

CHAPTER 469 LAWS OF N. J. 1968
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ASSEMBLY, No. 104

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1968

By Assemblymen W. L. SMITH, BROWN, PARKER, LASKIN,
THOMAS, Assemblywoman MARGETTS, Assemblymen COBB
and VREELAND

Referred to Committee on Labor Relations

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*
2 *of New Jersey:*

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

3 43:21-19. As used in this chapter (R. S. 43:21-1 et seq.), unless
4 the context clearly requires otherwise:

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

8 (2) "Average annual payroll" means the average of the annual
9 payrolls of any employer for the last 3 or 5 preceding calendar
10 years, whichever average is higher, except that any year or years
11 throughout which an employer has had no "annual payroll" be-
12 cause of military service shall be deleted from the reckoning;
13 the "average annual payroll" in such case is to be determined on
14 the basis of the prior 3 or 5 calendar years in each of which the
15 employer had an "annual payroll" in the operation of his busi-
16 ness, if the employer resumes his business within 12 months after
17 separation, discharge or release from such service, under con-
18 ditions other than dishonorable, and makes application to have
19 his "average annual payroll" determined on the basis of such
20 deletion within 12 months after he resumes his business; provided,
21 however, that "average annual payroll" solely for the purposes
22 of paragraph (3) of subsection (e) of section 43:21-7 of this Title
23 means the average of the annual payrolls of any employer on
24 which he paid contributions to the State disability benefits fund,
25 for the last 3 or 5 preceding calendar years, whichever average is

26 higher; provided further, that only those wages be included on
27 which employer contributions have been paid on or before January
28 31 (or the next succeeding day if such January 31 is a Saturday
29 or Sunday) immediately preceding the beginning of the 12 months'
30 period for which the employer's contribution rate is computed.

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

34 (c) "Base year" with respect to benefit years commencing on or
35 after January 1, 1953, shall mean the 52 calendar weeks ending
36 with the second week immediately preceding an individual's benefit
37 year.

38 (d) "Benefit year" with respect to any individual means the
39 364 consecutive calendar days beginning with the day on, or as of,
40 which he first files a valid claim for benefits, and thereafter begin-
41 ning with the day on, or as of, which the individual next files a
42 valid claim for benefits after the termination of his last preceding
43 benefit year. Any claim for benefits made in accordance with sub-
44 section (a) of section 43:21-6 of this Title shall be deemed to be a
45 "Valid Claim" for the purpose of this subsection if (1) no re-
46 muneration was paid or is payable for the day on which, or as of
47 which he files a claim for benefits, and no work is available to him
48 with his current employing unit on such day, or, he is unemployed
49 for the week in which, or as of which, he files a claim for benefits;
50 and (2) he has fulfilled the conditions imposed by subsection (e)
51 of section 43:21-4 of this Title.

52 (e) "Division" means the Division of Employment Security
53 of the Department of Labor and Industry established by chapter
54 446, P. L. 1948, and any transaction or exercise of authority by
55 the director of the division thereunder, or under this chapter
56 (R. S. 43:21-1 et seq.), shall be deemed to be performed by the
57 division.

58 (f) "Contributions" means the money payments to the State
59 unemployment compensation fund required by this chapter (R. S.
60 43:21-1 et seq.).

61 (g) "Employing unit" means any individual or type of organi-
62 zation, including any partnership, association, trust, estate, joint-
63 stock company, insurance company or corporation, whether domes-
64 tic or foreign, or the receiver, trustee in bankruptcy, trustee or
65 successor thereof, or the legal representative of a deceased person,
66 which has or subsequent to January 1, 1936, had in its employ one
67 or more individuals performing services for it within this State.
68 All individuals performing services within this State for any em-

69 plying unit which maintains 2 or more separate establishments
70 within this State shall be deemed to be employed by a single
71 employing unit for all the purposes of this chapter (R. S. 43:21-1
72 et seq.). Whenever any employing unit contracts with or has
73 under it any contractor or subcontractor for any employment which
74 is part of its usual trade, occupation, profession, or business,
75 unless the employing unit as well as each such contractor or sub-
76 contractor is an employer by reason of subsection (c) of section
77 43:21-8 of this Title or subsection (h) of this section, the employ-
78 ing unit shall for all the purposes of this chapter be deemed to
79 employ each individual in the employ of each such contractor or
80 subcontractor for each day during which such individual is engaged
81 in performing such employment; except that each such contractor
82 or subcontractor who is an employer by reason of subsection (c)
83 of section 43:21-8 of this Title or subsection (h) of this section,
84 shall alone be liable for the contributions measured by wages
85 payable to individuals in his employ, and except that any employ-
86 ing unit who shall become liable for and pay contributions with
87 respect to individuals in the employ of any such contractor or
88 subcontractor who is not an employer by reason of subsection (c)
89 of section 43:21-8 of this Title or subsection (h) of this section,
90 may recover the same from such contract or subcontractor. Each
91 individual employed to perform or to assist in performing the
92 work of any agent or employee of an employing unit shall be
93 deemed to be employed by such employing unit for all the purposes
94 of this chapter (R. S. 43:21-1 et seq.), whether such individual
95 was hired or paid directly by such employing unit or by such agent
96 or employee; provided, the employing unit had actual or construc-
97 tive knowledge of the work.

