

[Second Reprint]

**ASSEMBLY, No. 4132**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MAY 7, 2020

**Sponsored by:**

**Assemblyman ADAM J. TALIAFERRO**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblywoman JOANN DOWNEY**  
**District 11 (Monmouth)**  
**Senator STEPHEN M. SWEENEY**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Senator NELLIE POU**  
**District 35 (Bergen and Passaic)**  
**Senator STEVEN V. OROHO**  
**District 24 (Morris, Sussex and Warren)**

**Co-Sponsored by:**

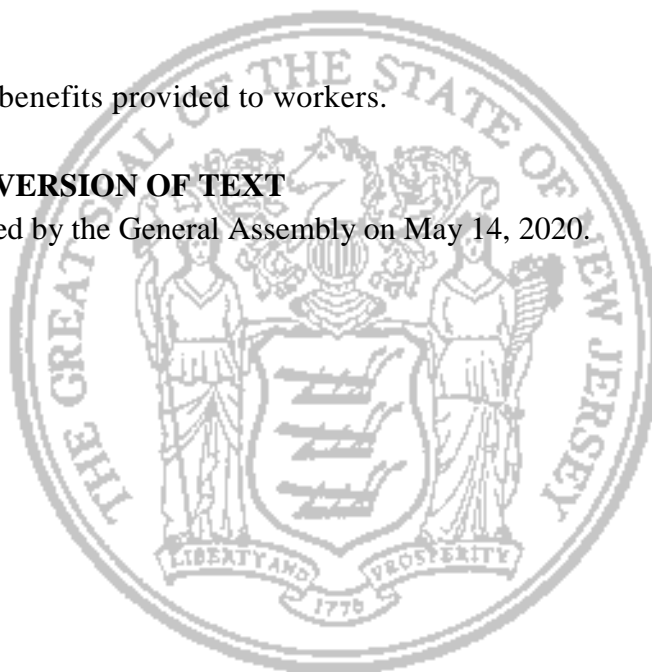
**Assemblywomen Jimenez, Jasey, Assemblyman Houghtaling, Senators Addiego, O'Scanlon, Cruz-Perez and Thompson**

**SYNOPSIS**

Concerns benefits provided to workers.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on May 14, 2020.



(Sponsorship Updated As Of: 5/14/2020)

1 AN ACT concerning certain benefits <sup>1</sup>**[and leave]**<sup>1</sup> provided to  
2 workers, and amending and supplementing various parts of the  
3 statutory law.

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

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

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

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

40 c. For purposes of State service, a "layoff unit" means a  
41 department or autonomous agency and includes all programs  
42 administered by that department or agency. For purposes of  
43 political subdivision service, the "layoff unit" means a department  
44 in a county or municipality, an entire autonomous agency, or an

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted May 11, 2020.

<sup>2</sup>Assembly floor amendments adopted May 14, 2020.

1 entire school district, except that the commission may establish  
2 broader layoff units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

1 preceding school year, but the commissioner, for good cause shown,  
2 may remit the penalty.

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

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

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

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

1 parents, staff, and the board of education or boards of education are  
2 informed promptly of the superintendent's decision.

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

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

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

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

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

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

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

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

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

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

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

1 facilities had remained open. Payments received by a contracted  
2 service provider or public entity pursuant to this paragraph shall be  
3 used to meet the payroll and fixed costs obligations of the contracted  
4 service provider or public entity<sup>1</sup>, and employees of the contracted  
5 service provider or public entity shall be paid as if the school facilities  
6 had remained open and in full operation<sup>1</sup>. <sup>1</sup>Upon request of the school  
7 district, the educational services commission, county special services  
8 school district, and a jointure commission shall certify, and provide  
9 any supporting documentation to a school district as may be necessary  
10 to verify, that payments received have been used solely to meet the  
11 payroll and fixed costs of the contracted service provider or public  
12 entity. Any portion of those payments not used to meet the payroll and  
13 fixed costs shall be returned to the school district.<sup>1</sup> An educational  
14 services commission, county special services school district, jointure  
15 commission or any lead school district under a shared services  
16 agreement or cooperative contract, shall make all reasonable efforts to  
17 renegotiate a contract in good faith subject to this paragraph and may  
18 direct contracted service providers or public entities, who are a party to  
19 a contract and receive payments under this paragraph, to provide  
20 services which may reasonably be provided and are within the general  
21 expertise or service provision of the original contract. Negotiations  
22 shall not include indirect costs such as fuel or tolls. As a condition of  
23 negotiations, a contracted service provider or public entity shall reveal  
24 whether the entity has insurance coverage for business interruption  
25 covering work stoppages.

26 (5) The provisions <sup>1</sup>of paragraphs (1) through (4)<sup>1</sup> of this  
27 subsection e. shall not apply to any employee whose weekly hours of  
28 work are reduced, and to whom unemployment benefits are provided,  
29 pursuant to a shared work program approved pursuant to the  
30 provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.). <sup>1</sup>A contracted  
31 service provider, educational services commission, county special  
32 services school district, or jointure commission shall notify any  
33 school district with which it has entered into a contract to provide  
34 services of its intent to reduce the hours of work of its employees  
35 pursuant to a shared work program approved pursuant to the  
36 provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.).  
37 Notwithstanding the provisions of paragraph (3) of this subsection e.,  
38 if a contracted service provider reduces the amount that it pays to its  
39 employees providing services to a school district, and that reduction is  
40 the result of a reduction of workhours of the those employees made  
41 pursuant to a shared work program approved pursuant to the  
42 provisions of P.L.2011, c.154 (C.43:21-20.3 et seq.), then the amount  
43 paid by the public school district to the contracted service provider  
44 shall be reduced by the same amount. Notwithstanding the provisions  
45 of paragraph (4) of this subsection e., if an educational services  
46 commission, county special services school district, or jointure  
47 commission reduces the amount that it pays to its employees providing



1 services to a school district, and that reduction is the result of a  
2 reduction of workhours of the those employees made pursuant to a  
3 shared work program approved pursuant to the provisions of P.L.2011,  
4 c.154 (C.43:21-20.3 et seq.), then the amount paid by the public school  
5 district to the educational services commission, county special services  
6 school district, or jointure commission shall be reduced by the same  
7 amount.<sup>1</sup>

8 f. For purposes of subsections b., c., d., and e. of this section,  
9 “school district” shall include a charter school and a renaissance  
10 school project.

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

12

13 <sup>1</sup>§3. Section 3 of P.L.1989, c.261 (C.34:11B-3) is amended to  
14 read as follows:

15 3. As used in this act:

16 a. "Child" means a biological, adopted, foster child, or resource  
17 family child, stepchild, legal ward, or child of a parent, including a  
18 child who becomes the child of a parent pursuant to a valid written  
19 agreement between the parent and a gestational carrier.

20 b. "Director" means the Director of the Division on Civil  
21 Rights.

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

24 d. "Employ" means to suffer or permit to work for  
25 compensation, and includes ongoing, contractual relationships in  
26 which the employer retains substantial direct or indirect control  
27 over the employee's employment opportunities or terms and  
28 conditions of employment.

