advance of the date
29 on which reduced hours of employment are to commence to permit
30 payment of benefits under the program immediately upon that
31 commencement, or, as an alternative, permit the payment of benefits
32 under a shared work program to commence immediately upon the
33 date of an application by an eligible employer for approval of the
34 program, and pay, for any period of shared work under the program,
35 amounts of benefits which are based on determinations made by the
36 division or based on preliminary determinations made by the
37 employer pursuant to paragraph (2) of subsection a. of this section,
38 which the division shall review and, if appropriate, revise, and shall
39 subsequently pay any underpayment in benefits, or collect from
40 subsequent benefits any overpayment in benefits, including the
41 collecting of an amount equal to all benefits paid, if the application
42 is rejected, without penalty to the employees and, if the division finds
43 that the employer made a good faith effort to follow the division’s
44 guidance, impose no penalty on the employer for the overpayment;

45 d. Permit employers who have fully laid off employees to
46 resume employing those employees on a partial basis in a manner
47 consistent with the requirements of P.L.2011, c.154 (C.43:21-20.3 et

1 seq.), and establish a shared work program to make short-time
2 benefits available to those employees;

3 e. Permit, upon the approval of a shared work program, of the
4 payment of benefits retroactively back to the time that shared work
5 commenced in a manner consistent with the requirements of
6 P.L.2011, c.154 (C.43:21-20.3 et seq.);

7 f. Contact each employer which is a non-profit organization
8 subject to the provisions of section 3 of P.L.1971, c.346 (C.43:21-
9 7.2) or a governmental entity or instrumentality subject to the
10 provisions of section 4 of P.L.1971, c.346 (C.43:21-7.3) to provide
11 that employer, in addition to the guidance document indicated in
12 subsection a. of this section, information regarding the potential
13 reduction in the expenses of that employer from participating in a
14 shared work program pursuant to P.L.2011, c.154 (C.43:21-20.3 et
15 seq.) for which full federal funding of short-time unemployment
16 benefits is available pursuant to section 2108 of the “Coronavirus
17 Aid, Relief, and Economic Security Act,” Pub. Law 116-136.

18

19 10. (New section) A public employee enrolled in a State-
20 administered retirement system or fund, and the employer of that
21 employee, shall be required to make contributions to the system or
22 fund during the period that the employee is on a furlough pursuant to
23 section 9 of this act, P.L. , c. (C.) (pending before the
24 Legislature as this bill) and P.L.2011, c.154 (C.43:21-20.3 et seq.).
25 The contributions shall be based on the base salary or compensation,
26 as defined by the retirement system or fund, that would have been
27 paid to the employee if the employee had not been on furlough. The
28 employee’s service credit as a member of the system or fund shall
29 include the period of furlough. For all purposes under the retirement
30 system or fund, the period of furlough and the base salary or
31 compensation upon which contribution were made during the period
32 of furlough shall be recognized by the retirement system or fund. The
33 seniority rights and health benefits coverage of an employee who
34 participates in this furlough program shall continue and shall not be
35 adversely affected by participation. The employer shall enter into a
36 written agreement with any collective bargaining agent representing
37 the employees regarding the terms of the program, including terms
38 regarding attendance in training programs while receiving short-time
39 benefits, and provide certification, and the copy, of the agreement to
40 the division as required by P.L.2011, c.154 (C.43:21-20.3 et seq.).
41 This section shall not be construed to conflict with any applicable
42 provisions of federal law.

43

44 11. (New section) a. The division shall, not later than March 31,
45 2021, issue, make public on the website of the Department of Labor
46 and Workforce Development, and submit to the Governor and
47 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
48 a report on all shared work programs approved during calendar year

1 2020 pursuant to P.L.2011, c.154 (C.43:21-20.3 et seq.) and the
2 impact of federal financing of those programs pursuant to section
3 2108 of the “Coronavirus Aid, Relief, and Economic Security Act,”
4 Pub. Law 116-136 and of federal financing pursuant to section 2104
5 of that act of emergency increases in unemployment benefits for
6 participants in approved shared work programs.

