SENATE, No. 2350

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:
Senator  STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator  NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS
Concerns benefits and leave provided to workers.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning certain benefits and leave provided to workers, and amending and supplementing various parts of the statutory law.

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

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

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

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

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

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

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

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

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

(1) a vacant position that the appointing authority has previously indicated it is willing to fill;
(2) a position held by a provisional employee who does not have permanent status in another title, and if there are multiple employees at a job location, the specific position shall be determined by the appointing authority;
(3) a position held by a provisional employee who has permanent status in another title, and if there are multiple provisional employees at a job location, the specific position shall be determined based on level of the permanent title held and seniority;
(4) the position held by the employee serving in a working test period with the least seniority;
(5) in State service, and in local jurisdictions having a performance evaluation program approved by the commission, the
position held by the permanent employee whose performance rating
within the most recent 12 months in the employee's permanent title
was significantly below standards or an equivalent rating;
(6) in State service, and in local jurisdictions having a
performance evaluation program approved by the commission, the
position held by the permanent employee whose performance rating
within the most recent 12 months in the employee's permanent title
was marginally below standards or an equivalent rating; and
(7) the position held by the permanent employee with the least
seniority.

h. A permanent employee shall be granted special reemployment
rights based on the employee's permanent title at the time of the
layoff action and the employee shall be certified for reappointment
after the layoff action to the same, lateral and lower related titles.
Special reemployment rights shall be determined by the commission
in the same manner as lateral and demotional rights.
i. Notwithstanding the provisions above, at no time shall any
person on a military leave of absence for active service in the Armed
Forces of the United States or for active service in the organized
militia in time of war or emergency be laid off.
For the purposes of this section, "organized militia" means the
Army and Air National Guard of New Jersey or any other state, and
"active service" includes National Guard active service ordered by a
Governor of a state.
(cf: P.L.2019, c.286, s.3)

2. Section 9 of P.L.1996, c.138 (C.18A:7F-9) is amended to read
as follows:
9. a. In order to receive any State aid pursuant to P.L.2007,
c.260 (C.18A:7F-43 et al.), a school district, charter school,
renaissance school project, county vocational school district, or
county special services school district shall comply with the rules and
standards for the equalization of opportunity which have been or may
hereafter be prescribed by law or formulated by the commissioner
pursuant to law, including those implementing P.L.1996, c.138
related to the core curriculum content standards required by
P.L.2007, c.260 (C.18A:7F-43 et al.), and shall further comply with
any directive issued by the commissioner pursuant to section 6 of
P.L.1996, c.138 (C.18A:7F-6). The commissioner is hereby
authorized to withhold all or part of a district's State aid for failure to
comply with any rule, standard or directive. No State aid shall be
paid to any district which has not provided public school facilities for
at least 180 days during the preceding school year, but the
commissioner, for good cause shown, may remit the penalty.
b. Notwithstanding the provisions of subsection a. of this section
to the contrary, in the event that a school district is required to close
the schools of the district for more than three consecutive school days
due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner shall allow the district to apply to the 180-day requirement established pursuant to subsection a. of this section, one or more days of virtual or remote instruction provided to students on the day or days the schools of the district were closed if the program of virtual or remote instruction meets such criteria as may be established by the commissioner. A district that wants to use a program of virtual or remote instruction to meet the 180-day requirement in accordance with this subsection shall, with board of education approval, submit its proposed program of virtual or remote instruction to the commissioner within 30 days of the effective date of P.L.2020 c.27 and annually thereafter, provided however that if the school district is unable to complete and submit its proposed program within the 30-day period and the district is required to close its schools for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the commissioner may retroactively approve the program.

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

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

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

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

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

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

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

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

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

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

(3) If the schools of a school district are subject to a health-related closure for a period longer than three consecutive school days, which is the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer, then the school district shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider in effect on the date of the closure as if the services for such benefits, compensation, and emoluments
had been provided, and as if the school facilities had remained open. Payments received by a contracted service provider pursuant to this paragraph shall be used to meet the payroll and fixed costs obligations of the contracted service provider. A school district shall make all reasonable efforts to renegotiate a contract in good faith subject to this paragraph and may direct contracted service providers, who are a party to a contract and receive payments from the school district under this paragraph, to provide services on behalf of the school district which may reasonably be provided and are within the general expertise or service provision of the original contract. Negotiations shall not include indirect costs such as fuel or tolls. As a condition of negotiations, a contracted service provider shall reveal to the school district whether the entity has insurance coverage for business interruption covering work stoppages. A school district shall not be liable for the payment of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider under this paragraph for services which otherwise would not have been provided had the school facilities remained open. Nothing in this paragraph shall be construed to require a school district to make payments to a party in material breach of a contract with a contracted service provider if the breach was not due to a closure resulting from a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer.