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

42 f. "Employer" means a person or corporation, partnership,  
43 individual proprietorship, joint venture, firm or company or other  
44 similar legal entity which engages the services of an employee and  
45 which:

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

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

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

8 (4) With respect to any period of time **【on or after】** from June  
9 30, 2019 until the effective date of P.L. c. (pending before the  
10 Legislature as this bill), employs 30 or more employees for each  
11 working day during each of 20 or more calendar workweeks in the  
12 then current or immediately preceding calendar year; and

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

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

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

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

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

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

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

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

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

46 (a) requires in-home care or treatment of a child due to the  
47 closure of the school or place of care of the child of the employee,

1 by order of a public official due to the epidemic or other public  
2 health emergency;

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

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

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

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

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

28 (1) inpatient care in a hospital, hospice, or residential medical  
29 care facility; or

30 (2) continuing medical treatment or continuing supervision by a  
31 health care provider.

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

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

40 (cf: P.L.2020, c.23, s.1)]<sup>1</sup>

41

42 <sup>1</sup>[4.] 3.<sup>1</sup> R.S.43:21-3 is amended to read as follows:

43 43:21-3. Benefits.

44 (a) Payment of benefits.

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

47 (b) Weekly benefits for unemployment.

1       (1) With respect to an individual's benefit year commencing on  
2 or after July 1, 1961 and before June 1, 2020<sup>1</sup>, and after the time  
3 that federal financing of unemployment benefits in this State,  
4 pursuant to the "Coronavirus Aid, Relief, and Economic Security  
5 Act," Pub. Law 116-136, ceases<sup>1</sup>, such individual, if eligible and  
6 unemployed (as defined in subsection (m) of R.S.43:21-19), shall  
7 be paid an amount (except as to final payment) equal to his weekly  
8 benefit rate less any remuneration, other than remuneration from  
9 self-employment paid to an individual who is receiving a self-  
10 employment assistance allowance, paid or payable to him for such  
11 week in excess of 20% of his weekly benefit rate (fractional part of  
12 a dollar omitted) or \$5.00, whichever is the greater; provided that  
13 such amount shall be computed to the next lower multiple of \$1.00  
14 if not already a multiple thereof.

15       (2) With respect to an individual's benefit year commencing on  
16 or after June 1, 2020 <sup>1</sup>until the time that federal financing of  
17 unemployment benefits in this State, pursuant to the "Coronavirus  
18 Aid, Relief, and Economic Security Act," Pub. Law 116-136  
19 ceases<sup>1</sup>, such individual, if eligible and unemployed (as defined in  
20 subsection (m) of R.S.43:21-19), shall be paid an amount (except as  
21 to final payment) equal to his weekly benefit rate less any  
22 remuneration, other than remuneration from self-employment paid  
23 to an individual who is receiving a self-employment assistance  
24 allowance, paid or payable to him for such week in excess of 40%  
25 of his weekly benefit rate (fractional part of a dollar omitted) or  
26 \$5.00, whichever is the greater; provided that such amount shall be  
27 computed to the next lower multiple of \$1.00 if not already a  
28 multiple thereof.

29       (c) Weekly benefit rate.

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

40       (2) Dependency benefits.

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

1 maximum amount determined under paragraph (1) of this  
2 subsection (c).

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

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

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

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

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

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

47 (d) Maximum total benefits.

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

1 (B) (i) With respect to an individual for whom benefits shall be  
2 payable for benefit years commencing on or after July 1, 1986, and  
3 before July 1, 2003 as provided in this section, the individual shall  
4 be entitled to receive a total amount of benefits equal to three-  
5 quarters of the individual's base weeks with all employers in the  
6 base year multiplied by the individual's weekly benefit rate; but the  
7 amount of benefits thus resulting under that determination shall be  
8 adjusted to the next lower multiple of \$1.00 if not already a  
9 multiple thereof. With respect to an individual for whom benefits  
10 shall be payable for benefit years commencing on or after July 1,  
11 2003 as provided in this section, the individual shall be entitled to  
12 receive a total amount of benefits equal to the number of the  
13 individual's base weeks with all employers in the base year  
14 multiplied by the individual's weekly benefit rate; but the amount of  
15 benefits thus resulting under that determination shall be adjusted to  
16 the next lower multiple of \$1.00 if not already a multiple thereof.

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

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

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

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

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

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

39

40 <sup>1</sup>**[5.] 4.<sup>1</sup>** R.S.43:21-4 is amended to read as follows:

41 43:21-4. Benefit eligibility conditions. An unemployed  
42 individual shall be eligible to receive benefits with respect to any  
43 week eligible only if:

44 (a) The individual has filed a claim at an unemployment  
45 insurance claims office and thereafter continues to report at an  
46 employment service office or unemployment insurance claims  
47 office, as directed by the division in accordance with such  
48 regulations as the division may prescribe, except that the division

1 may, by regulation, waive or alter either or both of the requirements  
2 of this subsection as to individuals attached to regular jobs, and as  
3 to such other types of cases or situations with respect to which the  
4 division finds that compliance with such requirements would be  
5 oppressive, or would be inconsistent with the purpose of this act;  
6 provided that no such regulation shall conflict with subsection (a) of  
7 R.S.43:21-3.

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

10 (c) (1) The individual is able to work, and is available for work,  
11 and has demonstrated to be actively seeking work, except as  
12 hereinafter provided in this subsection or in subsection (f) of this  
13 section.

14 (2) The director may modify the requirement of actively seeking  
15 work if such modification of this requirement is warranted by  
16 economic conditions.

17 (3) No individual, who is otherwise eligible, shall be deemed  
18 ineligible, or unavailable for work, because the individual is on  
19 vacation, without pay, during said week, if said vacation is not the  
20 result of the individual's own action as distinguished from any  
21 collective action of a collective bargaining agent or other action  
22 beyond the individual's control.

23 (4) (A) Subject to such limitations and conditions as the  
24 division may prescribe, an individual, who is otherwise eligible,  
25 shall not be deemed unavailable for work or ineligible because the  
26 individual is attending a training program approved for the  
27 individual by the division to enhance the individual's employment  
28 opportunities or because the individual failed or refused to accept  
29 work while attending such program.

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

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

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

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

46 (iv) The training does not include on the job training or other  
47 training under which the individual is paid by an employer for work

1 performed by the individual during the time that the individual  
2 receives benefits; and

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

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

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

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

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

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

20 (D) For the purpose of this paragraph (4), "labor demand  
21 occupation" means an occupation for which there is or is likely to  
22 be an excess of demand over supply for adequately trained workers,  
23 including, but not limited to, an occupation designated as a labor  
24 demand occupation by the Center for Occupational Employment  
25 Information pursuant to the provisions of subsection d. of section  
26 27 of P.L.2005, c.354 (C.34:1A-86).

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

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

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

43 (7) No individual, who is otherwise eligible, shall be deemed  
44 ineligible or unavailable for work with respect to any week because,  
45 during that week, the individual fails or refuses to accept work  
46 while the individual is participating on a full-time basis in self-  
47 employment assistance activities authorized by the division,



1 whether or not the individual is receiving a self-employment  
2 allowance during that week.

