

## CHAPTER 262

### CORRECTED COPY

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

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

C.34:11-69 Findings, declarations.

1. The Legislature finds and declares that:
  - a. Domestic workers provide valuable services in industries such as in-home child care, house cleaning, home care, cooking, gardening, and other household occupations.
  - b. The labor domestic workers provide is an important contribution to the State's economy and prosperity, including, but not limited to, by providing support services that enable other individuals to participate in the workforce.
  - c. Many domestic workers are women, immigrants, and persons of color who work in or about private homes, isolated from other workers.
  - d. Since 2007, the National Domestic Workers Alliance (NDWA) has advocated for respect for domestic workers by including them in national, State, and local labor protection laws. In September 2020, NDWA affiliates, Adhikaar, Casa Freehold, New Labor and Wind of the Spirit, in collaboration with the Center for Women at Work at Rutgers University, released a report which found low pay, lack of benefits, and rampant wage theft occurs throughout the domestic worker industry and that there is a lack of enforcement regarding existing rights of domestic workers.
  - e. At least 10 other states and two cities have enacted legislation to provide rights, benefits, and protections for domestic workers.
  - f. The Legislature therefore finds that it is in the best interest of the State of New Jersey and its residents to provide rights, benefits, and protections to the countless domestic workers providing valuable services throughout the State.

C.34:11-70 Definitions.

2. As used in P.L.2023, c.262 (C.34:11-69 et al.):

"Casual work" means work that is:

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

"Domestic services" means services of a household nature and performed by an individual in or about a private home on a permanent or temporary basis and includes services performed by a domestic worker.

"Domestic worker" or "worker" means hourly and salaried employees, full-time and part-time individuals, and temporary individuals and is narrowly construed to mean any worker who:

  - (1) works for one or more employers; and
  - (2) is an individual who works in residence for the purposes of providing any of the following services: caring for a child; serving as a companion or caretaker for a sick, convalescing, or elderly person or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing; or for any other domestic service purpose, provided that the term domestic worker does not include:
  - (a) A family member, with "family member" meaning a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-

in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the individual is related by blood, marriage, or adoption;

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

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

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

(e) An employee of the State or the United States; or

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

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

"Employment agency" means any person or entity that procures, or attempts to procure, any workers for referral to a third party.

"Hiring entity" means any employer, as defined in section 1 of P.L.1965, c.173 (C.34:11-4.1), who employs a domestic worker and also means any person, firm, business, partnership, association, corporation, limited liability company, or other entity, including referral, employment, and internet based or on-demand platforms, that provides compensation directly or indirectly to a domestic worker for the performance of domestic services and any person or persons acting directly or indirectly in the interest of the employer in relation to the domestic worker.

"Live-in domestic worker" includes any individuals, who, as part of their employment, reside in the personal residence of the employer.

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

(1) employees; and

(2) after the procurement does not continue involvement in the terms of exchange of domestic services with the employees in any way, with the exception of the following:

(a) continuing to display, host, or advertise, either through physical means or virtual means, the workers' contact information, job qualifications, resume, image, or digital profile which employers or clients can use to independently contact employees about employment; or

(b) removing, either through physical means or virtual means, the workers' contact information, job qualifications, resume, image, or digital profile, which employers or clients can use to independently contact employees, upon the mandate of any federal, State, or local laws.

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

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

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

C.10:5-5 Definitions relative to discrimination.

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

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

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

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

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

e. "Employer" includes all persons as defined in subsection a. of this section and "hiring entities" as defined by section 2 of P.L.2023, c.262 (C.34:11-70), unless otherwise specifically exempt under another section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.

f. (Deleted by amendment, P.L.2023, c.262)

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

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

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

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

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

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

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

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

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

o. "Real estate broker" includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate

broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale, or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

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

r. "Blind person" or "person who is blind" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist persons who are deaf, or which is fitted with a special harness so as to be suitable as an aid to the mobility of a person who is blind, and is used by a person who is blind and has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind or deaf, as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind, have visual impairments, or are deaf or have hearing impairments, as reputable and competent to provide dogs with training, as defined in this section, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

w. "Deaf person" or "person who is deaf" means any person whose hearing is so severely impaired that the person is unable to hear and understand conversational speech through the unaided ear alone, and who must depend primarily on an assistive listening device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

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

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

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

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

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

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

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

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

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

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

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

kk. "Bisexuality" means affectional, emotional, or physical attraction or behavior which is directed towards persons of multiple genders.

