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SYNOPSIS
Concerns benefits provided to workers.

CURRENT VERSION OF TEXT
As amended by the General Assembly on May 14, 2020.
AN ACT concerning certain benefits and leave provided to workers, and amending and supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

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

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

g. Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:
   (1) a vacant position that the appointing authority has previously indicated it is willing to fill;
   (2) a position held by a provisional employee who does not have permanent status in another title, and if there are multiple employees at a job location, the specific position shall be determined by the appointing authority;
   (3) a position held by a provisional employee who has permanent status in another title, and if there are multiple provisional employees at a job location, the specific position shall be determined based on level of the permanent title held and seniority;
(4) the position held by the employee serving in a working test period with the least seniority;

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

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

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

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

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

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

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

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

9. a. In order to receive any State aid pursuant to P.L.2007, c.260 (C.18A:7F-43 et al.), a school district, charter school, renaissance school project, county vocational school district, or county special services school district shall comply with the rules and standards for the equalization of opportunity which have been or may hereafter be prescribed by law or formulated by the commissioner pursuant to law, including those implementing P.L.1996, c.138 (C.18A:7F-1 et al.) and P.L.2007, c.260 (C.18A:7F-43 et al.) or related to the core curriculum content standards required by P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with any directive issued by the commissioner pursuant to section 6 of P.L.1996, c.138 (C.18A:7F-6).

The commissioner is hereby authorized to withhold all or part of a district's State aid for failure to comply with any rule, standard or directive. No State aid shall be paid to any district which has not provided public school facilities for at least 180 days during the
preceding school year, but the commissioner, for good cause shown, may remit the penalty.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, in the event that a school district is required to close the schools of the district for more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner shall allow the district to apply to the 180-day requirement established pursuant to subsection a. of this section, one or more days of virtual or remote instruction provided to students on the day or days the schools of the district were closed if the program of virtual or remote instruction meets such criteria as may be established by the commissioner. A district that wants to use a program of virtual or remote instruction to meet the 180-day requirement in accordance with this subsection shall, with board of education approval, submit its proposed program of virtual or remote instruction to the commissioner within 30 days of the effective date of P.L.2020, c.27 and annually thereafter, provided however that if the school district is unable to complete and submit its proposed program within the 30-day period and the district is required to close its schools for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner may retroactively approve the program.

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

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

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

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

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

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

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

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

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

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

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

(3) If the schools of a school district are subject to a health-related
closure for a period longer than three consecutive school days, which
is the result of a declared state of emergency, declared public health
emergency, or a directive by the appropriate health agency or officer,
then the school district shall continue to make payments of benefits,
compensation, and emoluments pursuant to the terms of a contract
with a contracted service provider in effect on the date of the closure.
as if the services for such benefits, compensation, and emoluments had
been provided, and as if the school facilities had remained open.
Payments received by a contracted service provider pursuant to this
paragraph shall be used to meet the payroll and fixed costs obligations
of the contracted service provider and employees of the contracted
service provider shall be paid as if the school facilities had remained
open and in full operation. Upon request of the school district, the
contracted service provider shall certify, and provide any supporting
documentation to a school district as may be necessary to verify, that
payments received have been used solely to meet the payroll and fixed
costs of the contracted service provider. Any portion of those
payments not used to meet the payroll and fixed costs shall be returned
to the school district. A school district shall make all reasonable
efforts to renegotiate a contract in good faith subject to this paragraph
and may direct contracted service providers, who are a party to a
contract and receive payments from the school district under this
paragraph, to provide services on behalf of the school district which
may reasonably be provided and are within the general expertise or
service provision of the original contract. Negotiations shall not
include indirect costs such as fuel or tolls. As a condition of
negotiations, a contracted service provider shall reveal to the school
district whether the entity has insurance coverage for business
interruption covering work stoppages. A school district shall not be
liable for the payment of benefits, compensation, and emoluments
pursuant to the terms of a contract with a contracted service provider
under this paragraph for services which otherwise would not have been
provided had the school facilities remained open. Nothing in this
paragraph shall be construed to require a school district to make
payments to a party in material breach of a contract with a contracted
service provider if the breach was not due to a closure resulting from a
declared state of emergency, declared public health emergency, or a
directive by the appropriate health agency or officer.
(4) If the schools of a school district are subject to a health-related
closure for a period longer than three consecutive school days, which
is the result of a declared state of emergency, declared public health
emergency, or a directive by the appropriate health agency or officer,
the school district shall be obligated to make payments for benefits,
compensation, and emoluments and all payments required pursuant to
P.L.1968, c.243 (C.18A:6-51 et seq.), to an educational services
commission, county special services school district, and a jointure
commission, and under any shared services agreement and cooperative
contract entered into with any other public entity. An educational
services commission, county special services school district, and a jointure
commission shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract
with a contracted service provider or a shared services agreement in
effect on the date of the closure as if the services for such benefits,
compensation, and emoluments had been provided, and as if the school
facilities had remained open. Payments received by a contracted
service provider or public entity pursuant to this paragraph shall be
used to meet the payroll and fixed costs obligations of the contracted
service provider or public entity, and employees of the contracted
service provider or public entity shall be paid as if the school facilities
had remained open and in full operation. Upon request of the school
district, the educational services commission, county special services
school district, and a jointure commission shall certify, and provide
any supporting documentation to a school district as may be necessary
to verify, that payments received have been used solely to meet the
payroll and fixed costs of the contracted service provider or public
entity. Any portion of those payments not used to meet the payroll and
fixed costs shall be returned to the school district. An educational
services commission, county special services school district, jointure
commission or any lead school district under a shared services
agreement or cooperative contract, shall make all reasonable efforts to
renegotiate a contract in good faith subject to this paragraph and may
direct contracted service providers or public entities, who are a party to
a contract and receive payments under this paragraph, to provide
services which may reasonably be provided and are within the general
expertise or service provision of the original contract. Negotiations
shall not include indirect costs such as fuel or tolls. As a condition of
negotiations, a contracted service provider or public entity shall reveal
whether the entity has insurance coverage for business interruption
covering work stoppages.