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

10 (A) The individual has completed the reemployment services; or

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

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

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

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

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

35 (d) With respect to any benefit year commencing before January  
36 1, 2002, the individual has been totally or partially unemployed for  
37 a waiting period of one week in the benefit year which includes that  
38 week. When benefits become payable with respect to the third  
39 consecutive week next following the waiting period, the individual  
40 shall be eligible to receive benefits as appropriate with respect to  
41 the waiting period. No week shall be counted as a week of  
42 unemployment for the purposes of this subsection:

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

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

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

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

8 The waiting period provided by this subsection shall not apply to  
9 benefit years commencing on or after January 1, 2002. An  
10 individual whose total benefit amount was reduced by the  
11 application of the waiting period to a claim which occurred on or  
12 after January 1, 2002 and before the effective date of P.L.2002,  
13 c.13, shall be permitted to file a claim for the additional benefits  
14 attributable to the waiting period in the form and manner prescribed  
15 by the division, but not later than the 180th day following the  
16 effective date of P.L.2002, c.13 unless the division determines that  
17 there is good cause for a later filing.

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

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

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

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

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

27 (B) If the individual has not met the requirements of  
28 subparagraph (A) of this paragraph (4), earned remuneration not  
29 less than an amount 1,000 times the minimum wage in effect  
30 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
31 1 of the calendar year preceding the calendar year in which the  
32 benefit year commences, which amount shall be adjusted to the next  
33 higher multiple of \$100 if not already a multiple thereof.

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

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

46 (B) Has earned remuneration not less than an amount 1,000  
47 times the minimum wage in effect pursuant to section 5 of  
48 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year

1 preceding the calendar year in which the benefit year commences,  
2 which amount shall be adjusted to the next higher multiple of \$100  
3 if not already a multiple thereof; or

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

6 (6) With respect to benefit years commencing on or after June 1,  
7 2020<sup>1</sup>, until the time that federal financing of unemployment  
8 benefits in this State, pursuant to the "Coronavirus Aid, Relief, and  
9 Economic Security Act," Pub. Law 116-136 ceases<sup>1</sup>, the individual,  
10 during his base year as defined in subsection (c) of R.S.43:21-19:

11 (A) Has established at least 20 base weeks as defined in  
12 <sup>1</sup>[paragraphs (2) and (3)] paragraph (4)<sup>1</sup> of subsection (t) of  
13 R.S.43:21-19; or

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

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

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

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

47 (A) For any period during which such individual is not under the  
48 care of a legally licensed physician, dentist, optometrist, podiatrist,

1 practicing psychologist, advanced practice nurse, or chiropractor,  
2 who, when requested by the division, shall certify within the scope  
3 of the practitioner's practice, the disability of the individual, the  
4 probable duration thereof, and, where applicable, the medical facts  
5 within the practitioner's knowledge;

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

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

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

17 (E) For any week with respect to which or part of which the  
18 individual has received or is seeking disability benefits under the  
19 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-  
20 25 et al.);

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

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

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

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

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

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

19 (3) Benefit payments under this subsection (f) shall be charged  
20 to and paid from the State disability benefits fund established by the  
21 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-  
22 25 et al.), and shall not be charged to any employer account in  
23 computing any employer's experience rate for contributions payable  
24 under this chapter.

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

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

44 (2) With respect to weeks of unemployment beginning after  
45 September 3, 1982, on the basis of service performed in any other  
46 capacity for an educational institution, benefits shall not be paid on  
47 the basis of such services to any individual for any week which  
48 commences during a period between two successive academic years

1 or terms if such individual performs such services in the first of  
2 such academic years or terms and there is a reasonable assurance  
3 that such individual will perform such services in the second of  
4 such academic years or terms, except that if benefits are denied to  
5 any individual under this paragraph (2) and the individual was not  
6 offered an opportunity to perform these services for the educational  
7 institution for the second of any academic years or terms, the  
8 individual shall be entitled to a retroactive payment of benefits for  
9 each week for which the individual filed a timely claim for benefits  
10 and for which benefits were denied solely by reason of this clause;

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

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

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

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

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

45 An individual who is tenured or holds tenure track status is  
46 considered to have reasonable assurance, unless advised otherwise.  
47 For the purposes of this subsection, tenure track status means a

1 probationary faculty employee having an opportunity to be  
2 reviewed for tenure.

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

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

28 (i) (1) Benefits shall not be paid on the basis of services  
29 performed by an alien unless such alien is an individual who was  
30 lawfully admitted for permanent residence at the time the services  
31 were performed and was lawfully present for the purpose of  
32 performing the services or otherwise was permanently residing in  
33 the United States under color of law at the time the services were  
34 performed (including an alien who is lawfully present in the United  
35 States as a result of the application of the provisions of section  
36 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and  
37 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any  
38 modifications of the provisions of section 3304(a)(14) of the  
39 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) **【**as  
40 **provided by Pub.L.94-566】**, which specify other conditions or other  
41 effective dates than stated herein for the denial of benefits based on  
42 services performed by aliens and which modifications are required  
43 to be implemented under State law as a condition for full tax credit  
44 against the tax imposed by the Federal Unemployment Tax Act,  
45 shall be deemed applicable under the provisions of this section.

46 (2) Any data or information required of individuals applying for  
47 benefits to determine whether benefits are not payable to them

1 because of their alien status shall be uniformly required from all  
2 applicants for benefits.

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

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

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

15

16 <sup>1</sup>~~6.~~ 5.<sup>1</sup> R.S.43:21-6 is amended to read as follows:

17 43:21-6. (a) Filing. (1) Claims for benefits shall be made in  
18 accordance with such regulations as the Director of the Division of  
19 Unemployment and Temporary Disability Insurance of the  
20 Department of Labor and Workforce Development of the State of  
21 New Jersey may approve. Each employer shall post and maintain  
22 on his premises printed notices of his subject status, of such design,  
23 in such numbers and at such places as the director of the division  
24 may determine to be necessary to give notice thereof to persons in  
25 the employer's service. Each employer shall give to each individual  
26 at the time he becomes unemployed, for any reason, whether the  
27 unemployment is permanent or temporary, or, if the employer  
28 provides the individual an advanced notification of a layoff, at the  
29 time of that notification, a printed copy of benefit instructions. The  
30 benefit instructions given to the individual shall include, but not be  
31 limited to, the following information: (A) the date upon which the  
32 individual becomes unemployed, and, in the case that the  
33 unemployment is temporary, to the extent possible, the date upon  
34 which the individual is expected to be recalled to work; and (B) that  
35 the individual may lose some or all of the benefits to which he is  
36 entitled if he fails to file a claim in a timely manner. Both the  
37 aforesaid notices and instructions, including information detailing  
38 the time sensitivity of filing a claim, shall be supplied by the  
39 division to employers without cost to them. Nothing in this section  
40 shall be construed so as to require an employer to re-hire an  
41 individual formerly in the employer's service.