(4) If the schools of a school district are subject to a health-related closure for a period longer than three consecutive school days, which is the result of a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer, the school district shall be obligated to make payments for benefits, compensation, and emoluments and all payments required pursuant to P.L.1968, c.243 (C.18A:6-51 et seq.), to an educational services commission, county special services school district, and a jointure commission, and under any shared services agreement and cooperative contract entered into with any other public entity. An educational services commission, county special services school district, and jointure commission shall continue to make payments of benefits, compensation, and emoluments pursuant to the terms of a contract with a contracted service provider or a shared services agreement in effect on the date of the closure as if the services for such benefits, compensation, and emoluments had been provided, and as if the school facilities had remained open. Payments received by a contracted service provider or public entity pursuant to this paragraph shall be used to meet the payroll and fixed costs obligations of the contracted service provider or public entity. An educational services commission, county special services school district, jointure commission or any lead school district under a shared services agreement or cooperative contract, shall make all reasonable efforts to renegotiate a contract in good faith subject to
this paragraph and may direct contracted service providers or public
entities, who are a party to a contract and receive payments under this
paragraph, to provide services which may reasonably be provided
and are within the general expertise or service provision of the
original contract. Negotiations shall not include indirect costs such
as fuel or tolls. As a condition of negotiations, a contracted service
provider or public entity shall reveal whether the entity has insurance
coverage for business interruption covering work stoppages.
(5) The provisions of this subsection e. shall not apply to any
employee whose weekly hours of work are reduced, and to whom
unemployment benefits are provided, pursuant to a shared work
program approved pursuant to the provisions of P.L.2011 c.154
(C.43:21-20.3 et seq.).
 f. For purposes of subsections b., c., d., and e. of this section,
“school district” shall include a charter school and a renaissance
school project.
(cf: P.L.2020, c.27, s.1)

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

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

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

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

(3) With respect to the period of time from the 1,095th day following the effective date of P.L.1989, c.261 (C.34:11B-1 et seq.) through June 30, 2019, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year; and

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

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

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

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

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

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

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

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

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

(4) in the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease, which:
(a) requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;

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

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

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

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

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

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

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

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

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

(cf: P.L.2020, c.23, s.1)
(b) Weekly benefits for unemployment.

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

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

c) Weekly benefit rate.

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

(2) Dependency benefits.

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

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

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

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

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

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

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

(d) Maximum total benefits.

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

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

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

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

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

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

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

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

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

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

(a) The individual has filed a claim at an unemployment insurance claims office and thereafter continues to report at an employment service office or unemployment insurance claims office, as directed by the division in accordance with such regulations as the division may prescribe, except that the division may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which the division finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act; provided that no such regulation shall conflict with subsection (a) of R.S.43:21-3.
(b) The individual has made a claim for benefits in accordance with the provisions of subsection (a) of R.S.43:21-6.

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

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

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

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

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

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

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

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

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

(v) The individual enrolls in vocational training, remedial education or a combination of both on a full-time basis, except that the training or education may be on a part-time basis if the individual is receiving short-time benefits pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.).
(C) If the requirements of subparagraph (B) of this paragraph (4) are met, the division shall not withhold approval of the training program for the individual for any of the following reasons:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) (1) (Deleted by amendment, P.L.2001, c.17).
(2) (Deleted by amendment, P.L.2008, c.17).
(3) (Deleted by amendment, P.L.2008, c.17).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) For any week with respect to which or part of which the
individual has received or is seeking disability benefits for a
disability of the individual under the "Temporary Disability Benefits

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

(D) For any period of family temporary disability leave for a
serious health condition of a family member of the claimant during
which the family member is not receiving inpatient care in a hospital,
hospice, or residential medical care facility and is not subject to
continuing medical treatment or continuing supervision by a health
care provider, who, when requested by the division, shall certify
within the scope of the provider's practice, the serious health
condition of the family member, the probable duration thereof, and,
where applicable, the medical facts within the provider's knowledge.
(3) Benefit payments under this subsection (f) shall be charged to and paid from the State disability benefits fund established by the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), and shall not be charged to any employer account in computing any employer's experience rate for contributions payable under this chapter.

