

12/3/70

SENATE, No. 739

STATE OF NEW JERSEY

INTRODUCED APRIL 6, 1970

By Senator McDERMOTT

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:

4A (a) (1) "Annual payroll" means the total amount of wages  
4B paid during a calendar year (regardless of when earned) by an  
4C employer for employment.

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

25 31 (or the next succeeding day if such January 31 is a Saturday  
26 or Sunday) immediately preceding the beginning of the 12 months'  
27 period for which the employer's contribution rate is computed.

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

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

35 (d) "Benefit year" with respect to any individual means the  
36 364 consecutive calendar days beginning with the day on, or as of,  
37 which he first files a valid claim, for benefits, and thereafter begin-  
38 ning with the day on, or as of, which the individual next files a  
38A valid claim for benefits after the termination of his last preceding  
39 benefit year. Any claim for benefits made in accordance with sub-  
40 section (a) of section 43:21-6 of this Title shall be deemed to be a  
41 "Valid Claim" for the purpose of this subsection if (1) no re-  
42 munerated was paid or is payable for the day on which, or as of  
43 which he files a claim for benefits, and no work is available to him  
44 with his current employing unit on such day, or, he is unemployed  
45 for the week in which, or as of which, he files a claim for benefits;  
46 and (2) he has fulfilled the conditions imposed by subsection (e)  
47 of section 43:21-4 of this Title.

48 (e) "Division" means the Division of Employment Security  
49 of the Department of Labor and Industry established by chapter  
50 446, P. L. 1948, and any transaction or exercise of authority by  
51 the director of the division thereunder, or under this chapter  
52 (R. S. 43:21-1 et seq.), shall be deemed to be performed by the  
53 division.

54 (f) "Contributions" means the money payments to the State  
55 unemployment compensation fund required by this chapter (R. S.  
56 43:21-1 et seq.).

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

67 employing unit for all the purposes of this chapter (R. S. 43:21-1  
68 et seq.). Whenever any employing unit contracts with or has  
68a under it any contractor or subcontractor for any employment which  
69 is part of its usual trade, occupation, profession, or business,  
70 unless the employing unit as well as each such contractor or sub-  
71 contractor is an employer by reason of subsection (c) of section  
72 43:21-8 of this Title or subsection (h) of this section, the employ-  
73 ing unit shall for all the purposes of this chapter be deemed to  
74 employ each individual in the employ of each such contractor or  
75 subcontractor for each day during which such individual is engaged  
76 in performing such employment; except that each such contractor  
77 or subcontractor who is an employer by reason of subsection (c)  
78 of section 43:21-8 of this Title or subsection (h) of this section,  
79 shall alone be liable for the contributions measured by wages  
80 payable to individuals in his employ, and except that any employ-  
81 ing unit who shall become liable for and pay contributions with  
82 respect to individuals in the employ of any such contractor or  
83 subcontractor who is not an employer by reason of subsection (c)  
84 of section 43:21-8 of this Title or subsection (h) of this section,  
85 may recover the same from such contractor or subcontractor. Each  
86 individual employed to perform or to assist in performing the  
87 work of any agent or employee of an employing unit shall be  
88 deemed to be employed by such employing unit for all the purposes  
89 of this chapter (R. S. 43:21-1 et seq.), whether such individual  
90 was hired or paid directly by such employing unit or by such agent  
91 or employee; provided, the employing unit had actual or construc-  
92 tive knowledge of the work.

93 (h) "Employer" means:

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

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

105 (3) Any employing unit which acquired the organization, trade  
106 or business, or substantially all the assets thereof, of another em-  
107 ploying unit and which, if treated as a single unit with such other

108 employing unit, would be an employer under paragraph (1) of this  
109 subsection;

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

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

121 (6) For the effective period of its election pursuant to subsection  
122 (c) of section 43:21-8 of this chapter (R. S. 43:21-1 et seq.) any  
123 other employing unit which has elected to become fully subject  
124 to this chapter (R. S. 43:21-1 et seq.); or

125 (7) *Any employing unit subject to the provisions of the Federal*  
126 *Unemployment Tax Act within either the current or the preceding*  
127 *calendar year except for employment hereinafter excluded under*  
128 *paragraph (7) of subsection (i) of this section.*