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



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

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

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

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

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

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

45       Whenever an initial determination is based upon information  
46 other than that supplied by an employer because such employer  
47 failed to respond to the deputy's request for information, such initial  
48 determination and any subsequent determination thereunder shall be

1 incontestable by the noncomplying employer, as to any charges to  
2 his employer's account because of benefits paid prior to the close of  
3 the calendar week following the receipt of his reply. Such initial  
4 determination shall be altered if necessary upon receipt of  
5 information from the employer, and any benefits paid or payable  
6 with respect to weeks occurring subsequent to the close of the  
7 calendar week following the receipt of the employer's reply shall be  
8 paid in accordance with such altered initial determination.

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

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

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

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

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

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

32 Unless the claimant or any interested party, within seven  
33 calendar days after delivery of notification of an initial  
34 determination or within 10 calendar days after such notification was  
35 mailed to his or their last-known address and addresses, files an  
36 appeal from such decision, such decision shall be final and benefits  
37 shall be paid or denied in accordance therewith, except for such  
38 determinations as may be altered in benefit amounts or duration as  
39 provided in this paragraph. Benefits payable for periods pending an  
40 appeal and not in dispute shall be paid as such benefits accrue;  
41 provided that insofar as any such appeal is or may be an appeal  
42 from a determination to the effect that the claimant is disqualified  
43 under the provisions of R.S.43:21-5 or any amendments thereof or  
44 supplements thereto, benefits pending determination of the appeal  
45 shall be withheld only for the period of disqualification as provided  
46 for in said section, and notwithstanding such appeal, the benefits  
47 otherwise provided by this act shall be paid for the period  
48 subsequent to such period of disqualification; and provided, also,

1 that if there are two determinations of entitlement, benefits for the  
2 period covered by such determinations shall be paid regardless of  
3 any appeal which may thereafter be taken, but no employer's  
4 account shall be charged with benefits so paid, if the decision is  
5 finally reversed.

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

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

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

44 (c) Appeals. Unless such appeal is withdrawn, an appeal  
45 tribunal, after affording the parties reasonable opportunity for fair  
46 hearing, shall affirm or modify the findings of fact and the  
47 determination. The parties shall be duly notified of such tribunal's  
48 decision, together with its reasons therefor, which shall be deemed

1 to be the final decision of the board of review, unless further appeal  
2 is initiated pursuant to subsection (e) of this section within 10 days  
3 after the date of notification or mailing of the decision for any  
4 decision made on or before December 1, 2010, or within 20 days  
5 after the date of notification or mailing of such decision for any  
6 decision made after December 1, 2010.

7 (d) Appeal tribunals. To hear and decide disputed benefit  
8 claims, including appeals from determinations with respect to  
9 demands for refunds of benefits under subsection (d) of R.S.43:21-  
10 16, the director with the approval of the Commissioner of Labor and  
11 Workforce Development shall establish impartial appeal tribunals  
12 consisting of a salaried body of examiners under the supervision of  
13 a Chief Appeals Examiner, all of whom shall be appointed pursuant  
14 to the provisions of Title 11A of the New Jersey Statutes, Civil  
15 Service and other applicable statutes.

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

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

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

1 (h) Court review. Any decision of the board of review shall  
2 become final as to any party upon the mailing of a copy thereof to  
3 such party or to his attorney, or upon the mailing of a copy thereof  
4 to such party at his last-known address. The Division of  
5 Unemployment and Temporary Disability Insurance and any party  
6 to a proceeding before the board of review may secure judicial  
7 review of the final decision of the board of review. Any party not  
8 joining in the appeal shall be made a defendant; the board of review  
9 shall be deemed to be a party to any judicial action involving the  
10 review of, or appeal from, any of its decisions, and may be  
11 represented in any such judicial action by any qualified attorney,  
12 who may be a regular salaried employee of the board of review or  
13 has been designated by it for that purpose, or, at the board of  
14 review's request, by the Attorney General.

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

25 (j) With respect to benefit payments made on or after October  
26 22, 2013, an employer's account shall not be relieved of charges  
27 related to a benefit payment that was made erroneously from the  
28 division if it is determined that:

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

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

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

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

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

47 "Pattern of failing" means repeated documented failure on the  
48 part of the employer, or an agent of the employer, to respond to

1 requests from the division to the employer or employer's agent for  
2 information related to a claim for benefits, except that an employer,  
3 or an agent of an employer, shall not be determined to have engaged  
4 in a "pattern of failing" if the number of failures to respond to  
5 requests from the division for information related to claims for  
6 benefits during the previous 365 calendar days is less than three, or  
7 if the number of failures is less than two percent of the number of  
8 requests from the division, whichever is greater.

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

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

19

20 <sup>1</sup>[7.] 6.<sup>1</sup> R.S.43:21-19 is amended to read as follows:

21 43:21-19. Definitions. As used in this chapter (R.S.43:21-  
22 1 et seq.), unless the context clearly requires otherwise:

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

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

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

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

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

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

37 (2) With respect to a benefit year commencing on or after June  
38 1, 1990 for an individual who immediately preceding the benefit  
39 year was subject to a disability compensable under the provisions of  
40 the "Temporary Disability Benefits Law," P.L.1948, c.110  
41 (C.43:21-25 et seq.), "base year" shall mean the first four of the last  
42 five completed calendar quarters immediately preceding the  
43 individual's period of disability, if the employment held by the  
44 individual immediately preceding the period of disability is no  
45 longer available at the conclusion of that period and the individual  
46 files a valid claim for unemployment benefits after the conclusion  
47 of that period. For the purposes of this paragraph, "period of  
48 disability" means the period defined as a period of disability by

1 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
2 c.110 (C.43:21-27). An individual who files a claim under the  
3 provisions of this paragraph (2) shall not be regarded as having left  
4 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

5 (3) With respect to a benefit year commencing on or after June  
6 1, 1990 for an individual who immediately preceding the benefit  
7 year was subject to a disability compensable under the provisions of  
8 the workers' compensation law (chapter 15 of Title 34 of the  
9 Revised Statutes), "base year" shall mean the first four of the last  
10 five completed calendar quarters immediately preceding the  
11 individual's period of disability, if the period of disability was not  
12 longer than two years, if the employment held by the individual  
13 immediately preceding the period of disability is no longer  
14 available at the conclusion of that period and if the individual files a  
15 valid claim for unemployment benefits after the conclusion of that  
16 period. For the purposes of this paragraph, "period of disability"  
17 means the period from the time at which the individual becomes  
18 unable to work because of the compensable disability until the time  
19 that the individual becomes able to resume work and continue work  
20 on a permanent basis. An individual who files a claim under the  
21 provisions of this paragraph (3) shall not be regarded as having left  
22 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

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

44 (f) "Contributions" means the money payments to the State  
45 Unemployment Compensation Fund, required by R.S.43:21-7.  
46 "Payments in lieu of contributions" means the money payments to  
47 the State Unemployment Compensation Fund by employers electing  
48 or required to make payments in lieu of contributions, as provided



1 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-  
2 7.3).