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

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

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

(3) With respect to those services described in paragraphs (1) and (2) above, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such period or holiday recess;
(4) With respect to any services described in paragraphs (1) and
(2) above, benefits shall not be paid as specified in paragraphs (1),
(2), and (3) above to any individual who performed those services in
an educational institution while in the employ of an educational
service agency, and for this purpose the term "educational service
agency" means a governmental agency or governmental entity which
is established and operated exclusively for the purpose of providing
those services to one or more educational institutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The deputy shall issue a separate initial benefit determination with
respect to each of the claimant's base year employers, starting with
the most recent employer and continuing as necessary in the inverse
chronological order of the claimant's last date of employment with
each such employer. If an appeal is taken from an initial
determination, as hereinafter provided, by any employer other than
the first chargeable base year employer or for benefit years
commencing on or after July 1, 1986, that employer from whom the
individual was most recently separated, then such appeal shall be
limited in scope to include only one or more of the following matters:
(A) The correctness of the benefit payments authorized to be made
under the determination;
(B) Fraud in connection with the claim pursuant to which the
initial determination is issued;
(C) The refusal of suitable work offered by the chargeable
employer filing the appeal;
(D) Gross misconduct as provided in subsection (b) of R.S.43:21-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of subsection (j) of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) "Benefit year" with respect to any individual means the 364
consecutive calendar days beginning with the day on, or as of, which
he first files a valid claim for benefits, and thereafter beginning with
the day on, or as of, which the individual next files a valid claim for
benefits after the termination of his last preceding benefit year. Any
claim for benefits made in accordance with subsection (a) of
R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
this subsection if (1) he is unemployed for the week in which, or as
of which, he files a claim for benefits; and (2) he has fulfilled the
conditions imposed by subsection (e) of R.S.43:21-4.
"Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development, and any transaction or exercise of authority by the director of the division thereunder, or under this chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by the division.

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

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

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

"Employer" means:

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

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets thereof, of another which, at the time of such acquisition, was an employer subject to this chapter (R.S.43:21-1 et seq.).
(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

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

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

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

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

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

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

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

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

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

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

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

(i) (1) "Employment” means:

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

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

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

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

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

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

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

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

(aa) as an elected official;

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

(cc) as a member of the State National Guard or Air National Guard;
(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

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

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

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

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

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

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

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

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

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

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

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

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

(I) (i) Service performed after December 31, 1977 in agricultural
labor in a calendar year for an entity which is an employer as defined
in the "unemployment compensation law," (R.S.43:21-1 et seq.) as
of January 1 of such year; or for an employing unit which
(a) during any calendar quarter in either the current or the
preceding calendar year paid remuneration in cash of $20,000.00 or
more for individuals employed in agricultural labor, or
(b) for some portion of a day in each of 20 different calendar
weeks, whether or not such weeks were consecutive, in either the
current or the preceding calendar year, employed in agricultural labor
10 or more individuals, regardless of whether they were employed at
the same moment in time.

(ii) for the purposes of this subsection any individual who is a
member of a crew furnished by a crew leader to perform service in
agricultural labor for any other entity shall be treated as an employee
of such crew leader
(aa) if such crew leader holds a certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, [Pub.L.97-470] (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192 (C.34:8A-7 et seq.); or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

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

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

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

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

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

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

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

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

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

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

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

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

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if contributions are not
required and paid with respect to such services under an
unemployment compensation law of any other state or of the federal
government.

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

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

(6) Services performed by an individual for remuneration shall be
deemed to be employment subject to this chapter (R.S.43:21-
1 et seq.) unless and until it is shown to the satisfaction of the
division that:
(A) Such individual has been and will continue to be free from
control or direction over the performance of such service, both under
his contract of service and in fact; and
(B) Such service is either outside the usual course of the business
for which such service is performed, or that such service is performed
outside of all the places of business of the enterprise for which such
service is performed; and
(C) Such individual is customarily engaged in an independently
established trade, occupation, profession or business.