(5) The provisions of paragraphs (1) through (4) of this
subsection e. shall not apply to any employee whose weekly hours of
work are reduced, and to whom unemployment benefits are provided,
pursuant to a shared work program approved pursuant to the
provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). A contracted
service provider, educational services commission, county special
services school district, or jointure commission shall notify any
school district with which it has entered into a contract to provide
services of its intent to reduce the hours of work of its employees
pursuant to a shared work program approved pursuant to the
provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). Notwithstanding the provisions of paragraph (3) of this subsection e.,
if a contracted service provider reduces the amount that it pays to its
employees providing services to a school district, and that reduction is
the result of a reduction of workhours of the those employees made
pursuant to a shared work program approved pursuant to the
provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.), then the amount
paid by the public school district to the contracted service provider
shall be reduced by the same amount. Notwithstanding the provisions
of paragraph (4) of this subsection e., if an educational services
commission, county special services school district, or jointure
commission reduces the amount that it pays to its employees providing
services to a school district, and that reduction is the result of a
reduction of workhours of the those employees made pursuant to a
shared work program approved pursuant to the provisions of P.L.2011,
c.154 (C.43:21-20.3 et seq.), then the amount paid by the public school
district to the educational services commission, county special services
school district, or jointure commission shall be reduced by the same
amount.

f. For purposes of subsections b., c., d., and e. of this section,
“school district” shall include a charter school and a renaissance
school project.
(cf: P.L.2020, c.27, s.1)

3. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to
read as follows:
3. As used in this act:
a. "Child" means a biological, adopted, foster child, or resource
family child, stepchild, legal ward, or child of a parent, including a
child who becomes the child of a parent pursuant to a valid written
agreement between the parent and a gestational carrier.
b. "Director" means the Director of the Division on Civil
Rights.
c. "Division" means the Division on Civil Rights in the
Department of Law and Public Safety.
d. "Employ" means to suffer or permit to work for
compensation, and includes ongoing, contractual relationships in
which the employer retains substantial direct or indirect control
over the employee's employment opportunities or terms and
conditions of employment.
e. "Employee" means a person who is employed for at least 12
months by an employer, with respect to whom benefits are sought
under this act, for not less than 1,000 base hours during the
immediately preceding 12-month period. Any time, up to a
maximum of 90 calendar days, during which a person is laid off or
furloughed by an employer due to that employer curtailing
operations because of a state of emergency declared after October
22, 2012, shall be regarded as time in which the person is employed
for the purpose of determining eligibility for leave time under this
act. In making the determination, the base hours per week during
the layoff or furlough shall be deemed to be the same as the average
number of hours worked per week during the rest of the 12-month
period.

f. "Employer" means a person or corporation, partnership,
individual proprietorship, joint venture, firm or company or other
similar legal entity which engages the services of an employee and
which:
(1) (Deleted by amendment, P.L.2019, c.37);
(2) (Deleted by amendment, P.L.2019, c.37);
(3) [With respect to the period of time from the 1,095th day following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.) through June 30, 2019, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; and] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

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

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

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

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

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

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

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

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

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

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

(a) requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee,
by order of a public official due to the epidemic or other public
health emergency;
(b) prompts the issuance by a public health authority of a
determination, including by mandatory quarantine, requiring or
imposing responsive or prophylactic measures as a result of illness
caused by an epidemic of a communicable disease or known or
suspected exposure to the communicable disease because the
presence in the community of a family member in need of care by
the employee, would jeopardize the health of others; or
(c) results in the recommendation of a health care provider or
public health authority, that a family member in need of care by the
employee voluntarily undergo self-quarantine as a result of
suspected exposure to a communicable disease because the presence
in the community of that family member in need of care by the
employee, would jeopardize the health of others.