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

25 (h) "Employer" means:

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

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

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

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

46 (5) Any employing unit for which service in employment as  
47 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December

1 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is  
2 performed after December 31, 1977;

3 (6) Any employing unit for which service in employment as  
4 defined in R.S.43:21-19 (i) (1) ~~[(c)]~~ (C) is performed after  
5 December 31, 1971 and which in either the current or the preceding  
6 calendar year paid remuneration for employment in the amount of  
7 \$1,000.00 or more;

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

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

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

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

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

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

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

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

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

38 (A) Any service performed prior to January 1, 1972, which was  
39 employment as defined in the "unemployment compensation law"  
40 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
41 provisions of this subsection, service performed on or after January  
42 1, 1972, including service in interstate commerce, performed for  
43 remuneration or under any contract of hire, written or oral, express  
44 or implied.

45 (B) (i) Service performed after December 31, 1971 by an  
46 individual in the employ of this State or any of its instrumentalities  
47 or in the employ of this State and one or more other states or their  
48 instrumentalities for a hospital or institution of higher education

1 located in this State, if such service is not excluded from  
2 "employment" under paragraph (D) below.

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

10 (C) Service performed after December 31, 1971 by an individual  
11 in the employ of a religious, charitable, educational, or other  
12 organization, which is excluded from "employment" as defined in  
13 the Federal Unemployment Tax Act, solely by reason of section  
14 3306 (c)(8) of that act, if such service is not excluded from  
15 "employment" under paragraph (D) below.

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

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

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

26 (iii) Prior to January 1, 1978, in the employ of a school which  
27 is not an institution of higher education, and after December 31,  
28 1977, in the employ of a governmental entity referred to in  
29 R.S.43:21-19 (i) (1) (B), if such service is performed by an  
30 individual in the exercise of duties

31 (aa) as an elected official;

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

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

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

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

43 (iv) By an individual receiving rehabilitation or remunerative  
44 work in a facility conducted for the purpose of carrying out a  
45 program of rehabilitation of individuals whose earning capacity is  
46 impaired by age or physical or mental deficiency or injury or  
47 providing remunerative work for individuals who because of their

1 impaired physical or mental capacity cannot be readily absorbed in  
2 the competitive labor market;

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

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

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

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

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

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

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

45 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed  
46 after January 1, 1972 by an officer or member of the crew of an  
47 American vessel or American aircraft on or in connection with such  
48 vessel or aircraft, if the operating office from which the operations

1 of such vessel or aircraft operating within, or within and without,  
2 the United States are ordinarily and regularly supervised, managed,  
3 directed, and controlled, is within this State.

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

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

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

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

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

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

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

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

46 (iii) For the purposes of subparagraph (I) (i) in the case of any  
47 individual who is furnished by a crew leader to perform service in

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

1 entire service of such individual shall be deemed to be employment  
2 subject to this chapter (R.S.43:21-1 et seq.).

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

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

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

9 (6) Services performed by an individual for remuneration shall  
10 be deemed to be employment subject to this chapter (R.S.43:21-  
11 1 et seq.) unless and until it is shown to the satisfaction of the  
12 division that:

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

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

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

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

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

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

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

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

- 1 (C) Service performed by an individual in the employ of his son,  
2 daughter or spouse, and service performed by a child under the age  
3 of 18 in the employ of his father or mother;
- 4 (D) Service performed prior to January 1, 1978, in the employ of  
5 this State or of any political subdivision thereof or of any  
6 instrumentality of this State or its political subdivisions, except as  
7 provided in R.S.43:21-19 (i) (1) (B) above, and service in the  
8 employ of the South Jersey Port Corporation or its successors;
- 9 (E) Service performed in the employ of any other state or its  
10 political subdivisions or of an instrumentality of any other state or  
11 states or their political subdivisions to the extent that such  
12 instrumentality is with respect to such service exempt under the  
13 Constitution of the United States from the tax imposed under the  
14 Federal Unemployment Tax Act, as amended, except as provided in  
15 R.S.43:21-19 (i) (1) (B) above;
- 16 (F) Service performed in the employ of the United States  
17 Government or of any instrumentality of the United States exempt  
18 under the Constitution of the United States from the contributions  
19 imposed by the "unemployment compensation law," except that to  
20 the extent that the Congress of the United States shall permit states  
21 to require any instrumentalities of the United States to make  
22 payments into an unemployment fund under a state unemployment  
23 compensation law, all of the provisions of this act shall be  
24 applicable to such instrumentalities, and to service performed for  
25 such instrumentalities, in the same manner, to the same extent and  
26 on the same terms as to all other employers, employing units,  
27 individuals and services; provided that if this State shall not be  
28 certified for any year by the Secretary of Labor of the United States  
29 under section 3304 of the federal Internal Revenue Code of 1986  
30 (26 U.S.C. s.3304), the payments required of such instrumentalities  
31 with respect to such year shall be refunded by the division from the  
32 fund in the same manner and within the same period as is provided  
33 in R.S.43:21-14 (f) with respect to contributions erroneously paid to  
34 or collected by the division;
- 35 (G) Services performed in the employ of fraternal beneficiary  
36 societies, orders, or associations operating under the lodge system  
37 or for the exclusive benefit of the members of a fraternity itself  
38 operating under the lodge system and providing for the payment of  
39 life, sick, accident, or other benefits to the members of such society,  
40 order, or association, or their dependents;
- 41 (H) Services performed as a member of the board of directors, a  
42 board of trustees, a board of managers, or a committee of any bank,  
43 building and loan, or savings and loan association, incorporated or  
44 organized under the laws of this State or of the United States, where  
45 such services do not constitute the principal employment of the  
46 individual;



- 1 (I) Service with respect to which unemployment insurance is  
2 payable under an unemployment insurance program established by  
3 an Act of Congress;
- 4 (J) Service performed by agents of mutual fund brokers or  
5 dealers in the sale of mutual funds or other securities, by agents of  
6 insurance companies, exclusive of industrial insurance agents or by  
7 agents of investment companies, if the compensation to such agents  
8 for such services is wholly on a commission basis;
- 9 (K) Services performed by real estate salesmen or brokers who  
10 are compensated wholly on a commission basis;
- 11 (L) Services performed in the employ of any veterans'  
12 organization chartered by Act of Congress or of any auxiliary  
13 thereof, no part of the net earnings of which organization, or  
14 auxiliary thereof, inures to the benefit of any private shareholder or  
15 individual;
- 16 (M) Service performed for or in behalf of the owner or operator  
17 of any theater, ballroom, amusement hall or other place of  
18 entertainment, not in excess of 10 weeks in any calendar year for  
19 the same owner or operator, by any leader or musician of a band or  
20 orchestra, commonly called a "name band," entertainer, vaudeville  
21 artist, actor, actress, singer or other entertainer;
- 22 (N) Services performed after January 1, 1973 by an individual  
23 for a labor union organization, known and recognized as a union  
24 local, as a member of a committee or committees reimbursed by the  
25 union local for time lost from regular employment, or as a part-time  
26 officer of a union local and the remuneration for such services is  
27 less than \$1,000.00 in a calendar year;
- 28 (O) Services performed in the sale or distribution of merchandise  
29 by home-to-home salespersons or in-the-home demonstrators whose  
30 remuneration consists wholly of commissions or commissions and  
31 bonuses;
- 32 (P) Service performed in the employ of a foreign government,  
33 including service as a consular, nondiplomatic representative, or  
34 other officer or employee;
- 35 (Q) Service performed in the employ of an instrumentality  
36 wholly owned by a foreign government if (i) the service is of a  
37 character similar to that performed in foreign countries by  
38 employees of the United States Government or of an instrumentality  
39 thereof, and (ii) the division finds that the United States Secretary  
40 of State has certified to the United States Secretary of the Treasury  
41 that the foreign government, with respect to whose instrumentality  
42 exemption is claimed, grants an equivalent exemption with respect  
43 to similar services performed in the foreign country by employees  
44 of the United States Government and of instrumentalities thereof;
- 45 (R) Service in the employ of an international organization  
46 entitled to enjoy the privileges, exemptions and immunities under  
47 the International Organizations Immunities Act  
48 (22 U.S.C. s.288 et seq.);