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

mm. "Housing for older persons" means housing:

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

Development determines is specifically designed and operated to assist persons who are elderly (as defined in the federal program); or

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

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

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

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

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

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

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

oo. "Genetic information" means the information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to identify a predisposing genetic characteristic.

qq. "Domestic partnership" means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

rr. "Gender identity or expression" means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth.

ss. "Civil Union" means a legally recognized union of two eligible individuals established pursuant to R.S.37:1-1 et seq. and P.L.2006, c.103 (C.37:1-28 et al.).

tt. "Premium pay" means additional remuneration for night, weekend, or holiday work, or for standby or irregular duty.

uu. "Premium benefit" means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

vv. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair types, and protective hairstyles.

ww. "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

xx. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, partner in a civil union couple, domestic partner, or any other individual

related by blood to the person, and any other individual that the person shows to have a close association with the person which is the equivalent of a family relationship.

4. Section 2 of P.L.1965, c.164 (C.34:6A-2) is amended to read as follows:

C.34:6A-2 Definitions.

2. The following terms wherever used or referred to in this act shall have the following meaning:

- (a) "Act" means this act and rules and regulations promulgated hereunder.
- (b) "Board" means the Industrial Safety Board established under this act.
- (c) "Bureau" means the Bureau of Engineering and Safety in the Division of Labor, Department of Labor and Industry established under this act.
- (d) "Commissioner" means the Commissioner of the Department of Labor and Industry or his authorized representatives.
- (e) "Committee" means the New Jersey State Industrial Safety Committee established under this act.
- (f) "Department" means the Department of Labor and Industry.
- (g) "Employee" means any person engaged in service to an employer for wages, salary or other compensation.
- (h) "Employer" means any person or corporation, partnership, individual proprietorship, joint venture, firm, company or other similar legal entity who engages the services of an employee and who pays his wages, salary, or other compensation; and any person exercising supervision of employees on an employer's behalf.
- (i) "Owner" means the person possessing legal or equitable title. For the purposes of this act "Person possessing equitable title" shall mean that person or corporation, partnership, individual proprietorship, joint venture, firm, company or other legal entity that has actual control over the premises used in whole or in part as a place of employment.
- (j) "Place of employment" means any building or other premises occupied by an employer in or about which an employee customarily is suffered or permitted to work.
- (k) "Domestic worker" means all persons defined as a domestic worker by section 2 of P.L.2023, c.262 (C.34:11-70).

5. Section 9 of P.L.1965, c.154 (C.34:6A-9) is amended to read as follows:

C.34:6A-9 Rules and regulations.

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

The commissioner shall provide for the adoption of all applicable occupational standards, amendments, or changes adopted or recognized by the Secretary of Labor under the authority of the "Occupational Safety and Health Act of 1970," which shall be applicable to domestic workers employed by individuals in the residences of the individuals.

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



The commissioner shall before promulgation furnish a copy of proposed rules and regulations to the members of the committee for its review and recommendations. Within 90 days of the receipt of said proposed rules and regulations the committee shall provide the commissioner and the board with its written recommendations. Following receipt of the committee's recommendations or upon the expiration of 90 days, the commissioner shall furnish to every member of the board a copy of the proposed rules and regulations with or without change in his discretion and at the same time a notice of intent to promulgate proposed rules and regulations shall be published by the commissioner. This notice of intent shall state briefly the purpose of the proposed rules and regulations, shall state that a copy of the proposed rules and regulations may be obtained by any person upon written request to the department, and shall fix the date, time and place for a public hearing on the proposed rules and regulations, which date shall be not less than 21 days after the publication of the notice. All person appearing at such hearing shall be given the opportunity to be heard. Rules and regulations, as so proposed or as changed by the commissioner after such hearing, may be promulgated by the commissioner 90 days following delivery to the board to be effective on such date as the rules and regulations shall provide unless disapproved by a majority of the board and if so disapproved such rules or regulations shall not become effective. Within 30 days after the public hearing and on 30 days' notice the commissioner shall call a meeting of the board for the purpose of discussing the proposed rules and regulations. If any changes were made in the proposed rules or regulations following the public hearing, a copy of such change shall accompany such notice. At any meeting called for such purpose disapproval shall be by vote of the majority of the members of the board.

6. Section 19 of P.L.1965, c.154 (C.34:6A-19) is amended to read as follows:

C.34:6A-19 Penalties; compromise of claims.

19. Any person violating any of the provisions of this act shall be liable to a penalty of not less than \$975 nor more than \$13,653 to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Notwithstanding the penalties prescribed in this section, the penalty amounts shall be subject to adjustment by the commissioner to remain consistent with the "Occupational Safety and Health Act of 1970," (29 U.S.C. s.651 et seq.). Fifty percent of the sum collected as a penalty pursuant to this subsection shall be provided to the employee harmed by violation. Any violation of the act by an officer, agent or employee shall also be a violation of the act by his employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature each day during which it continues, after the date given by which the violation must be eliminated in the order by the commissioner, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

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

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

7. Section 22 of P.L.1965, c.154 (C.34:6A-22) is amended to read as follows:

C.34:6A-22 Exemptions.

