

P.L. 2022, CHAPTER 120, *approved November 3, 2022*  
Senate Committee Substitute (*First Reprint*) for  
Senate, No. 2357

1 AN ACT concerning the timely payment of unemployment  
2 compensation benefits and amending R.S.43:21-6 and R.S.43:21-  
3 16.

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

7  
8 1. R.S.43:21-6 is amended to read as follows:

9 43:21-6. (a) Filing. (1) Claims for benefits shall be made in  
10 accordance with such regulations as the Director of the Division of  
11 Unemployment and Temporary Disability Insurance of the  
12 Department of Labor and Workforce Development of the State of  
13 New Jersey may approve. Each employer shall post and maintain  
14 on his premises printed notices of his subject status, of such design,  
15 in such numbers and at such places as the director of the division  
16 may determine to be necessary to give notice thereof to persons in  
17 the employer's service. Each employer shall give to each individual  
18 at the time he becomes unemployed, for any reason, whether the  
19 unemployment is permanent or temporary, a printed copy of benefit  
20 instructions. The benefit instructions given to the individual shall  
21 include, but not be limited to, the following information: (A) the  
22 date upon which the individual becomes unemployed, and, in the  
23 case that the unemployment is temporary, to the extent possible, the  
24 date upon which the individual is expected to be recalled to work;  
25 and (B) that the individual may lose some or all of the benefits to  
26 which he is entitled if he fails to file a claim in a timely manner.  
27 Both the aforesaid notices and instructions, including information  
28 detailing the time sensitivity of filing a claim, and directions  
29 provided in advance to all employers regarding what information  
30 the division requires employers to provide to the division by  
31 electronic means immediately upon a separation from employment  
32 sufficient to enable the division to make a benefit determination,  
33 including any information relevant to whether the individual may be  
34 disqualified pursuant to subsections (a),(b),(d), or (e) of R.S.43:21-  
35 5, shall be supplied by the division to employers without cost to  
36 them. The directions provided to all employers in advance shall  
37 include that each employer provide the division with an email  
38 address for communications to and from the division. When an

**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:

<sup>1</sup>Senate amendments adopted in accordance with Governor's recommendations September 29, 2022.

1 employer provides benefit instructions to the individual which  
2 disclose the date on which unemployment will commence, the  
3 employer shall immediately and simultaneously provide by  
4 electronic means that disclosure to the division together with the  
5 information required by the division pursuant to the directions  
6 provided in advance by the division. An employer who fails to  
7 make the immediate and simultaneous disclosure to the department  
8 as required by this paragraph shall be liable for the penalties  
9 imposed by subsection (b) of R.S.43:21-16 on employers for willful  
10 failure to furnish reports. The division shall notify the employer by  
11 electronic means not more than seven calendar days after the  
12 department receives the disclosure of any failure of the employer to  
13 provide all of the information needed by the division to make a  
14 benefit determination. Nothing in this section shall be construed so  
15 as to require an employer to re-hire an individual formerly in the  
16 employer's service. Nothing in this section shall be construed as  
17 requiring the division to issue a benefit determination solely based  
18 on the information supplied by the employer. <sup>1</sup>Notwithstanding the  
19 provisions of this section which require employers to provide  
20 information to the division by electronic means, and the division to  
21 provide notifications to an employer by electronic means, the  
22 commissioner shall have the discretion to establish by rule an  
23 alternate method or methods for employers to provide the required  
24 information to the division and for the division to provide the  
25 required notifications to an employer in circumstances where it is  
26 established, to the satisfaction of the commissioner, that the  
27 employer is unable to provide the information to the division or is  
28 unable to receive notifications from the division by electronic  
29 means.<sup>1</sup>

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

36 (3) The division may request that claimants obtain digital  
37 identity credentials, but only if the division provides opportunities  
38 for claimants to verify their identities even if they do not have the  
39 knowledge or access to the equipment needed to obtain the digital  
40 identity credentials. Any request by the division for a claimant to  
41 obtain digital identity credentials shall include a statement that the  
42 claimant may use alternative procedures to verify identification, and  
43 fully describe the alternative procedures, which shall include  
44 personal assistance in person or by phone which shall be made  
45 available by representatives of the division as needed to prevent any  
46 delay in processing claims. If the division requests that a claimant  
47 obtain digital identity credentials, and the claimant chooses to  
48 request a digital identity credential rather than utilize an alternative

1 procedure, but is denied the digital identity credential, the division  
2 shall issue the claimant a written appealable determination.