(7) Provided that such services are also exempt under the Federal
Unemployment Tax Act, as amended, or that contributions with
respect to such services are not required to be paid into a state
unemployment fund as a condition for a tax offset credit against the
tax imposed by the Federal Unemployment Tax Act, as amended, the
term "employment" shall not include:
(A) Agricultural labor performed prior to January 1, 1978; and
after December 31, 1977, only if performed in a calendar year for an
entity which is not an employer as defined in the "unemployment
compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
calendar year; or unless performed for an employing unit which
(i) during a calendar quarter in either the current or the preceding
calendar year paid remuneration in cash of $20,000.00 or more to
individuals employed in agricultural labor, or
(ii) for some portion of a day in each of 20 different calendar
weeks, whether or not such weeks were consecutive, in either the
current or the preceding calendar year, employed in agricultural labor
10 or more individuals, regardless of whether they were employed at
the same moment in time;
(B) Domestic service in a private home performed prior to
January 1, 1978; and after December 31, 1977, unless performed in
the private home of an employing unit which paid cash remuneration
of $1,000.00 or more to one or more individuals for such domestic
service in any calendar quarter in the current or preceding calendar
year;
(C) Service performed by an individual in the employ of his son,
daughter or spouse, and service performed by a child under the age
of 18 in the employ of his father or mother;
(D) Service performed prior to January 1, 1978, in the employ of
this State or of any political subdivision thereof or of any
instrumentality of this State or its political subdivisions, except as
provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ
of the South Jersey Port Corporation or its successors;
(E) Service performed in the employ of any other state or its
political subdivisions or of an instrumentality of any other state or
states or their political subdivisions to the extent that such
instrumentality is with respect to such service exempt under the
Constitution of the United States from the tax imposed under the
Federal Unemployment Tax Act, as amended, except as provided in
R.S.43:21-19 (i) (1) (B) above;
(F) Service performed in the employ of the United States
Government or of any instrumentality of the United States exempt
under the Constitution of the United States from the contributions
imposed by the "unemployment compensation law," except that to
the extent that the Congress of the United States shall permit states
to require any instrumentalities of the United States to make
payments into an unemployment fund under a state unemployment
compensation law, all of the provisions of this act shall be applicable
to such instrumentalities, and to service performed for such
instrumentalities, in the same manner, to the same extent and on the
same terms as to all other employers, employing units, individuals
and services; provided that if this State shall not be certified for any
year by the Secretary of Labor of the United States under section
3304 of the federal Internal Revenue Code of 1986 (26 U.S.C.
s.3304), the payments required of such instrumentalities with respect
to such year shall be refunded by the division from the fund in the
same manner and within the same period as is provided in R.S.43:21-
14 (f) with respect to contributions erroneously paid to or collected
by the division;
(G) Services performed in the employ of fraternal beneficiary
societies, orders, or associations operating under the lodge system or
for the exclusive benefit of the members of a fraternity itself
operating under the lodge system and providing for the payment of
life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

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

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

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

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

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

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

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

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

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

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality
exemption is claimed, grants an equivalent exemption with respect to
similar services performed in the foreign country by employees of
the United States Government and of instrumentalities thereof;
(R) Service in the employ of an international organization entitled
to enjoy the privileges, exemptions and immunities under the
International Organizations Immunities Act
(22 U.S.C. s.288 et seq.);
(S) Service covered by an election duly approved by an agency
charged with the administration of any other state or federal
unemployment compensation or employment security law, in
accordance with an arrangement pursuant to R.S.43:21-21 during the
effective period of such election;
(T) Service performed in the employ of an international organization entitled
service is performed by an individual who is enrolled at
a regular faculty and curriculum and normally has a regularly
organized body of students in attendance at the place where its
educational activities are carried on, as a student in a full-time
program, taken for credit at such institution, which combines
academic instruction with work experience, if such service is an
integral part of such program, and such institution has so certified to
the employer, except that this subparagraph shall not apply to service
performed in a program established for or on behalf of an employer
or group of employers;
(V) Service performed in the employ of a hospital, if such service
is performed by a student nurse in the employ of a hospital or a nurses' training school
by an individual who is enrolled and regularly attending classes in a
nurses' training school approved under the laws of this State;
(W) Services performed after the effective date of this amendatory
act by agents of mutual benefit associations if the compensation to
such agents for such services is wholly on a commission basis;
(X) Services performed by operators of motor vehicles weighing
18,000 pounds or more, licensed for commercial use and used for the
highway movement of motor freight, who own their equipment or
who lease or finance the purchase of their equipment through an
entity which is not owned or controlled directly or indirectly by the
entity for which the services were performed and who were
compensated by receiving a percentage of the gross revenue
generated by the transportation move or by a schedule of payment
based on the distance and weight of the transportation move;
(Y) (Deleted by amendment, P.L.2009, c.211.)
(Z) Services performed, using facilities provided by a travel
agent, by a person, commonly known as an outside travel agent, who
acts as an independent contractor, is paid on a commission basis, sets
his own work schedule and receives no benefits, sick leave, vacation
or other leave from the travel agent owning the facilities.

