

[Third Reprint]

ASSEMBLY, No. 822

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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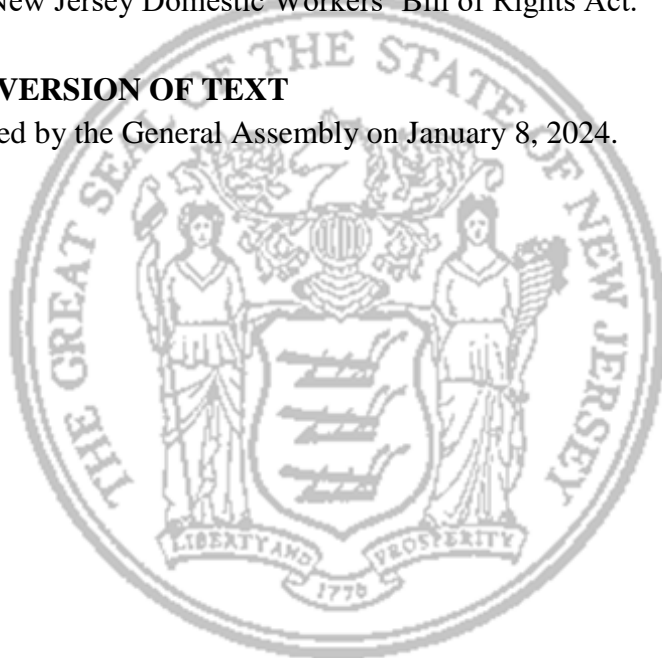
**Assemblyman Mukherji, Assemblywoman Sumter, Assemblyman Atkins,
Assemblywoman Jaffer, Assemblyman Spearman, Assemblywomen
Speight, Haider, McKnight, Yustein and Assemblyman McKeon**

SYNOPSIS

Creates “New Jersey Domestic Workers’ Bill of Rights Act.”

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 8, 2024.



(Sponsorship Updated As Of: 1/8/2024)

1 AN ACT concerning the employment rights of domestic workers and
2 amending and supplementing various parts of the statutory law.

3

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

6

7 1. (New section) The Legislature finds and declares that:

8 a. Domestic workers provide valuable services in industries
9 such as in-home child care, house cleaning, home care, cooking,
10 gardening, and other household occupations.

11 b. The labor domestic workers provide is an important
12 contribution to the State’s economy and prosperity, including but
13 not limited to, by providing support services that enable other
14 individuals to participate in the workforce.

15 c. Many domestic workers are women, immigrants, and
16 persons of color who work in or about private homes, isolated from
17 other workers.

18 d. Since 2007, the National Domestic Workers Alliance
19 (NDWA) has advocated for respect for domestic workers by
20 including them in national, State, and local labor protection laws.
21 NDWA. In September 2020, NDWA affiliates, Adhikaar, Casa
22 Freehold, New Labor and Wind of the Spirit, in collaboration with
23 the Center for Women at Work at Rutgers University, released a
24 report which found low pay, lack of benefits, and rampant wage
25 theft occurs throughout the domestic worker industry, and that there
26 is a lack of enforcement regarding existing rights of domestic
27 workers.

28 e. At least 10 other states and two cities have enacted
29 legislation to provide rights, benefits, and protections for domestic
30 workers.

31 f. The Legislature therefore finds that it is in the best interest
32 of the State of New Jersey and its residents to provide rights,
33 benefits, and protections to the countless domestic workers
34 providing valuable services throughout the State.

35

36 2. (New section) As used in P.L. , c. (C.) (pending
37 before the Legislature as this bill):

38 “Casual work” means work that is:

- 39 (1) irregular, uncertain, or incidental in nature and duration; and
40 (2) different in nature from the type of paid work in which the
41 worker is customarily engaged.

42 “Domestic services” means services of a household nature and
43 performed by an individual in or about a private home on a
44 permanent or temporary basis, and includes services performed by a
45 domestic worker.

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

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted May 19, 2022.

²Assembly ASL committee amendments adopted October 17, 2022.

³Assembly floor amendments adopted January 8, 2024.

1 "Domestic worker" or "worker" means hourly and salaried
2 employees, ³[independent contractors,]³ full-time and part-time
3 individuals and temporary individuals and is narrowly construed to
4 mean any worker who:

5 (1) works for one or more employers; and
6 (2) is an individual who works in residence for the purposes of
7 providing any of the following services: caring for a child; serving
8 as a companion or caretaker for a sick, convalescing, or elderly
9 person, or a person with a disability; housekeeping or house
10 cleaning; cooking; providing food or butler service; parking cars;
11 cleaning laundry; gardening; personal organizing, or for any other
12 domestic service purpose; provided that the term domestic worker
13 does not include:

14 (a) A family member, with "family member" meaning a spouse,
15 child, parent, sibling, aunt, uncle, niece, nephew, first cousin,
16 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,
17 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half
18 brother, or half sister, whether the individual is related by blood,
19 marriage, or adoption;

20 (b) An individual primarily engaged in house sitting, pet sitting,
21 or dog walking;

22 (c) An individual working at a business operated primarily out
23 of the residence, such as a home day-care business;

24 (d) An individual whose primary work involves household
25 repair or maintenance, such as a roofer, plumber, mason, painter or
26 other
27 similar contractor;

28 (e) ²[A home health care worker while they are paid through
29 public funds, such as a home health care worker while paid through
30 Medicaid or Medicare] An employee of the State or the United
31 States²; ³or³

32 (f) An individual established as a kinship legal guardian, as
33 defined by section 2³[.]³ of P.L.2001, c.250 (C.3B:12A-2), of a
34 child who lives in the residence, or an individual who participates in
35 the Kinship Navigator Program, as authorized by the Department of
36 Children and Families, as a caregiver of a child who lives in the
37 residence and receives services provided by a kinship navigator
38 service provider³; or

39 (g) An individual less than 18 years of age³.

40 "Department" means the Department of Labor and Workforce
41 Development.

42 "Employment agency" means any person or entity that procures,
43 or attempts to procure, ³[directly or indirectly through placement in
44 a physical or virtual labor pool:

45 (1) employees, independent contractors, or domestic workers for
46 employers or companies seeking the services of employees,
47 independent contractors, or domestic workers; and

1 (2) after the procurement is complete, continues involvement in
2 the terms of exchange of domestic services with the employees,
3 independent contractors, or domestic workers through activities,
4 including, but not limited to:

5 (a) processing or distributing or withholding workers' payment
6 that the workers are owed from ¹**[hiring entities]** ²**[employers¹]**
7 hiring entities² or clients;

8 (b) levying fees, fines, or discipline for unsatisfactory worker
9 behavior that happened during an employment, independent
10 contractor engagement, or other job, including the termination of
11 workers;

12 (c) rating workers on an ongoing basis and publicly sharing
13 those ratings to employers or clients;

14 (d) adjusting wages or payment based on ratings from
15 employers or clients; or

16 (e) other forms of continued involvement after procurement that
17 evidence ongoing control **]** any workers for referral to a third party³.

18 ¹**["Hiring entity" means any employer, as defined in section 1 of**
19 **P.L.1965, c.173 (C.34:11-4.1), who employs a domestic worker,**
20 **and also means any person, firm, business, partnership, association,**
21 **corporation, limited liability company, or other entity, including**
22 **referral, employment, and internet based or on-demand platforms,**
23 **that provides compensation directly or indirectly to a domestic**
24 **worker for the performance of domestic services and any person or**
25 **persons acting directly or indirectly in the interest of the employer**
26 **in relation to the domestic worker.]¹ ²"Hiring entity" means any
27 employer, as defined in section 1 of P.L.1965, c.173 (C.34:11-4.1),
28 who employs a domestic worker, and also means any person, firm,
29 business, partnership, association, corporation, limited liability
30 company, or other entity, including referral, employment, and
31 internet based or on-demand platforms, that provides compensation
32 directly or indirectly to a domestic worker for the performance of
33 domestic services and any person or persons acting directly or
34 indirectly in the interest of the employer in relation to the domestic
35 worker.²**

36 "Live-in domestic worker" includes any individuals, who, as part
37 of their employment, reside in the personal residence of the ¹**[hiring**
38 **entity]** employer.¹

39 "Referral agency" means any person or entity that procures, or
40 attempts to procure, directly or indirectly through placement in a
41 physical or virtual labor pool:

42 (1) employees³**],** independent contractors, or domestic workers
43 for employers or companies seeking the services of employees,
44 independent contractors, or domestic workers]³; and

45 (2) after the procurement does not continue involvement in the
46 terms of exchange of domestic services with the employees³**],**

1 independent contractors, or domestic workers³ in any way, with
2 the exception of the following:

3 (a) continuing to display or host or advertise, either through
4 physical means or virtual means, the workers' contact information,
5 job qualifications, resume, image, or digital profile which
6 employers or clients can use to independently contact employees³,
7 independent contractors, or domestic workers³ about
8 employment³, independent contractor engagement, or domestic
9 workers about employment, independent contractor engagements,
10 or other jobs³; or

11 (b) removing, either through physical means or virtual means,
12 the workers' contact information, job qualifications, resume, image,
13 or digital profile which employers or clients can use to
14 independently contact employees, upon the mandate of any federal,
15 State, or local ³["Wage"] laws.

16 "Remuneration for work"³ means compensation due to the work
17 of a domestic worker, payable in legal tender of the United States or
18 checks on banks convertible into cash on demand at full face value,
19 subject to any deductions, charges, or allowances as may be
20 permitted by rules of the department.

21 "Written" or "writing" means a printed or printable
22 communication in physical or electronic form, including a
23 communication that is transmitted through email, text message, or a
24 computer system, or is otherwise sent and maintained
25 electronically.

26

27 3. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read
28 as follows:

29 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
30 different meaning clearly appears from the context:

31 a. "Person" includes one or more individuals, partnerships,
32 associations, organizations, labor organizations, corporations, legal
33 representatives, trustees, trustees in bankruptcy, receivers, and
34 fiduciaries.

35 b. "Employment agency" **[includes any person undertaking to**
36 **procure employees or opportunities for others to work]** ²**[shall have**
37 **the same meaning as in section 2 of P.L. , c. (C.) (pending**
38 **before the Legislature as this bill)]** **includes any person undertaking**
39 **to procure employees or opportunities for others to work**².

40 c. "Labor organization" includes any organization which exists
41 and is constituted for the purpose, in whole or in part, of collective
42 bargaining, or of dealing with employers concerning grievances,
43 terms or conditions of employment, or of other mutual aid or
44 protection in connection with employment.

45 d. "Unlawful employment practice" and "unlawful
46 discrimination" include only those unlawful practices and acts
47 specified in section 11 of P.L.1945, c.169 (C.10:5-12).

1 e. "Employer" includes all persons as defined in subsection a.
2 of this section ¹~~["and "hiring entities" as defined by section 2 of~~
3 ~~P.L. , c. (C.) (pending before the Legislature as this bill),]~~¹
4 ²~~and "hiring entities" as defined by section 2 of P.L. ,~~
5 ~~c. (C.) (pending before the Legislature as this bill),~~² unless
6 otherwise specifically exempt under another section of P.L.1945,
7 c.169 (C.10:5-1 et seq.), and includes the State, any political or civil
8 subdivision thereof, and all public officers, agencies, boards, or
9 bodies.

10 f. ~~["Employee" does not include any individual employed in~~
11 ~~the domestic service of any person.] (Deleted by amendment,~~
12 ~~P.L. , c. (pending before the Legislature as this bill)~~

13 g. "Liability for service in the Armed Forces of the United
14 States" means subject to being ordered as an individual or member
15 of an organized unit into active service in the Armed Forces of the
16 United States by reason of membership in the National Guard, naval
17 militia or a reserve component of the Armed Forces of the United
18 States, or subject to being inducted into such armed forces through
19 a system of national selective service.

20 h. "Division" means the "Division on Civil Rights" created by
21 P.L.1945, c.169 (C.10:5-1 et seq.).

22 i. "Attorney General" means the Attorney General of the State
23 of New Jersey or the Attorney General's representative or designee.

24 j. "Commission" means the Commission on Civil Rights
25 created by P.L.1945, c.169 (C.10:5-1 et seq.).

26 k. "Director" means the Director of the Division on Civil
27 Rights.

28 l. "A place of public accommodation" shall include, but not be
29 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
30 summer camp, day camp, or resort camp, whether for entertainment
31 of transient guests or accommodation of those seeking health,
32 recreation, or rest; any producer, manufacturer, wholesaler,
33 distributor, retail shop, store, establishment, or concession dealing
34 with goods or services of any kind; any restaurant, eating house, or
35 place where food is sold for consumption on the premises; any
36 place maintained for the sale of ice cream, ice and fruit preparations
37 or their derivatives, soda water or confections, or where any
38 beverages of any kind are retailed for consumption on the premises;
39 any garage, any public conveyance operated on land or water or in
40 the air or any stations and terminals thereof; any bathhouse,
41 boardwalk, or seashore accommodation; any auditorium, meeting
42 place, or hall; any theatre, motion-picture house, music hall, roof
43 garden, skating rink, swimming pool, amusement and recreation
44 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
45 pool parlor, or other place of amusement; any comfort station; any
46 dispensary, clinic, or hospital; any public library; and any
47 kindergarten, primary and secondary school, trade or business

1 school, high school, academy, college and university, or any
2 educational institution under the supervision of the State Board of
3 Education or the Commissioner of Education of the State of New
4 Jersey. Nothing herein contained shall be construed to include or to
5 apply to any institution, bona fide club, or place of accommodation,
6 which is in its nature distinctly private; nor shall anything herein
7 contained apply to any educational facility operated or maintained
8 by a bona fide religious or sectarian institution, and the right of a
9 natural parent or one in loco parentis to direct the education and
10 upbringing of a child under his control is hereby affirmed; nor shall
11 anything herein contained be construed to bar any private secondary
12 or post-secondary school from using in good faith criteria other than
13 race, creed, color, national origin, ancestry, gender identity, or
14 expression or affectional or sexual orientation in the admission of
15 students.

16 m. "A publicly assisted housing accommodation" shall include
17 all housing built with public funds or public assistance pursuant to
18 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
19 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
20 c.184, and all housing financed in whole or in part by a loan,
21 whether or not secured by a mortgage, the repayment of which is
22 guaranteed or insured by the federal government or any agency
23 thereof.

24 n. The term "real property" includes real estate, lands,
25 tenements and hereditaments, corporeal and incorporeal, and
26 leaseholds, provided, however, that, except as to publicly assisted
27 housing accommodations, the provisions of this act shall not apply
28 to the rental: (1) of a single apartment or flat in a two-family
29 dwelling, the other occupancy unit of which is occupied by the
30 owner as a residence; or (2) of a room or rooms to another person or
31 persons by the owner or occupant of a one-family dwelling
32 occupied by the owner or occupant as a residence at the time of
33 such rental. Nothing herein contained shall be construed to bar any
34 religious or denominational institution or organization, or any
35 organization operated for charitable or educational purposes, which
36 is operated, supervised, or controlled by or in connection with a
37 religious organization, in the sale, lease, or rental of real property,
38 from limiting admission to or giving preference to persons of the
39 same religion or denomination or from making such selection as is
40 calculated by such organization to promote the religious principles
41 for which it is established or maintained. Nor does any provision
42 under this act regarding discrimination on the basis of familial
43 status apply with respect to housing for older persons.

44 o. "Real estate broker" includes a person, firm, or corporation
45 who, for a fee, commission, or other valuable consideration, or by
46 reason of promise or reasonable expectation thereof, lists for sale,
47 sells, exchanges, buys or rents, or offers or attempts to negotiate a
48 sale, exchange, purchase, or rental of real estate or an interest

1 therein, or collects or offers or attempts to collect rent for the use of
2 real estate, or solicits for prospective purchasers or assists or directs
3 in the procuring of prospects or the negotiation or closing of any
4 transaction which does or is contemplated to result in the sale,
5 exchange, leasing, renting, or auctioning of any real estate, or
6 negotiates, or offers or attempts or agrees to negotiate a loan
7 secured or to be secured by mortgage or other encumbrance upon or
8 transfer of any real estate for others; or any person who, for
9 pecuniary gain or expectation of pecuniary gain conducts a public
10 or private competitive sale of lands or any interest in lands. In the
11 sale of lots, the term "real estate broker" shall also include any
12 person, partnership, association, or corporation employed by or on
13 behalf of the owner or owners of lots or other parcels of real estate,
14 at a stated salary, or upon a commission, or upon a salary and
15 commission or otherwise, to sell such real estate, or any parts
16 thereof, in lots or other parcels, and who shall sell or exchange, or
17 offer or attempt or agree to negotiate the sale or exchange, of any
18 such lot or parcel of real estate.

19 p. "Real estate salesperson" includes any person who, for
20 compensation, valuable consideration or commission, or other thing
21 of value, or by reason of a promise or reasonable expectation
22 thereof, is employed by and operates under the supervision of a
23 licensed real estate broker to sell or offer to sell, buy or offer to buy
24 or negotiate the purchase, sale, or exchange of real estate, or offers
25 or attempts to negotiate a loan secured or to be secured by a
26 mortgage or other encumbrance upon or transfer of real estate, or to
27 lease or rent, or offer to lease or rent any real estate for others, or to
28 collect rents for the use of real estate, or to solicit for prospective
29 purchasers or lessees of real estate, or who is employed by a
30 licensed real estate broker to sell or offer to sell lots or other parcels
31 of real estate, at a stated salary, or upon a commission, or upon a
32 salary and commission, or otherwise to sell real estate, or any parts
33 thereof, in lots or other parcels.

34 q. "Disability" means physical or sensory disability, infirmity,
35 malformation, or disfigurement which is caused by bodily injury,
36 birth defect, or illness including epilepsy and other seizure
37 disorders, and which shall include, but not be limited to, any degree
38 of paralysis, amputation, lack of physical coordination, blindness or
39 visual impairment, deafness or hearing impairment, muteness or
40 speech impairment, or physical reliance on a service or guide dog,
41 wheelchair, or other remedial appliance or device, or any mental,
42 psychological, or developmental disability, including autism
43 spectrum disorders, resulting from anatomical, psychological,
44 physiological, or neurological conditions which prevents the typical
45 exercise of any bodily or mental functions or is demonstrable,
46 medically or psychologically, by accepted clinical or laboratory
47 diagnostic techniques. Disability shall also mean AIDS or HIV
48 infection.