3 (4) Any system that the division establishes for claimants or  
4 recipients of benefits to verify identity, to apply for, or to make  
5 appeals regarding, benefits either by phone or on-line, shall provide  
6 a clearly and prominently expressed option for the claimant or  
7 recipient, if not immediately provided personal assistance, to select  
8 from available appointment times an appointment time to speak  
9 with a representative to obtain assistance in verifying identity, filing  
10 a claim or appeal, or obtaining information regarding the status of a  
11 claim or appeal.

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

14 A representative or representatives designated by the director of  
15 the division and hereafter referred to as a "deputy" shall promptly  
16 examine **【the】** any disclosure of information to the division by an  
17 employer required by paragraph (1) of subsection (a) of this section  
18 upon a separation from work and any claim for benefits, and shall,  
19 by electronic means, notify the most recent employing unit and,  
20 successively as necessary, each employer in inverse chronological  
21 order during the base year. **【Such】** The notification shall be made  
22 not later than seven calendar days after the employer provides to the  
23 department the disclosure required by paragraph (1) of subsection  
24 (a) of this section, or seven calendar days after the filing of the  
25 claim, whichever occurs first, and require said employing unit and  
26 employer to furnish **【such】**, by electronic means, not more than  
27 seven calendar days after the notification is made, any information  
28 to the deputy which the employer failed to provide as required by  
29 paragraph (1) of subsection (a) of this section as may be necessary  
30 to determine the claimant's eligibility and his benefit rights with  
31 respect to the employer in question. The claimant shall, at the time  
32 the claim is filed, be provided any information the division has  
33 received from the employer upon the separation from work and an  
34 opportunity to respond to that information. If a claim is filed and  
35 the employer has provided the information required upon separation  
36 from work, the employer shall immediately be notified by electronic  
37 means of the opportunity to provide, by electronic means and in not  
38 more than seven calendar days, additional information in response  
39 to the claim for benefits. If a claim is filed and the employer has  
40 failed to provide the information required upon the separation from  
41 work, the division shall immediately, by electronic means, request  
42 the required information and the employer shall provide the  
43 information, by electronic means and in not more than seven  
44 calendar days. The division shall provide the claimant any  
45 additional information it receives and an opportunity to respond.

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

4       If any employer or employing unit fails to respond to the  
5       notification or request within **【10】** seven calendar days after **【the**  
6       mailing, or communicating】 a communication by electronic  
7       means**【,】** of **【such】** the notification or request, the deputy shall rely  
8       entirely on information from other sources, including an affidavit to  
9       the best of the knowledge and belief of the claimant with respect to  
10      his wages and time worked. Except in the event of **【fraud】** a  
11      knowing, fraudulent nondisclosure or misrepresentation by the  
12      claimant or his agent, if it is determined that any information in  
13      such affidavit is erroneous, no penalty shall be imposed on the  
14      claimant.

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

32      Whenever an initial determination is based upon information  
33      other than that supplied by an employer because such employer  
34      failed to provide information as required at the time of separation  
35      from employment, and failed to respond to the deputy's request for  
36      additional information, benefit payments based on the determination  
37      shall commence immediately, and such initial determination and  
38      any subsequent determination thereunder shall be incontestable by  
39      the noncomplying employer, as to any charges to his employer's  
40      account because of benefits paid prior to the close of the calendar  
41      week following the receipt of his reply. Such initial determination  
42      shall be altered if necessary upon receipt of information from the  
43      employer, and any benefits paid or payable with respect to weeks  
44      occurring subsequent to the close of the calendar week following  
45      the receipt of the employer's reply and the determination of the  
46      division to alter the initial determination after providing the

1 claimant the information and an opportunity to respond shall be  
2 paid in accordance with such altered initial determination.

3 The deputy shall issue a separate initial benefit determination  
4 with respect to each of the claimant's base year employers, starting  
5 with the most recent employer and continuing as necessary in the  
6 inverse chronological order of the claimant's last date of  
7 employment with each such employer. If an appeal is taken from  
8 an initial determination, as hereinafter provided, by any employer  
9 other than the first chargeable base year employer or for benefit  
10 years commencing on or after July 1, 1986, that employer from  
11 whom the individual was most recently separated, then such appeal  
12 shall be limited in scope to include only one or more of the  
13 following matters:

14 (A) The correctness of the benefit payments authorized to be  
15 made under the determination;

16 (B) Fraud in connection with the claim pursuant to which the  
17 initial determination is issued;

18 (C) The refusal of suitable work offered by the chargeable  
19 employer filing the appeal;

20 (D) Gross misconduct as provided in subsection (b) of  
21 R.S.43:21-5.