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

(9) Services performed by the owner of a limousine franchise
(franchisee) shall not be deemed to be employment subject to the
"unemployment compensation law," R.S.43:21-1 et seq., with regard
to the franchisor if:
(A) The limousine franchisee is incorporated;
(B) The franchisee is subject to regulation by the Interstate
Commerce Commission;
(C) The limousine franchise exists pursuant to a written franchise
arrangement between the franchisee and the franchisor as defined by
section 3 of P.L.1971, c.356 (C.56:10-3); and
(D) The franchisee registers with the Department of Labor and
Workforce Development and receives an employer registration
number.

(10) Services performed by a legal transcriber, or certified court
reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
shall not be deemed to be employment subject to the "unemployment
compensation law," R.S.43:21-1 et seq., if those services are
provided to a third party by the transcriber or reporter who is referred
to the third party pursuant to an agreement with another legal
transcriber or legal transcription service, or certified court reporter or
court reporting service, on a freelance basis, compensation for which
is based upon a fee per transcript page, flat attendance fee, or other
flat minimum fee, or combination thereof, set forth in the agreement.
For purposes of this paragraph (10): "legal transcription service"
and "legal transcribing" mean making use, by audio, video or voice
recording, of a verbatim record of court proceedings, depositions,
other judicial proceedings, meetings of boards, agencies,
corporations, or other bodies or groups, and causing that record to be
printed in readable form or produced on a computer screen in
readable form; and "legal transcriber" means a person who engages in "legal transcribing."

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

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

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

(m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Deleted by amendment, P.L. . c. .)(pending before the Legislature
as this bill)

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

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

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

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

(v) "Initial determination" means, subject to the provisions of
R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
measured by an eligible individual's base year employment with a
single employer covering all periods of employment with that
employer during the base year.
(w) "Last date of employment" means the last calendar day in the base year of an individual on which he performed services in employment for a given employer.

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

(y) (1) "Educational institution" means any public or other nonprofit institution (including an institution of higher education):
   (A) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;
   (B) Which is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the State to approve, license or issue a permit for the operation of a school; and
   (C) Which offers courses of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(2) "Institution of higher education" means an educational institution which:
   (A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
   (B) Is legally authorized in this State to provide a program of education beyond high school;
   (C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
   (D) Is a public or other nonprofit institution.
   Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The report shall provide, for each calendar year from 2012 through 2019, the total number of employers and employees participating in approved shared work programs and the total amount of unemployment benefits paid to participating employees.
12. Section 2 of P.L. 1948, c.110 (C.43:21-26) is amended to read as follows:

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

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

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

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

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

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

While the Legislature recognizes the pressing need for benefits
for workers taking leave to care for family members incapable of
self-care, it also finds that the need of workers for leave during their
own disability continues to be especially acute, as a disabled worker
has less discretion about taking time off from work than a worker
caring for a family member. Notwithstanding any interpretation of
law which may be construed as providing a worker with rights to take
action against an employer who fails or refuses to restore the worker
to employment after the worker's own disability, the Legislature does
not intend that the policy established by P.L.2008, c.17 (C.43:21-39.1
et al.) of providing benefits for workers during periods of family
temporary disability leave to care for family members incapable of
self-care be construed as granting any worker an entitlement to be
restored by the employer to employment held by the worker prior to
taking family temporary disability leave or any right to take action,
in tort, or for breach of an implied provision of the employment
agreement, or under common law, against an employer who fails or
refuses to restore the worker to employment after the family
temporary disability leave, and the Legislature does not intend that
the policy of providing benefits during family temporary disability
leave be construed as increasing, reducing or otherwise modifying
any entitlement of a worker to return to employment or right of the
worker to take action under the provisions of the "Family Leave Act,"
P.L.1989, c.261 (C.34:11B-1 et seq.).]
Since the enactment of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.), the State government-operated State temporary disability benefits plan, or "State plan," has proven to be highly efficient and cost effective in providing temporary disability benefits to New Jersey workers. The State plan guarantees the availability of coverage for all employers, regardless of experience, with low overhead costs and a rapid processing of claims and appeals by knowledgeable, impartial public employees. Consequently, the percentage of all employers using the State plan increased from 64% in 1952 to 98% in 2006, while the percentage of employees covered by the State plan increased from 28% to 83%. A publicly-operated, nonprofit State plan is therefore indispensable to achieving the goals of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