7 b. The report shall provide separately for governmental
8 employers, for-profit private employers, and nonprofit employers,
9 during calendar year 2020:

10 (1) The total number of participating employers and employees,
11 the total amount of unemployment benefits paid to participants, the
12 portion of those benefits that was pandemic unemployment
13 compensation, the total wage compensation that was paid to
14 participants during participation in the program, and the share, if any,
15 of the benefit costs not paid or reimbursed by the federal government;

16 (2) The minimum, maximum, and average duration of programs,
17 the average weekly benefit, and the average weekly wage paid during
18 participation in the program;

19 (3) The number of participating employers who provided, and the
20 total number of employees who received, health insurance coverage,
21 and the total number of participating employers who provided, and
22 the total number of employees who received, pension coverage;

23 (4) The number of participating employers who entered into
24 agreements with collective bargaining agents regarding the terms of
25 the program, and the total number of employees covered by those
26 agreements;

27 (5) The total reduction in payroll costs due to reduced hours of
28 paid employment by participants;

29 (6) In the case of governmental employers and, separately,
30 nonprofit employers, the portion of the participating employers that
31 elected to make payments in lieu of contributions pursuant to section
32 3 of P.L.1971, c.346 (C.43:21-7.2) or section 4 of P.L.1971, c.346
33 (C.43:21-7.3), the portion of participating employees who were
34 employed by those employers, the portion of benefits that were paid
35 by those employers, and the total reduction in cost to those employers
36 due to federal financing of short-time compensation.

37 c. The report shall provide an estimate of the total cost of
38 unemployment benefits to the unemployment compensation fund if
39 employers who used federally-funded, approved shared work
40 programs to partially lay off employees had instead reduced work
41 hours by the same amount, by fully laying off a smaller number of
42 employees, and the effect that would have had on employer
43 contribution rates.

44 d. The report shall provide, for each calendar year from 2012
45 through 2019, the total number of employers and employees
46 participating in approved shared work programs and the total amount
47 of unemployment benefits paid to participating employees.

1 12. Section 2 of P.L.1948, c.110 (C.43:21-26) is amended to read
2 as follows:

3 2. Purpose. This act shall be liberally construed as remedial
4 legislation enacted upon the following declarations of public policy
5 and legislative findings of fact:

6 The public policy of this State, already established, is to protect
7 employees against the suffering and hardship generally caused by
8 involuntary unemployment. But the "unemployment compensation
9 law" provides benefit payments to replace wage loss caused by
10 involuntary unemployment only so long as an individual is "able to
11 work, and is available for work," and fails to provide any protection
12 against wage loss suffered because of inability to perform the duties
13 of a job interrupted by nonoccupational illness, injury, or other
14 disability of the individual or of members of the individual's family.
15 Nor is there any other comprehensive and systematic provision for
16 the protection of working people against loss of earnings due to a
17 nonoccupational sickness, accident, or other disability.

18 The prevalence and incidence of nonoccupational sickness,
19 accident, and other disability among employed people is greatest
20 among the lower income groups, who either cannot or will not
21 voluntarily provide out of their own resources against the hazard of
22 an earnings loss caused by nonoccupational sickness, accident, or
23 other disability. Disabling sickness or accident occurs throughout
24 the working population at one time or another, and approximately
25 fifteen per centum (15%) of the number of people at work may be
26 expected to suffer disabling illness of more than one week each year.

27 It was found, prior to the enactment of the "Temporary Disability
28 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then existing
29 voluntary plans for the payment of cash sickness benefits covered
30 less than one-half of the number of working people of this State who
31 were covered by the "unemployment compensation law," and that
32 even that degree of voluntary protection afforded uneven, unequal
33 and sometimes uncertain protection among the various voluntary
34 benefit programs.