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

131A (2) The term "employment" shall include an individual's entire  
132 service performed within or both within and without this State if:

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

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

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

149 (4) Services not covered under paragraph (2) of this subsection,  
150 and performed entirely without this State, with respect to no part

151 of which contributions are required and paid under an unemploy-  
 152 ment compensation law of any other State or of the Federal Gov-  
 153 ernment, shall be deemed to be employment subject to this chapter  
 154 (R. S. 43:21-1 et seq.) if the individual performing such services  
 156-156 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  
 183a his son, daughter or spouse, and service performed by a child  
 184 under the age of 21 in the employ of his father or mother;

185 (D) Service performed in the employ of this State or of  
 186 any political subdivision thereof or of any instrumentality of  
 187 this State or its political subdivisions *except those services*  
 188 *performed in the employ of the South Jersey Port Commission*  
 189 *or its successors;*

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

194 (F) Services performed in the employ of a corporation,  
195 community chest, fund, or foundation, organized and operated  
196 exclusively for religious, charitable, scientific, literary, hos-  
197 pital, benevolent, philanthropic, or educational purposes, or  
198 for the prevention of cruelty to children or animals, no part  
199 of the net earnings of which inures to the benefit of any private  
200 shareholder or individual;

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

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

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

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

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

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

235 (M) Service performed for or in behalf of the owner or  
236 operator of any theatre, ballroom, amusement hall or other

237 place of entertainment, not in excess of 10 weeks in any calen-  
 238 dar year for the same owner or operator, by any leader or  
 239 musician of a band or orchestra, commonly called a "name  
 240 band," entertainer, vaudeville artist, actor, actress, singer or  
 241 other entertainer;

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

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

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

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

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

262 (m) Unemployment.

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

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

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

277 (n) "Unemployment compensation administration fund" means  
 278 the unemployment compensation administration fund established

279 by this chapter (R. S. 43:21-1 et seq.), from which administrative  
280 expenses under this chapter (R. S. 43:21-1 et seq.) shall be paid.

281 (o) "Wages" means remuneration paid subsequent to Decem-  
282 ber 31, 1946, by employers for employment; provided, however,  
283 that for eligibility and benefit purposes wages earned but not paid  
284 when the amount thereof has been calculated and is due as de-  
285 termined by the established and customary practices of the em-  
286 ployer shall be construed as having been paid when earned.  
287 Gratuities, received regularly in the course of employment from  
288 other than the employer, shall be included in determining the  
289 wages but only in those cases where the employer or employee  
290 has kept a regular daily or weekly record of the amount of  
291 gratuities so received. In such cases the average weekly amount  
292 of gratuities over a period of 6 months, or for the entire time of  
293 employment, whichever period is less, shall be added to the fixed  
294 weekly wage to determine the employee's total weekly wage.

295 (p) "Remuneration" means all compensation for personal ser-  
296 vices, including commissions and bonuses and the cash value of  
297 all compensation in any medium other than cash.

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

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

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

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

315 (u) "Average weekly wage" means the amount derived by divid-  
316 ing an individual's total wages received during his base year base  
317 weeks (as defined in subsection (t) of this section) from that most  
318 recent base year employer with whom he had established at least  
319 17 base weeks, by the number of base weeks in which such wages  
320 were earned. In the event that such claimant had no employer in  
321 his base year with whom he had established at least 17 base weeks,



322 then such individual's average weekly wage shall be computed as if  
323 all of his base week wages were received from one employer and as  
324 if all his base weeks of employment had been performed in the em-  
325 ploy of one employer.

326 If on application of a claimant it is determined that he has been  
327 employed during at least the 4 weeks immediately preceding his  
328 separation from employment by an employer on a substantially  
329 reduced schedule of weekly hours due to lack of work, all weeks of  
330 substantially reduced schedule within the base period and his wages  
331 therefor shall be disregarded in computing his average weekly  
332 wage.

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

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

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

1 2. This act shall take effect immediately.

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#### STATEMENT

This is corrective legislation to combine into one law the separate amendments to R. S. 43:21-19 enacted pursuant to P. L. 1968, chapter 360, P. L. 1968, chapter 366 and P. L. 1968, chapter 469.

This corrective legislation has been prepared by the Law Revision and Legislative Services Commission.