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

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

29 Unless the **【claimant or any interested party】** employer, within  
30 seven calendar days after **【delivery】** a confirmed receipt of  
31 notification of an initial determination, including by electronic  
32 means, or the claimant, within **【10】** 21 calendar days after **【such】**  
33 the notification was mailed to **【his or their】** the claimant's last-  
34 known address and addresses, files an appeal **【from such】** of the  
35 decision, **【such】** the decision shall be final and benefits shall  
36 immediately be paid or denied in accordance therewith, except for  
37 such determinations as may be altered in benefit amounts or  
38 duration as provided in this paragraph. An appeal concerning an  
39 initial determination shall not be filed after whichever is applicable  
40 of the seven-day or 21-day period. Benefits payable for periods  
41 pending an appeal **【and not in dispute】** shall be paid as such  
42 benefits accrue and be paid according to the initial determination  
43 but shall be, to the extent that the amount paid exceeds the amount  
44 determined in the appeal, regarded as an overpayment subject to the  
45 provisions of R.S.43:21-16 regarding overpayments, including the  
46 requirement of that section that a claimant who makes knowing,  
47 fraudulent nondisclosure or misrepresentation is liable to repay the

1 full amount of the overpayment; provided that **[insofar as any such]**  
2 if the appeal is [or may be] an appeal [from] of a determination  
3 **[to the effect]** that the claimant is disqualified under the provisions  
4 of R.S.43:21-5 **[or any amendments thereof or supplements**  
5 **thereto]**, benefits pending determination of the appeal shall be  
6 withheld only for the period of disqualification as provided for in  
7 **[said] that section, and [notwithstanding such] while the appeal is**  
8 pending, the benefits otherwise provided by this act shall be paid  
9 for the period subsequent to such period of disqualification;  
10 provided further that if it is determined in the appeal that the  
11 claimant was not disqualified, the claimant shall be paid the  
12 benefits due for the period of the disqualification<sup>1</sup>, except that no  
13 such benefits shall be paid to the claimant for any week during  
14 which the claimant has failed to provide to the division a weekly  
15 certification evidencing the claimant's eligibility for benefits<sup>1</sup>; and  
16 provided, also, that if there are two determinations of entitlement,  
17 benefits for the period covered by such determinations shall be paid  
18 regardless of any appeal which may thereafter be taken, but no  
19 employer's account shall be charged with benefits so paid, if the  
20 decision is finally reversed. If an employer appeals the charging of  
21 benefits to the employer's account after the seven-day period to  
22 appeal the initial benefit determination, and, as a result of the  
23 appeal on the charging to the employer's account, the division, after  
24 the claimant is notified and given the opportunity to respond,  
25 reduces the amount charged to the employer's account, any  
26 resulting reduction in the amount of benefits shall take effect only  
27 after the resolution of the appeal of the charging, and any amount of  
28 benefits paid before the resolution of the appeal of the charging  
29 which exceeds the amount determined in that appeal shall be  
30 regarded as an overpayment caused by employer error and shall be  
31 charged to the employer's account, and the claimant shall not be  
32 liable to repay any portion of that overpayment<sup>1</sup> where the  
33 overpayment is of regular Unemployment Compensation. In the  
34 case of the recovery of an overpayment of benefit under any of the  
35 following programs authorized by the federal "Coronavirus Aid,  
36 Relief, and Economic Security (CARES) Act," Pub.L.116-136:  
37 Federal Pandemic Unemployment Compensation (FPUC),  
38 Pandemic Emergency Unemployment Compensation (PEUC),  
39 Mixed Earners Unemployment Compensation (MEUC), Pandemic  
40 Unemployment Assistance (PUA), or the first week of regular  
41 Unemployment Compensation that is reimbursed in accordance  
42 with Section 2105 of the CARES Act, a recovery shall not be  
43 waived unless the division determines that the claimant is without  
44 fault and the repayment would be contrary to equity and good  
45 conscience<sup>1</sup>.

46 (2) **[Procedure for making initial determinations in certain cases**  
47 of concurrent employment, with respect to benefit years

1 commencing on or after January 1, 1953 and prior to benefit years  
2 commencing on or after July 1, 1986.

3 Notwithstanding any other provisions of this Title, if an  
4 individual shows to the satisfaction of the deputy that there were at  
5 least 13 weeks in his base period in each of which he earned wages  
6 from two or more employers totaling \$30.00 or more but in each of  
7 which there was no single employer from whom he earned as much  
8 as \$100.00, then such individual's claim shall be determined in  
9 accordance with the special provisions of this paragraph. In such  
10 case, the deputy shall determine the individual's eligibility for  
11 benefits, his average weekly wage, weekly benefit rate and  
12 maximum total benefits as if all his base year employers were a  
13 single employer. Such determination shall apportion the liability  
14 for benefit charges thereunder to the individual's several base year  
15 employers so that each employer's maximum liability for charges  
16 thereunder bears approximately the same relation to the maximum  
17 total benefits allowed as the wages earned by the individual from  
18 each employer during the base year bears to his total wages earned  
19 from all employers during the base year. Such initial determination  
20 shall also specify the individual's last date of employment within  
21 the base year with respect to each base year employer, and such  
22 employers shall be charged for benefits paid under said initial  
23 determination in the inverse chronological order of such last date of  
24 employment. **】** (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_) (pending  
25 before the Legislature as this bill)