- 1 r. "Blind person" or "person who is blind" means any
2 individual whose central visual acuity does not exceed 20/200 in the
3 better eye with correcting lens or whose visual acuity is better than
4 20/200 if accompanied by a limit to the field of vision in the better
5 eye to such a degree that its widest diameter subtends an angle of
6 no greater than 20 degrees.
- 7 s. "Guide dog" means a dog used to assist persons who are
8 deaf, or which is fitted with a special harness so as to be suitable as
9 an aid to the mobility of a person who is blind, and is used by a
10 person who is blind and has satisfactorily completed a specific
11 course of training in the use of such a dog, and has been trained by
12 an organization generally recognized by agencies involved in the
13 rehabilitation of persons with disabilities, including, but not limited
14 to, those persons who are blind or deaf, as reputable and competent
15 to provide dogs with training of this type.
- 16 t. "Guide or service dog trainer" means any person who is
17 employed by an organization generally recognized by agencies
18 involved in the rehabilitation of persons with disabilities, including,
19 but not limited to, those persons who are blind, have visual
20 impairments, or are deaf or have hearing impairments, as reputable
21 and competent to provide dogs with training, as defined in this
22 section, and who is actually involved in the training process.
- 23 u. "Housing accommodation" means any publicly assisted
24 housing accommodation or any real property, or portion thereof,
25 which is used or occupied, or is intended, arranged, or designed to
26 be used or occupied, as the home, residence, or sleeping place of
27 one or more persons, but shall not include any single family
28 residence the occupants of which rent, lease, or furnish for
29 compensation not more than one room therein.
- 30 v. "Public facility" means any place of public accommodation
31 and any street, highway, sidewalk, walkway, public building, and
32 any other place or structure to which the general public is regularly,
33 normally, or customarily permitted or invited.
- 34 w. "Deaf person" or "person who is deaf" means any person
35 whose hearing is so severely impaired that the person is unable to
36 hear and understand conversational speech through the unaided ear
37 alone, and who must depend primarily on an assistive listening
38 device or visual communication such as writing, lip reading, sign
39 language, and gestures.
- 40 x. "Atypical hereditary cellular or blood trait" means sickle cell
41 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
42 fibrosis trait.
- 43 y. "Sickle cell trait" means the condition wherein the major
44 natural hemoglobin components present in the blood of the
45 individual are hemoglobin A (normal) and hemoglobin S (sickle
46 hemoglobin) as defined by standard chemical and physical analytic
47 techniques, including electrophoresis; and the proportion of
48 hemoglobin A is greater than the proportion of hemoglobin S or one

1 natural parent of the individual is shown to have only normal
2 hemoglobin components (hemoglobin A, hemoglobin A2,
3 hemoglobin F) in the normal proportions by standard chemical and
4 physical analytic tests.

5 z. "Hemoglobin C trait" means the condition wherein the major
6 natural hemoglobin components present in the blood of the
7 individual are hemoglobin A (normal) and hemoglobin C as defined
8 by standard chemical and physical analytic techniques, including
9 electrophoresis; and the proportion of hemoglobin A is greater than
10 the proportion of hemoglobin C or one natural parent of the
11 individual is shown to have only normal hemoglobin components
12 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
13 proportions by standard chemical and physical analytic tests.

14 aa. "Thalassemia trait" means the presence of the thalassemia
15 gene which in combination with another similar gene results in the
16 chronic hereditary disease Cooley's anemia.

17 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
18 which in combination with another similar gene results in the
19 chronic hereditary disease Tay-Sachs.

20 cc. "Cystic fibrosis trait" means the presence of the cystic
21 fibrosis gene which in combination with another similar gene
22 results in the chronic hereditary disease cystic fibrosis.

23 dd. "Service dog" means any dog individually trained to the
24 requirements of a person with a disability including, but not limited
25 to minimal protection work, rescue work, pulling a wheelchair or
26 retrieving dropped items. This term shall include a "seizure dog"
27 trained to alert or otherwise assist persons with epilepsy or other
28 seizure disorders.

29 ee. "Qualified Medicaid applicant" means an individual who is a
30 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

31 ff. "AIDS" means acquired immune deficiency syndrome as
32 defined by the Centers for Disease Control and Prevention of the
33 United States Public Health Service.

34 gg. "HIV infection" means infection with the human
35 immunodeficiency virus or any other related virus identified as a
36 probable causative agent of AIDS.

37 hh. "Affectional or sexual orientation" means male or female
38 heterosexuality, homosexuality, or bisexuality by inclination,
39 practice, identity, or expression, having a history thereof or being
40 perceived, presumed, or identified by others as having such an
41 orientation.

42 ii. "Heterosexuality" means affectional, emotional, or physical
43 attraction or behavior which is primarily directed towards persons
44 of the other gender.

45 jj. "Homosexuality" means affectional, emotional, or physical
46 attraction or behavior which is primarily directed towards persons
47 of the same gender.

1 kk. "Bisexuality" means affectional, emotional, or physical
2 attraction or behavior which is directed towards persons of ³【either
3 gender】 multiple genders³.

4 ll. "Familial status" means being the natural parent of a child,
5 the adoptive parent of a child, the resource family parent of a child,
6 having a "parent and child relationship" with a child as defined by
7 State law, or having sole or joint legal or physical custody, care,
8 guardianship, or visitation with a child, or any person who is
9 pregnant or is in the process of securing legal custody of any
10 individual who has not attained the age of 18 years.

11 mm. "Housing for older persons" means housing:

12 (1) provided under any State program that the Attorney General
13 determines is specifically designed and operated to assist persons
14 who are elderly (as defined in the State program); or provided under
15 any federal program that the United States Department of Housing
16 and Urban Development determines is specifically designed and
17 operated to assist persons who are elderly (as defined in the federal
18 program); or

19 (2) intended for, and solely occupied by, persons 62 years of age
20 or older; or

21 (3) intended and operated for occupancy by at least one person
22 55 years of age or older per unit. In determining whether housing
23 qualifies as housing for older persons under this paragraph, the
24 Attorney General shall adopt regulations which require at least the
25 following factors:

26 (a) the existence of significant facilities and services
27 specifically designed to meet the physical or social needs of older
28 persons, or if the provision of such facilities and services is not
29 practicable, that such housing is necessary to provide important
30 housing opportunities for older persons; and

31 (b) that at least 80 percent of the units are occupied by at least
32 one person 55 years of age or older per unit; and

33 (c) the publication of, and adherence to, policies and procedures
34 which demonstrate an intent by the owner or manager to provide
35 housing for persons 55 years of age or older.

36 Housing shall not fail to meet the requirements for housing for
37 older persons by reason of: persons residing in such housing as of
38 September 13, 1988 not meeting the age requirements of this
39 subsection, provided that new occupants of such housing meet the
40 age requirements of this subsection; or unoccupied units, provided
41 that such units are reserved for occupancy by persons who meet the
42 age requirements of this subsection.

43 nn. "Genetic characteristic" means any inherited gene or
44 chromosome, or alteration thereof, that is scientifically or medically
45 believed to predispose an individual to a disease, disorder, or
46 syndrome, or to be associated with a statistically significant
47 increased risk of development of a disease, disorder, or syndrome.

- 1 oo. "Genetic information" means the information about genes,
2 gene products, or inherited characteristics that may derive from an
3 individual or family member.
- 4 pp. "Genetic test" means a test for determining the presence or
5 absence of an inherited genetic characteristic in an individual,
6 including tests of nucleic acids such as DNA, RNA, and
7 mitochondrial DNA, chromosomes, or proteins in order to identify a
8 predisposing genetic characteristic.
- 9 qq. "Domestic partnership" means a domestic partnership
10 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).
- 11 rr. "Gender identity or expression" means having or being
12 perceived as having a gender related identity or expression whether
13 or not stereotypically associated with a person's assigned sex at
14 birth.
- 15 ss. "Civil Union" means a legally recognized union of two
16 eligible individuals established pursuant to R.S.37:1-1 et seq. and
17 P.L.2006, c.103 (C.37:1-28 et al.).
- 18 tt. ³["Premium wages"] "Premium pay"³ means additional
19 remuneration for night, weekend, or holiday work, or for standby or
20 irregular duty.
- 21 uu. "Premium benefit" means an employment benefit, such as
22 seniority, group life insurance, health insurance, disability
23 insurance, sick leave, annual leave, or an educational or pension
24 benefit that is greater than the employment benefit due the
25 employee for an equivalent period of work performed during the
26 regular work schedule of the employee.
- 27 vv. "Race" is inclusive of traits historically associated with race,
28 including, but not limited to, hair texture, hair types, and protective
29 hairstyles.
- 30 ww. "Protective hairstyles" includes, but is not limited to, such
31 hairstyles as braids, locks, and twists.
- 32 xx. "Family member" means a child, parent, parent-in-law,
33 sibling, grandparent, grandchild, spouse, partner in a civil union
34 couple, domestic partner, or any other individual related by blood to
35 the person, and any other individual that the person shows to have a
36 close association with the person which is the equivalent of a family
37 relationship.
38 (cf: P.L.2019, c.436, s.2)
39
- 40 4. Section 2 of P.L.1965, c.154 (C.34:6A-2) is amended to read
41 as follows:
- 42 2. The following terms wherever used or referred to in this act
43 shall have the following meaning:
- 44 (a) "Act" means this act and rules and regulations promulgated
45 hereunder.
- 46 (b) "Board" means the Industrial Safety Board established under
47 this act.

1 (c) "Bureau" means the Bureau of Engineering and Safety in the
2 Division of Labor, Department of Labor and Industry established
3 under this act.

4 (d) "Commissioner" means the Commissioner of the Department
5 of Labor and Industry or his authorized representatives.

6 (e) "Committee" means the New Jersey State Industrial Safety
7 Committee established under this act.

8 (f) "Department" means the Department of Labor and Industry.

9 (g) "Employee" means any person engaged in service to an
10 employer for wages, salary or other compensation.

11 (h) "Employer" means any person or corporation, partnership,
12 individual proprietorship, joint venture, firm, company or other
13 similar legal entity who engages the services of an employee and
14 who pays his wages, salary, or other compensation; and any person
15 exercising supervision of employees on an employer's behalf ¹];
16 and includes all "hiring entities" as defined by section 2 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill)]¹.

18 (i) "Owner" means the person possessing legal or equitable
19 title. For the purposes of this act "Person possessing equitable title"
20 shall mean that person or corporation, partnership, individual
21 proprietorship, joint venture, firm, company or other legal entity
22 that has actual control over the premises used in whole or in part as
23 a place of employment.

24 (j) "Place of employment" means any building or other
25 premises occupied by an employer in or about which an employee
26 customarily is suffered or permitted to work.

27 (k) "Domestic worker" means all persons defined as a domestic
28 worker by section 2 of P.L. , c. (C.) (pending before the
29 Legislature as ³this³ bill).
30 (cf: P.L.1965, c.154, s.2)

31
32 ²5. Section 6 of P.L.1965, c.154 (C.34:6A-6) is amended to read
33 as follows:

34 6. a. The commissioner shall enforce the provisions of this act,
35 make complaints against persons violating its provisions and prosecute
36 violations of the same.

37 b. The commissioner shall have the power and authority, without
38 notice or delay during regular working hours or other reasonable
39 hours within reasonable limits and in a reasonable manner, to enter
40 and inspect any place of employment and all pertinent conditions,
41 structures, machinery, apparatus, devices, equipment and materials
42 and to question privately the owner and any employer or employee.

43 c. In the case where the ¹place of employment is a residential
44 dwelling and the employee is a domestic worker] employer is an
45 individual or group of individuals and the place of employment is the
46 employer's residential dwelling¹, the commissioner or the
47 commissioner's authorized representative shall initiate telephone

1 contact with the ¹['hiring entity] employer¹ as soon as possible, but
2 not later than 14 calendar days after receipt of a complaint charging a
3 violation.

4 When telephone contact is successfully made, the commissioner or
5 the authorized representative shall:

6 (1) Notify the ¹['hiring entity] employer¹ of the existence of any
7 alleged unsafe or unhealthful condition;

8 (2) Describe the alleged hazard and any specific regulatory
9 standard alleged to have been violated;

10 (3) Inform the ¹['hiring entity] employer¹ that the ¹['entity]
11 employer¹ is required to investigate and abate any hazard discovered
12 during the investigation regarding violations of section 3 of P.L.1965,
13 c.154 (C.34:6A-3);

14 (4) Inform the ¹['hiring entity] employer¹ by letter sent by
15 facsimile or email, or by certified mail if the employer cannot receive
16 facsimile or email, of each alleged hazard and each specific allegation
17 of a violation of a standard;

18 (5) Inform the ¹['hiring entity] employer¹ that if the department
19 determines that the ¹['hiring entity's] employer's¹ response is
20 unsatisfactory for any reason, the department shall seek permission
21 from the ¹['hiring entity] employer¹ to enter the residential dwelling to
22 investigate the matter, and if permission is denied, may secure an
23 inspection warrant to conduct an onsite inspection of the residential
24 dwelling; and

25 (6) Provide the complainant with copies of the law and regulations
26 alleged to have been violated, the department's letter to the employer,
27 and all subsequent correspondence concerning the investigation of any
28 alleged hazards;

29 d. ¹['A hiring entity] An employer¹ subject to investigation shall:

30 (1) Provide the department, within 14 days of the ¹['hiring
31 entity's] employer's¹ receipt of the department's letter, a response
32 describing the results of the employer's investigation of the alleged
33 hazard and a description of all actions taken, in the process of being
34 taken, or planned to be taken, by the ¹['hiring entity] employer¹ to
35 abate the alleged hazard;

36 (2) Provide a copy of the commissioner or the commissioner's
37 authorized representative's letter to the domestic worker, and all
38 subsequent correspondence from and to the ¹['hiring entity] employer¹
39 to the affected domestic worker, or prominently post the letter and
40 correspondence in the method prescribed by letter sent pursuant to
41 subsection c. of this section regarding each alleged hazard and each
42 specific standard to have been violated;

43 e. For complaints alleging serious illness or injury or death while
44 performing domestic services as defined by section 2 of P.L. ,
45 c. (C.) (pending before the Legislature as this bill), the
46 commissioner or the authorized representative may enter the premises
47 with permission or with an inspection warrant issued pursuant to

1 subsection b. of this section without first initiating the telephone
2 contact described in subsection c. of this section.

3 f. Notwithstanding any other provision of this chapter to the
4 contrary, investigations of complaints in domestic services as defined
5 by section 2 of P.L. , c. (C.) (pending before the Legislature
6 as this bill), shall be conducted in a manner to avoid any unwarranted
7 invasion of personal privacy and shall not contain any personal,
8 financial, or medical information of the individuals residing in the
9 residential dwelling that is not pertinent to the investigation of the
10 complaint.

11 g. No person shall obstruct, hinder or delay or interfere with by
12 force or otherwise the performance by the commissioner of any duty
13 under the provisions of this act.

14 (cf: P.L.1973, c.259, s.1)]²

15

16 ²[6.] 5.² Section 9 of P.L.1965, c.154 (C.34:6A-9) is amended to
17 read as follows:

18 9. The commissioner shall make and promulgate rules and
19 regulations reasonably necessary to implement the purposes of this act.
20 Such rules and regulations shall have the force and effect of law and
21 shall be enforced in the manner provided in this act.

22 The commissioner shall ¹make and promulgate rules to ensure the
23 requirements of section 3 of P.L.1965, c.154 (C.34:6A-3) apply to the
24 hiring entities of domestic workers. These rules shall include the
25 establishment of a mechanism to receive complaints within the
26 department that prompts inspections by the commissioner in
27 accordance with section 6 of P.L.1965, c.154 (C.34:6A-6)] provide for
28 the adoption of all applicable occupational standards, amendments, or
29 changes adopted or recognized by the Secretary of Labor under the
30 authority of the "Occupational Safety and Health Act of 1970," which
31 shall be applicable to domestic workers employed by individuals in the
32 residences of the individuals¹.

33 Buildings or other structures in use on the effective date of this act
34 as a place of employment other than a place where the manufacturing
35 of goods of any kind is carried on shall not be made to comply with
36 the requirements of rules and regulations promulgated hereunder
37 substantially affecting such building or other structures unless such
38 compliance is essential to correct an unsafe or unhealthful condition
39 which constitutes a serious and substantial threat to the health or
40 safety of employees.

41 The commissioner shall before promulgation furnish a copy of
42 proposed rules and regulations to the members of the committee for its
43 review and recommendations. Within 90 days of the receipt of said
44 proposed rules and regulations the committee shall provide the
45 commissioner and the board with its written recommendations.
46 Following receipt of the committee's recommendations or upon the
47 expiration of 90 days, the commissioner shall furnish to every member

1 of the board a copy of the proposed rules and regulations with or
 2 without change in his discretion and at the same time a notice of intent
 3 to promulgate proposed rules and regulations shall be published by the
 4 commissioner. This notice of intent shall state briefly the purpose of
 5 the proposed rules and regulations, shall state that a copy of the
 6 proposed rules and regulations may be obtained by any person upon
 7 written request to the department, and shall fix the date, time and place
 8 for a public hearing on the proposed rules and regulations, which date
 9 shall be not less than 21 days after the publication of the notice. All
 10 person appearing at such hearing shall be given the opportunity to be
 11 heard. Rules and regulations, as so proposed or as changed by the
 12 commissioner after such hearing, may be promulgated by the
 13 commissioner 90 days following delivery to the board to be effective
 14 on such date as the rules and regulations shall provide unless
 15 disapproved by a majority of the board and if so disapproved such
 16 rules or regulations shall not become effective. Within 30 days after
 17 the public hearing and on 30 days' notice the commissioner shall call a
 18 meeting of the board for the purpose of discussing the proposed rules
 19 and regulations. If any changes were made in the proposed rules or
 20 regulations following the public hearing, a copy of such change shall
 21 accompany such notice. At any meeting called for such purpose
 22 disapproval shall be by vote of the majority of the members of the
 23 board.

24 (cf: P.L.1965, c.154, s.9)

25

26 ²[7.] ^{6.}² Section 19 of P.L.1965, c.154 (C.34:6A-19) is
 27 amended to read as follows:

28 19. Any person violating any of the provisions of this act shall
 29 be liable to a penalty of not less than ~~[\$25.00]~~ \$975 nor more than
 30 ~~[\$500.00]~~ \$13,653 to be collected in a civil action by a summary
 31 proceeding under the ³[Penalty] “Penalty³ Enforcement Law
 32 [(N.J.S. 2A:58-1)] of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).
 33 Notwithstanding the penalties prescribed in this section, the penalty
 34 amounts shall be subject to adjustment by the commissioner to
 35 remain consistent with the ³[federal Occupational] “Occupational³
 36 Safety and Health Act of ³[1970] 1970,”³ (29 U.S.C. s. 651 et
 37 seq.). ³[50] Fifty³ percent of the sum collected as a penalty
 38 pursuant to this subsection shall be provided to the employee
 39 harmed by violation. Any violation of the act by an officer, agent or
 40 employee shall also be a violation of the act by his employer if such
 41 employer had knowledge of and actual control over the cause of
 42 such violation. Where the violation is of a continuing nature each
 43 day during which it continues, after the date given by which the
 44 violation must be eliminated in the order by the commissioner, shall
 45 constitute an additional, separate and distinct offense, except during
 46 the time an appeal from said order may be taken or is pending.