98 (h) "Employer" means:

99 (1) Any employing unit which for some portion of a day, but not
100 necessarily simultaneously, in each of 20 different weeks, whether
101 or not such weeks are or were consecutive, within either the current
102 or the preceding calendar year has or had in employment 4 or more
103 individuals (irrespective of whether the same individuals are or
104 were employed in each such day);

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

110 (3) Any employing unit which acquired the organization, trade
111 or business, or substantially all the assets thereof, of another em-

112 plying unit and which, if treated as a single unit with such other
113 employing unit, would be an employer under paragraph (1) of this
114 subsection;

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

122 (5) Any employing unit which, having become an employer
123 under paragraphs (1), (2), (3) or (4) has not, under section 43:21-8
124 of this chapter (R. S. 43:21-1 et seq.) ceased to be an employer
125 subject to this chapter (R. S. 43:21-1 et seq.); or

126 (6) for the effective period of its election pursuant to subsection
127 (c) of section 43:21-8 of this chapter (R. S. 43:21-1 et seq.) any
128 other employing unit which has elected to become fully subject to
129 this chapter (R. S. 43:21-1 et seq.).

130 (i) (1) "Employment" means service, including service in inter-
131 state commerce performed for remuneration or under any contract
132 of hire, written or oral, express or implied.

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

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

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

144 (3) Services performed within this State but not covered under
145 paragraph (2) of this subsection shall be deemed to be employ-
146 ment subject to this chapter (R. S. 43:21-1 et seq.) if contributions
147 are not required and paid with respect to such services under an
148 unemployment compensation law of any other State or of the
149 Federal Government.

150 (4) Services not covered under paragraph (2) of this subsection,
151 and performed entirely without this State, with respect to no part
152 of which contributions are required and paid under an unemploy-
153 ment compensation law of any other State or of the Federal Gov-
154 ernment, shall be deemed to be employment subject to this chapter

155 (R. S. 43:21-1 et seq.) if the individual performing such services
156 is a resident of this State and the employing unit for whom such
157 services are performed files with the division an election that the
158 entire service of such individual shall be deemed to be employment
159 subject to this chapter (R. S. 43:21-1 et seq.).

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

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

162 (B) the service is performed both within and without such
163 State, but the service performed without such State is in-
164 cidental to the individual's service within the State, for ex-
165 ample, is temporary or transitory in nature or consists of
166 isolated transactions.

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

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

174 (B) such service is either outside the usual course of the
175 business for which such service is performed, or that such
176 service is performed outside of all the places of business of
177 the enterprise for which such service is performed; and

178 (C) such individual is customarily engaged in an independ-
179 ently established trade, occupation, profession or business.

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

181 (A) Agricultural labor;

182 (B) Domestic service in a private home;

183 (C) Service performed by an individual in the employ of
184 his son, daughter or spouse, and service performed by a child
185 under the age of 21 in the employ of his father or mother;

186 (D) Service performed in the employ of this State or of
187 any political subdivision thereof or of any instrumentality of
188 this State or its political subdivisions;

189 (E) Service performed in the employ of any other State
190 or its political subdivisions, or of the United States Govern-
191 ment, or of an instrumentality of any other State or States
192 or their political subdivisions or of the United States;

193 (F) Services performed in the employ of a corporation,
194 community chest, fund, or foundation, organized and operated
195 exclusively for religious, charitable, scientific, literary, hos-
196 pital, benevolent, philanthropic, or educational purposes, or
197 for the prevention of cruelty to children or animals, no part

198 of the net earnings of which inures to the benefit of any private
199 shareholder or individual;

200 (G) Services performed in the employ of fraternal bene-
201 ficiary societies, orders, or associations operating under the
202 lodge system or for the exclusive benefit of the members of a
203 fraternity itself operating under the lodge system and pro-
204 viding for the payment of life, sick, accident, or other benefits
205 to the members of such society, order, or association, or their
206 dependents;

207 (H) Services performed as an officer or other employee
208 of any building and loan association of this State, except
209 where such services constitute the principal employment of
210 the individual; services performed as an officer or other em-
211 ployee of any building and loan association where such as-
212 sociation is a member of the Federal Home Loan Bank System;
213 services performed as an officer or other employee of any
214 bank which is a member of the Federal Reserve System;
215 services performed by a director or member of a committee
216 of a savings and loan association incorporated or organized
217 under the laws of this State or of the United States;

218 (I) Service with respect to which unemployment insurance
219 is payable under an unemployment insurance program estab-
220 lished by an Act of Congress;

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

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

229 (L) Services performed in the employ of any veterans'
230 organization chartered by Act of Congress or of any auxiliary
231 thereof, no part of the net earnings of which organization, or
232 auxiliary thereof, inures to the benefit of any private share-
233 holder or individual;

234 (M) Service performed for or in behalf of the owner or
235 operator of any theatre, ballroom, amusement hall or other
236 place of entertainment, not in excess of 10 weeks in any calen-
237 dar year for the same owner or operator, by any leader or
238 musician of a band or orchestra, commonly called a "name
239 band," entertainer, vaudeville artist, actor, actress, singer or
240 other entertainer;

241 (N) Services performed by an individual for a labor union
242 organization, known and recognized as a union local, as a
243 member of a committee or committees reimbursed by the union
244 local for time lost from regular employment, or as a part-time
245 officer of a union local and the remuneration for such services
246 is less than \$250.00 in a calendar year;

247 (O) Services performed in the sale or distribution of mer-
248 chandise by home-to-home salespersons or in-the-home demon-
249 strators whose remuneration consists wholly of commissions
250 or commissions and bonuses.