26 (3) Procedure for making subsequent determinations with  
27 respect to benefit years commencing on or after January 1, 1953.  
28 The deputy shall make determinations with respect to claims for  
29 benefits thereafter in the course of the benefit year, in accordance  
30 with any initial determination allowing benefits, and under which  
31 benefits have not been exhausted, and each notification of a benefit  
32 payment shall be a notification of an affirmative subsequent  
33 determination. **【The】** Any change in the allowance, amount, or  
34 other characteristic of benefits by the deputy **【on】** in any such  
35 determination, or the denial of benefits by the deputy **【on】** in any  
36 such determination, shall be appealable in the same manner and  
37 under the same limitations as is provided in the case of initial  
38 determinations. **【. After】**, except that, after an initial determination,  
39 the resolution of any appeal of the initial determination, and the  
40 payment of one or more weeks of benefits pursuant to the initial  
41 determination, if a subsequent determination will result in any  
42 termination or reduction of those benefits from the amount or  
43 duration of benefits specified in the initial determination, the  
44 claimant shall be provided notification with a full written  
45 explanation of why the reduction or termination of benefits will  
46 occur, and provided, during the seven calendar days following the  
47 notification, an opportunity to file an appeal before the reduction or

1 termination goes into effect. If the claimant files an appeal during  
2 the seven-day period, benefits shall continue to be paid at the rate,  
3 and for the duration, stipulated in the initial determination until the  
4 appeal is resolved. If the claimant does not file an appeal, or the  
5 claimant files an appeal and it is found in the resolution of the  
6 appeal that the amount in benefits paid during the processing of the  
7 appeal exceeded the amount determined in the appeal to be correct,  
8 or the claimant is found in the appeal to be ineligible for benefits,  
9 any resulting excess payment of benefits shall be regarded as an  
10 overpayment subject to the provisions of R.S.43:21-16 regarding  
11 overpayments, including the requirement of that section that a  
12 claimant who makes knowing, fraudulent nondisclosure or  
13 misrepresentation is liable to repay the full amount of the  
14 overpayment.

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

26 (d) Appeal tribunals. To hear and decide disputed benefit  
27 claims, including appeals from determinations with respect to  
28 demands for refunds of benefits under subsection (d) of R.S.43:21-  
29 16, the director with the approval of the Commissioner of Labor and  
30 Workforce Development shall establish impartial appeal tribunals  
31 consisting of a salaried body of examiners under the supervision of  
32 a Chief Appeals Examiner, all of whom shall be appointed pursuant  
33 to the provisions of Title 11A of the New Jersey Statutes, Civil  
34 Service and other applicable statutes.

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



1 section. The board of review shall promptly notify the interested  
2 parties of its findings and decision.

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

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

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

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

46 (j) With respect to benefit payments made on or after October  
47 22, 2013, an employer's account shall not be relieved of charges

1 related to a benefit payment that was made erroneously from the  
2 division if it is determined that:

3 (1) The erroneous benefit payment was made because the  
4 employer, or an agent of the employer, failed to respond in a timely  
5 or adequate manner to a request from the division for information  
6 related to the claim for benefits, including failing to provide the  
7 information required by subsection (a) of this section upon a  
8 separation from employment; and

9 (2) The employer, or an agent of the employer, has established a  
10 pattern of failing to respond in a timely or adequate manner to  
11 requests from the division for information related to claims for  
12 benefits, including failing to provide the information required by  
13 subsection (a) of this section upon a separation from employment.

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

18 For purposes of subsection (j) of this section:

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

24 "Pattern of failing" means repeated documented failure on the  
25 part of the employer, or an agent of the employer, to respond to  
26 requests from the division to the employer or employer's agent for  
27 information related to a claim for benefits, including failing to  
28 provide the information required by subsection (a) of this section  
29 upon a separation from employment, except that an employer, or an  
30 agent of an employer, shall not be determined to have engaged in a  
31 "pattern of failing" if the number of failures to provide the required  
32 information or respond to requests from the division for information  
33 related to claims for benefits during the previous 365 calendar days  
34 is less than three, or if the number of failures is less than two  
35 percent of the number of requests from the division, whichever is  
36 greater.