1 The commissioner is hereby authorized and empowered to
 2 compromise and settle any claim for a penalty under this section in
 3 such amount in the discretion of the commissioner as may appear
 4 appropriate and equitable under all of the circumstances.

5 Nothing in this subsection shall affect the rights of employees or
 6 any remedies available to employees provided by section 5 of
 7 P.L.1986, c.105 (C.34:19-5) or any other provision of law.

8 (cf: P.L.1965 c.154, s.19)

9
 10 ²~~8.~~ ^{7.} Section 22 of P.L.1965, c.154 (C.34:6A-22) is
 11 amended to read as follows:

12 22. This act is not intended to apply and shall not apply to the
 13 following:

14 (a) Places of employment under the exclusive jurisdiction of the
 15 Federal Government with respect to the health and safety of
 16 employees;

17 (b) Places of employment subject to the provisions of the Mine
 18 Safety Act, P.L.1954, c. 197;

19 (c) Employment and places of employment subject to the
 20 provisions of the Construction Safety Act, P.L.1962, c. 45;

21 (d) ~~Domestic employment;~~ (Deleted by amendment, P.L. ,
 22 c.) (pending before the Legislature as this bill)

23 (e) Transportation equipment coming under the jurisdiction of
 24 the Interstate Commerce Commission, Federal Aviation
 25 Administration, or of the New Jersey Division of Motor Vehicles;

26 (f) ~~Institutions requiring a license issued by the Department of~~
 27 ~~Institutions and Agencies pursuant to Revised Statutes 30:11-1;~~
 28 (Deleted by amendment, P.L. , c.) (pending before the
 29 Legislature as this bill)

30 (g) Schools, colleges and universities;

31 (h) Places of employment with fewer than ³~~4~~ ^{four}
 32 employees, except places of employment ¹~~of~~ ^{by individuals for}
 33 domestic services ¹in the residences of the individuals;
 34 employment in which the manufacturing of goods of any kind is
 35 carried on; and except as hereinafter provided in paragraph (o) of
 36 this section;

37 (i) Agricultural employment;

38 (j) Banks and other financial institutions;

39 (k) Places of employment in which the employees are primarily
 40 engaged in office operations and buildings under the actual control
 41 of one employer and in which the employees are primarily engaged
 42 in office operations or laboratories primarily engaged in research,
 43 development, or testing conducted on premises, in separate
 44 buildings, or in building sections devoted exclusively to these
 45 operations;

46 (l) Public utilities which own, operate, manage or control any
 47 autobus, canal, express, railroad, street railway, traction railway,

1 subway, pipeline, gas, electric light, heat, power, water, oil, sewer,
2 telephone or telegraph system, plant or equipment for public use,
3 under privileges granted by the State or by any political subdivision
4 thereof, with respect to work operations performed in connection
5 with the plant or facilities of such public utility located in the public
6 streets and highways, roads and alleys, private rights-of-way, or
7 upon their customers' premises;

8 (m) Liquefied petroleum gas bulk plants and facilities subject to
9 the jurisdiction and supervision of the Superintendent of State
10 Police, pursuant to chapter 139 of the laws of 1950
11 (N.J.S.A. 21:1B-1 to 21:1B-8);

12 (n) Natural gas pipeline utilities subject to the provisions of the
13 Natural Gas Safety Act (P.L.1952, c. 166) (N.J.S.A. 48:10-2 to
14 48:10-9); and

15 (o) Establishments with fewer than 10 employees and which are
16 devoted exclusively to the sale of goods, or furnishing of services,
17 at retail.

18 (cf: P.L.1965, c.154, s.22)

19

20 ¹¶9. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
21 read as follows:

22 2. As used in this act:

23 (a) "Commissioner" means the Commissioner of Labor and
24 Workforce Development.

25 (b) "Director" means the director in charge of the bureau
26 referred to in section 3 of this act.

27 (c) "Wage board" means a board created as provided in section
28 10 of this act.

29 (d) "Wages" means any moneys due an employee from an
30 employer for services rendered or made available by the employee
31 to the employer as a result of their employment relationship
32 including commissions, bonus and piecework compensation and
33 including the fair value of any food or lodgings supplied by an
34 employer to an employee, and, until December 31, 2018, "wages"
35 includes any gratuities received by an employee for services
36 rendered for an employer or a customer of an employer. The
37 commissioner may, by regulation, establish the average value of
38 gratuities received by an employee in any occupation and the fair
39 value of food and lodging provided to employees in any occupation,
40 which average values shall be acceptable for the purposes of
41 determining compliance with this act in the absence of evidence of
42 the actual value of such items.

43 (e) "Regular hourly wage" means the amount that an employee
44 is regularly paid for each hour of work as determined by dividing
45 the total hours of work during the week into the employee's total
46 earnings for the week, exclusive of overtime premium pay.

47 (f) "Employ" includes to suffer or to permit to work.

1 (g) "Employer" includes any individual, partnership,
2 association, corporation, and the State and any county,
3 municipality, or school district in the State, or any agency,
4 authority, department, bureau, or instrumentality thereof, or any
5 person or group of persons acting directly or indirectly in the
6 interest of an employer in relation to an employee, and includes
7 "hiring entities" as defined in section 2 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9 (h) "Employee" includes any individual employed by an
10 employer.

11 (i) "Occupation" means any occupation, service, trade,
12 business, industry or branch or group of industries or employment
13 or class of employment in which employees are gainfully employed.

14 (j) "Minimum fair wage order" means a wage order
15 promulgated pursuant to this act.

16 (k) "Fair wage" means a wage fairly and reasonably
17 commensurate with the value of the service or class of service
18 rendered and sufficient to meet the minimum cost of living
19 necessary for health.

20 (l) "Oppressive and unreasonable wage" means a wage which is
21 both less than the fair and reasonable value of the service rendered
22 and less than sufficient to meet the minimum cost of living
23 necessary for health.

24 (m) "Limousine" means a motor vehicle used in the business of
25 carrying passengers for hire to provide prearranged passenger
26 transportation at a premium fare on a dedicated, nonscheduled,
27 charter basis that is not conducted on a regular route and with a
28 seating capacity in no event of more than 14 passengers, not
29 including the driver, provided, that such a motor vehicle shall not
30 have a seating capacity in excess of four passengers, not including
31 the driver, beyond the maximum passenger seating capacity of the
32 vehicle, not including the driver, at the time of manufacture.
33 "Limousine" shall not include taxicabs, hotel or airport shuttles and
34 buses, buses employed solely in transporting school children or
35 teachers to and from school, vehicles owned and operated directly
36 or indirectly by businesses engaged in the practice of mortuary
37 science when those vehicles are used exclusively for providing
38 transportation related to the provision of funeral services or vehicles
39 owned and operated without charge or remuneration by a business
40 entity for its own purposes.

41 (n) "Seasonal employment" means employment during a year by
42 an employer that is a seasonal employer, or employment by a non-
43 profit or government entity of an individual who is not employed by
44 that employer outside of the period of that year commencing on
45 May 1 and ending September 30, or employment by a governmental
46 entity in a recreational program or service during the period
47 commencing on May 1 and ending September 30, except that
48 "seasonal employment" does not include employment of employees

1 engaged to labor on a farm on either a piece-rate or regular hourly
2 rate basis.

3 (o) "Seasonal employer" means an employer who exclusively
4 provides its services in a continuous period of not more than ten
5 weeks during the months of June, July, August, and September, or
6 an employer for which, during the immediately previous calendar
7 year, not less than two thirds of the employer's gross receipts were
8 received in a continuous period of not more than sixteen weeks or
9 for which not less than 75 percent of the wages paid by the
10 employer during the immediately preceding year were paid for work
11 performed during a single calendar quarter.

12 (p) "Small employer" means any employer who employed less
13 than six employees for every working day during each of a majority
14 of the calendar workweeks in the current calendar year and less than
15 six employees for every working day during not less than 48
16 calendar workweeks in the preceding calendar year, except that, if
17 the employer was newly established during the preceding calendar
18 year, the employer shall be regarded as a "small employer" if the
19 employer employed less than six employees for every working day
20 during all of the weeks of that year, and during a majority of the
21 calendar workweeks in the current calendar year, and, if the
22 employer is newly established during the current calendar year, the
23 employer shall be regarded as a "small employer" if the employer
24 employed less than six employees for every working day during a
25 majority of the calendar workweeks in the current calendar year.

26 (q) "Long-term care facility direct care staff member" means
27 any health care professional licensed or certified pursuant to Title
28 26 or Title 45 of the Revised Statutes who is employed by a long-
29 term care facility and who provides personal care, assistance, or
30 treatment services directly to residents of the facility in the course
31 of the professional's regular duties.

32 (cf: P.L.2020, c.89, s.1) **1**¹

33

34 **¹[10.] ²[9.1] 8.2** Section 5 of P.L.1966, c.113 (C.34:11-56a4)
35 is amended to read as follows:

36 5. a. Except as provided in subsections c., d., e. g., and i. of
37 this section, each employer shall pay to each of his employees
38 wages at a rate of not less than \$8.85 per hour as of January 1, 2019
39 and, on January 1 of 2020 and January 1 of each subsequent year,
40 the minimum wage shall be increased by any increase in the
41 consumer price index for all urban wage earners and clerical
42 workers (CPI-W) as calculated by the federal government for the 12
43 months prior to the September 30 preceding that January 1, except
44 that any of the following rates shall apply if it exceeds the rate
45 determined in accordance with the applicable increase in the CPI-W
46 for the indicated year: on July 1, 2019, the minimum wage shall be
47 \$10.00 per hour; on January 1, 2020, the minimum wage shall be
48 \$11.00 per hour; and on January 1 of each year from 2021 to 2024,

1 inclusive, the minimum wage shall be increased from the rate of the
2 preceding year by \$1.00 per hour. If the federal minimum hourly
3 wage rate set by section 6 of the federal "Fair Labor Standards Act
4 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
5 level higher than the State minimum wage rate set by this
6 subsection, then the State minimum wage rate shall be increased to
7 the level of the federal minimum wage rate and subsequent
8 increases based on increases in the CPI-W pursuant to this section
9 shall be applied to the higher minimum wage rate. If an applicable
10 wage order has been issued by the commissioner under section 17
11 (C.34:11-56a16) of this act, the employer shall also pay not less
12 than the wages prescribed in said order. The wage rates fixed in
13 this section shall not be applicable to [part-time employees
14 primarily engaged in the care and tending of children in the home of
15 the employer, to] persons under the age of 18 not possessing a
16 special vocational school graduate permit issued pursuant to section
17 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
18 salesmen of motor vehicles, or to persons employed as outside
19 salesmen as such terms shall be defined and delimited in regulations
20 adopted by the commissioner, or to persons employed in a volunteer
21 capacity and receiving only incidental benefits at a county or other
22 agricultural fair by a nonprofit or religious corporation or a
23 nonprofit or religious association which conducts or participates in
24 that fair.

25 b. (1) An employer shall also pay each employee not less than
26 1 1/2 times such employee's regular hourly rate for each hour of
27 working time in excess of 40 hours in any week, except that this
28 overtime rate shall not apply: to any individual employed in a bona
29 fide executive, administrative, or professional capacity; or to
30 employees engaged to labor on a farm or employed in a hotel; or to
31 an employee of a common carrier of passengers by motor bus; or to
32 a limousine driver who is an employee of an employer engaged in
33 the business of operating limousines; or to employees engaged in
34 labor relative to the raising or care of livestock.

35 (2) Employees engaged on a piece-rate or regular hourly rate
36 basis to labor on a farm shall be paid for each day worked not less
37 than the applicable minimum hourly wage rate multiplied by the
38 total number of hours worked.

39 (3) Full-time students may be employed by the college or
40 university at which they are enrolled at not less than 85% of the
41 effective applicable minimum wage rate.

42 c. Employees of a small employer, and employees who are
43 engaged in seasonal employment, except for employees who
44 customarily and regularly receive gratuities or tips who shall be
45 subject to the provisions of subsections a. and d. of this section,
46 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
47 of 2020 and January 1 of each subsequent year, that minimum wage
48 rate shall be increased by any increase in the consumer price index

1 for all urban wage earners and clerical workers (CPI-W) as
2 calculated by the federal government for the 12 months prior to the
3 September 30 preceding that January 1, except that any of the
4 following rates shall apply if it exceeds the rate determined in
5 accordance with the applicable increase in the CPI-W for the
6 indicated year: on January 1, 2020, the minimum wage shall be
7 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
8 inclusive, the minimum wage shall be increased from the rate of the
9 preceding year by eighty cents per hour, and, in 2026, the minimum
10 wage shall be increased from the rate of the preceding year by
11 seventy cents per hour, and, in each year from 2027 to 2028
12 inclusive, the minimum wage for employees subject to this
13 subsection c. shall be increased by the same amount as the increase
14 for employees subject to subsection a. of this section based on CPI-
15 W increases, plus one half of the difference between \$15.00 per
16 hour and the minimum wage in effect in 2026 for employees
17 pursuant to subsection a. of this section, so that, by 2028, the
18 minimum wage for employees subject to this subsection shall be the
19 same as the minimum wage in effect for employees subject to
20 subsection a. of this section. If the federal minimum hourly wage
21 rate set by section 6 of the federal "Fair Labor Standards Act of
22 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
23 level higher than the State minimum wage rate set by this
24 subsection, then the State minimum wage rate shall be increased to
25 the level of the federal minimum wage rate and subsequent
26 increases based on increases in the CPI-W pursuant to this
27 subsection shall be applied to the higher minimum wage rate.

28 d. Employees engaged on a piece-rate or regular hourly rate
29 basis to labor on a farm shall be paid \$8.85 per hour as of January
30 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
31 year, that minimum wage rate shall be increased by any increase in
32 the consumer price index for all urban wage earners and clerical
33 workers (CPI-W) as calculated by the federal government for the 12
34 months prior to the September 30 preceding that January 1, except
35 that any of the following rates shall apply if it exceeds the rate
36 determined in accordance with the applicable increase in the CPI-W
37 for the indicated year:

38 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
39 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
40 hour; and on January 1 of each year from 2023 to 2024, inclusive,
41 the minimum wage shall be increased from the rate of the preceding
42 year by eighty cents per hour; and

43 (2) subject to the provisions of paragraph (3) of this subsection
44 d., minimum wage rates shall be increased as follows: on January 1
45 of 2025, the minimum wage shall be increased to \$13.40, and on
46 January 1 of each year from 2026 to 2027, inclusive, the minimum
47 wage shall be increased from the rate of the preceding year by
48 eighty cents per hour, and, in each year from 2028 to 2030

1 inclusive, the minimum wage for employees subject to this
2 subsection d. shall be increased during that year by the same
3 amount as the increase in that year for employees subject to
4 subsection a. of this section based on CPI-W increases, plus one
5 third of the difference between \$15.00 per hour and the minimum
6 wage in effect in 2027 for employees pursuant to subsection a. of
7 this section, so that, by 2030, the minimum wage for employees
8 subject to this subsection shall be the same as the minimum wage in
9 effect for employees subject to subsection a. of this section.

10 (3) Not later than March 31, 2024, the commissioner and the
11 Secretary of Agriculture shall review the report issued by the
12 commissioner pursuant to subsection b. of section 4 of P.L.2019,
13 c.32 (C.34:11-56a4.10) and shall consider any information provided
14 by the secretary regarding the impact on farm employers and the
15 viability of the State's agricultural industry of the increases of the
16 minimum wage made pursuant to paragraph (1) of this subsection,
17 and the potential impact of the increases which would be set by
18 paragraph (2) of this subsection, including comparisons with the
19 wage rates in the agricultural industries in other states, and shall
20 recommend: approval of the increases set forth in paragraph (2) of
21 this subsection; disapproval of the increases set forth in paragraph
22 (2) of this subsection; or an alternative manner of changing the
23 minimum wage after 2024 for employees engaged on a piece-rate or
24 regular hourly rate basis to labor on a farm. In contemplation of the
25 possibility that the commissioner and the secretary are unable to
26 agree on the recommendation required by this paragraph, by
27 December 31, 2021, the Governor shall appoint a public member
28 subject to advice and consent by the Senate, who will serve as a tie-
29 breaking member if needed. The increases set forth in paragraph
30 (2) of this subsection shall take effect unless there is a
31 recommendation pursuant to this paragraph to disapprove the
32 increases or for an alternative manner of changing the minimum
33 wage after 2024 for employees engaged on a piece-rate or regular
34 hourly rate basis to labor on a farm and the Legislature, not later
35 than June 30, 2024, enacts a concurrent resolution approving the
36 implementation of that recommendation. Beginning in 2024, the
37 commissioner, secretary, and public member shall meet biennially
38 to make either a one or two year recommendation to the Legislature
39 for implementation by way of concurrent resolution.

40 (4) If the federal minimum hourly wage rate set by section 6 of
41 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
42 a successor federal law, is raised to a level higher than the State
43 minimum wage rate set by this subsection, then the State minimum
44 wage rate shall be increased to the level of the federal minimum
45 wage rate and subsequent increases based on increases in the CPI-
46 W pursuant to this subsection shall be applied to the higher
47 minimum wage rate.

1 e. With respect to an employee who customarily and regularly
2 receives gratuities or tips, every employer is entitled to a credit for
3 the gratuities or tips received by the employee against the hourly
4 wage rate that would otherwise be paid to the employee pursuant to
5 subsection a. of this section of the following amounts: after
6 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
7 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
8 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
9 calendar year 2023, \$8.87 per hour; and during calendar year 2024
10 and subsequent calendar years, \$9.87 per hour.