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

- (a) Places of employment under the exclusive jurisdiction of the Federal Government with respect to the health and safety of employees;
- (b) Places of employment subject to the provisions of the Mine Safety Act, P.L.1954, c.197;
- (c) Employment and places of employment subject to the provisions of the Construction Safety Act, P.L.1962, c.45;
- (d) (Deleted by amendment, P.L.2023, c.262)
- (e) Transportation equipment coming under the jurisdiction of the Interstate Commerce Commission, Federal Aviation Administration, or of the New Jersey Division of Motor Vehicles;
- (f) (Deleted by amendment, P.L.2023, c.262)
- (g) Schools, colleges and universities;
- (h) Places of employment with fewer than four employees, except places of employment by individuals for domestic services in the residences of the individuals; employment in which the manufacturing of goods of any kind is carried on; and except as hereinafter provided in paragraph (o) of this section;
- (i) Agricultural employment;
- (j) Banks and other financial institutions;
- (k) Places of employment in which the employees are primarily engaged in office operations and buildings under the actual control of one employer and in which the employees are primarily engaged in office operations or laboratories primarily engaged in research, development, or testing conducted on premises, in separate buildings, or in building sections devoted exclusively to these operations;
- (l) Public utilities which own, operate, manage or control any autobus, canal, express, railroad, street railway, traction railway, subway, pipeline, gas, electric light, heat, power, water, oil, sewer, telephone or telegraph system, plant or equipment for public use, under privileges granted by the State or by any political subdivision thereof, with respect to work operations performed in connection with the plant or facilities of such public utility located in the public streets and highways, roads and alleys, private rights-of-way, or upon their customers' premises;
- (m) Liquefied petroleum gas bulk plants and facilities subject to the jurisdiction and supervision of the Superintendent of State Police, pursuant to chapter 139 of the laws of 1950 (C.21:1B-1 to 21:1B-8);
- (n) Natural gas pipeline utilities subject to the provisions of the Natural Gas Safety Act (P.L.1952, c. 166) (C.48:10-2 to 48:10-9); and
- (o) Establishments with fewer than 10 employees and which are devoted exclusively to the sale of goods, or furnishing of services, at retail.

8. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to read as follows:

C.34:11-56a4 Minimum wage rate; exceptions.

5. a. Except as provided in subsections c., d., e. g., and i. of this section, each employer shall pay to each of his employees wages at a rate of not less than \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, the minimum wage shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to

the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on July 1, 2019, the minimum wage shall be \$10.00 per hour; on January 1, 2020, the minimum wage shall be \$11.00 per hour; and on January 1 of each year from 2021 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by \$1.00 per hour. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this section shall be applied to the higher minimum wage rate. If an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, the employer shall also pay not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

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

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

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

c. Employees of a small employer, and employees who are engaged in seasonal employment, except for employees who customarily and regularly receive gratuities or tips who shall be subject to the provisions of subsections a. and d. of this section, shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on January 1, 2020, the minimum wage shall be \$10.30 per hour; and on January 1 of each year from 2021 to 2025, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in 2026, the minimum wage shall be increased from the rate of the preceding year by seventy cents per hour, and, in each year from 2027 to 2028 inclusive, the minimum wage for employees subject to this subsection c. shall be increased by the same amount as the increase for employees subject to subsection a. of this section based on CPI-W increases, plus one half of the difference between \$15.00 per hour and the minimum wage in effect in 2026

for employees pursuant to subsection a. of this section, so that, by 2028, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.

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

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

(2) subject to the provisions of paragraph (3) of this subsection d., minimum wage rates shall be increased as follows: on January 1 of 2025, the minimum wage shall be increased to \$13.40, and on January 1 of each year from 2026 to 2027, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in each year from 2028 to 2030 inclusive, the minimum wage for employees subject to this subsection d. shall be increased during that year by the same amount as the increase in that year for employees subject to subsection a. of this section based on CPI-W increases, plus one third of the difference between \$15.00 per hour and the minimum wage in effect in 2027 for employees pursuant to subsection a. of this section, so that, by 2030, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section.

