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SENATE, No. 467

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 13, 1941

By Mr. HENDRICKSON

(Without Reference)

AN ACT concerning unemployment compensation, and amending section 43:21-19
of the Revised Statutes.

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

1 1. Section 43:21-19 of the Revised Statutes is amended to read as fol-
2 lows:

3 43:21-19. As used in this chapter, unless the context clearly requires
4 otherwise:

5 (a) (1) "Annual payroll" means the total amount of wages payable by
6 an employer (regardless of the time of payment) for employment during
7 the calendar year.

8 (2) "Average annual payroll" means the average of the annual payrolls
9 of any employer for the last three or five preceding calendar years, which-
10 ever average is higher; *provided, however*, that only those wages be
11 included on which employer contributions have been paid on or before Janu-
12 ary thirty-first of the calendar year for which the employer's contribution
13 rate is computed.

14 (b) "Benefits" means the money payments payable to an individual, as
15 provided in this chapter, with respect to his unemployment.

16 (c) The term "base year" means the first four of the last five completed
17 calendar quarters immediately preceding the first day of an individual's

19 in the best interests of the State, the State Highway Commissioner is author-
20 ized to enter into a contract or contracts for the purpose of actually con-
21 structing new wells for the property owners affected. The judgment of the
22 State Highway Commissioner on the question of whether or not any com-
23 pensation shall be made under this act shall be final.

1 2. Nothing contained in this act shall be construed to apply to any case
2 where a part of the lands of a property owner upon which a well is located
3 has been taken for the construction of the State highway which is claimed
4 to be responsible for the damage. Nothing contained in this act shall be con-
5 strued to apply to any well that does not go dry within three months from
6 the date of the excavation alleged to have caused the damage, or to any well
7 located more than three hundred feet from the right-of-way line of the State
8 highway in question, or to any well that was not in existence at the time that
9 the contract was let for the construction of the State highway in question.

1 3. This act shall take effect immediately.

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9 of any employer for the last three or five preceding calendar years, which-
10 ever average is higher; *provided, however*, that only those wages be
11 included on which employer contributions have been paid on or before Janu-
12 ary thirty-first of the calendar year for which the employer's contribution
13 rate is computed.

14 (b) "Benefits" means the money payments payable to an individual, as
15 provided in this chapter, with respect to his unemployment.

16 (c) The term "base year" means the first four of the last five completed
17 calendar quarters immediately preceding the first day of an individual's

18 benefit year; *provided*, that no calendar quarter shall comprise a part of
19 more than one base year.

20 (d) "Benefit year" with respect to any individual means the three
21 hundred sixty-four consecutive calendar days beginning with the day on, or
22 as of, which he first files a valid claim for benefits, and thereafter begin-
23 ning with the day on, or as of, which the individual next files a valid claim
24 for benefits after the termination of his last preceding benefit year. Any
25 claim for benefits made in accordance with section six (a) of this act shall
26 be deemed to be a "valid claim" for the purpose of this subsection if the
27-30 individual has fulfilled the condition imposed by section four (e).

31 (e) "Commission" means the Unemployment Compensation Commis-
32 sion established by section 43:21-10 of this Title, and for purposes of this
33 chapter any transaction or exercise of authority by the executive director
34 shall be deemed to be performed by the commission.

35 (f) "Contributions" means the money payments to the State Unemploy-
36 ment Compensation Fund required by this chapter.

37 (g) "Employing unit" means any individual or type of organization,
38 including any partnership, association, trust, estate, joint-stock company, in-
39 surance company or corporation, whether domestic or foreign, or the re-
40 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal repre-
41 sentative of a deceased person, which has or subsequent to January first, one
42 thousand nine hundred and thirty-six, had in its employ one or more in-
43 dividuals performing services for it within this State. All individuals per-
44 forming services within this State for any employing unit which maintains
45 two or more separate establishments within this State shall be deemed to be
46 employed by a single employing unit for all the purposes of this chapter.
47 Whenever any employing unit contracts with or has under it any contractor
48 or subcontractor for any employment which is part of its usual trade, occupa-
49 tion, profession, or business, unless the employing unit as well as each such
50 contractor or subcontractor is an employer by reason of subsection (c) of
51 section 43:21-8 of this Title or subsection (h) of this section, the employing