11 f. Notwithstanding the provisions of this section to the
12 contrary, every trucking industry employer shall pay to all drivers,
13 helpers, loaders and mechanics for whom the Secretary of
14 Transportation may prescribe maximum hours of work for the safe
15 operation of vehicles, pursuant to section 31502(b) of the federal
16 Motor Carrier Act, 49 U.S.C. s.31502(b), an overtime rate not less
17 than 1 1/2 times the minimum wage required pursuant to this
18 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
19 industry shall be paid no less than the minimum wage rate as
20 provided in this section and N.J.A.C. 12:56-3.1. As used in this
21 section, "trucking industry employer" means any business or
22 establishment primarily operating for the purpose of conveying
23 property from one place to another by road or highway, including
24 the storage and warehousing of goods and property. Such an
25 employer shall also be subject to the jurisdiction of the Secretary of
26 Transportation pursuant to the federal Motor Carrier Act,
27 49 U.S.C. s.31501 et seq., whose employees are exempt under
28 section 213(b)(1) of the federal "Fair Labor Standards Act of 1938,"
29 29 U.S.C. s.213(b)(1), which provides an exemption to employees
30 regulated by section 207 of the federal "Fair Labor Standards Act of
31 1938," 29 U.S.C. s.207, and the Interstate Commerce Act,
32 49 U.S.C. s.501 et al.

33 g. Commencing on January 1, 2020, a training wage of not less
34 than 90 percent of the minimum wage rate otherwise set pursuant to
35 subsection a. of this section may be paid to an employee who is
36 enrolled in an established employer on-the-job or other training
37 program which meets standards set by regulations adopted by the
38 commissioner. The period during which an employer may pay the
39 training wage to the employee shall be the first 120 hours of work
40 after hiring the employee in employment in an occupation in which
41 the employee has no previous similar or related experience. An
42 employer shall not utilize any employee paid the training wage in a
43 manner which causes, induces, encourages or assists any
44 displacement or partial displacement of any currently employed
45 worker, including any previous recipient of the training wage, by
46 reducing hours of a currently employed worker, replacing a current
47 or laid off employee with a trainee, or by relocating operations
48 resulting in a loss of employment at a previous workplace, or in a

1 manner which replaces, supplants, competes with or duplicates any
2 approved apprenticeship program. An employer who pays an
3 employee a training wage shall make a good faith effort to continue
4 to employ the employee after the period of the training wage
5 expires and shall not hire the employee at the training wage unless
6 there is a reasonable expectation that there will be regular
7 employment, paying at or above the effective minimum wage, for
8 the trainee upon the successful completion of the period of the
9 training wage. If the commissioner determines that an employer
10 has made repeated, knowing violations of the provisions of this
11 subsection regarding the payment of a training wage, the
12 commissioner shall suspend the employer's right to pay a training
13 wage for a period set pursuant to regulations adopted by the
14 commissioner, but not less than three years.

15 h. The provisions of this section shall not be construed as
16 prohibiting any political subdivision of the State from adopting an
17 ordinance, resolution, regulation or rule, or entering into any
18 agreement, establishing any standard for vendors, contractors and
19 subcontractors of the subdivision regarding wage rates or overtime
20 compensation which is higher than the standards provided for in
21 this section, and no provision of any other State or federal law
22 establishing a minimum standard regarding wages or other terms
23 and conditions of employment shall be construed as preventing a
24 political subdivision of the State from adopting an ordinance,
25 resolution, regulation or rule, or entering into any agreement,
26 establishing a standard for vendors, contractors and subcontractors
27 of the subdivision which is higher than the State or federal law or
28 which otherwise provides greater protections or rights to employees
29 of the vendors, contractors and subcontractors of the subdivision,
30 unless the State or federal law expressly prohibits the subdivision
31 from adopting the ordinance, resolution, regulation or rule, or
32 entering into the agreement.

33 i. Effective on the first day of the second month next following
34 the effective date of P.L.2020, c.89 (C.30:4D-7cc et al.), the
35 minimum wage for long-term care facility direct care staff members
36 shall be in an amount that is \$3 higher than the prevailing minimum
37 wage established pursuant to subsection a. of this section.

38 (cf: P.L.2020, c.89, s.2)

39

40 ¹[[11.]] ²[[10.1]] ^{9.}² Section 1 of P.L.1952, c.9 (C.34:11-56.1) is
41 amended to read as follows:

42 1. As used in this act:

43 a. "Employee" includes any person, either male or female,
44 employed by an employer, but shall not include persons performing
45 volunteer service for nonprofit organizations or corporations nor
46 persons employed on a farm¹, or in domestic service in a private
47 home,¹ or in a hotel.

1 b. "Employer" includes any person acting directly or indirectly in
 2 the interest, or as agent, of an employer in relation to an employee and
 3 further includes one or more individuals, partnerships, corporations,
 4 associations, legal representatives, trustees, trustees in bankruptcy, or
 5 receivers, ¹and "hiring entities" as defined by section 2 of P.L. ,
 6 c. (C.) (pending before the Legislature as this bill).¹ such term
 7 shall not include nonprofit hospital associations or corporations.

8 c. "Employ" includes to suffer or permit to work.

9 d. "Occupation" includes any industry, trade, business or branch
 10 thereof, or any employment or class of employment.

11 e. "Commissioner" means the Commissioner of Labor and
 12 **Industry Workforce Development** of the State of New Jersey.
 13 (cf: P.L.1952, c.9, s.1)

14
 15 ¹**[12.]** ²**[11.]** R.S.34:15-36 is amended to read as follows:

16 34:15-36. "Willful negligence" within the intent of this chapter
 17 shall consist of (1) deliberate act or deliberate failure to act, or (2) such
 18 conduct as evidences reckless indifference to safety, or (3)
 19 intoxication, operating as the proximate cause of injury, or (4)
 20 unlawful use of a controlled dangerous substance as defined in the
 21 "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226
 22 (C.24:21-1 et seq.).

23 "Employer" **is declared to be synonymous with master, and**
 24 includes natural persons, partnerships, **and** ¹and¹ corporations¹,
 25 and "hiring entities" as defined by section 2 of P.L. , c. (C.)
 26 (pending before the Legislature as this bill)¹; "employee" **is**
 27 synonymous with servant, and **includes all natural persons, including**
 28 officers of corporations, who perform service for an employer for
 29 financial consideration, exclusive of (1) employees eligible under the
 30 federal "Longshore and Harbor Workers' Compensation Act," 44 Stat.
 31 1424 (33 U.S.C.s.901 et seq.), for benefits payable with respect to
 32 accidental death or injury, or occupational disease or infection; and (2)
 33 casual employments, which shall be defined**,** if in connection with the
 34 employer's business, as employment the occasion for which arises by
 35 chance or is purely accidental; or if not in connection with any
 36 business of the employer, as employment not regular, periodic or
 37 recurring; **as work that is:**

38 (a) irregular, uncertain, or incidental in nature or duration; and

39 (b) different in nature from the type of paid work in which the
 40 worker is customarily engaged, provided, however, that forest fire
 41 wardens and forest firefighters employed by the State of New Jersey
 42 shall, in no event, be deemed casual employees.

43 An individual providing services for remuneration shall be
 44 regarded as an employee of an employer for the purposes of the
 45 workers' compensation law, R.S.34:15-1 et seq. unless and until it is
 46 shown to the satisfaction of the division that:

1 (a) the individual has been and will continue to be free from
2 control or direction over the performance of such service, both under
3 his contract of service and in fact; and

4 (b) the service is either outside the usual course of the business for
5 which the service is performed, or that such service is performed
6 outside of all the places of business of the enterprise for which such
7 service is performed; and

8 (c) the individual is customarily engaged in an independently
9 established trade, occupation, profession, or business.

10 A self-employed person, partners of a limited liability partnership,
11 members of a limited liability company or partners of a partnership
12 who actively perform services on behalf of the self-employed person's
13 business, the limited liability partnership, limited liability company or
14 the partnership shall be deemed an "employee" of the business, limited
15 liability partnership, limited liability company or partnership for
16 purposes of receipt of benefits and payment of premiums pursuant to
17 this chapter, if the business, limited liability partnership, limited
18 liability company or partnership elects, when the workers'
19 compensation policy of the business, limited liability partnership,
20 limited liability company or partnership is purchased or renewed, to
21 obtain coverage for the person, the limited liability partners, the
22 limited liability company members or the partners. If the business,
23 limited liability partnership, limited liability company or partnership
24 elects to obtain coverage for the self-employed person, limited liability
25 partners, limited liability company members or the partners, the
26 election may only be made at purchase or at renewal and may not be
27 withdrawn during the policy term. If the business, limited liability
28 partnership, limited liability company or partnership performs services
29 covered under a homeowner's policy or other policies providing
30 comprehensive personal liability insurance for domestic **【servants】**
31 employees, household employees or the dependents thereof, the
32 workers' compensation policy of the business, limited liability
33 partnership, limited liability company or partnership shall have
34 primary responsibility for the payment of benefits. Notwithstanding
35 the provisions of R.S.34:15-71 and 34:15-72, the business, limited
36 liability partnership, limited liability company or partnership shall not
37 be required to purchase a policy unless the business, limited liability
38 partnership, limited liability company or partnership is an "employer"
39 of a least one employee as defined in this section who is not a self-
40 employed person, limited liability partner, limited liability company
41 member or partner actively performing services on behalf of the
42 business, limited liability partnership, limited liability company or
43 partnership.

44 Notwithstanding any other provision of law to the contrary, no
45 insurer or insurance producer as defined in section **【2 of P.L.1987,**
46 **c.293 (C.17:22A-2)】** 3 of P.L.2001, c.210 (c.17:22A-28) shall be
47 liable in an action for damages on account of the failure of a business,
48 limited liability partnership, limited liability company or partnership to

1 elect to obtain workers' compensation coverage for a self-employed
2 person, limited liability partner, limited liability company member or
3 partner, unless the insurer or insurance producer causes damage by a
4 willful, wanton or grossly negligent act of commission or omission.
5 Every application for workers' compensation made on or after the
6 effective date of this amendatory act shall include notice, as approved
7 by the Commissioner of Banking and Insurance, concerning the
8 availability of workers' compensation coverage for self-employed
9 persons, limited liability partners, limited liability company members
10 or partners. That application shall also contain a notice of election of
11 coverage and shall clearly state that coverage for self-employed
12 persons, limited liability partners, limited liability company members
13 and partners shall not be provided under the policy unless the
14 application containing the notice of election is executed and filed with
15 the insurer or insurance producer. The application containing the
16 notice of election shall also contain a statement that the insurer or
17 insurance producer shall not be liable in an action for damages on
18 account of the failure of a business, limited liability partnership,
19 limited liability company or partnership to elect to obtain workers'
20 compensation coverage for a self-employed person, limited liability
21 partner, limited liability company member or partner, unless the
22 insurer or insurance producer causes damage by a willful, wanton or
23 grossly negligent act of commission or omission. The failure of a self-
24 employed person, limited liability partnership, limited liability
25 company or partnership to elect to obtain workers' compensation
26 coverage for the self-employed person, the limited liability partners,
27 the limited liability company members or the partners shall not affect
28 benefits available under any other accident or health policy.

29 Employment shall be deemed to commence when an employee
30 arrives at the employer's place of employment to report for work and
31 shall terminate when the employee leaves the employer's place of
32 employment, excluding areas not under the control of the employer;
33 provided, however, when the employee is required by the employer to
34 be away from the employer's place of employment, the employee shall
35 be deemed to be in the course of employment when the employee is
36 engaged in the direct performance of duties assigned or directed by the
37 employer; but the employment of employee paid travel time by an
38 employer for time spent traveling to and from a job site or of any
39 employee who utilizes an employer authorized vehicle shall
40 commence and terminate with the time spent traveling to and from a
41 job site or the authorized operation of a vehicle on business authorized
42 by the employer. Travel by a policeman, fireman, or a member of a
43 first aid or rescue squad, in responding to and returning from an
44 emergency, shall be deemed to be in the course of employment.

45 Employment shall also be deemed to commence when an
46 employee is traveling in a ridesharing arrangement between his or her
47 place of residence or terminal near such place and his or her place of
48 employment, if one of the following conditions is satisfied: the vehicle

1 used in the ridesharing arrangement is owned, leased or contracted for
2 by the employer, or the employee is required by the employer to travel
3 in a ridesharing arrangement as a condition of employment.

4 Employment shall also be deemed to commence, if an employer
5 provides or designates a parking area for use by an employee, when an
6 employee arrives at the parking area prior to reporting for work and
7 shall terminate when an employee leaves the parking area at the end of
8 a work period; provided that, if the site of the parking area is separate
9 from the place of employment, an employee shall be deemed to be in
10 the course of employment while the employee travels directly from the
11 parking area to the place of employment prior to reporting for work
12 and while the employee travels directly from the place of employment
13 to the parking area at the end of a work period.

14 "Disability permanent in quality and partial in character" means a
15 permanent impairment caused by a compensable accident or
16 compensable occupational disease, based upon demonstrable objective
17 medical evidence, which restricts the function of the body or of its
18 members or organs; included in the criteria which shall be considered
19 shall be whether there has been a lessening to a material degree of an
20 employee's working ability. Subject to the above provisions, nothing
21 in this definition shall be construed to preclude benefits to a worker
22 who returns to work following a compensable accident even if there be
23 no reduction in earnings. Injuries such as minor lacerations, minor
24 contusions, minor sprains, and scars which do not constitute
25 significant permanent disfigurement, and occupational disease of a
26 minor nature such as mild dermatitis and mild bronchitis shall not
27 constitute permanent disability within the meaning of this definition.

28 "Disability permanent in quality and total in character" means a
29 physical or neuropsychiatric total permanent impairment caused by a
30 compensable accident or compensable occupational disease, where no
31 fundamental or marked improvement in such condition can be
32 reasonably expected.

33 Factors other than physical and neuropsychiatric impairments may
34 be considered in the determination of permanent total disability, where
35 such physical and neuropsychiatric impairments constitute at least
36 75% or higher of total disability.

37 "Ridesharing" means the transportation of persons in a motor
38 vehicle, with a maximum carrying capacity of not more than 15
39 passengers, including the driver, where such transportation is
40 incidental to the purpose of the driver. This term shall include such
41 ridesharing arrangements known as carpools and vanpools.

42 "Medical services, medical treatment, physicians' services and
43 physicians' treatment" shall include, but not be limited to, the services
44 which a chiropractor is authorized by law to perform and which are
45 authorized by an employer pursuant to the provisions of R.S.34:15-1 et
46 seq.

47 (cf: P.L.2021, c.334. s.1)]²

1 ²10. R.S.34:15-36 is amended to read as follows:

2 34:15-36. "Willful negligence" within the intent of this chapter
3 shall consist of (1) deliberate act or deliberate failure to act, or (2)
4 such conduct as evidences reckless indifference to safety, or (3)
5 intoxication, operating as the proximate cause of injury, or (4)
6 unlawful use of a controlled dangerous substance as defined in the
7 "New Jersey Controlled Dangerous Substances Act," P.L.1970,
8 c.226 (C.24:21-1 et seq.).

9 "Employer" [is declared to be synonymous with master, and]
10 includes natural persons, partnerships, and corporations;
11 "employee" [is synonymous with servant, and] includes all natural
12 persons, including officers of corporations, who perform service for
13 an employer for financial consideration, exclusive of (1) employees
14 eligible under the federal "Longshore and Harbor Workers'
15 Compensation Act," 44 Stat. 1424 (33 U.S.C.s.901 et seq.), for
16 benefits payable with respect to accidental death or injury, or
17 occupational disease or infection; and (2) casual employments,
18 which shall be defined[, if in connection with the employer's
19 business, as employment the occasion for which arises by chance or
20 is purely accidental; or if not in connection with any business of the
21 employer, as employment not regular, periodic or recurring;] ³[as
22 work that is:

23 (a) irregular, uncertain, or incidental in nature or duration; and
24 (b) different in nature from the type of paid work in which the
25 worker is customarily engaged,] , if in connection with the
26 employer's business, as employment the occasion for which arises
27 by chance or is purely accidental; or if not in connection with any
28 business of the employer, as employment not regular, periodic or
29 recurring;³ provided, however, that forest fire wardens and forest
30 firefighters employed by the State of New Jersey shall, in no event,
31 be deemed casual employees.

32 A self-employed person, partners of a limited liability
33 partnership, members of a limited liability company or partners of a
34 partnership who actively perform services on behalf of the self-
35 employed person's business, the limited liability partnership, limited
36 liability company or the partnership shall be deemed an "employee"
37 of the business, limited liability partnership, limited liability
38 company or partnership for purposes of receipt of benefits and
39 payment of premiums pursuant to this chapter, if the business,
40 limited liability partnership, limited liability company or
41 partnership elects, when the workers' compensation policy of the
42 business, limited liability partnership, limited liability company or
43 partnership is purchased or renewed, to obtain coverage for the
44 person, the limited liability partners, the limited liability company
45 members or the partners. If the business, limited liability
46 partnership, limited liability company or partnership elects to obtain
47 coverage for the self-employed person, limited liability partners,

1 limited liability company members or the partners, the election may
2 only be made at purchase or at renewal and may not be withdrawn
3 during the policy term. If the business, limited liability partnership,
4 limited liability company or partnership performs services covered
5 under a homeowner's policy or other policies providing
6 comprehensive personal liability insurance for domestic **[servants]**
7 workers, household employees or the dependents thereof, the
8 workers' compensation policy of the business, limited liability
9 partnership, limited liability company or partnership shall have
10 primary responsibility for the payment of benefits. Notwithstanding
11 the provisions of R.S.34:15-71 and 34:15-72, the business, limited
12 liability partnership, limited liability company or partnership shall
13 not be required to purchase a policy unless the business, limited
14 liability partnership, limited liability company or partnership is an
15 "employer" of a least one employee as defined in this section who is
16 not a self-employed person, limited liability partner, limited
17 liability company member or partner actively performing services
18 on behalf of the business, limited liability partnership, limited
19 liability company or partnership.

20 Notwithstanding any other provision of law to the contrary, no
21 insurer or insurance producer as defined in section 3 of P.L.2001,
22 c.210 (C.17:22A-28) shall be liable in an action for damages on
23 account of the failure of a business, limited liability partnership,
24 limited liability company or partnership to elect to obtain workers'
25 compensation coverage for a self-employed person, limited liability
26 partner, limited liability company member or partner, unless the
27 insurer or insurance producer causes damage by a willful, wanton or
28 grossly negligent act of commission or omission. Every application
29 for workers' compensation made on or after the effective date of
30 this amendatory act shall include notice, as approved by the
31 Commissioner of Banking and Insurance, concerning the
32 availability of workers' compensation coverage for self-employed
33 persons, limited liability partners, limited liability company
34 members or partners. That application shall also contain a notice of
35 election of coverage and shall clearly state that coverage for self-
36 employed persons, limited liability partners, limited liability
37 company members and partners shall not be provided under the
38 policy unless the application containing the notice of election is
39 executed and filed with the insurer or insurance producer. The
40 application containing the notice of election shall also contain a
41 statement that the insurer or insurance producer shall not be liable
42 in an action for damages on account of the failure of a business,
43 limited liability partnership, limited liability company or
44 partnership to elect to obtain workers' compensation coverage for a
45 self-employed person, limited liability partner, limited liability
46 company member or partner, unless the insurer or insurance
47 producer causes damage by a willful, wanton or grossly negligent
48 act of commission or omission. The failure of a self-employed

1 person, limited liability partnership, limited liability company or
2 partnership to elect to obtain workers' compensation coverage for
3 the self-employed person, the limited liability partners, the limited
4 liability company members or the partners shall not affect benefits
5 available under any other accident or health policy.