(3) Not later than March 31, 2024, the commissioner and the Secretary of Agriculture shall review the report issued by the commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32 (C.34:11-56a4.10) and shall consider any information provided by the secretary regarding the impact on farm employers and the viability of the State's agricultural industry of the increases of the minimum wage made pursuant to paragraph (1) of this subsection, and the potential impact of the increases which would be set by paragraph (2) of this subsection, including comparisons with the wage rates in the agricultural industries in other states, and shall recommend: approval of the increases set forth in paragraph (2) of this subsection; disapproval of the increases set forth in paragraph (2) of this subsection; or an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm. In contemplation of the possibility that the commissioner and the secretary are unable to agree on the recommendation required by this paragraph, by December 31, 2021, the Governor shall appoint a public member subject to advice and consent by the Senate, who will serve as a tie-breaking member if needed. The increases set forth in paragraph (2) of this subsection shall take effect unless there is a recommendation pursuant to this paragraph to disapprove the increases or for an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm and the Legislature, not later than June 30, 2024,

enacts a concurrent resolution approving the implementation of that recommendation. Beginning in 2024, the commissioner, secretary, and public member shall meet biennially to make either a one or two year recommendation to the Legislature for implementation by way of concurrent resolution.

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

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

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

g. Commencing on January 1, 2020, a training wage of not less than 90 percent of the minimum wage rate otherwise set pursuant to subsection a. of this section may be paid to an employee who is enrolled in an established employer on-the-job or other training program which meets standards set by regulations adopted by the commissioner. The period during which an employer may pay the training wage to the employee shall be the first 120 hours of work after hiring the employee in employment in an occupation in which the employee has no previous similar or related experience. An employer shall not utilize any employee paid the training wage in a manner which causes, induces, encourages or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner which replaces, supplants, competes with or duplicates any approved apprenticeship program. An employer who pays an employee a training wage shall make a good faith effort to continue to employ the employee after the period of the training wage expires and shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum

wage, for the trainee upon the successful completion of the period of the training wage. If the commissioner determines that an employer has made repeated, knowing violations of the provisions of this subsection regarding the payment of a training wage, the commissioner shall suspend the employer's right to pay a training wage for a period set pursuant to regulations adopted by the commissioner, but not less than three years.

h. The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

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

9. Section 1 of P.L.1952, c.9 (C.34:11-56.1) is amended to read as follows:

C.34:11-56.1 Definitions.

1. As used in this act:

a. "Employee" includes any person, either male or female, employed by an employer, but shall not include persons performing volunteer service for nonprofit organizations or corporations nor persons employed on a farm or in a hotel.

b. "Employer" includes any person acting directly or indirectly in the interest, or as agent, of an employer in relation to an employee and further includes one or more individuals, partnerships, corporations, associations, legal representatives, trustees, trustees in bankruptcy, or receivers, such term shall not include nonprofit hospital associations or corporations.

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

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

e. "Commissioner" means the Commissioner of Labor and Workforce Development of the State of New Jersey.

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

Definitions.

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

"Employer" includes natural persons, partnerships, and corporations; "employee" includes all natural persons, including officers of corporations, who perform service for an employer for financial consideration, exclusive of (1) employees eligible under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C.s.901 et seq.), for benefits payable with respect to accidental death or injury, or occupational disease or infection; and (2) casual employments, which shall be defined, if in connection with the employer's business, as employment, the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring; provided, however, that forest fire wardens and forest firefighters employed by the State of New Jersey shall, in no event, be deemed casual employees.

A self-employed person, partners of a limited liability partnership, members of a limited liability company or partners of a partnership who actively perform services on behalf of the self-employed person's business, the limited liability partnership, limited liability company or the partnership shall be deemed an "employee" of the business, limited liability partnership, limited liability company or partnership for purposes of receipt of benefits and payment of premiums pursuant to this chapter, if the business, limited liability partnership, limited liability company or partnership elects, when the workers' compensation policy of the business, limited liability partnership, limited liability company or partnership is purchased or renewed, to obtain coverage for the person, the limited liability partners, the limited liability company members or the partners. If the business, limited liability partnership, limited liability company or partnership elects to obtain coverage for the self-employed person, limited liability partners, limited liability company members or the partners, the election may only be made at purchase or at renewal and may not be withdrawn during the policy term. If the business, limited liability partnership, limited liability company or partnership performs services covered under a homeowner's policy or other policies providing comprehensive personal liability insurance for domestic workers, household employees or the dependents thereof, the workers' compensation policy of the business, limited liability partnership, limited liability company or partnership shall have primary responsibility for the payment of benefits. Notwithstanding the provisions of R.S.34:15-71 and 34:15-72, the business, limited liability partnership, limited liability company or partnership shall not be required to purchase a policy unless the business, limited liability partnership, limited liability company or partnership is an "employer" of a least one employee as defined in this section who is not a self-employed person, limited liability partner, limited liability company member or partner actively performing services on behalf of the business, limited liability partnership, limited liability company or partnership.