j. "Family member" means a child, parent, parent-in-law,
sibling, grandparent, grandchild, spouse, domestic partner, or one
partner in a civil union couple, or any other individual related by
blood to the employee, and any other individual that the employee
shows to have a close association with the employee which is the
equivalent of a family relationship.
k. "Reduced leave schedule" means leave scheduled for fewer
than an employee's usual number of hours worked per workweek
but not for fewer than an employee's usual number of hours worked
per workday, unless agreed to by the employee and the employer.
l. "Serious health condition" means an illness, injury,
impairment, or physical or mental condition which requires:
(1) inpatient care in a hospital, hospice, or residential medical
care facility; or
(2) continuing medical treatment or continuing supervision by a
health care provider.
m. "State of emergency" means a natural or man-made disaster
or emergency for which a state of emergency has been declared by
the President of the United States or the Governor, or for which a
state of emergency has been declared by a municipal emergency
management coordinator.
n. "Health care provider" means a duly licensed health care
provider or other health care provider deemed appropriate by the
director.
(cf: P.L.2020, c.23, s.1)
(1) With respect to an individual’s benefit year commencing on
or after July 1, 1961 and before June 1, 2020, and after the time
that federal financing of unemployment benefits in this State,
pursuant to the “Coronavirus Aid, Relief, and Economic Security
Act,” Pub. Law 116-136, ceased, such individual, if eligible and
unemployed (as defined in subsection (m) of R.S.43:21-19), shall
be paid an amount (except as to final payment) equal to his weekly
benefit rate less any remuneration, other than remuneration from
self-employment paid to an individual who is receiving a self-
employment assistance allowance, paid or payable to him for such
week in excess of 20% of his weekly benefit rate (fractional part of
a dollar omitted) or $5.00, whichever is the greater; provided that
such amount shall be computed to the next lower multiple of $1.00
if not already a multiple thereof.

(2) With respect to an individual’s benefit year commencing on
or after June 1, 2020 until the time that federal financing of
unemployment benefits in this State, pursuant to the “Coronavirus
ceased, such individual, if eligible and unemployed (as defined in
subsection (m) of R.S.43:21-19), shall be paid an amount (except as
to final payment) equal to his weekly benefit rate less any remuneration, other than remuneration from self-employment paid
to an individual who is receiving a self-employment assistance
allowance, paid or payable to him for such week in excess of 40%
of his weekly benefit rate (fractional part of a dollar omitted) or
$5.00, whichever is the greater; provided that such amount shall be
computed to the next lower multiple of $1.00 if not already a
multiple thereof.

(c) Weekly benefit rate.

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

(2) Dependency benefits.

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

(B) For the purposes of this paragraph (2), a dependent is
defined as an individual's unemployed spouse or an unemployed
unmarried child (including a stepchild or a legally adopted child)
under the age of 19 or an unemployed unmarried child, who is
attending an educational institution as defined in subsection (y) of
R.S.43:21-19 on a full-time basis and is under the age of 22. If an
individual's spouse is employed during the week the individual files
an initial claim for benefits, this paragraph (2) shall not apply. If
both spouses establish a claim for benefits in accordance with the
provisions of this chapter (R.S.43:21-1 et seq.), only one shall be
entitled to dependency benefits as provided in this paragraph (2).

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

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

(i) All married individuals claiming dependents under this
paragraph (2) shall be required to provide the social security
number of the individual's spouse. If the individual indicates that
the spouse is unemployed, the division shall match the social
security number of the spouse against available wage records to
determine whether earnings were reported on the last quarterly
were reported, the division shall contact in writing the last employer
to determine whether the spouse is currently employed.

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

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

(d) Maximum total benefits.

(1) (A) (Deleted by amendment, P.L.2003, c.107).
(B) (i) With respect to an individual for whom benefits shall be payable for benefit years commencing on or after July 1, 1986, and before July 1, 2003 as provided in this section, the individual shall be entitled to receive a total amount of benefits equal to three-quarters of the individual's base weeks with all employers in the base year multiplied by the individual's weekly benefit rate; but the amount of benefits thus resulting under that determination shall be adjusted to the next lower multiple of $1.00 if not already a multiple thereof. With respect to an individual for whom benefits shall be payable for benefit years commencing on or after July 1, 2003 as provided in this section, the individual shall be entitled to receive a total amount of benefits equal to the number of the individual's base weeks with all employers in the base year multiplied by the individual's weekly benefit rate; but the amount of benefits thus resulting under that determination shall be adjusted to the next lower multiple of $1.00 if not already a multiple thereof.