6 Employment shall be deemed to commence when an employee
7 arrives at the employer's place of employment to report for work
8 and shall terminate when the employee leaves the employer's place
9 of employment, excluding areas not under the control of the
10 employer; provided, however, when the employee is required by the
11 employer to be away from the employer's place of employment, the
12 employee shall be deemed to be in the course of employment when
13 the employee is engaged in the direct performance of duties
14 assigned or directed by the employer; but the employment of
15 employee paid travel time by an employer for time spent traveling
16 to and from a job site or of any employee who utilizes an employer
17 authorized vehicle shall commence and terminate with the time
18 spent traveling to and from a job site or the authorized operation of
19 a vehicle on business authorized by the employer. Travel by a
20 policeman, fireman, or a member of a first aid or rescue squad, in
21 responding to and returning from an emergency, shall be deemed to
22 be in the course of employment.

23 Employment shall also be deemed to commence when an
24 employee is traveling in a ridesharing arrangement between his or
25 her place of residence or terminal near such place and his or her
26 place of employment, if one of the following conditions is satisfied:
27 the vehicle used in the ridesharing arrangement is owned, leased or
28 contracted for by the employer, or the employee is required by the
29 employer to travel in a ridesharing arrangement as a condition of
30 employment.

31 Employment shall also be deemed to commence, if an employer
32 provides or designates a parking area for use by an employee, when
33 an employee arrives at the parking area prior to reporting for work
34 and shall terminate when an employee leaves the parking area at the
35 end of a work period; provided that, if the site of the parking area is
36 separate from the place of employment, an employee shall be
37 deemed to be in the course of employment while the employee
38 travels directly from the parking area to the place of employment
39 prior to reporting for work and while the employee travels directly
40 from the place of employment to the parking area at the end of a
41 work period.

42 "Disability permanent in quality and partial in character" means
43 a permanent impairment caused by a compensable accident or
44 compensable occupational disease, based upon demonstrable
45 objective medical evidence, which restricts the function of the body
46 or of its members or organs; included in the criteria which shall be
47 considered shall be whether there has been a lessening to a material
48 degree of an employee's working ability. Subject to the above

1 provisions, nothing in this definition shall be construed to preclude
 2 benefits to a worker who returns to work following a compensable
 3 accident even if there be no reduction in earnings. Injuries such as
 4 minor lacerations, minor contusions, minor sprains, and scars which
 5 do not constitute significant permanent disfigurement, and
 6 occupational disease of a minor nature such as mild dermatitis and
 7 mild bronchitis shall not constitute permanent disability within the
 8 meaning of this definition.

9 "Disability permanent in quality and total in character" means a
 10 physical or neuropsychiatric total permanent impairment caused by
 11 a compensable accident or compensable occupational disease,
 12 where no fundamental or marked improvement in such condition
 13 can be reasonably expected.

14 Factors other than physical and neuropsychiatric impairments
 15 may be considered in the determination of permanent total
 16 disability, where such physical and neuropsychiatric impairments
 17 constitute at least 75% or higher of total disability.

18 "Ridesharing" means the transportation of persons in a motor
 19 vehicle, with a maximum carrying capacity of not more than 15
 20 passengers, including the driver, where such transportation is
 21 incidental to the purpose of the driver. This term shall include such
 22 ridesharing arrangements known as carpools and vanpools.

23 "Medical services, medical treatment, physicians' services and
 24 physicians' treatment" shall include, but not be limited to, the
 25 services which a chiropractor is authorized by law to perform and
 26 which are authorized by an employer pursuant to the provisions of
 27 R.S.34:15-1 et seq.²

28 (cf: P.L.2021, c.334. s.1)

29

30 ¹~~13.~~ ²~~12.1~~ 11.² R.S.34:15-92 is amended to read as follows:
 31 34:15-92. ~~Each employer~~ Employers ¹~~and hiring entities~~¹
 32 of domestic ~~servants or household employees~~ workers and every
 33 stock company or mutual association affording insurance for the
 34 liability of such employers by reason of that employment shall be
 35 exempted from the provisions of ~~R.S. 34:15-79, and~~ R.S. 34:15-
 36 80. The provisions of ~~and~~ R.S. 34:15-81 ~~shall not be~~
 37 applicable where the insurance coverage is afforded pursuant to
 38 P.L....., c..... (now pending before the Legislature as Assembly
 39 Bill No. 949 of 1978), but ²employers of domestic workers² are
 40 required to provide written notice of insurance coverage and
 41 cancellation of a policy.

42 (cf: P.L.1979, c.380, s.3)

43

44 ¹~~14.~~ R.S.43:21-19 is amended to read as follows:

45 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
 46 seq.), unless the context clearly requires otherwise:

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

4 (2) "Average annual payroll" means the average of the annual
5 payrolls of any employer for the last three or five preceding
6 calendar years, whichever average is higher, except that any year or
7 years throughout which an employer has had no "annual payroll"
8 because of military service shall be deleted from the reckoning; the
9 "average annual payroll" in such case is to be determined on the
10 basis of the prior three or five calendar years in each of which the
11 employer had an "annual payroll" in the operation of his business, if
12 the employer resumes his business within 12 months after
13 separation, discharge or release from such service, under conditions
14 other than dishonorable, and makes application to have his "average
15 annual payroll" determined on the basis of such deletion within 12
16 months after he resumes his business; provided, however, that
17 "average annual payroll" solely for the purposes of paragraph (3) of
18 subsection (e) of R.S.43:21-7 means the average of the annual
19 payrolls of any employer on which he paid contributions to the
20 State disability benefits fund for the last three or five preceding
21 calendar years, whichever average is higher; provided further that
22 only those wages be included on which employer contributions have
23 been paid on or before January 31 (or the next succeeding day if
24 such January 31 is a Saturday or Sunday) immediately preceding
25 the beginning of the 12-month period for which the employer's
26 contribution rate is computed.

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

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

34 With respect to a benefit year commencing on or after July 1,
35 1995, if an individual does not have sufficient qualifying weeks or
36 wages in his base year to qualify for benefits, the individual shall
37 have the option of designating that his base year shall be the
38 "alternative base year," which means the last four completed
39 calendar quarters immediately preceding the individual's benefit
40 year; except that, with respect to a benefit year commencing on or
41 after October 1, 1995, if the individual also does not have sufficient
42 qualifying weeks or wages in the last four completed calendar
43 quarters immediately preceding his benefit year to qualify for
44 benefits, "alternative base year" means the last three completed
45 calendar quarters immediately preceding his benefit year and, of the
46 calendar quarter in which the benefit year commences, the portion
47 of the quarter which occurs before the commencing of the benefit
48 year.

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

15 (2) With respect to a benefit year commencing on or after June
16 1, 1990 for an individual who immediately preceding the benefit
17 year was subject to a disability compensable under the provisions of
18 the "Temporary Disability Benefits Law," P.L.1948, c.110
19 (C.43:21-25 et seq.), "base year" shall mean the first four of the last
20 five completed calendar quarters immediately preceding the
21 individual's period of disability, if the employment held by the
22 individual immediately preceding the period of disability is no
23 longer available at the conclusion of that period and the individual
24 files a valid claim for unemployment benefits after the conclusion
25 of that period. For the purposes of this paragraph, "period of
26 disability" means the period defined as a period of disability by
27 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
28 c.110 (C.43:21-27). An individual who files a claim under the
29 provisions of this paragraph (2) shall not be regarded as having left
30 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

31 (3) With respect to a benefit year commencing on or after June
32 1, 1990 for an individual who immediately preceding the benefit
33 year was subject to a disability compensable under the provisions of
34 the workers' compensation law (chapter 15 of Title 34 of the
35 Revised Statutes), "base year" shall mean the first four of the last
36 five completed calendar quarters immediately preceding the
37 individual's period of disability, if the period of disability was not
38 longer than two years, if the employment held by the individual
39 immediately preceding the period of disability is no longer
40 available at the conclusion of that period and if the individual files a
41 valid claim for unemployment benefits after the conclusion of that
42 period. For the purposes of this paragraph, "period of disability"
43 means the period from the time at which the individual becomes
44 unable to work because of the compensable disability until the time
45 that the individual becomes able to resume work and continue work
46 on a permanent basis. An individual who files a claim under the
47 provisions of this paragraph (3) shall not be regarded as having left
48 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

12 (e) (1) "Division" means the Division of Unemployment and
13 Temporary Disability Insurance of the Department of Labor and
14 Workforce Development, and any transaction or exercise of
15 authority by the director of the division thereunder, or under this
16 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by
17 the division.

18 (2) "Controller" means the Office of the Assistant
19 Commissioner for Finance and Controller of the Department of
20 Labor and Workforce Development, established by the 1982
21 Reorganization Plan of the Department of Labor.

22 (f) "Contributions" means the money payments to the State
23 Unemployment Compensation Fund, required by R.S.43:21-7.
24 "Payments in lieu of contributions" means the money payments to
25 the State Unemployment Compensation Fund by employers electing
26 or required to make payments in lieu of contributions, as provided
27 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or
28 43:21-7.3).

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

- 1 provided the employing unit had actual or constructive knowledge
2 of the work.
- 3 (h) "Employer" means:
- 4 (1) Any employing unit which in either the current or the
5 preceding calendar year paid remuneration for employment in the
6 amount of \$1,000.00 or more;
- 7 (2) Any employing unit (whether or not an employing unit at the
8 time of acquisition) which acquired the organization, trade or
9 business, or substantially all the assets thereof, of another which, at
10 the time of such acquisition, was an employer subject to this chapter
11 (R.S.43:21-1 et seq.);
- 12 (3) Any employing unit which acquired the organization, trade
13 or business, or substantially all the assets thereof, of another
14 employing unit and which, if treated as a single unit with such other
15 employing unit, would be an employer under paragraph (1) of this
16 subsection;
- 17 (4) Any employing unit which together with one or more other
18 employing units is owned or controlled (by legally enforceable
19 means or otherwise), directly or indirectly by the same interests, or
20 which owns or controls one or more other employing units (by
21 legally enforceable means or otherwise), and which, if treated as a
22 single unit with such other employing unit or interest, would be an
23 employer under paragraph (1) of this subsection;
- 24 (5) Any employing unit for which service in employment as
25 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
26 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
27 performed after December 31, 1977;
- 28 (6) Any employing unit for which service in employment as
29 defined in R.S.43:21-19 (i) (1) (c) is performed after December 31,
30 1971 and which in either the current or the preceding calendar year
31 paid remuneration for employment in the amount of \$1,000.00 or
32 more;
- 33 (7) Any employing unit not an employer by reason of any other
34 paragraph of this subsection (h) for which, within either the current
35 or preceding calendar year, service is or was performed with respect
36 to which such employing unit is liable for any federal tax against
37 which credit may be taken for contributions required to be paid into
38 a state unemployment fund; or which, as a condition for approval of
39 the "unemployment compensation law" for full tax credit against
40 the tax imposed by the Federal Unemployment Tax Act, is required
41 pursuant to such act to be an employer under this chapter
42 (R.S.43:21-1 et seq.);
- 43 (8) (Deleted by amendment; P.L.1977, c.307.)
- 44 (9) (Deleted by amendment; P.L.1977, c.307.)
- 45 (10) (Deleted by amendment; P.L.1977, c.307.)
- 46 (11) Any employing unit subject to the provisions of the Federal
47 Unemployment Tax Act within either the current or the preceding

- 1 calendar year, except for employment hereinafter excluded under
2 paragraph (7) of subsection (i) of this section;
- 3 (12) Any employing unit for which agricultural labor in
4 employment as defined in R.S.43:21-19 (i) (1) (I) is performed after
5 December 31, 1977;
- 6 (13) (a) Any employing unit for which domestic service in
7 employment as defined in R.S.43:21-19 (i) (1) (J) is performed after
8 December 31, 1977 and before January 1, 2022; and
- 9 (b) Any employing unit or hiring entity for domestic services as
10 defined in section 2 of P.L. , c. (C.)(pending before the
11 Legislature as this bill);
- 12 (14) Any employing unit which having become an employer
13 under the "unemployment compensation law" (R.S.43:21-1 et seq.),
14 has not under R.S.43:21-8 ceased to be an employer; or for the
15 effective period of its election pursuant to R.S.43:21-8, any other
16 employing unit which has elected to become fully subject to this
17 chapter (R.S.43:21-1 et seq.).
- 18 (i) (1) "Employment" means:
- 19 (A) Any service performed prior to January 1, 1972, which was
20 employment as defined in the "unemployment compensation law"
21 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
22 provisions of this subsection, service performed on or after January
23 1, 1972, including service in interstate commerce, performed for
24 remuneration or under any contract of hire, written or oral, express
25 or implied.
- 26 (B) (i) Service performed after December 31, 1971 by an
27 individual in the employ of this State or any of its instrumentalities
28 or in the employ of this State and one or more other states or their
29 instrumentalities for a hospital or institution of higher education
30 located in this State, if such service is not excluded from
31 "employment" under paragraph (D) below.
- 32 (ii) Service performed after December 31, 1977, in the employ
33 of this State or any of its instrumentalities or any political
34 subdivision thereof or any of its instrumentalities or any
35 instrumentality of more than one of the foregoing or any
36 instrumentality of the foregoing and one or more other states or
37 political subdivisions, if such service is not excluded from
38 "employment" under paragraph (D) below.
- 39 (C) Service performed after December 31, 1971 by an individual
40 in the employ of a religious, charitable, educational, or other
41 organization, which is excluded from "employment" as defined in
42 the Federal Unemployment Tax Act, solely by reason of section
43 3306 (c)(8) of that act, if such service is not excluded from
44 "employment" under paragraph (D) below.
- 45 (D) For the purposes of paragraphs (B) and (C), the term
46 "employment" does not apply to services performed
- 47 (i) In the employ of (I) a church or convention or association of
48 churches, or (II) an organization, or school which is operated

- 1 primarily for religious purposes and which is operated, supervised,
2 controlled or principally supported by a church or convention or
3 association of churches;
- 4 (ii) By a duly ordained, commissioned, or licensed minister of a
5 church in the exercise of his ministry or by a member of a religious
6 order in the exercise of duties required by such order;
- 7 (iii) Prior to January 1, 1978, in the employ of a school which is
8 not an institution of higher education, and after December 31, 1977,
9 in the employ of a governmental entity referred to in R.S.43:21-19
- 10 (i) (1) (B), if such service is performed by an individual in the
11 exercise of duties
- 12 (aa) as an elected official;
- 13 (bb) as a member of a legislative body, or a member of the
14 judiciary, of a state or political subdivision;
- 15 (cc) as a member of the State National Guard or Air National
16 Guard;
- 17 (dd) as an employee serving on a temporary basis in case of fire,
18 storm, snow, earthquake, flood or similar emergency;
- 19 (ee) in a position which, under or pursuant to the laws of this
20 State, is designated as a major nontenured policy making or
21 advisory position, or a policy making or advisory position, the
22 performance of the duties of which ordinarily does not require more
23 than eight hours per week; or
- 24 (iv) By an individual receiving rehabilitation or remunerative
25 work in a facility conducted for the purpose of carrying out a
26 program of rehabilitation of individuals whose earning capacity is
27 impaired by age or physical or mental deficiency or injury or
28 providing remunerative work for individuals who because of their
29 impaired physical or mental capacity cannot be readily absorbed in
30 the competitive labor market;
- 31 (v) By an individual receiving work-relief or work-training as
32 part of an unemployment work-relief or work-training program
33 assisted in whole or in part by any federal agency or an agency of a
34 state or political subdivision thereof; or
- 35 (vi) Prior to January 1, 1978, for a hospital in a State prison or
36 other State correctional institution by an inmate of the prison or
37 correctional institution and after December 31, 1977, by an inmate
38 of a custodial or penal institution.
- 39 (E) The term "employment" shall include the services of an
40 individual who is a citizen of the United States, performed outside
41 the United States after December 31, 1971 (except in Canada and in
42 the case of the Virgin Islands, after December 31, 1971) and prior
43 to January 1 of the year following the year in which the U.S.
44 Secretary of Labor approves the unemployment compensation law
45 of the Virgin Islands, under section 3304 (a) of the Internal
46 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an
47 American employer (other than the service which is deemed
48 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or

1 the parallel provisions of another state's unemployment
2 compensation law), if

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

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

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

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

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

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

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

- 1 (I) (i) Service performed after December 31, 1977 in
2 agricultural labor in a calendar year for an entity which is an
3 employer as defined in the "unemployment compensation law,"
4 (R.S.43:21-1 et seq.) as of January 1 of such year; or for an
5 employing unit which
- 6 (aa) during any calendar quarter in either the current or the
7 preceding calendar year paid remuneration in cash of \$20,000.00 or
8 more for individuals employed in agricultural labor, or
- 9 (bb) for some portion of a day in each of 20 different calendar
10 weeks, whether or not such weeks were consecutive, in either the
11 current or the preceding calendar year, employed in agricultural
12 labor 10 or more individuals, regardless of whether they were
13 employed at the same moment in time.
- 14 (ii) for the purposes of this subsection any individual who is a
15 member of a crew furnished by a crew leader to perform service in
16 agricultural labor for any other entity shall be treated as an
17 employee of such crew leader
- 18 (aa) if such crew leader holds a certification of registration
19 under the Migrant and Seasonal Agricultural Worker Protection
20 Act, Pub.L.97-470 (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
21 (C.34:8A-7 et seq.); or substantially all the members of such crew
22 operate or maintain tractors, mechanized harvesting or cropdusting
23 equipment, or any other mechanized equipment, which is provided
24 by such crew leader; and
- 25 (bb) if such individual is not an employee of such other person
26 for whom services were performed.
- 27 (iii) For the purposes of subparagraph (I) (i) in the case of any
28 individual who is furnished by a crew leader to perform service in
29 agricultural labor or any other entity and who is not treated as an
30 employee of such crew leader under (I) (ii)
- 31 (aa) such other entity and not the crew leader shall be treated as
32 the employer of such individual; and
- 33 (bb) such other entity shall be treated as having paid cash
34 remuneration to such individual in an amount equal to the amount
35 of cash remuneration paid to such individual by the crew leader
36 (either on his own behalf or on behalf of such other entity) for the
37 service in agricultural labor performed for such other entity.
- 38 (iv) For the purpose of subparagraph (I)(ii), the term "crew
39 leader" means an individual who
- 40 (aa) furnishes individuals to perform service in agricultural
41 labor for any other entity;
- 42 (bb) pays (either on his own behalf or on behalf of such other
43 entity) the individuals so furnished by him for the service in
44 agricultural labor performed by them; and
- 45 (cc) has not entered into a written agreement with such other
46 entity under which such individual is designated as an employee of
47 such other entity.