35 While the enactment of that law has provided stable protection for
36 New Jersey's disabled workers, very few workers are protected from
37 income losses caused by the need to take time off from work to care
38 for family members who are incapable of self-care, including
39 newborn and newly-adopted children. The growing portion of
40 middle-income families in which all adult family members work,
41 largely due to economic necessity, points to the desperate need for
42 replacement income when a working family member must take time
43 to care for family members who are unable to take care of themselves.
44 Moreover, the United States is the only industrialized nation in the
45 world which does not have a mandatory workplace-based program
46 for such income support. It is therefore desirable and necessary to
47 fill the gap in existing provisions for protection against the loss of
48 earnings caused by involuntary unemployment, by extending such

1 protection to meet the hazard of earnings loss due to inability to work
2 caused by nonoccupational sickness, accidents, or other disabilities
3 of workers and members of their families. Developing systems that
4 help families adapt to the competing interests of work and home not
5 only benefits workers, but also benefits employers by reducing
6 employee turnover and increasing worker productivity.

7 The foregoing facts and considerations require that there be a
8 uniform minimum program providing in a systematic manner for the
9 payment of reasonable benefits to replace partially such earnings loss
10 and to meet the continuing need for benefits where an individual
11 becomes disabled during unemployment or needs to care for family
12 members incapable of self-care. In order to maintain consumer
13 purchasing power, relieve the serious menace to health, morals and
14 welfare of the people caused by insecurity and the loss of earnings,
15 to reduce the necessity for public relief of needy persons, to increase
16 workplace productivity and alleviate the enormous and growing
17 stress on working families of balancing the demands of work and
18 family needs, and in the interest of the health, welfare and security
19 of the people of this State, such a system, enacted under the police
20 power, is hereby established, requiring the payment of reasonable
21 cash benefits to eligible individuals who are subject to accident or
22 illness which is not compensable under the worker's compensation
23 law or who need to care for family members incapable of self-care.

24 **【While the Legislature recognizes the pressing need for benefits**
25 **for workers taking leave to care for family members incapable of**
26 **self-care, it also finds that the need of workers for leave during their**
27 **own disability continues to be especially acute, as a disabled worker**
28 **has less discretion about taking time off from work than a worker**
29 **caring for a family member. Notwithstanding any interpretation of**
30 **law which may be construed as providing a worker with rights to take**
31 **action against an employer who fails or refuses to restore the worker**
32 **to employment after the worker's own disability, the Legislature does**
33 **not intend that the policy established by P.L.2008, c.17 (C.43:21-39.1**
34 **et al.) of providing benefits for workers during periods of family**
35 **temporary disability leave to care for family members incapable of**
36 **self-care be construed as granting any worker an entitlement to be**
37 **restored by the employer to employment held by the worker prior to**
38 **taking family temporary disability leave or any right to take action,**
39 **in tort, or for breach of an implied provision of the employment**
40 **agreement, or under common law, against an employer who fails or**
41 **refuses to restore the worker to employment after the family**
42 **temporary disability leave, and the Legislature does not intend that**
43 **the policy of providing benefits during family temporary disability**
44 **leave be construed as increasing, reducing or otherwise modifying**
45 **any entitlement of a worker to return to employment or right of the**
46 **worker to take action under the provisions of the "Family Leave Act,"**
47 **P.L.1989, c.261 (C.34:11B-1 et seq.).】**

1 Since the enactment of the "Temporary Disability Benefits Law,"
2 P.L.1948, c.110 (C.43:21-25 et al.), the State government-operated
3 State temporary disability benefits plan, or "State plan," has proven
4 to be highly efficient and cost effective in providing temporary
5 disability benefits to New Jersey workers. The State plan guarantees
6 the availability of coverage for all employers, regardless of
7 experience, with low overhead costs and a rapid processing of claims
8 and appeals by knowledgeable, impartial public employees.
9 Consequently, the percentage of all employers using the State plan
10 increased from 64% in 1952 to 98% in 2006, while the percentage of
11 employees covered by the State plan increased from 28% to 83%. A
12 publicly-operated, nonprofit State plan is therefore indispensable to
13 achieving the goals of the "Temporary Disability Benefits Law,"
14 P.L.1948, c.110 (C.43:21-25 et al.).
15 (cf: P.L.2019, c.37, s.7)

16
17 13. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to
18 read as follows:

19 10. a. Family temporary disability leave shall be compensable
20 subject to the limitations of P.L.2008, c.17 (C.43:21-39.1 et al.) for
21 any period of family temporary disability leave taken by a covered
22 individual which commences after June 30, 2009.