Notwithstanding any other provision of law to the contrary, no insurer or insurance producer as defined in section 3 of P.L.2001, c.210 (C.17:22A-28) shall be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. Every application for workers' compensation made on or after the effective date of this amendatory act shall include notice, as approved by the Commissioner of Banking and Insurance, concerning the availability of workers' compensation coverage for self-employed persons, limited liability partners, limited liability company members or partners. That application shall also contain a notice of election of coverage and shall clearly state that coverage for self-employed persons, limited liability partners, limited liability company members and partners shall not be provided under the policy unless the application containing the notice of election is executed and filed with the insurer or insurance producer.

The application containing the notice of election shall also contain a statement that the insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. The failure of a self-employed person, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for the self-employed person, the limited liability partners, the limited liability company members or the partners shall not affect benefits available under any other accident or health policy.

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

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

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

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



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

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

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

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

11. R.S.34:15-92 is amended to read as follows:

Domestic work excepted.

34:15-92. Employers of domestic workers and every stock company or mutual association affording insurance for the liability of such employers by reason of that employment shall be exempted from the provisions of R.S. 34:15-80 and R.S. 34:15-81, but employers of domestic workers are required to provide written notice of insurance coverage and cancellation of a policy.

12. R.S.43:21-19 is amended to read as follows:

Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) "Employer" means:

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

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

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

(4) Any employing unit which together with one or more other employing units is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same

interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit or interest, would be an employer under paragraph (1) of this subsection;

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

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

(7) Any employing unit not an employer by reason of any other paragraph of this subsection (h) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of the "unemployment compensation law" for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter (R.S.43:21-1 et seq.);

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

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

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

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

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

(13) Any employing unit for which domestic service in employment as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31, 1977;

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

(i) (1) "Employment" means:

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

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

(ii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of the foregoing and one or more other states or political subdivisions, if such service is not excluded from "employment" under paragraph (D) below.

(C) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, which is excluded from "employment"

as defined in the Federal Unemployment Tax Act, solely by reason of section 3306 (c)(8) of that act, if such service is not excluded from "employment" under paragraph (D) below.

(D) For the purposes of paragraphs (B) and (C), the term "employment" does not apply to services performed

(i) In the employ of (I) a church or convention or association of churches, or (II) an organization, or school which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education, and after December 31, 1977, in the employ of a governmental entity referred to in R.S.43:21-19 (i) (1) (B), if such service is performed by an individual in the exercise of duties

(aa) as an elected official;

(bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(cc) as a member of the State National Guard or Air National Guard;

(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(ee) in a position which, under or pursuant to the laws of this State, is designated as a major nontenured policy making or advisory position, or a policy making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market;

(v) By an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program assisted in whole or in part by any federal agency or an agency of a state or political subdivision thereof; or

(vi) Prior to January 1, 1978, for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) (i) Domestic service after December 31, 1977 and before the effective date of P.L.2023, c.262 (C.34:11-69 et al.) performed in the private home of an employing unit which paid cash remuneration of \$1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year.

(ii) Domestic services after the effective date of P.L.2023, c.262 (C.34:11-69 et al.), performed in the private home of an employing unit which in either the current or preceding calendar year paid remuneration for employment in the amount of \$1,000 or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(D) Service performed prior to January 1, 1978, in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions, except as provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ of the South Jersey Port Corporation or its successors;

(E) Service performed in the employ of any other state or its political subdivisions or of an instrumentality of any other state or states or their political subdivisions to the extent that such instrumentality is with respect to such service exempt under the Constitution of the United States from the tax imposed under the Federal Unemployment Tax Act, as amended, except as provided in R.S.43:21-19 (i) (1) (B) above;

(F) Service performed in the employ of the United States Government or of any instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the "unemployment compensation law," except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Secretary of Labor of the



United States under section 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.3304), the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in R.S.43:21-14 (f) with respect to contributions erroneously paid to or collected by the division;

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

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

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

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

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

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

(M) Service performed for or in behalf of the owner or operator of any theater, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band," entertainer, vaudeville artist, actor, actress, singer or other entertainer;

(N) Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year;

(O) Services performed in the sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;

(P) Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (22 U.S.C. s.288 et seq.);

(S) Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to R.S.43:21-21 during the effective period of such election;

(T) Service performed in the employ of a school, college, or university if such service is performed (i) by a student enrolled at such school, college, or university on a full-time basis in an educational program or completing such educational program leading to a degree at any of the severally recognized levels, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance;

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State;

(W) Services performed after the effective date of this amendatory act by agents of mutual benefit associations if the compensation to such agents for such services is wholly on a commission basis;

(X) Services performed by operators of motor vehicles weighing 18,000 pounds or more, licensed for commercial use and used for the highway movement of motor freight, who own their equipment or who lease or finance the purchase of their equipment through an entity which is not owned or controlled directly or indirectly by the entity for which the services were performed and who were compensated by receiving a percentage of the gross revenue generated by the transportation move or by a schedule of payment based on the distance and weight of the transportation move;

(Y) (Deleted by amendment, P.L.2009, c.211.)