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

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

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

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

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

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

[R.S.43:21-4 is amended to read as follows:]

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

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division
may, by regulation, waive or alter either or both of the requirements
of this subsection as to individuals attached to regular jobs, and as
to such other types of cases or situations with respect to which the
division finds that compliance with such requirements would be
oppressive, or would be inconsistent with the purpose of this act;
provided that no such regulation shall conflict with subsection (a) of
(b) The individual has made a claim for benefits in accordance
with the provisions of subsection (a) of R.S.43:21-6.
(c) (1) The individual is able to work, and is available for work,
and has demonstrated to be actively seeking work, except as
hereinafter provided in this subsection or in subsection (f) of this
section.
(2) The director may modify the requirement of actively seeking
work if such modification of this requirement is warranted by
economic conditions.
(3) No individual, who is otherwise eligible, shall be deemed
ineligible, or unavailable for work, because the individual is on
vacation, without pay, during said week, if said vacation is not the
result of the individual's own action as distinguished from any
collective action of a collective bargaining agent or other action
beyond the individual's control.
(4) (A) Subject to such limitations and conditions as the
division may prescribe, an individual, who is otherwise eligible,
shall not be deemed unavailable for work or ineligible because the
individual is attending a training program approved for the
individual by the division to enhance the individual's employment
opportunities or because the individual failed or refused to accept
work while attending such program.
(B) For the purpose of this paragraph (4), any training program
shall be regarded as approved by the division for the individual if
the program and the individual meet the following requirements:
(i) The training is for a labor demand occupation and is likely to
enhance the individual's marketable skills and earning power,
except that the training may be for an occupation other than a labor
demand occupation if the individual is receiving short-time benefits
pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)
and the training is necessary to prevent a likely loss of jobs;
(ii) The training is provided by a competent and reliable private
or public entity approved by the Commissioner of Labor and
Workforce Development pursuant to the provisions of section 8 of
the "1992 New Jersey Employment and Workforce Development
Act," P.L.1992, c.43 (C.34:15D-8);
(iii) The individual can reasonably be expected to complete the
program, either during or after the period of benefits;
(iv) The training does not include on the job training or other
training under which the individual is paid by an employer for work
performed by the individual during the time that the individual receives benefits; and

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

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

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

(ii) The training is provided in connection with a program under which the individual may obtain a college degree, including a postgraduate degree;

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

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

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

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

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

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

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

(8) Any individual who is determined to be likely to exhaust
regular benefits and need reemployment services based on
information obtained by the worker profiling system shall not be
eligible to receive benefits if the individual fails to participate in
available reemployment services to which the individual is referred
by the division or in similar services, unless the division determines
that:

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

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

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

(A) The individual is able to work and is available to work the
individual's normal full-time hours for the shared work employer;
or
(B) The individual is attending a training program which is in
compliance with the provisions of paragraph (4) of subsection (c) of
this section and the agreements and certifications required pursuant

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

(1) If benefits have been paid, or are payable with respect
thereof; provided that the requirements of this paragraph shall be
waived with respect to any benefits paid or payable for a waiting
period as provided in this subsection;
(2) If it has constituted a waiting period week under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

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

(4) If with respect thereto, claimant was disqualified for benefits in accordance with the provisions of subsection (d) of R.S.43:21-5. The waiting period provided by this subsection shall not apply to benefit years commencing on or after January 1, 2002. An individual whose total benefit amount was reduced by the application of the waiting period to a claim which occurred on or after January 1, 2002 and before the effective date of P.L.2002, c.13, shall be permitted to file a claim for the additional benefits attributable to the waiting period in the form and manner prescribed by the division, but not later than the 180th day following the effective date of P.L.2002, c.13 unless the division determines that there is good cause for a later filing.

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

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

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

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

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

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

(5) With respect to benefit years commencing on or after January 7, 2001 and before June 1, 2020, and after the time that federal financing of unemployment benefits in this State, pursuant to the "Coronavirus Aid, Relief, and Economic Security Act," Pub. Law 116-136, ceases, notwithstanding the provisions of paragraph (4) of this subsection, an unemployed individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops shall, subject to the limitations of subsection (i) of R.S.43:21-19, be eligible to receive benefits if during his base year, as defined in subsection (c) of R.S.43:21-19, the individual:

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

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

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

(6) With respect to benefit years commencing on or after June 1, 2020, until the time that federal financing of unemployment benefits in this State, pursuant to the “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law 116-136 ceases, the individual, during his base year as defined in subsection (c) of R.S.43:21-19:

(A) Has established at least 20 base weeks as defined in paragraphs (2) and (3) paragraph (4) of subsection (t) of R.S.43:21-19; or

(B) Has, if the individual has not met the requirements of subparagraph (A) of this paragraph (6), earned remuneration not less than an amount 500 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $100 if not already a multiple thereof; or

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

(7) The individual applying for benefits in any successive benefit year has earned at least six times his previous weekly benefit amount and has had four weeks of employment since the beginning of the immediately preceding benefit year. This provision shall be in addition to the earnings requirements specified in paragraph [1(4) or] (5) or (6) of this subsection, as applicable.

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

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

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

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

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

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

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

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

(A) For any week with respect to which or a part of which the individual has received or is seeking benefits under any unemployment compensation or disability benefits law of any other state or of the United States; provided that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such benefits, this disqualification shall not apply:
(B) For any week with respect to which or part of which the individual has received or is seeking disability benefits for a disability of the individual under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

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

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

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

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

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

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

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

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

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

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

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

An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise.