52 unit shall for all the purposes of this chapter be deemed to employ each in-
 53 dividual in the employ of each such contractor or subcontractor for each
 54 day during which such individual is engaged in performing such employ-
 55 ment; except that each such contractor or subcontractor who is an employer
 56 by reason of subsection (c) of section 43:21-8 of this Title or subsection (h)
 57 of this section, shall alone be liable for the contributions measured by wages
 58 payable to individuals in his employ, and except that any employing unit who
 59 shall become liable for and pay contributions with respect to individuals in
 60 the employ of any such contractor or subcontractor who is not an employer
 61 by reason of subsection (c) of section 43:21-8 of this Title or subsection (h)
 62 of this section, may recover the same from such contractor or subcontractor.
 63 Each individual employed to perform or to assist in performing the work
 64 of any agent or employee of an employing unit shall be deemed to be em-
 65 ployed by such employing unit for all the purposes of this chapter, whether
 66 such individual was hired or paid directly by such employing unit or by such
 67 agent or employee; *provided*, the employing unit had actual or constructive
 68 knowledge of the work.

69 (h) "Employer" means:

70 (1) Any employing unit which for some portion of a day, but not neces-
 71 sarily simultaneously in each of twenty different weeks, whether or not
 72 such weeks are or were consecutive, within either the current or the pre-
 73 ceding calendar year, has or had in employment, eight or more individuals
 74 (irrespective of whether the same individuals are or were employed in each
 75 such day);

76 (2) Any employing unit which acquired the organization, trade or busi-
 77 ness, or substantially all the assets thereof, of another which at the time of
 78 such acquisition was an employer subject to this chapter;

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

83 (4) Any employing unit which together with one or more other employ- 113
84 ing units, is owned or controlled (by legally enforceable means or otherwise), 114
85 directly or indirectly by the same interests, or which owns or controls one or 115
86 more other employing units (by legally enforceable means or otherwise), and 116
87 which, if treated as a single unit with such other employing units or 117
88 interests, would be an employer under paragraph (1) of this subsection; 118

89 (5) Any employing unit which, having become an employer under para- 119
90 graph (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, 120
91 ceased to be an employer subject to this chapter; or 121

92 (6) For the effective period of its election pursuant to subsection (c) of 122
93 section 43:21-8 of this Title any other employing unit which has elected to 123
94 become fully subject to this chapter. 124

95 (i) (1) "Employment" means service, including service in interstate 125
96 commerce performed for remuneration or under any contract of hire, written 126
97 or oral, expressed or implied. 127

98 (2) The term "employment" shall include an individual's entire service, 128
99 performed within or both within and without this State if: 129

100 (A) The service is localized in this State; or 130

101 (B) The service is not localized in any State but some of the service 131
102 is performed in this State, and (i) the base of operations, or, if there 132
103 is no base of operations, then the place from which such service is directed 133
104 or controlled, is in this State; or (ii) the base of operations or place 134
105 from which such service is directed or controlled is not in any State in 135
106 which some part of the service is performed, but the individual's res- 136
107 idence is in this State. 137

108 (3) Services performed within this State but not covered under para- 138
109 graph (2) of this subsection shall be deemed to be employment subject to 139
110 this chapter if contributions are not required and paid with respect to such 140
111 services under an unemployment compensation law of any other State or 141
112 of the Federal Government. 142
143

113 (4) Services not covered under paragraph (2) of this subsection, and
 114 performed entirely without this State, with respect to no part of which con-
 115 tributions are required and paid under an unemployment compensation law
 116 of any other State or of the Federal Government, shall be deemed to be
 117 employment subject to this chapter if the individual performing such serv-
 118 ices is a resident of this State and the commission approves the election
 119 of the employing unit for whom such services are performed that the entire
 120 service of such individual shall be deemed to be employment subject to
 121 this chapter; *provided*, written objections on the part of a substantial pro-
 122 portion of such individuals affected are not presented to the commission
 123 within ten days following the filing of such election.

124 (5) Service shall be deemed to be localized within a State if

125 (A) the service is performed entirely within such State; or

126 (B) the service is performed both within and without such State,
 127 but the service performed without such State is incidental to the indi-
 128 vidual's service within the State, for example, is temporary or transi-
 129 tory in nature or consists of isolated transactions.