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

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

(8) If one-half or more of the services in any pay period performed by an individual for an employing unit constitutes employment, all the services of such individual shall be deemed to be employment; but if more than one-half of the service in any pay period performed by an individual for an employing unit does not constitute employment, then none of the service of

such individual shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment for service is ordinarily made by an employing unit to individuals in its employ.

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

(A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

(m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Base week," commencing on or after January 1, 2001, means any calendar week during which the individual earned in employment from an employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to

this paragraph (3) is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (3) during that week.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Is a public or other nonprofit institution.

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

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

C.34:11-71 Domestic worker, casual work, work less than five hours per month, prohibited unless governed by written contract.

13. a. No hiring entity shall employ or engage a domestic worker, except for casual work or work of less than five hours per month, unless the engagement is governed by a written contract governing the following: a specific list of job duties; hourly wage and overtime wage; weekly schedule including number of hours per week; the manner and frequency of payment; breaks for rest and meals; paid or unpaid leave including sick time; paid holidays; any other benefits provided; modes of transportation required and whether provided; value of housing if provided; sleeping period and personal time for live-in workers; the term of the contract; and any other terms and conditions as agreed upon by the domestic worker and employer or as mandated pursuant to this act. The written agreement shall be signed and dated by all parties after ample opportunity to review.

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

(1) Mandatory pre-dispute arbitration agreement for claims made by a covered domestic worker against a domestic work hiring entity regarding the local rights of the worker; and

(2) Non-disclosure agreement, or non-competition or non-disparagement agreement, limiting the ability of the covered domestic worker to seek compensation for performing domestic services after the worker ceases to receive compensation from the domestic work hiring entity for the performance of domestic services.

c. The agreement shall be in English and such other language as may be preferred by the worker. The hiring entity shall make reasonable efforts to determine if the worker would prefer the agreement to be in another language.

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

e. A referral and employment agency shall provide domestic workers and hiring entities with information concerning the contract requirements of this act at the time a hiring entity is connected with a worker and shall make any model contracts adopted by the department available to the hiring entity.

C.34:11-72 Domestic worker, uninterrupted paid rest period.

14. a. An employer of a domestic worker shall allow the domestic worker an uninterrupted paid rest period of not less than ten minutes for each four consecutive hours worked, unless the nature of the work prevents the domestic worker from being relieved of all duties for such period of time, such as some types of child care and caretaker work for a sick, elderly or disabled person. In those types of work where the domestic worker is not relieved of all work duties, an "on-duty" rest period shall be provided. The employer shall pay the domestic worker for the time spent on a rest break at the domestic worker's regular rate of pay.

b. The employer shall allow an uninterrupted 30-minute meal break after more than five consecutive hours worked. Unless the domestic worker is relieved of all work duties during such 30-minute period and is permitted to leave the work site during that break, the meal period shall be considered an "on-duty" meal period and shall be paid at the domestic worker's regular rate of pay.

c. An "on-duty" meal or rest period shall be permitted only when the nature of the work prevents a domestic worker from being relieved of all duties and when, by written agreement

between the parties, an "on-duty" meal or rest period is agreed to. The agreement may be revoked by the domestic worker, in writing, at any time. The domestic worker may, to the extent possible given the domestic worker's duties for the employer, engage in personal activities, such as resting, eating a meal, drinking a beverage, making a personal telephone call, or making other personal choices during "on-duty" meal or rest periods.

d. The employer shall not impede or discourage a domestic worker from taking any meal or rest breaks.

e. In the case of a violation of this section, the domestic work employer involved shall be liable to the domestic worker for an amount equal to one hour of pay at the domestic worker's regular rate of compensation, but not more than two hours of such pay, for each workday that the meal or rest period was not provided. The department shall determine through the agency's complaint and adjudication process whether or not violations occurred by the employer and whether or not the domestic worker is entitled to the remedy.

C.34:11-73 Live-in domestic worker, work more than six consecutive days, same employer, without 24-hour rest, prohibited.

15. A "live-in" domestic worker shall not be required to work more than six consecutive days for the same employer without a 24-hour period of rest, which may be unpaid.

C.34:11-74 Domestic worker employer, minimum two-week notification before termination; live-in domestic worker employer, minimum four-week notification before termination.

16. a. An employer of a domestic worker shall provide a minimum two-week notification period before termination of employment, and for live-in domestic workers a minimum four-week notification period before termination of employment.

b. The employer may terminate the employment without complying with the full notification period based on a good-faith belief and without reckless disregard or willful ignorance of the truth that the domestic worker has engaged in significant misconduct.