23 b. An individual shall not simultaneously receive disability
24 benefits for family temporary disability leave and any other disability
25 benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or any
26 unemployment compensation, or any paid sick leave, vacation time
27 or other leave at full pay from the employer of the individual.

28 c. The employer of an individual may, notwithstanding any
29 other provision of law, including the provisions of N.J.S.18A:30-1 et
30 seq., permit the individual, during a period of family temporary
31 disability leave, to use any paid sick leave, vacation time or other
32 leave at full pay made available by the employer before the individual
33 uses disability benefits for family temporary disability leave pursuant
34 to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in P.L.2008, c.17
35 (C.43:21-39.1 et al.) shall be construed as nullifying any provision of
36 an existing collective bargaining agreement or employer policy, or
37 preventing any new provision of a collective bargaining agreement
38 or employer policy, which provides employees more generous leave
39 or gives employees greater rights to select which kind of leave is used
40 or select the order in which the different kinds of leave are used.
41 Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as
42 preventing an employer from providing more generous benefits than
43 are provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing
44 benefits which supplement the benefits provided under P.L.2008,
45 c.17 (C.43:21-39.1 et al.) for some or all of the employer's
46 employees.

47 d. An individual who is entitled to leave under the provisions of
48 the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the

1 federal "Family and Medical Leave Act of 1993," Pub.L.103-3 (29
2 U.S.C. s.2601 et seq.), shall take any benefits provided for family
3 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
4 et al.) concurrently with leave taken pursuant to the "Family Leave
5 Act," P.L.1989, c.261 (C.34:11B-1 et seq.) or the federal "Family and
6 Medical Leave Act of 1993," Pub.L.103-3 (29 U.S.C. s.2601 et seq.).
7 [Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed to
8 grant an employee any entitlement to be restored by the employer to
9 employment held by the employee prior to taking family temporary
10 disability leave or any right to take action against an employer who
11 refuses to restore the employee to employment after the leave.
12 Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed to
13 increase, reduce or otherwise modify any entitlement of an employee
14 to return to employment or right of the employee to take action under
15 the provisions of the "Family Leave Act," P.L.1989, c.261
16 (C.34:11B-1 et seq.). If an employee receives benefits for family
17 temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1
18 et al.) with respect to employment with an employer who is not an
19 employer as defined in the "Family Leave Act," P.L.1989, c.261
20 (C.34:11B-1 et seq.) and that employer fails or refuses to restore the
21 employee to employment after the period of family temporary
22 disability leave, that failure or refusal shall not be a wrongful
23 discharge in violation of a clear mandate of public policy, and the
24 employee shall not have a cause of action against that employer, in
25 tort, or for breach of an implied provision of the employment
26 agreement, or under common law, for that failure or refusal.]

27 e. An employee taking family temporary disability leave or an
28 employer from whom the employee is taking the leave shall have the
29 same right to appeal a determination of a benefit for the family
30 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1
31 et al.) as an employee or employer has to appeal a determination of a
32 benefit for the disability of the employee under the "Temporary
33 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and
34 any regulations adopted pursuant to the "Temporary Disability
35 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

36 f. In the event of a period of family temporary disability leave
37 of any individual covered under the State plan, the employer shall,
38 not later than the ninth day of the period of family temporary
39 disability leave, or not later than the ninth day after the employee
40 notifies the employer of an anticipated period of family temporary
41 disability leave pursuant to subsection h. of this section, whichever
42 comes first, including any time in which the employer provides sick
43 leave, vacation or other fully paid leave, issue to the individual and
44 to the division printed notices on division forms containing the name,
45 address and Social Security number of the individual, such wage
46 information as the division may require to determine the individual's
47 eligibility for benefits, including any sick pay, vacation or other fully
48 paid time off provided by the employer during the period of family

1 temporary disability leave, and the name, address, and division
2 identity number of the employer. Not later than 30 days after the
3 commencement of the period of family temporary disability leave for
4 which the notice is furnished by the employer, the individual shall
5 furnish to the division a notice and claim for family temporary
6 disability leave benefits. Upon the submission of the notices by the
7 employer and the individual, and the commencement of the
8 compensable portion of the family temporary disability leave
9 pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the division may
10 issue benefit payments. In the case of family temporary disability
11 leave taken to care for a family member with a serious health
12 condition, the benefits may be paid for periods not exceeding three
13 weeks pending the receipt of the certification required pursuant to
14 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2). Failure
15 to furnish notice and certification in the manner above provided shall
16 not invalidate or reduce any claim if it shall be shown to the
17 satisfaction of the division not to have been reasonably possible to
18 furnish the notice and certification and that the notice and
19 certification was furnished as soon as reasonably possible.