1 (J) (i) Domestic service after December 31, 1977 and before
2 January 1, 2022 performed in the private home of an employing unit
3 which paid cash remuneration of \$1,000.00 or more to one or more
4 individuals for such domestic service in any calendar quarter in the
5 current or preceding calendar year.

6 (ii) Domestic services as defined by section 2 of P.L. _____,
7 c. (C. _____) (pending before the Legislature as this bill) after
8 December 31, 2021 in either the current or preceding calendar year
9 paid remuneration for employment in the amount of \$1,000 or
10 more.

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

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

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

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

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

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

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

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

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

- 1 (A) Such individual has been and will continue to be free from
2 control or direction over the performance of such service, both
3 under his contract of service and in fact; and
- 4 (B) Such service is either outside the usual course of the
5 business for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprise for
7 which such service is performed; and
- 8 (C) Such individual is customarily engaged in an independently
9 established trade, occupation, profession or business.
- 10 (7) Provided that such services are also exempt under the
11 Federal Unemployment Tax Act, as amended, or that contributions
12 with respect to such services are not required to be paid into a state
13 unemployment fund as a condition for a tax offset credit against the
14 tax imposed by the Federal Unemployment Tax Act, as amended,
15 the term "employment" shall not include:
- 16 (A) Agricultural labor performed prior to January 1, 1978; and
17 after December 31, 1977, only if performed in a calendar year for
18 an entity which is not an employer as defined in the "unemployment
19 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
20 calendar year; or unless performed for an employing unit which
- 21 (i) during a calendar quarter in either the current or the
22 preceding calendar year paid remuneration in cash of \$20,000.00 or
23 more to individuals employed in agricultural labor, or
- 24 (ii) for some portion of a day in each of 20 different calendar
25 weeks, whether or not such weeks were consecutive, in either the
26 current or the preceding calendar year, employed in agricultural
27 labor 10 or more individuals, regardless of whether they were
28 employed at the same moment in time;
- 29 (B) Domestic service in a private home performed prior to
30 January 1, 1978; and after December 31, 1977, unless performed in
31 the private home of an employing unit which paid cash
32 remuneration of \$1,000.00 or more to one or more individuals for
33 such domestic service in any calendar quarter in the current or
34 preceding calendar year;
- 35 (C) Service performed by an individual in the employ of his son,
36 daughter or spouse, and service performed by a child under the age
37 of 18 in the employ of his father or mother;
- 38 (D) Service performed prior to January 1, 1978, in the employ of
39 this State or of any political subdivision thereof or of any
40 instrumentality of this State or its political subdivisions, except as
41 provided in R.S.43:21-19 (i) (1) (B) above, and service in the
42 employ of the South Jersey Port Corporation or its successors;
- 43 (E) Service performed in the employ of any other state or its
44 political subdivisions or of an instrumentality of any other state or
45 states or their political subdivisions to the extent that such
46 instrumentality is with respect to such service exempt under the
47 Constitution of the United States from the tax imposed under the

1 Federal Unemployment Tax Act, as amended, except as provided in
2 R.S.43:21-19 (i) (1) (B) above;

3 (F) Service performed in the employ of the United States
4 Government or of any instrumentality of the United States exempt
5 under the Constitution of the United States from the contributions
6 imposed by the "unemployment compensation law," except that to
7 the extent that the Congress of the United States shall permit states
8 to require any instrumentalities of the United States to make
9 payments into an unemployment fund under a state unemployment
10 compensation law, all of the provisions of this act shall be
11 applicable to such instrumentalities, and to service performed for
12 such instrumentalities, in the same manner, to the same extent and
13 on the same terms as to all other employers, employing units,
14 individuals and services; provided that if this State shall not be
15 certified for any year by the Secretary of Labor of the United States
16 under section 3304 of the federal Internal Revenue Code of 1986
17 (26 U.S.C. s.3304), the payments required of such instrumentalities
18 with respect to such year shall be refunded by the division from the
19 fund in the same manner and within the same period as is provided
20 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
21 or collected by the division;

22 (G) Services performed in the employ of fraternal beneficiary
23 societies, orders, or associations operating under the lodge system
24 or for the exclusive benefit of the members of a fraternity itself
25 operating under the lodge system and providing for the payment of
26 life, sick, accident, or other benefits to the members of such society,
27 order, or association, or their dependents;

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

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

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

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

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

- 1 (M) Service performed for or in behalf of the owner or operator
2 of any theater, ballroom, amusement hall or other place of
3 entertainment, not in excess of 10 weeks in any calendar year for
4 the same owner or operator, by any leader or musician of a band or
5 orchestra, commonly called a "name band," entertainer, vaudeville
6 artist, actor, actress, singer or other entertainer;
- 7 (N) Services performed after January 1, 1973 by an individual
8 for a labor union organization, known and recognized as a union
9 local, as a member of a committee or committees reimbursed by the
10 union local for time lost from regular employment, or as a part-time
11 officer of a union local and the remuneration for such services is
12 less than \$1,000.00 in a calendar year;
- 13 (O) Services performed in the sale or distribution of merchandise
14 by home-to-home salespersons or in-the-home demonstrators whose
15 remuneration consists wholly of commissions or commissions and
16 bonuses;
- 17 (P) Service performed in the employ of a foreign government,
18 including service as a consular, nondiplomatic representative, or
19 other officer or employee;
- 20 (Q) Service performed in the employ of an instrumentality
21 wholly owned by a foreign government if (i) the service is of a
22 character similar to that performed in foreign countries by
23 employees of the United States Government or of an instrumentality
24 thereof, and (ii) the division finds that the United States Secretary
25 of State has certified to the United States Secretary of the Treasury
26 that the foreign government, with respect to whose instrumentality
27 exemption is claimed, grants an equivalent exemption with respect
28 to similar services performed in the foreign country by employees
29 of the United States Government and of instrumentalities thereof;
- 30 (R) Service in the employ of an international organization
31 entitled to enjoy the privileges, exemptions and immunities under
32 the International Organizations Immunities Act (22 U.S.C. s.288 et
33 seq.);
- 34 (S) Service covered by an election duly approved by an agency
35 charged with the administration of any other state or federal
36 unemployment compensation or employment security law, in
37 accordance with an arrangement pursuant to R.S.43:21-21 during
38 the effective period of such election;
- 39 (T) Service performed in the employ of a school, college, or
40 university if such service is performed (i) by a student enrolled at
41 such school, college, or university on a full-time basis in an
42 educational program or completing such educational program
43 leading to a degree at any of the severally recognized levels, or (ii)
44 by the spouse of such a student, if such spouse is advised at the time
45 such spouse commences to perform such service that (I) the
46 employment of such spouse to perform such service is provided
47 under a program to provide financial assistance to such student by

- 1 such school, college, or university, and (II) such employment will
2 not be covered by any program of unemployment insurance;
- 3 (U) Service performed by an individual who is enrolled at a
4 nonprofit or public educational institution which normally
5 maintains a regular faculty and curriculum and normally has a
6 regularly organized body of students in attendance at the place
7 where its educational activities are carried on, as a student in a full-
8 time program, taken for credit at such institution, which combines
9 academic instruction with work experience, if such service is an
10 integral part of such program, and such institution has so certified
11 to the employer, except that this subparagraph shall not apply to
12 service performed in a program established for or on behalf of an
13 employer or group of employers;
- 14 (V) Service performed in the employ of a hospital, if such
15 service is performed by a patient of the hospital; service performed
16 as a student nurse in the employ of a hospital or a nurses' training
17 school by an individual who is enrolled and regularly attending
18 classes in a nurses' training school approved under the laws of this
19 State;
- 20 (W) Services performed after the effective date of this
21 amendatory act by agents of mutual benefit associations if the
22 compensation to such agents for such services is wholly on a
23 commission basis;
- 24 (X) Services performed by operators of motor vehicles weighing
25 18,000 pounds or more, licensed for commercial use and used for
26 the highway movement of motor freight, who own their equipment
27 or who lease or finance the purchase of their equipment through an
28 entity which is not owned or controlled directly or indirectly by the
29 entity for which the services were performed and who were
30 compensated by receiving a percentage of the gross revenue
31 generated by the transportation move or by a schedule of payment
32 based on the distance and weight of the transportation move;
- 33 (Y) (Deleted by amendment, P.L.2009, c.211.)
- 34 (Z) Services performed, using facilities provided by a travel
35 agent, by a person, commonly known as an outside travel agent,
36 who acts as an independent contractor, is paid on a commission
37 basis, sets his own work schedule and receives no benefits, sick
38 leave, vacation or other leave from the travel agent owning the
39 facilities.
- 40 (8) If one-half or more of the services in any pay period
41 performed by an individual for an employing unit constitutes
42 employment, all the services of such individual shall be deemed to
43 be employment; but if more than one-half of the service in any pay
44 period performed by an individual for an employing unit does not
45 constitute employment, then none of the service of such individual
46 shall be deemed to be employment. As used in this paragraph, the
47 term "pay period" means a period of not more than 31 consecutive

1 days for which a payment for service is ordinarily made by an
2 employing unit to individuals in its employ.

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

7 (A) The limousine franchisee is incorporated;

8 (B) The franchisee is subject to regulation by the Interstate
9 Commerce Commission;

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

13 (D) The franchisee registers with the Department of Labor and
14 Workforce Development and receives an employer registration
15 number.

16 (10) Services performed by a legal transcriber, or certified court
17 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
18 shall not be deemed to be employment subject to the
19 "unemployment compensation law," R.S.43:21-1 et seq., if those
20 services are provided to a third party by the transcriber or reporter
21 who is referred to the third party pursuant to an agreement with
22 another legal transcriber or legal transcription service, or certified
23 court reporter or court reporting service, on a freelance basis,
24 compensation for which is based upon a fee per transcript page, flat
25 attendance fee, or other flat minimum fee, or combination thereof,
26 set forth in the agreement.

27 For purposes of this paragraph (10): "legal transcription service"
28 and "legal transcribing" mean making use, by audio, video or voice
29 recording, of a verbatim record of court proceedings, depositions,
30 other judicial proceedings, meetings of boards, agencies,
31 corporations, or other bodies or groups, and causing that record to
32 be printed in readable form or produced on a computer screen in
33 readable form; and "legal transcriber" means a person who engages
34 in "legal transcribing."

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

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

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

42 (m) "Unemployment."

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

45 (A) The individual is not engaged in full-time work and with
46 respect to which his remuneration is less than his weekly benefit
47 rate, including any week during which he is on vacation without
48 pay; provided such vacation is not the result of the individual's

1 voluntary action, except that for benefit years commencing on or
2 after July 1, 1984, an officer of a corporation, or a person who has
3 more than a 5% equitable or debt interest in the corporation, whose
4 claim for benefits is based on wages with that corporation shall not
5 be deemed to be unemployed in any week during the individual's
6 term of office or ownership in the corporation; or

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

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

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

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

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

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

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

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

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

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

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

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

12 (B) If the individual does not establish in his base year 20 or
13 more base weeks as defined in subparagraph (A) of this paragraph
14 (2), any calendar week of an individual's base year during which the
15 individual earned in employment from an employer remuneration
16 not less than an amount 20 times the minimum wage in effect
17 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
18 1 of the calendar year preceding the calendar year in which the
19 benefit year commences, which amount shall be adjusted to the next
20 higher multiple of \$1.00 if not already a multiple thereof, except
21 that if in any calendar week an individual subject to this
22 subparagraph (B) is in employment with more than one employer,
23 the individual may in that calendar week establish a base week with
24 respect to each of the employers from whom the individual earns
25 remuneration not less than the amount defined in this subparagraph
26 (B) during that week.

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

41 (u) "Average weekly wage" means the amount derived by
42 dividing an individual's total wages received during his base year
43 base weeks (as defined in subsection (t) of this section) from that
44 most recent base year employer with whom he has established at
45 least 20 base weeks, by the number of base weeks in which such
46 wages were earned. In the event that such claimant had no employer
47 in his base year with whom he had established at least 20 base
48 weeks, then such individual's average weekly wage shall be

1 computed as if all of his base week wages were received from one
2 employer and as if all his base weeks of employment had been
3 performed in the employ of one employer.

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

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

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

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

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

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

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

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

38 (2) "Institution of higher education" means an educational
39 institution which:

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

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

45 (C) Provides an educational program for which it awards a
46 bachelor's or higher degree, or provides a program which is
47 acceptable for full credit toward such a degree, a program of post-
48 graduate or post-doctoral studies, or a program of training to

1 prepare students for gainful employment in a recognized
2 occupation; and

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

4 Notwithstanding any of the foregoing provisions of this
5 subsection, all colleges and universities in this State are institutions
6 of higher education for purposes of this section.

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

9 (cf: P.L.2017, c.230, s.1)]¹

10

11 ²[¹13.] 12.² R.S.43:21-19 is amended to read as follows:

12 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
13 seq.), unless the context clearly requires otherwise:

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

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

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

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

47 With respect to a benefit year commencing on or after July 1,
48 1995, if an individual does not have sufficient qualifying weeks or

1 wages in his base year to qualify for benefits, the individual shall
2 have the option of designating that his base year shall be the
3 "alternative base year," which means the last four completed
4 calendar quarters immediately preceding the individual's benefit
5 year; except that, with respect to a benefit year commencing on or
6 after October 1, 1995, if the individual also does not have sufficient
7 qualifying weeks or wages in the last four completed calendar
8 quarters immediately preceding his benefit year to qualify for
9 benefits, "alternative base year" means the last three completed
10 calendar quarters immediately preceding his benefit year and, of the
11 calendar quarter in which the benefit year commences, the portion
12 of the quarter which occurs before the commencing of the benefit
13 year.

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

28 (2) With respect to a benefit year commencing on or after June
29 1, 1990 for an individual who immediately preceding the benefit
30 year was subject to a disability compensable under the provisions of
31 the "Temporary Disability Benefits Law," P.L.1948, c.110
32 (C.43:21-25 et seq.), "base year" shall mean the first four of the last
33 five completed calendar quarters immediately preceding the
34 individual's period of disability, if the employment held by the
35 individual immediately preceding the period of disability is no
36 longer available at the conclusion of that period and the individual
37 files a valid claim for unemployment benefits after the conclusion
38 of that period. For the purposes of this paragraph, "period of
39 disability" means the period defined as a period of disability by
40 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
41 c.110 (C.43:21-27). An individual who files a claim under the
42 provisions of this paragraph (2) shall not be regarded as having left
43 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

44 (3) With respect to a benefit year commencing on or after June
45 1, 1990 for an individual who immediately preceding the benefit
46 year was subject to a disability compensable under the provisions of
47 the workers' compensation law (chapter 15 of Title 34 of the
48 Revised Statutes), "base year" shall mean the first four of the last

1 five completed calendar quarters immediately preceding the
2 individual's period of disability, if the period of disability was not
3 longer than two years, if the employment held by the individual
4 immediately preceding the period of disability is no longer
5 available at the conclusion of that period and if the individual files a
6 valid claim for unemployment benefits after the conclusion of that
7 period. For the purposes of this paragraph, "period of disability"
8 means the period from the time at which the individual becomes
9 unable to work because of the compensable disability until the time
10 that the individual becomes able to resume work and continue work
11 on a permanent basis. An individual who files a claim under the
12 provisions of this paragraph (3) shall not be regarded as having left
13 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

25 (e) (1) "Division" means the Division of Unemployment and
26 Temporary Disability Insurance of the Department of Labor and
27 Workforce Development, and any transaction or exercise of
28 authority by the director of the division thereunder, or under this
29 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by
30 the division.

31 (2) "Controller" means the Office of the Assistant
32 Commissioner for Finance and Controller of the Department of
33 Labor and Workforce Development, established by the 1982
34 Reorganization Plan of the Department of Labor.

35 (f) "Contributions" means the money payments to the State
36 Unemployment Compensation Fund, required by R.S.43:21-7.
37 "Payments in lieu of contributions" means the money payments to
38 the State Unemployment Compensation Fund by employers electing
39 or required to make payments in lieu of contributions, as provided
40 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or
41 43:21-7.3).

42 (g) "Employing unit" means the State or any of its
43 instrumentalities or any political subdivision thereof or any of its
44 instrumentalities or any instrumentality of more than one of the
45 foregoing or any instrumentality of any of the foregoing and one or
46 more other states or political subdivisions or any individual or type
47 of organization, any partnership, association, trust, estate, joint-
48 stock company, insurance company or corporation, whether

1 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or
2 successor thereof, or the legal representative of a deceased person,
3 which has or subsequent to January 1, 1936, had in its employ one
4 or more individuals performing services for it within this State. All
5 individuals performing services within this State for any employing
6 unit which maintains two or more separate establishments within
7 this State shall be deemed to be employed by a single employing
8 unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each
9 individual employed to perform or to assist in performing the work
10 of any agent or employee of an employing unit shall be deemed to
11 be employed by such employing unit for all the purposes of this
12 chapter (R.S.43:21-1 et seq.), whether such individual was hired or
13 paid directly by such employing unit or by such agent or employee;
14 provided the employing unit had actual or constructive knowledge
15 of the work.

16 (h) "Employer" means:

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

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

25 (3) Any employing unit which acquired the organization, trade
26 or business, or substantially all the assets thereof, of another
27 employing unit and which, if treated as a single unit with such other
28 employing unit, would be an employer under paragraph (1) of this
29 subsection;

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

37 (5) Any employing unit for which service in employment as
38 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
39 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
40 performed after December 31, 1977;

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

46 (7) Any employing unit not an employer by reason of any other
47 paragraph of this subsection (h) for which, within either the current
48 or preceding calendar year, service is or was performed with respect

1 to which such employing unit is liable for any federal tax against
2 which credit may be taken for contributions required to be paid into
3 a state unemployment fund; or which, as a condition for approval of
4 the "unemployment compensation law" for full tax credit against
5 the tax imposed by the Federal Unemployment Tax Act, is required
6 pursuant to such act to be an employer under this chapter
7 (R.S.43:21-1 et seq.);

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

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

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

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

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

18 (13) ²~~[(a)]~~² Any employing unit for which domestic service in
19 employment as defined in R.S.43:21-19 (i) (1) (J) is performed after
20 December 31, 1977² ~~and before January 1, 2023~~²; ²~~and~~

21 (b) Any employer for domestic services as defined in section 2
22 of P.L. , c. (C.)(pending before the Legislature as this
23 bill);²

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

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

31 (A) Any service performed prior to January 1, 1972, which was
32 employment as defined in the "unemployment compensation law"
33 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
34 provisions of this subsection, service performed on or after January
35 1, 1972, including service in interstate commerce, performed for
36 remuneration or under any contract of hire, written or oral, express
37 or implied.