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

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

47

48 2. R.S.43:21-16 is amended to read as follows:

1 43:21-16. (a) (1) Whoever makes a false statement or  
2 representation, knowing it to be false, or knowingly fails to disclose  
3 a material fact, to obtain or increase or attempts to obtain or  
4 increase any benefit or other payment under this chapter  
5 (R.S.43:21-1 et seq.), or under an employment security law of any  
6 other state or of the federal government, either for himself or for  
7 any other person, shall be liable to a fine of 25% of the amount  
8 fraudulently obtained, to be recovered in an action at law in the  
9 name of the Division of Unemployment and Temporary Disability  
10 Insurance of the Department of Labor and Workforce Development  
11 of the State of New Jersey or as provided in subsection (e) of  
12 R.S.43:21-14, said fine when recovered shall be immediately  
13 deposited in the following manner: 10 percent of the amount  
14 fraudulently obtained deposited into the unemployment  
15 compensation auxiliary fund for the use of said fund, and 15 percent  
16 of the amount fraudulently obtained deposited into the  
17 unemployment compensation fund; and each such false statement or  
18 representation or failure to disclose a material fact shall constitute a  
19 separate offense. Any penalties imposed by this subsection shall be  
20 in addition to those otherwise prescribed in this chapter (R.S.43:21-  
21 1 et seq.).

22 (2) For purposes of any unemployment compensation program  
23 of the United States, if the department determines that any benefit  
24 amount is obtained by an individual due to fraud committed by the  
25 individual, the department shall assess a fine on the individual and  
26 deposit the recovered fine in the same manner as provided in  
27 paragraph (1) of subsection (a) of this section. As used in this  
28 paragraph, "unemployment compensation program of the United  
29 States" means:

30 (A) Unemployment compensation for federal civilian employees  
31 pursuant to 5 U.S.C. 8501 et seq.;

32 (B) Unemployment compensation for ex-service members  
33 pursuant to 5 U.S.C. 8521 et seq.;

34 (C) Trade readjustment allowances pursuant to 19 U.S.C. 2291-  
35 2294;

36 (D) Disaster unemployment assistance pursuant to 42 U.S.C.  
37 5177(a);

38 (E) Any federal temporary extension of unemployment  
39 compensation;

40 (F) Any federal program that increases the weekly amount of  
41 unemployment compensation payable to individuals; and

42 (G) Any other federal program providing for the payment of  
43 unemployment compensation.

44 (b) (1) An employing unit or any officer or agent of an  
45 employing unit or any other person who makes a false statement or  
46 representation, knowing it to be false, or who knowingly fails to  
47 disclose a material fact, to prevent or reduce the payment of  
48 benefits to any individual entitled thereto or to avoid becoming or

1 remaining subject hereto or to avoid or reduce any contribution or  
2 other payment required from an employing unit under this chapter  
3 (R.S.43:21-1 et seq.), or under an employment security law of any  
4 other state or of the federal government, or who willfully fails or  
5 refuses to furnish any reports or information required hereunder  
6 **[(except for such reports as may be required under subsection (b) of**  
7 **R.S.43:21-6)], including failing to provide the information required**  
8 **by subsection (a) of R.S.43:21-6 immediately upon a separation**  
9 **from employment,** or to produce or permit the inspection or copying  
10 of records, as required hereunder, shall be liable to a fine of  
11 **[\$100.00] \$500,** or 25% of **[the] any** amount fraudulently  
12 withheld, whichever is greater, to be recovered in an action at law  
13 in the name of the Division of Unemployment and Temporary  
14 Disability Insurance of the Department of Labor and Workforce  
15 Development of the State of New Jersey or as provided in  
16 subsection (e) of R.S.43:21-14, said fine when recovered to be paid  
17 to the unemployment compensation auxiliary fund for the use of  
18 said fund; and each such false statement or representation or failure  
19 to disclose a material fact, and each day of such failure or refusal  
20 shall constitute a separate offense. Any penalties imposed by this  
21 paragraph shall be in addition to those otherwise prescribed in this  
22 chapter (R.S.43:21-1 et seq.).

23 (2) **[Any employing unit or any officer or agent of an**  
24 **employing unit or any other person who fails to submit any report**  
25 **required under subsection (b) of R.S.43:21-6 shall be subject to a**  
26 **penalty of \$25.00 for the first report not submitted within 10 days**  
27 **after the mailing of a request for such report, and an additional**  
28 **\$25.00 penalty may be assessed for the next 10-day period, which**  
29 **may elapse after the end of the initial 10-day period and before the**  
30 **report is filed; provided that when such report or reports are not**  
31 **filed within the prescribed time but it is shown to the satisfaction of**  
32 **the director that the failure was due to a reasonable cause, no such**  
33 **penalty shall be imposed. Any penalties imposed by this paragraph**  
34 **shall be recovered as provided in subsection (e) of R.S.43:21-14,**  
35 **and when recovered shall be paid to the unemployment**  
36 **compensation auxiliary fund for the use of said fund.] (Deleted by**  
37 **amendment, P.L. , c. ) (pending before the Legislature as this**  
38 **bill).**