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

254 (k) "Fund" means the unemployment compensation fund estab-
255 lished by this chapter (R. S. 43:21-1 et seq.), to which all contribu-
256 tions required and from which all benefits provided under this
257 chapter (R. S. 43:21-1 et seq.) shall be paid.

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

261 (m) Unemployment.

262 (1) An individual shall be deemed "unemployed" for any week
263 during which he is not engaged in full-time work and with respect
264 to which his remuneration is less than his weekly benefit rate, in-
265 cluding any week during which he is on vacation without pay;
266 provided, such vacation is not the result of the individual's volun-
267 tary action.

268 (2) The term "remuneration," with respect to any individual
269 for benefit years commencing on or after July 1, 1961, and as used
270 in this subsection, shall include only that part of the same which
271 in any week exceeds 20% of his weekly benefit rate (fractional parts
272 of a dollar omitted) or \$5.00 whichever is the larger.

273 (3) An individual's week of unemployment shall be deemed to
274 commence only after his registration at an employment office,
275 except as the division may by regulation otherwise prescribe.

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

280 (o) "Wages" means remuneration paid subsequent to Decem-
281 ber 31, 1946, by employers for employment; provided, however, that
282 for eligibility and benefit purposes wages earned but not paid when
283 the amount thereof has been calculated and is due as determined

284 by the established and customary practices of the employer shall be
285 construed as having been paid when earned. *Gratuities, received*
286 *regularly in the course of employment from other than the em-*
287 *ployer, shall be included in determining the wages but only in those*
288 *cases where the employer or employee has kept a regular daily or*
289 *weekly record of the amount of gratuities so received. In such cases*
290 *the average weekly amount of gratuities over a period of 6 months,*
291 *or for the entire time of employment, whichever period is less, shall*
292 *be added to the fixed weekly wage to determine the employee's*
293 *total weekly wage.*

294 "Remuneration" means all compensation for personal services,
295 including commissions and bonuses and the cash value of all com-
296 pensation in any medium other than cash.

297 (q) "Week" means such period or periods of 7 consecutive days
298 ending at midnight, as the division may by regulation prescribe.

299 (r) "Calendar quarter" means the period of 3 consecutive
300 calendar months ending on March 31, June 30, September 30, or
301 December 31.

302 (s) "Investment company" means any company as defined in
303 paragraph 1-a of chapter 322 of the laws of 1938, entitled "An act
304 concerning investment companies, and supplementing Title 17 of
305 the Revised Statutes by adding thereto a new chapter entitled
306 'investment companies.' "

307 (t) "Base week" means any calendar week of an individual's
308 base year during which he earned in employment from an employer
309 remuneration equal to not less than \$15.00; provided, if in any
310 calendar week, an individual is in employment with more than one
311 employer, he may in such calendar week establish a base week with
312 respect to each such employer from whom the individual earns
313 remuneration equal to not less than \$15.00 during such week.

314 (u) "Average weekly wage" means the amount derived by divid-
315 ing an individual's total wages received during his base year base
316 weeks (as defined in subsection (t) of this section) from that most
317 recent base year employer with whom he had established at least 17
318 base weeks, by the number of base weeks in which such wages were
319 earned. In the event that such claimant had no employer in his
320 base year with whom he had established at least 17 base weeks,
321 then such individual's average weekly wage shall be computed as if
322 all of his base week wages were received from one employer and as
323 if all his base weeks of employment had been performed in the em-
324 ploy of one employer.

325 If on application of a claimant it is determined that he has been
326 employed during at least the 4 weeks immediately preceding his

327 separation from employment by an employer on a substantially
328 reduced schedule of weekly hours due to lack of work, all weeks of
329 substantially reduced schedule within the base period and his wages
330 therefor shall be disregarded in computing his average weekly
331 wage.

332 (v) "Initial determination" means, subject to the provisions of
333 Revised Statutes 43:21-6 (b) (2) and (3), a determination of benefit
334 rights as measured by an eligible individual's base year employ-
335 ment with a single employer covering all periods of employment
336 with that employer during the base year. Subject to the provisions
337 of Revised Statutes 43:21-3 (d) (3) if an individual has been in
338 employment in his base year with more than one employer, no
339 benefits shall be paid to that individual under any successive initial
340 determination until his benefit rights have been exhausted under
341 the next preceding initial determination.

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

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

1 2. This act shall take effect immediately.