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

44 (ii) Service performed after December 31, 1977, in the employ
45 of this State or any of its instrumentalities or any political
46 subdivision thereof or any of its instrumentalities or any
47 instrumentality of more than one of the foregoing or any
48 instrumentality of the foregoing and one or more other states or

- 1 political subdivisions, if such service is not excluded from
2 "employment" under paragraph (D) below.
- 3 (C) Service performed after December 31, 1971 by an individual
4 in the employ of a religious, charitable, educational, or other
5 organization, which is excluded from "employment" as defined in
6 the Federal Unemployment Tax Act, solely by reason of section
7 3306 (c)(8) of that act, if such service is not excluded from
8 "employment" under paragraph (D) below.
- 9 (D) For the purposes of paragraphs (B) and (C), the term
10 "employment" does not apply to services performed
- 11 (i) In the employ of (I) a church or convention or association of
12 churches, or (II) an organization, or school which is operated
13 primarily for religious purposes and which is operated, supervised,
14 controlled or principally supported by a church or convention or
15 association of churches;
- 16 (ii) By a duly ordained, commissioned, or licensed minister of a
17 church in the exercise of his ministry or by a member of a religious
18 order in the exercise of duties required by such order;
- 19 (iii) Prior to January 1, 1978, in the employ of a school which is
20 not an institution of higher education, and after December 31, 1977,
21 in the employ of a governmental entity referred to in R.S.43:21-19
22 (i) (1) (B), if such service is performed by an individual in the
23 exercise of duties
- 24 (aa) as an elected official;
- 25 (bb) as a member of a legislative body, or a member of the
26 judiciary, of a state or political subdivision;
- 27 (cc) as a member of the State National Guard or Air National
28 Guard;
- 29 (dd) as an employee serving on a temporary basis in case of fire,
30 storm, snow, earthquake, flood or similar emergency;
- 31 (ee) in a position which, under or pursuant to the laws of this
32 State, is designated as a major nontenured policy making or
33 advisory position, or a policy making or advisory position, the
34 performance of the duties of which ordinarily does not require more
35 than eight hours per week; or
- 36 (iv) By an individual receiving rehabilitation or remunerative
37 work in a facility conducted for the purpose of carrying out a
38 program of rehabilitation of individuals whose earning capacity is
39 impaired by age or physical or mental deficiency or injury or
40 providing remunerative work for individuals who because of their
41 impaired physical or mental capacity cannot be readily absorbed in
42 the competitive labor market;
- 43 (v) By an individual receiving work-relief or work-training as
44 part of an unemployment work-relief or work-training program
45 assisted in whole or in part by any federal agency or an agency of a
46 state or political subdivision thereof; or
- 47 (vi) Prior to January 1, 1978, for a hospital in a State prison or
48 other State correctional institution by an inmate of the prison or

1 correctional institution and after December 31, 1977, by an inmate
2 of a custodial or penal institution.

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

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

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

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

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

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

44 (G) Notwithstanding any other provision of this subsection,
45 service in this State with respect to which the taxes required to be
46 paid under any federal law imposing a tax against which credit may
47 be taken for contributions required to be paid into a state
48 unemployment fund or which as a condition for full tax credit

1 against the tax imposed by the Federal Unemployment Tax Act is
2 required to be covered under the "unemployment compensation
3 law" (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (J) (i) Domestic service after December 31, 1977 and before
12 ²January 1, 2023 the effective date of P.L. , c. (C.)
13 (pending before the Legislature as this bill)² performed in the
14 private home of an employing unit which paid cash remuneration of
15 \$1,000.00 or more to one or more individuals for such domestic
16 service in any calendar quarter in the current or preceding calendar
17 year.

18 (ii) Domestic services ²as defined by section 2 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill)² after
20 ²December 31, 2022 the effective date of P.L. , c. (C.)
21 (pending before the Legislature as this bill), performed in the
22 private home of an employing unit which² in either the current or
23 preceding calendar year paid remuneration for employment in the
24 amount of \$1,000 or more.

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

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

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

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

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

1 services are performed files with the division an election that the
2 entire service of such individual shall be deemed to be employment
3 subject to this chapter (R.S.43:21-1 et seq.).

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

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

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

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

14 (A) Such individual has been and will continue to be free from
15 control or direction over the performance of such service, both
16 under his contract of service and in fact; ³[and]³

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

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

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

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

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

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

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

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

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

- 1 (S) Service covered by an election duly approved by an agency
2 charged with the administration of any other state or federal
3 unemployment compensation or employment security law, in
4 accordance with an arrangement pursuant to R.S.43:21-21 during
5 the effective period of such election;
- 6 (T) Service performed in the employ of a school, college, or
7 university if such service is performed (i) by a student enrolled at
8 such school, college, or university on a full-time basis in an
9 educational program or completing such educational program
10 leading to a degree at any of the severally recognized levels, or (ii)
11 by the spouse of such a student, if such spouse is advised at the time
12 such spouse commences to perform such service that (I) the
13 employment of such spouse to perform such service is provided
14 under a program to provide financial assistance to such student by
15 such school, college, or university, and (II) such employment will
16 not be covered by any program of unemployment insurance;
- 17 (U) Service performed by an individual who is enrolled at a
18 nonprofit or public educational institution which normally
19 maintains a regular faculty and curriculum and normally has a
20 regularly organized body of students in attendance at the place
21 where its educational activities are carried on, as a student in a full-
22 time program, taken for credit at such institution, which combines
23 academic instruction with work experience, if such service is an
24 integral part of such program, and such institution has so certified
25 to the employer, except that this subparagraph shall not apply to
26 service performed in a program established for or on behalf of an
27 employer or group of employers;
- 28 (V) Service performed in the employ of a hospital, if such
29 service is performed by a patient of the hospital; service performed
30 as a student nurse in the employ of a hospital or a nurses' training
31 school by an individual who is enrolled and regularly attending
32 classes in a nurses' training school approved under the laws of this
33 State;
- 34 (W) Services performed after the effective date of this
35 amendatory act by agents of mutual benefit associations if the
36 compensation to such agents for such services is wholly on a
37 commission basis;
- 38 (X) Services performed by operators of motor vehicles weighing
39 18,000 pounds or more, licensed for commercial use and used for
40 the highway movement of motor freight, who own their equipment
41 or who lease or finance the purchase of their equipment through an
42 entity which is not owned or controlled directly or indirectly by the
43 entity for which the services were performed and who were
44 compensated by receiving a percentage of the gross revenue
45 generated by the transportation move or by a schedule of payment
46 based on the distance and weight of the transportation move;
- 47 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

7 (AA) Services provided by a commercial fisherman whose
8 compensation is comprised solely of a percentage of fish caught or
9 a percentage of the proceeds from the sale of the catch.

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

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

24 (A) The limousine franchisee is incorporated;

25 (B) The franchisee is subject to regulation by the Interstate
26 Commerce Commission;

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

30 (D) The franchisee registers with the Department of Labor and
31 Workforce Development and receives an employer registration
32 number.

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

44 For purposes of this paragraph (10): "legal transcription service"
45 and "legal transcribing" mean making use, by audio, video or voice
46 recording, of a verbatim record of court proceedings, depositions,
47 other judicial proceedings, meetings of boards, agencies,
48 corporations, or other bodies or groups, and causing that record to

1 be printed in readable form or produced on a computer screen in
2 readable form; and "legal transcriber" means a person who engages
3 in "legal transcribing."

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

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

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

11 (m) "Unemployment."

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

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

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

27 (2) The term "remuneration" with respect to any individual for
28 benefit years commencing on or after July 1, 1961, and as used in
29 this subsection, shall include only that part of the same which in
30 any week exceeds 20% of his weekly benefit rate (fractional parts
31 of a dollar omitted) or \$5.00, whichever is the larger, and shall not
32 include any moneys paid to an individual by a county board of
33 elections for work as a board worker on an election day ²or for
34 work pursuant to subsection d. of section 1 of P.L.2021, c.40
35 (C.19:15A-1) during the early voting period².

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

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

44 (o) "Wages" means remuneration paid by employers for
45 employment. If a worker receives gratuities regularly in the course
46 of his employment from other than his employer, his "wages" shall
47 also include the gratuities so received, if reported in writing to his
48 employer in accordance with regulations of the division, and if not

1 so reported, his "wages" shall be determined in accordance with the
2 minimum wage rates prescribed under any labor law or regulation
3 of this State or of the United States, or the amount of remuneration
4 actually received by the employee from his employer, whichever is
5 the higher.

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

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

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

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

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

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

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

31 (B) If the individual does not establish in his base year 20 or
32 more base weeks as defined in subparagraph (A) of this paragraph
33 (2), any calendar week of an individual's base year during which the
34 individual earned in employment from an employer remuneration
35 not less than an amount 20 times the minimum wage in effect
36 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
37 1 of the calendar year preceding the calendar year in which the
38 benefit year commences, which amount shall be adjusted to the next
39 higher multiple of \$1.00 if not already a multiple thereof, except
40 that if in any calendar week an individual subject to this
41 subparagraph (B) is in employment with more than one employer,
42 the individual may in that calendar week establish a base week with
43 respect to each of the employers from whom the individual earns
44 remuneration not less than the amount defined in this subparagraph
45 (B) during that week.

46 (3) "Base week," commencing on or after January 1, 2001,
47 means any calendar week during which the individual earned in
48 employment from an employer remuneration not less than an

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

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

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

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

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

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

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

46 (A) In which participants, trainees, or students are offered an
47 organized course of study or training designed to transfer to them

1 knowledge, skills, information, doctrines, attitudes or abilities from,
2 by or under the guidance of an instructor or teacher;

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

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

10 (2) "Institution of higher education" means an educational
11 institution which:

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

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

17 (C) Provides an educational program for which it awards a
18 bachelor's or higher degree, or provides a program which is
19 acceptable for full credit toward such a degree, a program of post-
20 graduate or post-doctoral studies, or a program of training to
21 prepare students for gainful employment in a recognized
22 occupation; and

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

24 Notwithstanding any of the foregoing provisions of this
25 subsection, all colleges and universities in this State are institutions
26 of higher education for purposes of this section.

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

29 ²[(cf: P.L.2021, c.346, s.1)¹] (cf: P.L.2022, c.71, s.4)²

30
31 ¹[15.] ²[14.] 13.² (New section) ²[Except as otherwise
32 provided, the following minimum terms, and such other minimum
33 terms as may be established by the department by regulation, shall
34 apply to a work relationship between a domestic worker and ¹[a
35 hiring entity] an employer¹:]²

36 a. ²[Written agreements.]² No ²[employer] hiring entity² shall
37 employ ²or engage² a domestic worker, except for casual work or
38 work of less than five hours per month, unless the engagement is
39 governed by a written contract governing the following: a specific
40 list of job duties; hourly wage and overtime wage; weekly schedule
41 including number of hours per week; the manner and frequency of
42 payment; breaks for rest and meals; paid or unpaid leave including
43 sick time; paid holidays; any other benefits provided; modes of
44 transportation required and whether provided; value of housing if
45 provided; sleeping period and personal time for live-in workers; the
46 term of the contract; and any other terms and conditions as agreed
47 upon by the domestic worker and employer or as mandated pursuant

1 to this act. The written agreement shall be signed and dated by all
2 parties after ample opportunity to review.

3 b. The written agreement required under this section shall not
4 be construed to waive the protections of domestic workers under
5 federal, State, and local laws and shall not contain any:

6 (1) Mandatory pre-dispute arbitration agreement for claims
7 made by a covered domestic worker against a domestic work
8 ¹[hiring entity] ²[employer¹] hiring entity² regarding the local
9 rights of the worker; and

10 (2) Non-disclosure agreement, ²[restrictive covenant,] non-
11 competition² or non-disparagement agreement, limiting the ability
12 of the covered domestic worker to seek compensation for
13 performing domestic services after the worker ceases to receive
14 compensation from the domestic work ¹[hiring entity]
15 ²[employer¹] hiring entity² for the performance of domestic
16 services.

17 c. The agreement shall be in English and such other language
18 as may be preferred by the worker. The ¹[hiring entity]
19 ²[employer¹] hiring entity² shall make reasonable efforts to
20 determine if the worker would prefer the agreement to be in another
21 language.

22 d. The department shall make available model contracts
23 complying with this act shall in multiple languages on its Internet
24 website.

25 e. A referral and employment agency shall provide domestic
26 workers and ¹[hiring entities] ²[employers¹] hiring entities² with
27 information concerning the contract requirements of this act at the
28 time ¹[a hiring entity] ²[an employer¹] a hiring entity² is
29 connected with a worker and shall make any model contracts
30 adopted by the department available to the ¹[hiring entity]
31 ²[employer¹] hiring entity².

32
33 ¹[16.] ²[15.1] 14.² (New section) a. ²[The]² ¹[hiring entity]
34 ²An² employer¹ ²of a domestic worker² shall allow the domestic
35 worker an uninterrupted paid rest-period of not less than ten
36 minutes for each four consecutive hours worked, unless the nature
37 of the work prevents the domestic worker from being relieved of all
38 duties for such period of time, such as some types of child care and
39 caretaker work for a sick, elderly or disabled person. ³In those
40 types of work where the domestic worker is not relieved of all work
41 duties, an “on-duty” rest period shall be provided.³ The ¹[hiring
42 entity] employer¹ shall pay the domestic worker for the time spent
43 on a rest break at the domestic worker's regular rate of pay.

44 b. The ¹[hiring entity] employer¹ shall allow an uninterrupted
45 30-minute meal break after more than five consecutive hours
46 worked. Unless the domestic worker is relieved of all work duties

1 during such 30-minute period ³and is permitted to leave the work
 2 site during that break³, the meal period shall be considered an "on-
 3 duty" meal period and shall be paid at the domestic worker's regular
 4 rate of pay.

5 ³[(1)] c.³ An "on-duty" meal ³or rest³ period shall be permitted
 6 only when the nature of the work prevents a domestic worker from
 7 being relieved of all duties and when, by written agreement between
 8 the parties, an "on-duty" meal ³or rest³ period is agreed to. The
 9 agreement may be revoked by the domestic worker, in writing, at
 10 any time. ³The domestic worker may, to the extent possible given
 11 the domestic worker's duties for the employer, engage in personal
 12 activities, such as resting, eating a meal, drinking a beverage,
 13 making a personal telephone call, or making other personal choices
 14 during "on-duty" meal or rest periods.³

15 ³[c.] d.³ The ¹[hiring entity] employer¹ shall not impede or
 16 discourage a domestic worker from taking any meal or rest breaks.

17 ³[d. Failure to allow a meal or rest period in accordance with this
 18 paragraph (1) shall entitle] e. In the case of a violation of this
 19 section, the domestic work employer involved shall be liable to³ the
 20 domestic worker ³for an amount equal to³ to one ³[additional]³
 21 hour of pay at the domestic worker's regular rate of compensation³,
 22 but not more than two hours of such pay,³ for each workday that
 23 the meal or rest period was not provided. ³[Payment of this extra
 24 pay shall not excuse non-compliance with this subsection] The
 25 department shall determine through the agency's complaint and
 26 adjudication process whether or not violations occurred by the
 27 employer and whether or not the domestic worker is entitled to the
 28 remedy³.

29
 30 ¹[17.] ²[16.1] 15.² (New section) A "live-in" domestic worker
 31 shall not be required to work more than six consecutive days for the
 32 same ¹[hiring entity] employer¹ without a 24-hour period of rest,
 33 which may be unpaid.

34
 35 ¹[18.] ²[17.1] 16.² (New section) a. ²[The]² ¹[hiring entity]
 36 ²An² employer¹ ²of a domestic worker² shall provide a minimum
 37 two-week notification period before termination of employment,
 38 and for live-in domestic workers a minimum four-week notification
 39 period before termination of employment. ²[No notification period
 40 is required in connection with the termination of casual work
 41 performed for ¹[a hiring entity] an employer¹.]²

42 b. The ¹[hiring entity] employer¹ may terminate the
 43 employment without complying with the full notification period
 44 based on a good-faith belief ³and without reckless disregard or
 45 willful ignorance of the truth³ that the domestic worker has engaged
 46 in significant misconduct.

1 c. Failure to provide notification as required under this section
2 shall entitle the domestic worker to severance pay in the amount of
3 the worker's regular hourly rate multiplied by the regular number of
4 hours worked over the period of time during which the required
5 notification was not provided.

6 ³d. As used in this section, the term “significant misconduct”
7 means that the domestic worker abused, neglected, or caused any
8 other harmful conduct against the employer, members of the
9 employer’s family, or individuals residing in the employer’s
10 household.

11 e. The notification requirement in this section shall not apply
12 if:

13 (1) a domestic worker completes placement in a particular
14 position and is not immediately placed or scheduled for another
15 position by an employer if the employer is a temporary help service
16 firm, employment agency, or other staffing or placement agency,
17 health care service firm, home health agency, or hospice provider,
18 but the domestic worker remains on the employer’s payroll for
19 future placement opportunities; or

20 (2) a domestic worker is employed by an employer that is an
21 individual and not a temporary help service firm, employment
22 agency, or other staffing or placement agency, health care service
23 firm, home health agency, or hospice provider, whether or not the
24 employer is the person receiving care from the domestic worker,
25 and the domestic worker completes or fulfills all duties of the
26 position, and there is no longer a practicable need for the position,
27 including but not limited to, if the domestic worker’s employer is an
28 individual who has employed the domestic worker to care a person
29 who is terminally ill person, and the terminally ill person passes
30 away.³

31
32 ¹[19.] ²[18.1] ^{17.2} (New section) No ¹[hiring entity]
33 ²[employer¹] hiring entity² shall:

34 a. Keep or hold the original copies of any personal documents
35 of a domestic worker;

36 b. Monitor or record, through any means, the activities of a
37 domestic worker:

- 38 (1) using any bathroom or similar facility;
39 (2) in the living quarters of a domestic worker; or
40 (3) while the worker is engaged in any activities associated with
41 dressing or changing clothes; or

42 c. Monitor, record or interfere with the private communications
43 of a domestic worker.