39 (3) Any employing unit, officer or agent of the employing unit,  
40 or any other person, determined by the controller to have knowingly  
41 violated, or attempted to violate, or advised another person to  
42 violate the transfer of employment experience provisions found at  
43 R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain  
44 a lower rate of contributions by failing to disclose material  
45 information, or by making a false statement, or by a  
46 misrepresentation of fact, shall be subject to a fine of \$5,000 or  
47 25% of the contributions under-reported or attempted to be under-

1 reported, whichever is greater, to be recovered as provided in  
2 subsection (e) of R.S.43:21-14, and when recovered to be paid to  
3 the unemployment compensation auxiliary fund for the use of said  
4 fund. For the purposes of this subsection, "knowingly" means  
5 having actual knowledge of, or acting with deliberate ignorance or  
6 reckless disregard for the prohibition involved.

7 (c) Any person who shall willfully violate any provision of this  
8 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder,  
9 the violation of which is made unlawful or the observance of which  
10 is required under the terms of this chapter (R.S.43:21-1 et seq.), and  
11 for which a penalty is neither prescribed herein nor provided by any  
12 other applicable statute, shall be liable to a fine of \$50.00, to be  
13 recovered in an action at law in the name of the Division of  
14 Unemployment and Temporary Disability Insurance of the  
15 Department of Labor and Workforce Development of the State of  
16 New Jersey or as provided in subsection (e) of R.S.43:21-14, said  
17 fine when recovered to be paid to the unemployment compensation  
18 auxiliary fund for the use of said fund; and each day such violation  
19 continues shall be deemed to be a separate offense.

20 (d) (1) When it is determined by a representative or  
21 representatives designated by the Director of the Division of  
22 Unemployment and Temporary Disability Insurance of the  
23 Department of Labor and Workforce Development of the State of  
24 New Jersey that any person, **【whether (i)】** by reason of the  
25 knowing, fraudulent nondisclosure or misrepresentation by him, or  
26 by **【another】** anyone acting as his agent, of a material fact  
27 **【(whether or not such nondisclosure or misrepresentation was**  
28 **known or fraudulent), or (ii) for any other reason】**, has received any  
29 sum as benefits under this chapter (R.S.43:21-1 et seq.) while any  
30 conditions for the receipt of benefits imposed by this chapter  
31 (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was  
32 disqualified from receiving benefits, or while otherwise not entitled  
33 to receive such sum as benefits, such person, unless the director  
34 (with the concurrence of the controller) directs otherwise by  
35 regulation, shall be liable to repay those benefits in full. The person  
36 shall not be liable to repay all or any portion of the overpayment if  
37 the representative finds that the person received the overpayment of  
38 benefits because of errors or failures to provide information by the  
39 employer or errors by the division, and not because of an error, or  
40 knowing, fraudulent nondisclosure or misrepresentation, by the  
41 person. If the representative finds that errors made by the person  
42 were a cause of the overpayment together with errors of the  
43 division, or errors or failures to provide information by the  
44 employer, but the person did not make a knowing, fraudulent  
45 nondisclosure or misrepresentation, the representative shall  
46 determine a portion of the overpayment for which the person is  
47 liable taking into consideration possible financial hardship to the  
48 person, whether recovery would be against equity and good

1 conscience, and how much the person's errors, compared to errors  
2 of the division or employer, contributed to the overpayment  
3 occurring, but the amount to which the person shall be liable shall  
4 not exceed 50 percent of the overpayment. The employer's account  
5 shall not be charged for the amount of an overpayment of benefits if  
6 the overpayment was caused by an error of the division and not by  
7 any error of the employer, but shall be charged if the overpayment  
8 was caused by an error or failure to provide information of the  
9 employer. The sum for which the person is found liable to repay  
10 shall be deducted from any future benefits payable to the individual  
11 under this chapter (R.S.43:21-1 et seq.) or shall be paid by the  
12 individual to the division for the unemployment compensation fund,  
13 and such sum shall be collectible in the manner provided for by law,  
14 including, but not limited to, the filing of a certificate of debt with  
15 the Clerk of the Superior Court of New Jersey; provided, however,  
16 that, except in the event of fraud, no person shall be liable for any  
17 such refunds or deductions against future benefits unless so notified  
18 before four years have elapsed from the time the benefits in  
19 question were paid. Such person shall be promptly notified of the  
20 determination and the reasons therefor. The person shall be  
21 provided a written notification of any determination [shall be final  
22 unless the person files] regarding the repayment of an overpayment  
23 and the opportunity to file an appeal of the determination within  
24 [seven calendar days after the delivery of the determination, or  
25 within 10 calendar days after such notification was mailed to his  
26 last-known address, for any determination made on or before  
27 December 1, 2010, and any initial determination made pursuant to  
28 paragraph (1) of subsection (b) of R.S.43:21-6 after December 1,  
29 2010, or within 20 calendar days after the delivery of such  
30 determination, or within 20 calendar days after such notification  
31 was mailed to his last-known address, for any determination other  
32 than an initial determination made after December 1, 2010] 20  
33 calendar days after a confirmed receipt of a notice of the  
34 determination or 30 calendar days after the notice was mailed to the  
35 last known address of the person, and a recovery of an overpayment  
36 shall not commence until the end of whichever is applicable of the  
37 20 or 30 day periods and the resolution of any appeal made during  
38 those periods.