20 g. Each covered employer shall conspicuously post notification,
21 in a place or places accessible to all employees in each of the
22 employer's workplaces, in a form issued by regulation promulgated
23 by the commissioner, of each covered employee's rights regarding
24 benefits payable pursuant to this section. The employer shall also
25 provide each employee of the employer with a written copy of the
26 notification: (1) not later than 30 days after the form of the
27 notification is issued by regulation; (2) at the time of the employee's
28 hiring, if the employee is hired after the issuance; (3) whenever the
29 employee notifies the employer that the employee is taking time off
30 for circumstances under which the employee is eligible for benefits
31 pursuant to this section; and (4) at any time, upon the first request of
32 the employee.

33 h. With respect to any period of family temporary disability
34 leave commencing on or after October 4, 2019 if an individual knows
35 in advance when the period will commence, the individual may notify
36 the employer of the anticipated period of family temporary disability
37 leave and submit to the division a claim for benefits for that period,
38 which shall include a statement of when the period will commence
39 and any certification required pursuant to subsection b. of section 11
40 of P.L.2008, c.17 (C.43:21-39.2), prior to, but not more than 60 days
41 prior to, the date that the period will commence. The division shall
42 process that claim immediately and, upon finding that the claim is
43 valid, shall pay the benefit upon the commencement of the period of
44 family temporary disability leave, except that if the division receives
45 the claim less than 30 days before the commencement of the period,
46 the division shall make the payment not more than 30 days after the
47 receipt of the claim. The periods of family temporary disability leave
48 to which the provisions of this subsection apply shall include, but not

1 be limited to, any of the following if the commencement date of the
2 leave is known in advance: periods of leave for care of a child of the
3 individual after adoption, the placement of a child into foster care, or
4 childbirth, including childbirth under a valid agreement between the
5 individual and a gestational carrier; periods of leave for scheduled
6 medical procedures, treatments, or appointments for a family
7 member of the individual; and periods of leave for scheduled ongoing
8 care of a family member of the individual. If the individual did not
9 establish enough base weeks or have enough total earnings during the
10 base year preceding the week the individual submits the claim, the
11 division shall notify the individual that the individual may file the
12 claim again upon or after the commencement of the period of family
13 temporary disability leave and the division shall then reconsider the
14 individual's eligibility for benefits based on the base year preceding
15 the week in which the period of family temporary disability leave
16 commences.

17 (cf: P.L.2019, c.37, s.13)

18

19 14. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to
20 read as follows:

21 24. a. An employer shall not discharge, harass, threaten, or
22 otherwise discriminate or retaliate against an employee with respect
23 to the compensation, terms, conditions, or privileges of employment
24 on the basis that the employee requested or took any temporary
25 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.), or
26 family temporary disability leave benefits pursuant to P.L.2008, c.17
27 (C.43:21-39.1 et al.), including retaliation by refusing to **[restore]**
28 reinstate the employee to employment following a period of leave**],**
29 except that, pursuant to section 2 of P.L.1948, c.110 (C.43:21-26),
30 nothing in this section or any other section of P.L.1948, c.110
31 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1 et al.) shall be
32 construed as increasing, reducing or otherwise modifying any
33 entitlement provided to a worker by the provisions of the "Family
34 Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to be restored to
35 employment by the employer after a period of family temporary
36 disability leave**]** in the position held when the leave commenced or
37 an equivalent position of like seniority, status, employment benefits,
38 pay and other terms and conditions of employment, except that if,
39 during period of leave, the employer reduces the number of
40 employees and that reduction would have caused the employee to
41 have been laid off if the employee had not been on leave, the
42 employee shall not be entitled to reinstatement, but only if the
43 employer notifies the employee of the employee's right to file a claim
44 for unemployment benefits after the leave period ends as provided by
45 paragraph (2) of subsection (c) of R.S.43:21-19.