For the purposes of this subsection, tenure track status means a
probationary faculty employee having an opportunity to be
reviewed for tenure.

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

(b) Benefits shall not be paid to any individual on the basis of
any services, substantially all of which consist of participating in
sports or athletic events or training or preparing to so participate,
for any week which commences during the period between two
successive sports seasons (or similar periods) if such individual
performed such services in the first of such seasons (or similar
periods) and there is a reasonable assurance that such individual
will perform such services in the later of such seasons (or similar
periods).

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

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

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

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

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

"§ 5. R.S.43:21-6 is amended to read as follows:

43:21-6. (a) Filing. (1) Claims for benefits shall be made in accordance with such regulations as the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers and at such places as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed, for any reason, whether the unemployment is permanent or temporary, or, if the employer provides the individual an advanced notification of a layoff, at the time of that notification, a printed copy of benefit instructions. The benefit instructions given to the individual shall include, but not be limited to, the following information: (A) the date upon which the individual becomes unemployed, and, in the case that the unemployment is temporary, to the extent possible, the date upon which the individual is expected to be recalled to work; and (B) that the individual may lose some or all of the benefits to which he is entitled if he fails to file a claim in a timely manner. Both the aforesaid notices and instructions, including information detailing the time sensitivity of filing a claim, shall be supplied by the division to employers without cost to them. Nothing in this section shall be construed so as to require an employer to re-hire an individual formerly in the employer's service.

(2) Any claimant may choose to certify, cancel or close his claim for unemployment insurance benefits at any time, 24 hours a day and seven days a week, via the Internet on a website developed by the division; however, any claim that is certified, cancelled or closed after 7:00 PM will not be processed by the division until the next scheduled posting date.
(3) If an employer provides advanced notification of a layoff pursuant to paragraph (1) of this subsection a., the notified individual may file for benefits at the time of the notification, and the division, upon finding that the claim is valid, shall pay the benefit upon the commencement of the period of unemployment.

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

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

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

If any employer or employing unit fails to respond to the request for information within 10 days after the mailing, or communicating by electronic means, of such request, the deputy shall rely entirely on information from other sources, including an affidavit to the best of the knowledge and belief of the claimant with respect to his wages and time worked. Except in the event of fraud, if it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant.

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

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

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

(A) The correctness of the benefit payments authorized to be
made under the determination;
(B) Fraud in connection with the claim pursuant to which the
initial determination is issued;
(C) The refusal of suitable work offered by the chargeable
employer filing the appeal;
(D) Gross misconduct as provided in subsection (b) of
R.S.43:21-5.

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

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

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

Notwithstanding any other provisions of this Title, if an
individual shows to the satisfaction of the deputy that there were at
least 13 weeks in his base period in each of which he earned wages
from two or more employers totaling $30.00 or more but in each of
which there was no single employer from whom he earned as much
as $100.00, then such individual's claim shall be determined in
accordance with the special provisions of this paragraph. In such
case, the deputy shall determine the individual's eligibility for
benefits, his average weekly wage, weekly benefit rate and
maximum total benefits as if all his base year employers were a
single employer. Such determination shall apportion the liability
for benefit charges thereunder to the individual's several base year
employers so that each employer's maximum liability for charges
thereunder bears approximately the same relation to the maximum
total benefits allowed as the wages earned by the individual from
each employer during the base year bears to his total wages earned
from all employers during the base year. Such initial determination
shall also specify the individual's last date of employment within
the base year with respect to each base year employer, and such
employers shall be charged for benefits paid under said initial
determination in the inverse chronological order of such last date of
employment.

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

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

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

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

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

(g) Witness fees. Witnesses subpoenaed pursuant to this section
shall be allowed fees at a rate fixed by the director. Such fees and
all expenses of proceedings involving disputed claims shall be
deemed a part of the expense of administering this chapter
(R.S.43:21-1 et seq.).
(h) Court review. Any decision of the board of review shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address. The Division of Unemployment and Temporary Disability Insurance and any party to a proceeding before the board of review may secure judicial review of the final decision of the board of review. Any party not joining in the appeal shall be made a defendant; the board of review shall be deemed to be a party to any judicial action involving the review of, or appeal from, any of its decisions, and may be represented in any such judicial action by any qualified attorney, who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or, at the board of review's request, by the Attorney General.

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

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

1. The erroneous benefit payment was made because the employer, or an agent of the employer, failed to respond in a timely or adequate manner to a request from the division for information related to the claim for benefits; and

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

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

For purposes of subsection (j) of this section:

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

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

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

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

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

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

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

(2) "Average annual payroll" means the average of the annual
payrolls of any employer for the last three or five preceding
calendar years, whichever average is higher, except that any year or
years throughout which an employer has had no "annual payroll"
because of military service shall be deleted from the reckoning; the
"average annual payroll" in such case is to be determined on the
basis of the prior three or five calendar years in each of which the
employer had an "annual payroll" in the operation of his business, if
the employer resumes his business within 12 months after
separation, discharge or release from such service, under conditions
other than dishonorable, and makes application to have his "average
annual payroll" determined on the basis of such deletion within 12
months after he resumes his business; provided, however, that
"average annual payroll" solely for the purposes of paragraph (3) of
subsection (e) of R.S.43:21-7 means the average of the annual
payrolls of any employer on which he paid contributions to the
State disability benefits fund for the last three or five preceding
calendar years, whichever average is higher; provided further that
only those wages be included on which employer contributions have
been paid on or before January 31 (or the next succeeding day if
such January 31 is a Saturday or Sunday) immediately preceding
the beginning of the 12-month period for which the employer's
contribution rate is computed.
(b) "Benefits" means the money payments payable to an individual, as provided in this chapter (R.S.43:21-1 et seq.), with respect to his unemployment.