39 (2) Interstate and cross-offset of state and federal unemployment  
40 benefits. To the extent permissible under the laws and Constitution  
41 of the United States, the commissioner is authorized to enter into or  
42 cooperate in arrangements or reciprocal agreements with  
43 appropriate and duly authorized agencies of other states or the  
44 United States Secretary of Labor, or both, whereby:

45 (A) Overpayments of unemployment benefits as determined  
46 under subsection (d) of R.S.43:21-16 shall be recovered by offset  
47 from unemployment benefits otherwise payable under the  
48 unemployment compensation law of another state, and

1 overpayments of unemployment benefits as determined under the  
2 unemployment compensation law of another state shall be  
3 recovered by offset from unemployment benefits otherwise payable  
4 under R.S.43:21-1 et seq.; and

5 (B) Overpayments of unemployment benefits as determined  
6 under applicable federal law, with respect to benefits or allowances  
7 for unemployment provided under a federal program administered  
8 by this State under an agreement with the United States Secretary of  
9 Labor, shall be recovered by offset from unemployment benefits  
10 otherwise payable under R.S.43:21-1 et seq., or any federal program  
11 administered by this State, or under the unemployment  
12 compensation law of another state or any federal unemployment  
13 benefit or allowance program administered by another state under  
14 an agreement with the United States Secretary of Labor, if the other  
15 state has in effect a reciprocal agreement with the United States  
16 Secretary of Labor as authorized by subsection (g) of 42  
17 U.S.C.s.503, and if the United States agrees, as provided in the  
18 reciprocal agreement with this State entered into under subsection  
19 (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits  
20 as determined under subsection (d) of R.S.43:21-16 and  
21 overpayments as determined under the unemployment  
22 compensation law of another state which has in effect a reciprocal  
23 agreement with the United States Secretary of Labor as authorized  
24 by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset  
25 from benefits or allowances otherwise payable under a federal  
26 program administered by this State or another state under an  
27 agreement with the United States Secretary of Labor.

28 (3) The provisions of this subsection **[(d)]** shall not be  
29 construed as requiring or permitting a waiver of the **[full]**  
30 recovery of any overpayments of unemployment benefits if the  
31 waiver is prohibited by any federal law, regulation or administrative  
32 directive. A recovery shall not be waived unless the division  
33 determines that the claimant is without fault and the repayment  
34 would be contrary to equity and good conscience in the case of the  
35 recovery of an overpayment of benefit under any of the following  
36 programs authorized by the federal "Coronavirus Aid, Relief, and  
37 Economic Security (CARES) Act," Pub.L.116-136: Federal  
38 Pandemic Unemployment Compensation (FPUC), Pandemic  
39 Emergency Unemployment Compensation (PEUC), Mixed Earners  
40 Unemployment Compensation (MEUC), **[or]** Pandemic  
41 Unemployment Assistance (PUA)<sup>1</sup>, or the first week of regular  
42 Unemployment Compensation that is reimbursed in accordance  
43 with Section 2105 of the CARES Act"<sup>1</sup>.

44 (e) (1) Any employing unit, or any officer or agent of an  
45 employing unit, which officer or agent is directly or indirectly  
46 responsible for collecting, truthfully accounting for, remitting when  
47 payable any contribution, or filing or causing to be filed any report

1 or statement required by this chapter, or employer, or person failing  
2 to remit, when payable, any employer contributions, or worker  
3 contributions (if withheld or deducted), or the amount of such  
4 worker contributions (if not withheld or deducted), or filing or  
5 causing to be filed with the controller or the Division of  
6 Unemployment and Temporary Disability Insurance of the  
7 Department of Labor and Workforce Development of the State of  
8 New Jersey, any false or fraudulent report or statement, and any  
9 person who aids or abets an employing unit, employer, or any  
10 person in the preparation or filing of any false or fraudulent report  
11 or statement with intent to defraud the State of New Jersey or an  
12 employment security agency of any other state or of the federal  
13 government, or with intent to evade the payment of any  
14 contributions, interest or penalties, or any part thereof, which shall  
15 be due under the provisions of this chapter (R.S.43:21-1 et seq.),  
16 shall be liable for each offense upon conviction before any Superior  
17 Court or municipal court, to a fine not to exceed \$1,000.00 or by  
18 imprisonment for a term not to exceed 90 days, or both, at the  
19 discretion of the court. The fine upon conviction shall be payable to  
20 the unemployment compensation auxiliary fund. Any penalties  
21 imposed by this subsection shall be in addition to those otherwise  
22 prescribed in this chapter (R.S.43:21-1 et seq.).