44
45 ¹[20.] ²[19.1] ^{18.2} (New section) a. ¹[A hiring entity] ²[An
46 employer¹] A hiring entity² shall provide to a domestic worker

1 notification of the rights of domestic workers under P.L. ,
2 c. (C. et seq.) (pending before the Legislature as this bill),
3 and information on how to file a complaint for violation of these
4 rights, as shall be determined by the department by regulation.

5 b. ¹~~["A hiring entity"]~~ ²~~["An employer"]~~ A hiring entity² shall
6 create and maintain records documenting hours worked, pay rate,
7 meals and rest breaks, leave time earned and used, if applicable, and
8 the existence of a written agreement, all pursuant to requirements
9 established by regulation by the department. If ¹~~["a hiring entity"]~~
10 ²~~["an employer"]~~ a hiring entity² does not maintain the required
11 records or does not allow the department reasonable access to the
12 records, an adverse inference may be drawn with respect to facts
13 alleged regarding the issues about which records were not kept.

14 c. The department shall maintain the confidentiality of all
15 records it obtains in connection with enforcement activities to the
16 full extent permitted by law.

17

18 ¹~~["21."]~~ ²~~["20.1"]~~ 19.² (New section) a. It shall be unlawful for ¹~~["a~~
19 ~~hiring entity"]~~ ²~~["an employer"]~~ a hiring entity² or any other person
20 to interfere with, restrain, or deny the exercise of, or the attempt to
21 exercise, any right set forth in P.L. , c. (C. et seq.)
22 (pending before the Legislature as this bill).

23 b. The minimum requirements of sections ¹~~["15 through 20"]~~
24 ²~~["14 through 19"]~~ 13 through 18² of P.L. , c. (C.)
25 (pending before the Legislature as this bill) shall be deemed
26 incorporated into any contract, whether actual or implied, between
27 the employer and the domestic worker.

28 c. A material breach by ¹~~["a hiring entity"]~~ ²~~["an employer"]~~ a
29 hiring entity² of a contract with a domestic worker shall constitute a
30 violation of P.L. , c. (C. et seq.) (pending before the
31 Legislature as this bill), without regard to whether the breach is of a
32 provision required by this act.

33 d. No ¹~~["hiring entity"]~~ ²~~["employer"]~~ hiring entity² or any other
34 person shall take or threaten retaliatory action against any person
35 because a domestic worker has exercised rights or pursued a claim
36 of violation under P.L. , c. (C. et seq.) (pending before the
37 Legislature as this bill). These rights include the right to demand
38 compliance with protections established by written agreement; the
39 right to file a complaint or inform any person about an employer's
40 alleged violation of this act; the right to cooperate with the
41 department in any investigation pursuant to this act; and the right to
42 inform any person of the rights established under this act.

43 e. No ¹~~["hiring entity"]~~ ²~~["employer"]~~ hiring entity² or any other
44 person shall communicate to a person exercising rights protected
45 under P.L. c. (C.) (pending before the Legislature as this
46 bill) the willingness or intent to contact, report to, or to make an
47 implied or express assertion to report to a government agency

1 regarding the suspected citizenship or immigration status of a
 2 domestic worker or family member of a domestic worker because
 3 the worker has or has expressed an intent to exercise rights
 4 protected under this act or because of a belief the worker may do so.

5 f. The protections of this section shall apply to any person who
 6 mistakenly but in good faith alleges a violation of P.L. ,
 7 c. (C. et seq.) (pending before the Legislature as this bill).

8 g. It shall be considered a rebuttable presumption of retaliation
 9 if the ¹[hiring entity] ²[employer¹] hiring entity² or any other
 10 person takes an adverse action against a domestic worker within 90
 11 calendar days of the worker's exercise of rights protected in
 12 P.L. c. (C. et seq.) (pending before the Legislature as this
 13 bill). However, in the case of temporary or seasonal employment
 14 that ended before the close of the 90 calendar day period, the
 15 presumption also applies if the ¹[hiring entity] ²[employer¹] hiring
 16 entity² fails to rehire a former domestic worker at the next
 17 opportunity for work in the same position. The ¹[hiring entity]
 18 ²[employer¹] hiring entity² may rebut the presumption with clear
 19 and convincing evidence that the adverse action would have been
 20 taken in the absence of such protected activity. ³If a domestic
 21 worker declines to be rehired for the same position or resigns from
 22 the position, the presumption in this subsection g. shall not apply.³

23 h. Proof of retaliation under P.L. , c. (C. et seq.)
 24 (pending before the Legislature as this bill) shall be sufficient upon
 25 a showing that the ¹[hiring entity] ²[employer¹] hiring entity² or
 26 any other person has taken an adverse action against a person and
 27 the persons exercise or rights protected in P.L. , c. (C. et
 28 seq.) (pending before the Legislature as this bill) was a motivating
 29 factor in the absence of that protected activity.

30 i. A complaint or other communication by any person triggers
 31 the protection of P.L. , c. (C. et seq.) (pending before the
 32 Legislature as this bill) regardless of whether the complaint or
 33 communication is in writing or makes explicit reference to P.L. ,
 34 c. (C.) (pending before the Legislature as this bill).

35
 36 ¹[22.] ²[21.1] 20.² (New section) The department ³[is
 37 authorized to coordinate implementation, administration, and
 38 enforcement for P.L. , c. (C.) (pending before the
 39 Legislature as this bill), and]³ shall promulgate appropriate
 40 guidelines and regulations to effectuate the purposes of ³[for]³
 41 P.L. , c. (C.) (pending before the Legislature as this bill)
 42 ³[through the Domestic Workers Standards and Implementation
 43 Board, established in section ¹[25]²[24¹] 23.² of P.L. ,
 44 c. (C.) (pending before the Legislature as this bill)]³.

1 ¹[23.] ²[22.1] 21.² (New section) a. Individuals and ¹[hiring
2 entities] employers¹ with an overlapping employment relationship
3 with a domestic worker are subject to joint and several liability, and
4 concurrent ³[finds] fin³ and penalties, in connection with P.L. ,
5 c. (C.) (pending before the Legislature as this bill).

6 b. A domestic worker or other person representing a domestic
7 worker may report to the department any suspected violation of
8 P.L. , c. (C.) (pending before the Legislature as this bill).

9 c. The department shall ³[collaborate with the Domestic
10 Workers Standards and Implementation Board, as established by
11 section ¹[25] ²[241] 23.² of P.L. , c. (C.) (pending before
12 the Legislature as this bill) to³ take any steps as it deems
13 appropriate to resolve complaints and enforce P.L. , c. (C.)
14 (pending before the Legislature as this bill), including, but not
15 limited to, establishing a system to receive complaints regarding
16 noncompliance with P.L. , c. (C.) (pending before the
17 Legislature as this bill), investigating alleged violations in a timely
18 manner and resolving complaints through a separate “referral”
19 process for claims of ²[employees in] ²domestic ²[services]
20 workers².

21 d. The department shall have the power to subpoena records
22 and testimony from any party to a complaint. The records shall be
23 provided to the department within 30 days after receipt of the
24 subpoena.

25 e. Any person alleging a violation of P.L. , c. (C.)
26 (pending before the Legislature as this bill) shall file a complaint
27 with the department within two years of the date that the person
28 knew or should have known of the alleged violation.

29 f. Upon establishment of a system of administrative
30 adjudication, the department shall have the power to impose the
31 penalties and fines for a violation of P.L. , c. (C.) (pending
32 before the Legislature as this bill), and to provide or obtain
33 appropriate relief. Remedies may include reinstatement and full
34 restitution to the domestic worker for lost wages and benefits,
35 including presumed damages to be awarded to a domestic worker
36 for the ¹[hiring entity’s] ²hiring entity’s or ²employer’s¹ violation
37 of P.L. , c. (C.) (pending before the Legislature as this bill).
38 The department shall determine by regulation an amount of
39 presumed damages.

40 g. ¹[A hiring entity] ²[An] A hiring entity or an² employer¹
41 who knowingly retaliates against an employee for any activity
42 protected under P.L. , c. (C.) (pending before the
43 Legislature as this bill), or any other knowing violation of P.L. ,
44 c. (C.) (pending before the Legislature as this bill), shall be a
45 crime of the fourth degree. Otherwise, it shall be a disorderly
46 persons offense and the ¹[hiring entity] ²hiring entity or²
47 employer¹ shall, upon conviction for a violation, be punished by a

1 fine of not less than \$100 not more than \$2,000 for an initial
 2 violation and not less than \$200 nor more than \$4,000 for each
 3 subsequent violation. Each day during which any violation of
 4 P.L. , c. (C.) (pending before the Legislature as this bill)
 5 continues shall constitute a separate and distinct offense, and the
 6 employment of any domestic worker in violation of P.L. ,
 7 c. (C.) (pending before the Legislature as this bill), shall,
 8 with respect to each domestic worker employed, constitute a
 9 separate and violation.

10 h. Any domestic worker or person who is aggrieved by a
 11 violation of P.L. , c. (C.) (pending before the Legislature
 12 as this bill), or the department may bring civil action in a court of
 13 competent jurisdiction against ¹[a hiring entity] ²a hiring entity or²
 14 an employer¹ violating P.L. , c. (C.) (pending before the
 15 Legislature as this bill). Nothing in P.L. , c. (C.) (pending
 16 before the Legislature as this bill) or its implementing regulations
 17 shall be construed to require a complaint to be filed with the
 18 department before bringing an action in court. Upon prevailing in
 19 an action brought pursuant to this section, an aggrieved person shall
 20 be entitled to any legal or equitable relief as may be appropriate to
 21 remedy the violation, that is not duplicative of any relief provided
 22 to the person in administrative proceedings, including, without
 23 limitation, reinstatement in employment, back pay, and injunctive
 24 relief. The aggrieved person shall be entitled to an award of
 25 reasonable attorney's fees and costs.

26
 27 ¹[24.] ²[23.1] 22.2 (New section) a. The department shall,
 28 upon appropriation of funds to the department for purposes of this
 29 section, establish and maintain a Domestic Work Enforcement
 30 Program in collaboration with qualified organizations. P.L. ,
 31 c. (C.) (pending before the Legislature as this bill) requires
 32 the department to issue a competitive request to community-based
 33 organizations (CBOs) to provide education and outreach services in
 34 this program and would prescribe requirements for these
 35 organizations. The CBOs would be responsible for developing and
 36 consulting with the department regarding the core education and
 37 outreach materials, as specified. The program shall increase the
 38 capacity and expertise of the department to improve education and
 39 enforcement of labor standards in the domestic work industry. The
 40 program shall include, but not be limited to, the following:

41 (1) Education and training for domestic work employees and
 42 ¹[hiring entities] employers¹ addressing minimum wage, overtime,
 43 sick leave, recordkeeping, wage adjudication, and retaliation, along
 44 with new rights extended by P.L. , c. (C.) (pending before
 45 the Legislature as this bill);

46 (2) Training for domestic worker leaders to provide peer-to-peer
 47 support and wraparound service referrals to domestic work
 48 employees who have elected to file wage claims or take other

1 actions seeking remedy from ¹【hiring entities】 ²hiring entities or
2 employers¹;

3 (3) Development of core training curriculum to be used in the
4 education and training of domestic work employees and ¹【hiring
5 entities】 employers¹;

6 (4) Provision of technical and legal assistance to domestic work
7 employees through a Statewide telephone help line and the
8 promotion of the help line to domestic worker populations; and

9 (5) Development of an online resource hub to provide
10 information for ¹【hiring entities】 employers¹ on State labor laws
11 and guidelines on fair employment.

12 b. Qualified organizations that collaborate under subsection a.
13 of this section shall issue reports and meet quarterly with the
14 department to review the implementation and success of the
15 program.

16 c. (1) A nonprofit organization that has a minimum of five
17 years of experience working with domestic work employees or
18 ¹【hiring entities】 employers¹; or

19 (2) An organization that works with nonprofit organizations that
20 has a minimum of five years of experience working with domestic
21 work employees or ¹【hiring entities】 employers¹.

22

23 ¹【25.】 ²【24.1】 ³【23.2 (New section) a. The department shall
24 establish, within 90 days of the date of enactment of P.L. ,

25 c. (C.) (pending before the Legislature as this bill), a “Domestic
26 Workers Standards and Implementation Board” (Board), which shall
27 be established to provide a forum for ¹【hiring entities】 employers¹,
28 domestic workers, worker organizations, and the public to consider
29 analyze, and make recommendations to the State on the legal
30 protections, benefits, and working conditions for domestic worker
31 industry standards. The board shall be established to permanently
32 promote the health, safety, and well-being of domestic workers; and a
33 living wage for domestic workers along with development of the
34 mechanisms to support implementation of P.L. ,

35 c. (C. (pending before the Legislature as this bill), including the
36 development of regulations promulgated under P.L. ,

37 c. (C.)(pending before the Legislature as this bill). The board
38 shall also make recommendations to the department regarding
39 enforcement and implementation strategies, including the development
40 of the Domestic Work Enforcement Program.

41 b. (1) The board shall consist of 13 members composed of
42 members with expertise in labor standards, wage theft, law, and
43 policy; and domestic worker industry. The board shall meet at least
44 quarterly, and all meetings shall be open to the public. The board shall
45 create by-laws in order to conduct and structure future meetings
46 including, but not limited to, scheduling quarterly meetings,
47 determining recommended timetables for submission of

1 recommendations to the Legislature, the Department of Labor and
 2 Workforce Development, the Governor's Office, determining term
 3 lengths and appointments of individuals to the board. All State
 4 departments, agencies, boards, commissions shall support and
 5 cooperate with the board and provide the board with any data it may
 6 need which may include logistical support in regard to translation,
 7 interpretation, and outreach to ensure equal access and equity of
 8 domestic worker representatives and ¹**["hiring entities"] employers¹ on
 9 the board. The board will be comprised of various stakeholders from
 10 the private, non-profit sectors, domestic workers, ¹**["hiring entities"]**
 11 **employers**¹, and will have representation from members of the
 12 Department of Labor and Workforce Development, and Governor's
 13 office; and**

14 (2) (a) The Governor shall appoint seven members as follows:

15 (i) one representative from the Department of Labor and
 16 Workforce Development;

17 (ii) one representative from the National Domestic Workers
 18 Alliance;

19 (iii) one representative from a labor or union organization;

20 (iv) two representatives from a State-based community
 21 organization or worker center, which is focused on the rights of low-
 22 wage and immigrant workers;

23 (v) one domestic worker; and

24 (vi) one ¹**["hiring entity"] employer**¹; and

25 (b) The Legislature shall appoint six members as follows: three
 26 members to be appointed by the President of the Senate and three
 27 members to be appointed by the Speaker of the General Assembly, as
 28 follows:

29 (i) four domestic workers, two each selected respectively by the
 30 President of the Senate and the Speaker of the General Assembly; and

31 (ii) two ¹**["hiring entities"] employers**¹, one each selected
 32 respectively by the President of the Senate and the Speaker of the
 33 General Assembly.

34 c. The board's responsibilities include, but are not limited to,
 35 providing a forum for ¹**["hiring entities"] employers**¹, domestic
 36 workers, worker organizations, and other affected parties to share
 37 information, insights, and experiences on the working conditions of
 38 domestic workers, and recommendations on how the working
 39 conditions can be changed to meet the needs of domestic workers and
 40 ¹**["hiring entities"] employers**¹. These recommendations shall include:

41 (1) possible legislation or policy changes;

42 (2) wage standards for the industry;

43 (3) development and advancement of enforcement and
 44 implementation efforts in collaboration with the department; and

45 (4) the promulgation of regulations to enforce P.L. ,

46 c. (C.) (pending before the Legislature as this bill).

1 d. The board, in consultation with the department and other State
2 agencies, within six months after all members have been established,
3 shall submit to the Governor, and Legislature, pursuant to section 2 of
4 P.L.1991, c.164 (C.52:14-19.1), with oversight by the department, a
5 work plan identifying the topics the board will address in the first two
6 years. The board in consultation with the department and other
7 relevant State agencies, shall submit an updated work plan every two
8 years. The board's first recommendation shall be submitted to the
9 Governor and Legislature by the end of the first quarter of the year
10 following the year in which the work plan has been submitted.

11 Within 120 days from the date of receipt of any work plan
12 submitted by the board, the Legislature, through its committees that
13 consider labor subject matter, shall consider and respond to the board's
14 work plan. The response shall include proposed legislation and
15 policies, requests for additional information needed from the board,
16 requests for alternative plans from the board, reasons ¹~~["fro"]~~ for¹
17 rejection of any plan submitted by the board, or an explanation of why
18 additional time is needed to submit a response to the board's plan.
19 Additionally, the Legislature, sua sponte, may notify the board of any
20 policies or legislation it may introduce for enactment, request further
21 information from the board, request that the board develop
22 alternatives, or take any other action that it deems appropriate.

23 e. The board shall make recommendations to the Legislature on
24 the following subjects:

25 (1) Wage standards, such as industry standards, overtime, and pay
26 differentials;

27 (2) Training for ¹~~["hiring entities"]~~ employers¹ and domestic
28 workers on federal, State, and local labor laws, benefits, and
29 protections, discrimination, and sexual harassment, workplace health;
30 and safety standards;

31 (3) Jobs skills and professional development opportunities;

32 (4) Access to portable benefits, such as paid time off, retirement
33 pensions, health benefits, and paid family and disability leave;

34 (5) Workers' compensation and temporary disability benefits;

35 (6) Development and advancement of written agreement, including
36 notice of rights and recordkeeping templates;

37 (7) Outreach and enforcement strategies to ensure compliance with
38 P.L. , c. (C.) (pending before the Legislature as this bill), and
39 to provide effective information to both ¹~~["hiring entities"]~~ employers¹
40 and domestic workers; and

41 (8) Any other emerging issues the board wishes to include in its
42 work plan.

43 f. Members of the board shall serve without compensation but
44 shall be reimbursed for the reasonable travel and other out-of-pocket
45 expenses incurred in the performance of their duties.]³

1 ¹[26.] ²[25.1] ³[24.2] 23.³ (New section) a. Nothing in
2 P.L. , c. (C.) (pending before the Legislature as this bill)
3 shall be construed to diminish any rights or protections granted to
4 domestic workers by any other law.

5 b. If any provision of P.L. , c. (C.) (pending before the
6 Legislature as this bill) or its application to any person or
7 circumstance is held invalid, the invalidity does not affect other
8 provisions or applications of P.L. , c. (C.) (pending before
9 the Legislature as this bill) which can be given effect without the
10 invalid provision or application, and to this end the provisions of
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 are severable.

13

14 ¹[27.] ²[26.1] ³[25.2] 24.³ This act shall take effect on the first
15 day of the sixth month next following enactment, except that the
16 commissioner may take any anticipatory action as may be necessary
17 to effectuate the purposes of this act.