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

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

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

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

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

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

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

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

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

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

(h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (1) "Employment" means:

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

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

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

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

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

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

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

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

(aa) as an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) For the purposes of subparagraph (I) (i) in the case of any individual who is furnished by a crew leader to perform service in
agricultural labor or any other entity and who is not treated as an employee of such crew leader under (I) (ii) (aa) such other entity and not the crew leader shall be treated as the employer of such individual; and (bb) such other entity shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other entity) for the service in agricultural labor performed for such other entity. (iv) For the purpose of subparagraph (I)(ii), the term "crew leader" means an individual who (aa) furnishes individuals to perform service in agricultural labor for any other entity; (bb) pays (either on his own behalf or on behalf of such other entity) the individuals so furnished by him for the service in agricultural labor performed by them; and (cc) has not entered into a written agreement with such other entity under which such individual is designated as an employee of such other entity. (J) Domestic service after December 31, 1977 performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year. (2) The term "employment" shall include an individual's entire service performed within or both within and without this State if: (A) The service is localized in this State; or (B) The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. (3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government. (4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the
entire service of such individual shall be deemed to be employment
subject to this chapter (R.S.43:21-1 et seq.).

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

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

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

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

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

(A) Agricultural labor performed prior to January 1, 1978; and after December 31, 1977, only if performed in a calendar year for an entity which is not an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such calendar year; or unless performed for an employing unit which
   (i) during a calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000.00 or more to individuals employed in agricultural labor, or
   (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time;
(B) Domestic service in a private home performed prior to January 1, 1978; and after December 31, 1977, unless performed in the private home of an employing unit which paid cash remuneration of $1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year;
(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

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

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

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

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

(H) Services performed as a member of the board of directors, a board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or of the United States, where such services do not constitute the principal employment of the individual;
(I) Service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

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

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

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

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

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

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

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

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

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (22 U.S.C. s.288 et seq.);
Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to R.S.43:21-21 during the effective period of such election;

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

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

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

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

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

(Deleted by amendment, P.L.2009, c.211.)
(Z) Services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, who acts as an independent contractor, is paid on a commission basis, sets his own work schedule and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities.

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

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

(A) The limousine franchisee is incorporated;
(B) The franchisee is subject to regulation by the Interstate Commerce Commission;
(C) The limousine franchise exists pursuant to a written franchise arrangement between the franchisee and the franchisor as defined by section 3 of P.L.1971, c.356 (C.56:10-3); and
(D) The franchisee registers with the Department of Labor and Workforce Development and receives an employer registration number.

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

For purposes of this paragraph (10): "legal transcription service" and "legal transcribing" mean making use, by audio, video or voice recording, of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form; and "legal transcriber" means a person who engages in "legal transcribing."
(j) "Employment office" means a free public employment office, or branch thereof operated by this State or maintained as a part of a State-controlled system of public employment offices.

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

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

(m) "Unemployment."

1. An individual shall be deemed "unemployed" for any week during which:
   (A) The individual is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation shall not be deemed to be unemployed in any week during the individual's term of office or ownership in the corporation; or
   (B) The individual is eligible for and receiving a self-employment assistance allowance pursuant to the requirements of P.L.1995, c.394 (C.43:21-67 et al.).

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

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

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

(o) "Wages" means remuneration paid by employers for employment. If a worker receives gratuities regularly in the course of his employment from other than his employer, his "wages" shall also include the gratuities so received, if reported in writing to his employer in accordance with regulations of the division, and if not so reported, his "wages" shall be determined in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from his employer, whichever is the higher.
(p) "Remuneration" means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash.

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

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

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

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

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

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

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

(3) "Base week," commencing on or after January 1, 2001 and before January 1, 2020, and after the time that federal financing of unemployment benefits in this State, pursuant to the "Coronavirus Aid, Relief, and Economic Security Act," Pub. Law 116-136, ceases, means any calendar week during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section
5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph (3) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (3) during that week.

(4) "Base week," commencing on or after January 1, 2020 until the time that federal financing of unemployment benefits in this State, pursuant to the “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law 116-136 ceases, means any calendar week during which the individual earned in employment from an employer remuneration not less than an amount 10 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of $1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph (4) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (4) during that week.