46 b. Upon a violation of subsection a. of this section, an employee
47 or former employee may, as an alternative to any action that the
48 employee is permitted to take for the violation pursuant to the

1 provisions of P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17
 2 (C.43:21-39.1 et al.), or the "Family Leave Act," P.L.1989, c.261
 3 (C.34:11B-1 et seq.), institute a civil action in the Superior Court for
 4 relief. All in which all remedies available in common law tort
 5 actions shall be available to a prevailing plaintiff. The court may also
 6 order any or all of the following relief:

7 (1) an assessment of a civil fine of not less than \$1,000 and not
 8 more than \$2,000 for the first violation of any of the provisions of
 9 this section and not more than \$5,000 for each subsequent violation;

10 (2) an injunction to restrain the continued violation of any of the
 11 provisions of this section;

12 (3) reinstatement of the employee to the same position or to a
 13 position equivalent to that which the employee held prior to unlawful
 14 discharge or retaliatory action;

15 (4) reinstatement of full fringe benefits and seniority rights;

16 (5) compensation for any lost wages, benefits and other
 17 remuneration; and

18 (6) payment of reasonable costs and attorney's fees.

19 (cf: P.L.2019, c.37, s.24).

20
 21 15. This act shall take effect immediately, provided that:

22 a. in the case of any employer who becomes subject to the
 23 provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the
 24 provisions of paragraph (5) of subsection f. of section 3 of P.L.1989,
 25 c.261 (C.34:11B-3), the provisions of P.L.1989, c.261 (C.34:11B-1
 26 et seq.) shall apply to the employer only with respect to periods of
 27 family leave which take place, in full or in part, after the effective
 28 date of this act; and

29 b. in the case of any employer who becomes subject to the
 30 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because of
 31 the changes made in that section by P.L. , c. (C.)(pending
 32 before the Legislature as this bill) the provisions of section 24 of
 33 P.L.2019, c.37 (C.43:21-55.2) shall apply to the employer only with
 34 respect to periods of disability for family temporary disability leave
 35 which take place, in full or in part, after the effective date of this act.

36 37 38 STATEMENT

39
 40 This bill enhances certain rights of workers to benefits and leave.

41 The bill assists certain laid off workers by:

42 1. increasing the maximum amount which a laid off worker may
 43 earn in employment without a reduction in unemployment insurance
 44 (UI) benefits, from 20% of the worker's weekly UI benefit amount,
 45 to 40% of the worker's weekly UI benefit amount;

46 2. reducing the minimum weekly earnings required in each of 20
 47 base weeks for a worker to be eligible for UI benefits from 20 times
 48 the State minimum wage to 10 times and State minimum wage, and

1 reducing the alternative annual earnings required for eligibility from
2 1,000 times to 500 times the State minimum wage; and

3 3. permitting, if an employer gives advanced notice of a layoff,
4 a worker to file for UI benefits upon receiving the notice, and
5 requiring that the claim, if valid, be paid upon the commencement of
6 the period of unemployment.

7 The bill clarifies provisions of the UI law regarding UI benefits
8 for an employee of an education institution when work is not
9 available. The law currently provides that an employee may not
10 receive UI benefits when unemployed during a customary vacation
11 period or holiday recess between successive academic years or terms
12 if the employee is given a reasonable assurance of a return to
13 employment in the same capacity after the period or recess.
14 Currently, vacation periods are interpreted to include summer, even
15 if the institution is in session during the summer. The bill specifies
16 that an employee laid off in the summer may receive benefits if the
17 institution is in session during the summer. The bill also specifies
18 that for the employment after a break to be regarded as “in the same
19 capacity”, it must be under the same terms and conditions as before
20 the break. Finally, the bill indicates that the employee is not regarded
21 as having a reasonable assurance if the offer is conditioned on factors
22 such as enrollment, allocation of funding, or program changes.