23 (2) Any employing unit, officer or agent of the employing unit,  
24 or any other person, who knowingly violates, or attempts to violate,  
25 or advise another person to violate the transfer of employment  
26 experience provisions found at R.S.43:21-7 (c)(7) shall be, upon  
27 conviction before any Superior Court or municipal court, guilty of a  
28 crime of the fourth degree. For the purposes of this subsection,  
29 "knowingly" means having actual knowledge of, or acting with  
30 deliberate ignorance or reckless disregard for the prohibition  
31 involved.

32 (f) Any employing unit or any officer or agent of an employing  
33 unit or any other person who aids and abets any person to obtain  
34 any sum of benefits under this chapter to which he is not entitled, or  
35 a larger amount as benefits than that to which he is justly entitled,  
36 shall be liable for each offense upon conviction before any Superior  
37 Court or municipal court, to a fine not to exceed \$1,000.00 or by  
38 imprisonment for a term not to exceed 90 days, or both, at the  
39 discretion of the court. The fine upon conviction shall be payable to  
40 the unemployment compensation auxiliary fund. Any penalties  
41 imposed by this subsection shall be in addition to those otherwise  
42 prescribed in this chapter (R.S.43:21-1 et seq.).

43 (g) There shall be created in the Division of Unemployment and  
44 Temporary Disability Insurance of the Department of Labor and  
45 Workforce Development of the State of New Jersey an investigative  
46 staff for the purpose of investigating violations referred to in this  
47 section and enforcing the provisions thereof.



1 (h) An employing unit or any officer or agent of an employing  
2 unit who makes a false statement or representation, knowing it to be  
3 false, or who knowingly fails to disclose a material fact, to reduce  
4 benefit charges to the employing unit pursuant to paragraph (1) of  
5 subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to  
6 be recovered in an action at law in the name of the Division of  
7 Unemployment and Temporary Disability Insurance of the  
8 Department of Labor and Workforce Development of the State of  
9 New Jersey or as provided in subsection (e) of R.S.43:21-14. The  
10 fine when recovered shall be paid to the unemployment  
11 compensation auxiliary fund for the use of the fund. Each false  
12 statement or representation or failure to disclose a material fact, and  
13 each day of that failure or refusal shall constitute a separate offense.  
14 Any penalties imposed by this subsection shall be in addition to  
15 those otherwise prescribed in R.S.43:21-1 et seq.

16 (i) The Department of Labor and Workforce Development shall  
17 arrange for the electronic receipt of death record notifications from  
18 the New Jersey Electronic Death Registration System, pursuant to  
19 section 16 of P.L.2003, c.221 (C.26:8-24.1), and establish a  
20 verification system to confirm that benefits paid pursuant to the  
21 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
22 et al.), and the "unemployment compensation law," R.S.43:21-1 et  
23 seq., are not being paid to deceased individuals.

24 (j) The Department of Labor and Workforce Development shall  
25 arrange for the electronic receipt of identifying information from  
26 the Department of Corrections, pursuant to section 6 of P.L.1976,  
27 c.98 (C.30:1B-6), and from the Administrative Office of the Courts  
28 and any county which does not provide county inmate incarceration  
29 information to the Administrative Office of the Courts, and  
30 establish a verification system to confirm that benefits paid  
31 pursuant to the "unemployment compensation law," R.S.43:21-1 et  
32 seq., are not being paid to individuals who are incarcerated.

33 (cf: P.L.2013, c.274, s.5)

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35 3. This act shall take effect on the <sup>1</sup>~~120th~~ 270th<sup>1</sup> day  
36 following enactment, except that the division shall, prior to the  
37 <sup>1</sup>~~120th~~ 270th<sup>1</sup> day after enactment, take all administrative  
38 measures necessary to implement this act, including making all  
39 needed changes in forms and materials to be provided to employers,  
40 and notifying them of what is required to be in compliance with this  
41 act, including the requirements to provide the division with an  
42 email address for communication to and from the division and to  
43 use electronic means to communicate with the department.

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Concerns timely payment of UI benefits.