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

For the purpose of computing the average weekly wage, the monetary alternative in subparagraph (B) of paragraph [(2)](4) of subsection (e) of R.S.43:21-4 shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.
"Initial determination" means, subject to the provisions of R.S.43:21-6(b)(2) and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year.

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

"Most recent base year employer" means that employer with whom the individual most recently, in point of time, performed service in employment in the base year.

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

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

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

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

"Institution of higher education" means an educational institution which:

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

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

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

(D) Is a public or other nonprofit institution.

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

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

(cf: P.L.2017, c.230, s.1)
To facilitate the providing of the maximum possible benefits for employees and savings for employers in the State from the federal financing of unemployment benefits provided in connection with short-time compensation programs pursuant to section 2108 of the “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law 116-136 and from federal financing of emergency increases in unemployment benefits under section 2104 of that act, the division shall, during the period from the effective date of this act until December 31, 2020, undertake the following actions:

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

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

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

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

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

d. Permit employers who have fully laid off employees to
resume employing those employees on a partial basis in a manner
consistent with the requirements of P.L.2011, c.154 (C.43:21-20.3
et seq.), and establish a shared work program to make short-time
benefits available to those employees;
e. Permit, upon the approval of a shared work program, of the
payment of benefits retroactively back to the time that shared work
commenced in a manner consistent with the requirements of
P.L.2011, c.154 (C.43:21-20.3 et seq.);
f. Contact each employer which is a non-profit organization
subject to the provisions of section 3 of P.L.1971, c.346 (C.43:21-7.2) or a governmental entity or instrumentality subject to the
provisions of section 4 of P.L.1971, c.346 (C.43:21-7.3) to provide
that employer, in addition to the guidance document indicated in
subsection a. of this section, information regarding the potential
reduction in the expenses of that employer from participating in a
shared work program pursuant to P.L.2011, c.154 (C.43:21-20.3 et
seq.) for which full federal funding of short-time unemployment
benefits is available pursuant to section 2108 of the “Coronavirus

(10.) 9. (New section) A public employee enrolled in a
State-administered retirement system or fund, and the employer of
that employee, shall be required to make contributions to the system
or fund during the period that the employee is on a furlough
pursuant to section 9 of this act, P.L. 8 of this bill) and P.L.2011, c.154
(C.43:21-20.3 et seq.). The contributions shall be based on the base
salary or compensation, as defined by the retirement system or
fund, that would have been paid to the employee if the employee
had not been on furlough. The employee’s service credit as a
member of the system or fund shall include the period of furlough.
For all purposes under the retirement system or fund, the period of
furlough and the base salary or compensation upon which
contribution were made during the period of furlough shall be
recognized by the retirement system or fund. The seniority rights
and health benefits coverage of an employee who participates in
this furlough program shall continue and shall not be adversely
affected by participation. The employer shall enter into a written
agreement with any collective bargaining agent representing the
employees regarding the terms of the program, including terms
regarding attendance in training programs while receiving short-
time benefits, and provide certification, and the copy, of the
agreement to the division as required by P.L.2011, c.154 (C.43:21-
20.3 et seq.). This section shall not be construed to conflict with any applicable provisions of federal law.


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

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

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

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

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

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

6 (6) In the case of governmental employers and, separately, nonprofit employers, the portion of the participating employers that elected to make payments in lieu of contributions pursuant to section 3 of P.L.1971, c.346 (C.43:21-7.2) or section 4 of P.L.1971, c.346 (C.43:21-7.3), the portion of participating employees who were employed by those employers, the portion of benefits that were paid by those employers, and the total reduction in cost to those employers due to federal financing of short-time compensation.
c. The report shall provide an estimate of the total cost of unemployment benefits to the unemployment compensation fund if employers who used federally-funded, approved shared work programs to partially lay off employees had instead reduced work hours by the same amount, by fully laying off a smaller number of employees, and the effect that would have had on employer contribution rates.

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

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

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

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

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

It was found, prior to the enactment of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), that then existing voluntary plans for the payment of cash sickness benefits covered less than one-half of the number of working people of this State who were covered by the "unemployment compensation law," and that even that degree of voluntary protection afforded uneven, unequal and sometimes uncertain protection among the various voluntary benefit programs.
While the enactment of that law has provided stable protection for New Jersey's disabled workers, very few workers are protected from income losses caused by the need to take time off from work to care for family members who are incapable of self-care, including newborn and newly-adopted children. The growing portion of middle-income families in which all adult family members work, largely due to economic necessity, points to the desperate need for replacement income when a working family member must take time to care for family members who are unable to take care of themselves. Moreover, the United States is the only industrialized nation in the world which does not have a mandatory workplace-based program for such income support. It is therefore desirable and necessary to fill the gap in existing provisions for protection against the loss of earnings caused by involuntary unemployment, by extending such protection to meet the hazard of earnings loss due to inability to work caused by nonoccupational sickness, accidents, or other disabilities of workers and members of their families. Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by reducing employee turnover and increasing worker productivity.