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

d. As used in this section, the term "significant misconduct" means that the domestic worker abused, neglected, or caused any other harmful conduct against the employer, members of the employer's family, or individuals residing in the employer's household.

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

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

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

C.34:11-75 Domestic worker, personal records, information, monitoring.

17. No hiring entity shall:

- a. Keep or hold the original copies of any personal documents of a domestic worker;
- b. Monitor or record, through any means, the activities of a domestic worker:

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

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

C.34:11-76 Hiring entity, domestic worker, notification of rights, information, complaint, violation of rights.

18. a. A hiring entity shall provide to a domestic worker notification of the rights of domestic workers under P.L.2023, c.262 (C.34:11-69 et al.), and information on how to file a complaint for violation of these rights, as shall be determined by the department by regulation.

b. A hiring entity shall create and maintain records documenting hours worked, pay rate, meals and rest breaks, leave time earned and used, if applicable, and the existence of a written agreement, all pursuant to requirements established by regulation by the department. If a hiring entity does not maintain the required records or does not allow the department reasonable access to the records, an adverse inference may be drawn with respect to facts alleged regarding the issues about which records were not kept.

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

C.34:11-77 Hiring entity, domestic worker, interfere, restrain, deny exercise of, attempt, rights, prohibited; actions considered retaliation.

19. a. It shall be unlawful for a hiring entity or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right set forth in P.L.2023, c.262 (C.34:11-69 et al.).

b. The minimum requirements of sections 13 through 18 of P.L.2023, c.262 (C.34:11-71 through 34:11-76) shall be deemed incorporated into any contract, whether actual or implied, between the employer and the domestic worker.

c. A material breach by a hiring entity of a contract with a domestic worker shall constitute a violation of P.L.2023, c.262 (C.34:11-69 et al.), without regard to whether the breach is of a provision required by this act.

d. No hiring entity or any other person shall take or threaten retaliatory action against any person because a domestic worker has exercised rights or pursued a claim of violation under P.L.2023, c.262 (C.34:11-69 et al.). These rights include the right to demand compliance with protections established by written agreement; the right to file a complaint or inform any person about an employer's alleged violation of this act; the right to cooperate with the department in any investigation pursuant to this act; and the right to inform any person of the rights established under this act.

e. No hiring entity or any other person shall communicate to a person exercising rights protected under P.L.2023, c.262 (C.34:11-69 et al.) the willingness or intent to contact, report to, or to make an implied or express assertion to report to a government agency regarding the suspected citizenship or immigration status of a domestic worker or family member of a domestic worker because the worker has or has expressed an intent to exercise rights protected under this act or because of a belief the worker may do so.



f. The protections of this section shall apply to any person who mistakenly but in good faith alleges a violation of P.L.2023, c.262 (C.34:11-69 et al.).

g. It shall be considered a rebuttable presumption of retaliation if the hiring entity or any other person takes an adverse action against a domestic worker within 90 calendar days of the worker's exercise of rights protected in P.L.2023, c.262 (C.34:11-69 et al.). However, in the case of temporary or seasonal employment that ended before the close of the 90-calendar-day period, the presumption also applies if the hiring entity fails to rehire a former domestic worker at the next opportunity for work in the same position. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action would have been taken in the absence of such protected activity. If a domestic worker declines to be rehired for the same position or resigns from the position, the presumption in this subsection g. shall not apply.

h. Proof of retaliation under P.L.2023, c.262 (C.34:11-69 et al.) shall be sufficient upon a showing that the hiring entity or any other person has taken an adverse action against a person and the persons exercise or rights protected in P.L.2023, c.262 (C.34:11-69 et al.) was a motivating factor in the absence of that protected activity.

i. A complaint or other communication by any person triggers the protection of P.L.2023, c.262 (C.34:11-69 et al.) regardless of whether the complaint or communication is in writing or makes explicit reference to P.L.2023, c.262 (C.34:11-69 et al.).

C.34:11-78 Guidelines, regulations promulgated.

20. The department shall promulgate appropriate guidelines and regulations to effectuate the purposes of P.L.2023, c.262 (C.34:11-69 et al.).

C.34:11-79 Overlapping employment relationship, domestic worker, subject to joint, several liability, concurrent fines, penalties.

21. a. Individuals and employers with an overlapping employment relationship with a domestic worker are subject to joint and several liability, and concurrent fines and penalties, in connection with P.L.2023, c.262 (C.34:11-69 et al.).

b. A domestic worker or other person representing a domestic worker may report to the department any suspected violation of P.L.2023, c.262 (C.34:11-69 et al.).

c. The department shall take any steps as it deems appropriate to resolve complaints and enforce P.L.2023, c.262 (C.34:11-69 et al.), including, but not limited to, establishing a system to receive complaints regarding noncompliance with P.L.2023, c.262 (C.34:11-69 et al.), investigating alleged violations in a timely manner and resolving complaints through a separate "referral" process for claims of domestic workers.