23 The bill supplements P.L.2011, c.154 (C.43:21-20.3 et seq.) to
24 facilitate providing the maximum possible benefits for employees
25 and savings for employers from the federal financing of UI benefits
26 under short-time compensation programs, and emergency UI
27 benefits, pursuant to the federal “Coronavirus Aid, Relief, and
28 Economic Security (CARES) Act,” Pub. Law 116-136,

29 The bill requires the Division of Unemployment and Temporary
30 Disability Insurance to make available to employers who may be
31 eligible to participate in a shared work program under P.L.2011,
32 c.154 (C.43:21-20.3 et seq.) for which federal funding is available
33 under the CARES Act, a guidance document which explains:

34 1. what the employer is required to do to establish shared work
35 programs eligible for the federal funding, including certifying that
36 unions representing the employees agree to the terms of the program
37 and that the employer will continue current health insurance and
38 pension coverage, paid time off and other benefits; and

39 2. procedures for an employer to apply for approval of a shared
40 work program, including how the employer may make preliminary
41 calculations of benefits to be paid to participating employees to
42 expedite rapid benefit payments.

43 The bill specifies that pensions, health benefits, seniority rights
44 and other benefits for public employees may not be reduced under
45 the program. It requires that contributions, and the accrual of service
46 credit, continue as if the worktime was not reduced. The division is
47 required to assist, upon request, employers making applications, and

1 allow applications to be approved in advance to facilitate benefit
2 payments as soon as reduced hours commence.

3 The division may permit the payment of benefits to commence
4 immediately upon the application date, paying benefits based on
5 division determinations, or on preliminary determinations made by
6 the employer which the division reviews and, if appropriate, revises,
7 and subsequently pays any underpayment in benefits, or collects from
8 subsequent benefits any overpayment in benefits without penalty to
9 the employees and, if the employer made a good faith effort to follow
10 the division's guidance, without penalty to the employer. Workers
11 receiving shared work benefits under the bill are exempt from
12 existing requirements regarding prenotification of layoffs for
13 employees under civil service and requirements for full payment for
14 school employees.

15 The bill permits employers who have employees who were fully
16 laid off to rehire those employees on a partial basis in a manner
17 consistent with P.L.2011, c.154, and establish a shared work program
18 to provide short-time benefits to those employees. The bill permits,
19 upon the approval of a shared work program, the payment of benefits
20 retroactively back to the time that shared work commenced.

21 The division is directed to contact every non-profit and
22 governmental employer to provide, in addition to the indicated
23 guidance document, information about possible reductions of
24 employer costs due to federal funding.

25 The bill extends to workers employed by employers of less than
26 30 workers the right to be reinstated to employment after taking paid
27 or unpaid family leave, thus ensuring that all workers who pay for
28 family leave insurance (FLI) will have the right to return to work
29 after taking FLI benefits. It extends to workers, no matter how few
30 workers their employer employs, the current provision of section 24
31 of P.L.2019, c.37 (C.43:21-55.2) that a worker who takes FLI
32 benefits to care for a family member may not be retaliated against by
33 their employer refusing to reinstate them after the leave. Currently,
34 an employer who employs less than 30 workers, and is thus exempt
35 from the reinstatement requirements of the Family Leave Act (FLA),
36 is also exempt from the reinstatement requirements of that section.
37 By removing this exemption, the bill extends that section's
38 reinstatement rights to recipients of FLI benefits even if their
39 employers employs less than 30 workers, in the same way that section
40 currently provides that reinstatement protection for temporary
41 disability insurance recipients no matter how few workers the
42 employer employs.

43 The bill also amends the FLA to make employers, regardless of
44 how few workers they employ, subject to that law's requirement to
45 reinstate leave takers, thereby extending that right of reinstatement
46 to workers employed by employers of less than 30 workers, whether
47 or not the workers receive FLI benefits.

A4132 TALIAFERRO

58

1 The bill does not penalize an employer for not reinstating a worker
2 taking leave if the employer reduced the number of employees during
3 the leave period and the worker would have been laid off if not on
4 leave, but only if the employer notifies the worker of the worker's
5 rights to claim UI benefits after the leave period ends.