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

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

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

\[13. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to read as follows:
b. An individual shall not simultaneously receive disability benefits for family temporary disability leave and any other disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.) or any unemployment compensation, or any paid sick leave, vacation time or other leave at full pay from the employer of the individual.
c. The employer of an individual may, notwithstanding any other provision of law, including the provisions of N.J.S.18A:30-1 et seq., permit the individual, during a period of family temporary disability leave, to use any paid sick leave, vacation time or other leave at full pay made available by the employer before the
individual uses disability benefits for family temporary disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying any provision of an existing collective bargaining agreement or employer policy, or preventing any new provision of a collective bargaining agreement or employer policy, which provides employees more generous leave or gives employees greater rights to select which kind of leave is used or select the order in which the different kinds of leave are used. Nothing in P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as preventing an employer from providing more generous benefits than are provided under P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which supplement the benefits provided under P.L.2008, c.17 (C.43:21-39.1 et al.) for some or all of the employer's employees.

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

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

f. In the event of a period of family temporary disability leave
of any individual covered under the State plan, the employer shall,
not later than the ninth day of the period of family temporary
disability leave, or not later than the ninth day after the employee
notifies the employer of an anticipated period of family temporary
disability leave pursuant to subsection h. of this section, whichever
comes first, including any time in which the employer provides sick
leave, vacation or other fully paid leave, issue to the individual and
to the division printed notices on division forms containing the
name, address and Social Security number of the individual, such
wage information as the division may require to determine the
individual's eligibility for benefits, including any sick pay, vacation
or other fully paid time off provided by the employer during the
period of family temporary disability leave, and the name, address,
and division identity number of the employer. Not later than 30
days after the commencement of the period of family temporary
disability leave for which the notice is furnished by the employer,
the individual shall furnish to the division a notice and claim for
family temporary disability leave benefits. Upon the submission of
the notices by the employer and the individual, and the
commencement of the compensable portion of the family temporary
disability leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.), the
division may issue benefit payments. In the case of family
temporary disability leave taken to care for a family member with a
serious health condition, the benefits may be paid for periods not
exceeding three weeks pending the receipt of the certification
required pursuant to subsection b. of section 11 of P.L.2008, c.17
(C.43:21-39.2). Failure to furnish notice and certification in the
manner above provided shall not invalidate or reduce any claim if it
shall be shown to the satisfaction of the division not to have been
reasonably possible to furnish the notice and certification and that
the notice and certification was furnished as soon as reasonably
possible.

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

h. With respect to any period of family temporary disability 
leave commencing on or after October 4, 2019 if an individual 
knows in advance when the period will commence, the individual 
may notify the employer of the anticipated period of family 
temporary disability leave and submit to the division a claim for 
benefits for that period, which shall include a statement of when the 
period will commence and any certification required pursuant to 
to, but not more than 60 days prior to, the date that the period will 
commence. The division shall process that claim immediately and, 
upon finding that the claim is valid, shall pay the benefit upon the 
commencement of the period of family temporary disability leave, 
except that if the division receives the claim less than 30 days 
before the commencement of the period, the division shall make the 
payment not more than 30 days after the receipt of the claim. The 
periods of family temporary disability leave to which the provisions 
of this subsection apply shall include, but not be limited to, any of 
the following if the commencement date of the leave is known in 
advance: periods of leave for care of a child of the individual after 
adoption, the placement of a child into foster care, or childbirth, 
including childbirth under a valid agreement between the individual 
and a gestational carrier; periods of leave for scheduled medical 
procedures, treatments, or appointments for a family member of the 
individual; and periods of leave for scheduled ongoing care of a 
family member of the individual. If the individual did not establish 
enough base weeks or have enough total earnings during the base 
year preceding the week the individual submits the claim, the 
division shall notify the individual that the individual may file the 
claim again upon or after the commencement of the period of 
family temporary disability leave and the division shall then 
reconsider the individual’s eligibility for benefits based on the base 
year preceding the week in which the period of family temporary 
disability leave commences.

(cf: P.L.2019, c.37, s.13)1

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

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


b. Upon a violation of subsection a. of this section, an 
employee or former employee may, as an alternative to any action 
that the employee is permitted to take for the violation pursuant to 
(C.34:11B-1 et seq.), institute a civil action in the Superior Court 
for relief. All remedies available in common law 
tort actions shall be available to a prevailing plaintiff. The court 
may also order any or all of the following relief:

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

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

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

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

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

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

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

This act shall take effect immediately, provided 
that:

a. in the case of any employer who becomes subject to the 
provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the 
provisions of paragraph (5) of subsection f. of section 3 of 
(C.34:11B-1 et seq.) shall apply to the employer only with respect
to periods of family leave which take place, in full or in part, after
the effective date of this act; and
b. in the case of any employer who becomes subject to the
provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because
of the changes made in that section by P.L.
c. (C. ) (pending before the Legislature as this bill) the
provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) shall
apply to the employer only with respect to periods of disability for
family temporary disability leave which take place, in full or in
part, after the effective date of this act].