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

e. Any person alleging a violation of P.L.2023, c.262 (C.34:11-69 et al.) shall file a complaint with the department within two years of the date that the person knew or should have known of the alleged violation.

f. Upon establishment of a system of administrative adjudication, the department shall have the power to impose the penalties and fines for a violation of P.L.2023, c.262 (C.34:11-69 et al.), and to provide or obtain appropriate relief. Remedies may include reinstatement and full restitution to the domestic worker for lost wages and benefits, including presumed damages to be awarded to a domestic worker for the hiring entity's or employer's violation of P.L.2023,

c.262 (C.34:11-69 et al.). The department shall determine by regulation an amount of presumed damages.

g. A hiring entity or an employer who knowingly retaliates against an employee for any activity protected under P.L.2023, c.262 (C.34:11-69 et al.), or any other knowing violation of P.L.2023, c.262 (C.34:11-69 et al.), shall be a crime of the fourth degree. Otherwise, it shall be a disorderly persons offense and the hiring entity or employer shall, upon conviction for a violation, be punished by a fine of not less than \$100 not more than \$2,000 for an initial violation and not less than \$200 nor more than \$4,000 for each subsequent violation. Each day during which any violation of P.L.2023, c.262 (C.34:11-69 et al.) continues shall constitute a separate and distinct offense, and the employment of any domestic worker in violation of P.L.2023, c.262 (C.34:11-69 et al.), shall, with respect to each domestic worker employed, constitute a separate and violation.

h. Any domestic worker or person who is aggrieved by a violation of P.L.2023, c.262 (C.34:11-69 et al.), or the department may bring civil action in a court of competent jurisdiction against a hiring entity or an employer violating P.L.2023, c.262 (C.34:11-69 et al.). Nothing in P.L.2023, c.262 (C.34:11-69 et al.) or its implementing regulations shall be construed to require a complaint to be filed with the department before bringing an action in court. Upon prevailing in an action brought pursuant to this section, an aggrieved person shall be entitled to any legal or equitable relief as may be appropriate to remedy the violation, that is not duplicative of any relief provided to the person in administrative proceedings, including, without limitation, reinstatement in employment, back pay, and injunctive relief. The aggrieved person shall be entitled to an award of reasonable attorney's fees and costs.

C.34:11-80 "Domestic Work Enforcement Program" established.

22. a. The department shall, upon appropriation of funds to the department for purposes of this section, establish and maintain a Domestic Work Enforcement Program in collaboration with qualified organizations. P.L.2023, c.262 (C.34:11-69 et al.) requires the department to issue a competitive request to community-based organizations (CBOs) to provide education and outreach services in this program and would prescribe requirements for these organizations. The CBOs would be responsible for developing and consulting with the department regarding the core education and outreach materials, as specified. The program shall increase the capacity and expertise of the department to improve education and enforcement of labor standards in the domestic work industry. The program shall include, but not be limited to, the following:

(1) Education and training for domestic work employees and employers addressing minimum wage, overtime, sick leave, recordkeeping, wage adjudication, and retaliation, along with new rights extended by P.L.2023, c.262 (C.34:11-69 et al.);

(2) Training for domestic worker leaders to provide peer-to-peer support and wraparound service referrals to domestic work employees who have elected to file wage claims or take other actions seeking remedy from hiring entities or employers;

(3) Development of core training curriculum to be used in the education and training of domestic work employees and employers;

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

(5) Development of an online resource hub to provide information for employers on State labor laws and guidelines on fair employment.

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

c. (1) A nonprofit organization that has a minimum of five years of experience working with domestic work employees or employers; or

(2) An organization that works with nonprofit organizations that has a minimum of five years of experience working with domestic work employees or employers.

C.34:11-81 Construction of act; severability.

23. a. Nothing in P.L.2023, c.262 (C.34:11-69 et al.) shall be construed to diminish any rights or protections granted to domestic workers by any other law.

b. If any provision of P.L.2023, c.262 (C.34:11-69 et al.) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of P.L.2023, c.262 (C.34:11-69 et al.), which can be given effect without the invalid provision or application, and to this end the provisions of P.L.2023, c.262 (C.34:11-69 et al.) are severable.

24. This act shall take effect on the first day of the sixth month next following enactment, except that the commissioner may take any anticipatory action as may be necessary to effectuate the purposes of this act.

Approved January 12, 2024.