130 (6) Services performed by an individual for remuneration shall be
 131 deemed to be employment subject to this chapter unless and until it is shown
 132 to the satisfaction of the commission that

133 (A) such individual has been and will continue to be free from
 134 control or direction over the performance of such services, both under
 135 his contract of service and in fact; and

136 (B) such service is either outside the usual course of the business
 137 for which such service is performed, or that such service is performed
 138 outside of all the places of business of the enterprise for which such
 139 service is performed; and

140 (C) such individual is customarily engaged in an independently
 141 established trade, occupation, profession or business.

142 (7) The term "employment" shall not include:

143 (A) Agricultural labor;

144 (B) Domestic service in a private home;

145 (C) Service performed as an officer or member of the crew of a
146 vessel on the navigable waters of the United States;

147 (D) Service performed by an individual in the employ of his son,
148 daughter or spouse, and service performed by a child under the age of
149 twenty-one in the employ of his father or mother;

150 (E) Service performed in the employ of this State or of any polit-
151 ical subdivision thereof or of any instrumentality of this State or its
152 political subdivisions;

153 (F) Service performed in the employ of any other State or its
154 political subdivisions, or of the United States Government, or of an
155 instrumentality of any other State or States or their political subdivi-
156 sions or of the United States;

157 (G) Services performed in the employ of a corporation, community
158 chest, fund, or foundation, organized and operated exclusively for relig-
159 ious, charitable, scientific, literary, hospital, benevolent, philanthropic,
160 or educational purposes, or for the prevention of cruelty to children
161 or animals, no part of the net earnings of which inures to the benefit
162 of any private shareholder or individual;

163 (H) Services performed in the employ of fraternal beneficiary soci-
164 eties, orders, or associations operating under the lodge system or for
165 the exclusive benefit of the members of a fraternity itself operating
166 under the lodge system and providing for the payment of life, sick, acci-
167 dent or other benefits to the members of such society, order, or associ-
168 ation, or their dependents;

169 (I) Services performed as an officer or other employee of any build-
170 ing and loan association of this State, except where such services con-
171 stitute the principal employment of the individual; services performed
172 as an officer or other employee of any building and loan association
173 where such association is a member of the Federal Home Loan Bank
174 System; services performed as an officer or other employee of any bank
175 which is a member of the Federal Reserve System;

176 (J) Service, performed after June thirtieth, one thousand nine hun-
 177 dred and thirty-nine, with respect to which unemployment compensation
 178 is payable under the Railroad Unemployment Insurance Act (52 Stat.
 179 1094).

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

183 (k) "Fund" means the unemployment compensation fund established by
 184 this chapter, to which all contributions required and from which all benefits
 185 provided under this chapter shall be paid.

186 (l) "State" includes, in addition to the States of the United States of
 187 America, Alaska, Hawaii, and the District of Columbia.

188 (m) Unemployment.

189 (1) An individual shall be deemed "unemployed" for any week during
 190 which he is not engaged in full-time work and with respect to which his
 191 remuneration is less than his weekly benefit rate.

192 (2) The term remuneration, as used in this subsection, shall include
 193 only that part of the same which exceeds three dollars (\$3.00) for any one
 194 (1) week.

195 (3) An individual's week of unemployment shall be deemed to commence
 196 only after his registration at an employment office, except as the commis-
 197 sion may by regulation otherwise prescribe.

198 (n) "Unemployment compensation administration fund" means the un-
 199 employment compensation administration fund established by this chapter,
 200 from which administrative expenses under this chapter shall be paid.

201 (o) "Wages" means remuneration payable by employers for employ-
 202 ment.

203 (p) "Remuneration" means all compensation payable for personal serv-
 204 ices, including commissions and bonuses and the cash value of all compen-
 205 sation payable in any medium other than cash.

206 (q) "Week" means such period or periods of seven consecutive cal-
207 endar days ending at midnight, as the commission may by regulation pre-
208 scribe.

209 (r) "Calendar quarter" means the period of three consecutive calen-
210 dar months ending on March thirty-first, June thirtieth, September thirti-
211 eth, or December thirty-first, excluding, however, any calendar quarter or
212 portion thereof which occurs prior to January first, one thousand nine hun-
213 dred and thirty-seven, or the equivalent thereof as the commission may by
214 regulation prescribe.

1 2. This act will take effect immediately.

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