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

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

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

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

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

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

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

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

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

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

21 (A) The limousine franchisee is incorporated;

22 (B) The franchisee is subject to regulation by the Interstate  
23 Commerce Commission;

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

27 (D) The franchisee registers with the Department of Labor and  
28 Workforce Development and receives an employer registration  
29 number.

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

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

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

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

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

8 (m) "Unemployment."

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

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

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

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

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

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

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

- 1 (p) "Remuneration" means all compensation for personal  
2 services, including commission and bonuses and the cash value of  
3 all compensation in any medium other than cash.
- 4 (q) "Week" means for benefit years commencing on or after  
5 October 1, 1984, the calendar week ending at midnight Saturday, or  
6 as the division may by regulation prescribe.
- 7 (r) "Calendar quarter" means the period of three consecutive  
8 calendar months ending March 31, June 30, September 30, or  
9 December 31.
- 10 (s) "Investment company" means any company as defined in  
11 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).
- 12 (t) (1) (Deleted by amendment, P.L.2001, c.17).
- 13 (2) **["Base week,"** commencing on or after January 1, 1996 and  
14 before January 1, 2001, means:
- 15 (A) Any calendar week during which the individual earned in  
16 employment from an employer remuneration not less than an  
17 amount which is 20% of the Statewide average weekly  
18 remuneration defined in subsection (c) of R.S.43:21-3 which  
19 amount shall be adjusted to the next higher multiple of \$1.00 if not  
20 already a multiple thereof, except that if in any calendar week an  
21 individual subject to this subparagraph (A) is in employment with  
22 more than one employer, the individual may in that calendar week  
23 establish a base week with respect to each of the employers from  
24 whom the individual earns remuneration equal to not less than the  
25 amount defined in this subparagraph (A) during that week; or
- 26 (B) If the individual does not establish in his base year 20 or  
27 more base weeks as defined in subparagraph (A) of this paragraph  
28 (2), any calendar week of an individual's base year during which the  
29 individual earned in employment from an employer remuneration  
30 not less than an amount 20 times the minimum wage in effect  
31 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
32 1 of the calendar year preceding the calendar year in which the  
33 benefit year commences, which amount shall be adjusted to the next  
34 higher multiple of \$1.00 if not already a multiple thereof, except  
35 that if in any calendar week an individual subject to this  
36 subparagraph (B) is in employment with more than one employer,  
37 the individual may in that calendar week establish a base week with  
38 respect to each of the employers from whom the individual earns  
39 remuneration not less than the amount defined in this subparagraph  
40 (B) during that week. **】** (Deleted by amendment, P.L. \_\_\_\_\_,  
41 c. )(pending before the Legislature as this bill)
- 42 (3) "Base week," commencing on or after January 1, 2001 and  
43 before January 1, 2020<sup>1</sup>, and after the time that federal financing of  
44 unemployment benefits in this State, pursuant to the "Coronavirus  
45 Aid, Relief, and Economic Security Act," Pub. Law 116-136,  
46 ceases<sup>1</sup>, means any calendar week during which the individual  
47 earned in employment from an employer remuneration not less than  
48 an amount 20 times the minimum wage in effect pursuant to section

1 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar  
2 year preceding the calendar year in which the benefit year  
3 commences, which amount shall be adjusted to the next higher  
4 multiple of \$1.00 if not already a multiple thereof, except that if in  
5 any calendar week an individual subject to this paragraph (3) is in  
6 employment with more than one employer, the individual may in  
7 that calendar week establish a base week with respect to each of the  
8 employers from whom the individual earns remuneration equal to  
9 not less than the amount defined in this paragraph (3) during that  
10 week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45

46 <sup>1</sup>[8.] 7.<sup>1</sup> (New section) Sections <sup>1</sup>[8] 7<sup>1</sup> through <sup>1</sup>[11] 10<sup>1</sup> of  
47 this act shall be known and may be cited as the "Employee Job-  
48 Sharing Furlough Protection Act."

1       **[9.] 8.1** (New section) To facilitate the providing of the  
2 maximum possible benefits for employees and savings for  
3 employers in the State from the federal financing of unemployment  
4 benefits provided in connection with short-time compensation  
5 programs pursuant to section 2108 of the “Coronavirus Aid, Relief,  
6 and Economic Security Act,” Pub. Law 116-136 and from federal  
7 financing of emergency increases in unemployment benefits under  
8 section 2104 of that act, the division shall, during the period from  
9 the effective date of this act until December 31, 2020, undertake the  
10 following actions:

11       a. Make available to all employers who may be eligible to  
12 participate in a shared work program pursuant to P.L.2011, c.154  
13 (C.43:21-20.3 et seq.) for which full federal funding of short-time  
14 unemployment benefits is available pursuant to section 2108 of the  
15 “Coronavirus Aid, Relief, and Economic Security Act,” Pub. Law  
16 116-136, a guidance document which explains:

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

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

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

33       c. Permit an application for approval of a shared work program  
34 to be submitted to, and approved by, the division in advance of the  
35 date on which reduced hours of employment are to commence to  
36 permit payment of benefits under the program immediately upon  
37 that commencement, or, as an alternative, permit the payment of  
38 benefits under a shared work program to commence immediately  
39 upon the date of an application by an eligible employer for approval  
40 of the program, and pay, for any period of shared work under the  
41 program, amounts of benefits which are based on determinations  
42 made by the division or based on preliminary determinations made  
43 by the employer pursuant to paragraph (2) of subsection a. of this  
44 section, which the division shall review and, if appropriate, revise,  
45 and shall subsequently pay any underpayment in benefits, or collect  
46 from subsequent benefits any overpayment in benefits, including  
47 the collecting of an amount equal to all benefits paid, if the  
48 application is rejected, without penalty to the employees and, if the



1 division finds that the employer made a good faith effort to follow  
2 the division's guidance, impose no penalty on the employer for the  
3 overpayment;