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


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

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

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

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

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

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

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

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

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

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

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

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

1. an assessment of a civil fine of not less than $1,000 and not more than $2,000 for the first violation of any of the provisions of this section and not more than $5,000 for each subsequent violation;
2. an injunction to restrain the continued violation of any of the provisions of this section;
3. reinstatement of the employee to the same position or to a position equivalent to that which the employee held prior to unlawful discharge or retaliatory action;
4. reinstatement of full fringe benefits and seniority rights;
5. compensation for any lost wages, benefits and other remuneration; and
6. payment of reasonable costs and attorney's fees.

This act shall take effect immediately, provided that:

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

STATEMENT

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

The bill assists certain laid off workers by:

1. increasing the maximum amount which a laid off worker may earn in employment without a reduction in unemployment insurance (UI) benefits, from 20% of the worker’s weekly UI benefit amount, to 40% of the worker’s weekly UI benefit amount;
2. reducing the minimum weekly earnings required in each of 20 base weeks for a worker to be eligible for UI benefits from 20 times the State minimum wage to 10 times and State minimum wage, and
reducing the alternative annual earnings required for eligibility from
1,000 times to 500 times the State minimum wage; and
3. permitting, if an employer gives advanced notice of a layoff,
a worker to file for UI benefits upon receiving the notice, and
requiring that the claim, if valid, be paid upon the commencement of
the period of unemployment.
The bill clarifies provisions of the UI law regarding UI benefits
for an employee of an education institution when work is not
available. The law currently provides that an employee may not
receive UI benefits when unemployed during a customary vacation
period or holiday recess between successive academic years or terms
if the employee is given a reasonable assurance of a return to
employment in the same capacity after the period or recess.
Currently, vacation periods are interpreted to include summer, even
if the institution is in session during the summer. The bill specifies
that an employee laid off in the summer may receive benefits if the
institution is in session during the summer. The bill also specifies
that for the employment after a break to be regarded as “in the same
capacity”, it must be under the same terms and conditions as before
the break. Finally, the bill indicates that the employee is not regarded
as having a reasonable assurance if the offer is conditioned on factors
such as enrollment, allocation of funding, or program changes.
The bill supplements P.L.2011, c.154 (C.43:21-20.3 et seq.) to
facilitate providing the maximum possible benefits for employees
and savings for employers from the federal financing of UI benefits
under short-time compensation programs, and emergency UI
benefits, pursuant to the federal “Coronavirus Aid, Relief, and
The bill requires the Division of Unemployment and Temporary
Disability Insurance to make available to employers who may be
eligible to participate in a shared work program under P.L.2011,
c.154 (C.43:21-20.3 et seq.) for which federal funding is available
under the CARES Act, a guidance document which explains:
1. what the employer is required to do to establish shared work
programs eligible for the federal funding, including certifying that
unions representing the employees agree to the terms of the program
and that the employer will continue current health insurance and
pension coverage, paid time off and other benefits; and
2. procedures for an employer to apply for approval of a shared
work program, including how the employer may make preliminary
calculations of benefits to be paid to participating employees to
expedite rapid benefit payments.
The bill specifies that pensions, health benefits, seniority rights
and other benefits for public employees may not be reduced under
the program. It requires that contributions, and the accrual of service
credit, continue as if the worktime was not reduced. The division is
required to assist, upon request, employers making applications, and
allow applications to be approved in advance to facilitate benefit payments as soon as reduced hours commence.

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

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

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

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

The bill also amends the FLA to make employers, regardless of how few workers they employ, subject to that law’s requirement to reinstate leave takers, thereby extending that right of reinstatement to workers employed by employers of less than 30 workers, whether or not the workers receive FLI benefits.
The bill does not penalize an employer for not reinstating a worker taking leave if the employer reduced the number of employees during the leave period and the worker would have been laid off if not on leave, but only if the employer notifies the worker of the worker’s rights to claim UI benefits after the leave period ends.