4 d. Permit employers who have fully laid off employees to  
5 resume employing those employees on a partial basis in a manner  
6 consistent with the requirements of P.L.2011, c.154 (C.43:21-20.3  
7 et seq.), and establish a shared work program to make short-time  
8 benefits available to those employees;

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

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

24

25 <sup>1</sup>**[10.] 9.**<sup>1</sup> (New section) A public employee enrolled in a  
26 State-administered retirement system or fund, and the employer of  
27 that employee, shall be required to make contributions to the system  
28 or fund during the period that the employee is on a furlough  
29 pursuant to section <sup>1</sup>**[9] 8**<sup>1</sup> of this act, P.L. , c. (C. )  
30 (pending before the Legislature as this bill) and P.L.2011, c.154  
31 (C.43:21-20.3 et seq.). The contributions shall be based on the base  
32 salary or compensation, as defined by the retirement system or  
33 fund, that would have been paid to the employee if the employee  
34 had not been on furlough. The employee's service credit as a  
35 member of the system or fund shall include the period of furlough.  
36 For all purposes under the retirement system or fund, the period of  
37 furlough and the base salary or compensation upon which  
38 contribution were made during the period of furlough shall be  
39 recognized by the retirement system or fund. The seniority rights  
40 and health benefits coverage of an employee who participates in  
41 this furlough program shall continue and shall not be adversely  
42 affected by participation. The employer shall enter into a written  
43 agreement with any collective bargaining agent representing the  
44 employees regarding the terms of the program, including terms  
45 regarding attendance in training programs while receiving short-  
46 time benefits, and provide certification, and the copy, of the  
47 agreement to the division as required by P.L.2011, c.154 (C.43:21-

1 20.3 et seq.). This section shall not be construed to conflict with any  
2 applicable provisions of federal law.

3  
4 <sup>1</sup>~~11.1~~ 10.1 (New section) a. The division shall, not later than  
5 March 31, 2021, issue, make public on the website of the  
6 Department of Labor and Workforce Development, and submit to  
7 the Governor and Legislature, pursuant to section 2 of P.L.1991,  
8 c.164 (C.52:14-19.1), a report on all shared work programs  
9 approved during calendar year 2020 pursuant to P.L.2011, c.154  
10 (C.43:21-20.3 et seq.) and the impact of federal financing of those  
11 programs pursuant to section 2108 of the “Coronavirus Aid, Relief,  
12 and Economic Security Act,” Pub. Law 116-136 and of federal  
13 financing pursuant to section 2104 of that act of emergency  
14 increases in unemployment benefits for participants in approved  
15 shared work programs.

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

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

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

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

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

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

40 (6) In the case of governmental employers and, separately,  
41 nonprofit employers, the portion of the participating employers that  
42 elected to make payments in lieu of contributions pursuant to  
43 section 3 of P.L.1971, c.346 (C.43:21-7.2) or section 4 of P.L.1971,  
44 c.346 (C.43:21-7.3), the portion of participating employees who  
45 were employed by those employers, the portion of benefits that  
46 were paid by those employers, and the total reduction in cost to  
47 those employers due to federal financing of short-time  
48 compensation.

1 c. The report shall provide an estimate of the total cost of  
2 unemployment benefits to the unemployment compensation fund if  
3 employers who used federally-funded, approved shared work  
4 programs to partially lay off employees had instead reduced work  
5 hours by the same amount, by fully laying off a smaller number of  
6 employees, and the effect that would have had on employer  
7 contribution rates.

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

12  
13 <sup>1</sup>§12. Section 2 of P.L.1948, c.110 (C.43:21-26) is amended to  
14 read as follows:

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

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

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

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

1 While the enactment of that law has provided stable protection  
2 for New Jersey's disabled workers, very few workers are protected  
3 from income losses caused by the need to take time off from work  
4 to care for family members who are incapable of self-care,  
5 including newborn and newly-adopted children. The growing  
6 portion of middle-income families in which all adult family  
7 members work, largely due to economic necessity, points to the  
8 desperate need for replacement income when a working family  
9 member must take time to care for family members who are unable  
10 to take care of themselves. Moreover, the United States is the only  
11 industrialized nation in the world which does not have a mandatory  
12 workplace-based program for such income support. It is therefore  
13 desirable and necessary to fill the gap in existing provisions for  
14 protection against the loss of earnings caused by involuntary  
15 unemployment, by extending such protection to meet the hazard of  
16 earnings loss due to inability to work caused by nonoccupational  
17 sickness, accidents, or other disabilities of workers and members of  
18 their families. Developing systems that help families adapt to the  
19 competing interests of work and home not only benefits workers,  
20 but also benefits employers by reducing employee turnover and  
21 increasing worker productivity.

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

40 **【**While the Legislature recognizes the pressing need for benefits  
41 for workers taking leave to care for family members incapable of  
42 self-care, it also finds that the need of workers for leave during their  
43 own disability continues to be especially acute, as a disabled worker  
44 has less discretion about taking time off from work than a worker  
45 caring for a family member. Notwithstanding any interpretation of  
46 law which may be construed as providing a worker with rights to  
47 take action against an employer who fails or refuses to restore the  
48 worker to employment after the worker's own disability, the

1 Legislature does not intend that the policy established by P.L.2008,  
2 c.17 (C.43:21-39.1 et al.) of providing benefits for workers during  
3 periods of family temporary disability leave to care for family  
4 members incapable of self-care be construed as granting any worker  
5 an entitlement to be restored by the employer to employment held  
6 by the worker prior to taking family temporary disability leave or  
7 any right to take action, in tort, or for breach of an implied  
8 provision of the employment agreement, or under common law,  
9 against an employer who fails or refuses to restore the worker to  
10 employment after the family temporary disability leave, and the  
11 Legislature does not intend that the policy of providing benefits  
12 during family temporary disability leave be construed as increasing,  
13 reducing or otherwise modifying any entitlement of a worker to  
14 return to employment or right of the worker to take action under the  
15 provisions of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1  
16 et seq.).**】**

17 Since the enactment of the "Temporary Disability Benefits Law,"  
18 P.L.1948, c.110 (C.43:21-25 et al.), the State government-operated  
19 State temporary disability benefits plan, or "State plan," has proven  
20 to be highly efficient and cost effective in providing temporary  
21 disability benefits to New Jersey workers. The State plan  
22 guarantees the availability of coverage for all employers, regardless  
23 of experience, with low overhead costs and a rapid processing of  
24 claims and appeals by knowledgeable, impartial public employees.  
25 Consequently, the percentage of all employers using the State plan  
26 increased from 64% in 1952 to 98% in 2006, while the percentage  
27 of employees covered by the State plan increased from 28% to 83%.  
28 A publicly-operated, nonprofit State plan is therefore indispensable  
29 to achieving the goals of the "Temporary Disability Benefits Law,"  
30 P.L.1948, c.110 (C.43:21-25 et al.).  
31 (cf: P.L.2019, c.37, s.7)**】<sup>1</sup>**

32

33 <sup>1</sup>**【**13. Section 10 of P.L.2008, c.17 (C.43:21-39.1) is amended to  
34 read as follows:

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

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

44 c. The employer of an individual may, notwithstanding any  
45 other provision of law, including the provisions of N.J.S.18A:30-1  
46 et seq., permit the individual, during a period of family temporary  
47 disability leave, to use any paid sick leave, vacation time or other  
48 leave at full pay made available by the employer before the

1 individual uses disability benefits for family temporary disability  
2 leave pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.). Nothing in  
3 P.L.2008, c.17 (C.43:21-39.1 et al.) shall be construed as nullifying  
4 any provision of an existing collective bargaining agreement or  
5 employer policy, or preventing any new provision of a collective  
6 bargaining agreement or employer policy, which provides  
7 employees more generous leave or gives employees greater rights to  
8 select which kind of leave is used or select the order in which the  
9 different kinds of leave are used. Nothing in P.L.2008, c.17  
10 (C.43:21-39.1 et al.) shall be construed as preventing an employer  
11 from providing more generous benefits than are provided under  
12 P.L.2008, c.17 (C.43:21-39.1 et al.) or providing benefits which  
13 supplement the benefits provided under P.L.2008, c.17 (C.43:21-  
14 39.1 et al.) for some or all of the employer's employees.

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

44 e. An employee taking family temporary disability leave or an  
45 employer from whom the employee is taking the leave shall have  
46 the same right to appeal a determination of a benefit for the family  
47 temporary disability leave made under P.L.2008, c.17 (C.43:21-39.1  
48 et al.) as an employee or employer has to appeal a determination of

1 a benefit for the disability of the employee under the "Temporary  
2 Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and  
3 any regulations adopted pursuant to the "Temporary Disability  
4 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

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

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

1 eligible for benefits pursuant to this section; and (4) at any time,  
2 upon the first request of the employee.

3 h. With respect to any period of family temporary disability  
4 leave commencing on or after October 4, 2019 if an individual  
5 knows in advance when the period will commence, the individual  
6 may notify the employer of the anticipated period of family  
7 temporary disability leave and submit to the division a claim for  
8 benefits for that period, which shall include a statement of when the  
9 period will commence and any certification required pursuant to  
10 subsection b. of section 11 of P.L.2008, c.17 (C.43:21-39.2), prior  
11 to, but not more than 60 days prior to, the date that the period will  
12 commence. The division shall process that claim immediately and,  
13 upon finding that the claim is valid, shall pay the benefit upon the  
14 commencement of the period of family temporary disability leave,  
15 except that if the division receives the claim less than 30 days  
16 before the commencement of the period, the division shall make the  
17 payment not more than 30 days after the receipt of the claim. The  
18 periods of family temporary disability leave to which the provisions  
19 of this subsection apply shall include, but not be limited to, any of  
20 the following if the commencement date of the leave is known in  
21 advance: periods of leave for care of a child of the individual after  
22 adoption, the placement of a child into foster care, or childbirth,  
23 including childbirth under a valid agreement between the individual  
24 and a gestational carrier; periods of leave for scheduled medical  
25 procedures, treatments, or appointments for a family member of the  
26 individual; and periods of leave for scheduled ongoing care of a  
27 family member of the individual. If the individual did not establish  
28 enough base weeks or have enough total earnings during the base  
29 year preceding the week the individual submits the claim, the  
30 division shall notify the individual that the individual may file the  
31 claim again upon or after the commencement of the period of  
32 family temporary disability leave and the division shall then  
33 reconsider the individual's eligibility for benefits based on the base  
34 year preceding the week in which the period of family temporary  
35 disability leave commences.

36 (cf: P.L.2019, c.37, s.13)]<sup>1</sup>

37

38 <sup>1</sup>[14. Section 24 of P.L.2019, c.37 (C.43:21-55.2) is amended to  
39 read as follows:

40 24. a. An employer shall not discharge, harass, threaten, or  
41 otherwise discriminate or retaliate against an employee with respect  
42 to the compensation, terms, conditions, or privileges of employment  
43 on the basis that the employee requested or took any temporary  
44 disability benefits pursuant to P.L.1948, c.110 (C.43:21-25 et al.),  
45 or family temporary disability leave benefits pursuant to P.L.2008,  
46 c.17 (C.43:21-39.1 et al.), including retaliation by refusing to  
47 **[restore]** reinstate the employee to employment following a period  
48 of leave[, except that, pursuant to section 2 of P.L.1948, c.110



1 (C.43:21-26), nothing in this section or any other section of  
2 P.L.1948, c.110 (C.43:21-25 et al.) or P.L.2008, c.17 (C.43:21-39.1  
3 et al.) shall be construed as increasing, reducing or otherwise  
4 modifying any entitlement provided to a worker by the provisions  
5 of the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.) to  
6 be restored to employment by the employer after a period of family  
7 temporary disability leave] in the position held when the leave  
8 commenced or an equivalent position of like seniority, status,  
9 employment benefits, pay and other terms and conditions of  
10 employment, except that if, during period of leave, the employer  
11 reduces the number of employees and that reduction would have  
12 caused the employee to have been laid off if the employee had not  
13 been on leave, the employee shall not be entitled to reinstatement,  
14 but only if the employer notifies the employee of the employee's  
15 right to file a claim for unemployment benefits after the leave  
16 period ends as provided by paragraph (2) of subsection (c) of  
17 R.S.43:21-19.

18 b. Upon a violation of subsection a. of this section, an  
19 employee or former employee may, as an alternative to any action  
20 that the employee is permitted to take for the violation pursuant to  
21 the provisions of P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17  
22 (C.43:21-39.1 et al.), or the "Family Leave Act," P.L.1989, c.261  
23 (C.34:11B-1 et seq.), institute a civil action in the Superior Court  
24 for relief]. All] in which all remedies available in common law  
25 tort actions shall be available to a prevailing plaintiff. The court  
26 may also order any or all of the following relief:

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

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

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

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

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

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

39 (cf: P.L.2019, c.37, s.24).]¹

40

41 ¹[15.] 11.¹ This act shall take effect immediately¹[, provided  
42 that:

43 a. in the case of any employer who becomes subject to the  
44 provisions of P.L.1989, c.261 (C.34:11B-1 et seq.) because of the  
45 provisions of paragraph (5) of subsection f. of section 3 of  
46 P.L.1989, c.261 (C.34:11B-3), the provisions of P.L.1989, c.261  
47 (C.34:11B-1 et seq.) shall apply to the employer only with respect

1 to periods of family leave which take place, in full or in part, after  
2 the effective date of this act; and  
3 b. in the case of any employer who becomes subject to the  
4 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) because  
5 of the changes made in that section by P.L. ,  
6 c. (C. )(pending before the Legislature as this bill) the  
7 provisions of section 24 of P.L.2019, c.37 (C.43:21-55.2) shall  
8 apply to the employer only with respect to periods of disability for  
9 family temporary disability leave which take place, in full or in  
10 part, after the effective date of this act<sup>1</sup>.