

**SENATE, No. 3321**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED JUNE 19, 2017

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris and Somerset)**

**SYNOPSIS**

Revises test for employment or independent contractor status under certain State labor laws.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning employment status and amending R.S.43:21-19.

2

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

5

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

7 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et  
8 seq.), unless the context clearly requires otherwise:

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

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

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

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

42 With respect to a benefit year commencing on or after July 1,  
43 1995, if an individual does not have sufficient qualifying weeks or  
44 wages in his base year to qualify for benefits, the individual shall  
45 have the option of designating that his base year shall be the

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

**Matter underlined thus is new matter.**

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

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

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

42 (3) With respect to a benefit year commencing on or after June  
43 1, 1990 for an individual who immediately preceding the benefit  
44 year was subject to a disability compensable under the provisions of  
45 the workers' compensation law (chapter 15 of Title 34 of the  
46 Revised Statutes), "base year" shall mean the first four of the last  
47 five completed calendar quarters immediately preceding the  
48 individual's period of disability, if the period of disability was not

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

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

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

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

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

40 (g) "Employing unit" means the State or any of its  
41 instrumentalities or any political subdivision thereof or any of its  
42 instrumentalities or any instrumentality of more than one of the  
43 foregoing or any instrumentality of any of the foregoing and one or  
44 more other states or political subdivisions or any individual or type  
45 of organization, any partnership, association, trust, estate, joint-  
46 stock company, insurance company or corporation, whether  
47 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
48 successor thereof, or the legal representative of a deceased person,

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

14 (h) "Employer" means:

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

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

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

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

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

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

44 (7) Any employing unit not an employer by reason of any other  
45 paragraph of this subsection (h) for which, within either the current  
46 or preceding calendar year, service is or was performed with respect  
47 to which such employing unit is liable for any federal tax against  
48 which credit may be taken for contributions required to be paid into

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

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

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

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

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

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

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

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

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

26 (A) Any service performed prior to January 1, 1972, which was  
27 employment as defined in the "unemployment compensation law"  
28 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
29 provisions of this subsection, service performed on or after January  
30 1, 1972, including service in interstate commerce, performed for  
31 remuneration or under any contract of hire, written or oral, express  
32 or implied.

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

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

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

1 the Federal Unemployment Tax Act, solely by reason of section  
2 3306 (c)(8) of that act, if such service is not excluded from  
3 "employment" under paragraph (D) below.

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

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

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

14 (iii) Prior to January 1, 1978, in the employ of a school which is  
15 not an institution of higher education, and after December 31, 1977,  
16 in the employ of a governmental entity referred to in R.S.43:21-19

17 (i) (1) (B), if such service is performed by an individual in the  
18 exercise of duties

19 (aa) as an elected official;

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

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

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

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

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

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

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

46 (E) The term "employment" shall include the services of an  
47 individual who is a citizen of the United States, performed outside  
48 the United States after December 31, 1971 (except in Canada and in

1 the case of the Virgin Islands, after December 31, 1971) and prior  
2 to January 1 of the year following the year in which the U.S.  
3 Secretary of Labor approves the unemployment compensation law  
4 of the Virgin Islands, under section 3304 (a) of the Internal  
5 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an  
6 American employer (other than the service which is deemed  
7 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or  
8 the parallel provisions of another state's unemployment  
9 compensation law), if

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

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

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

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

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

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

47 (H) The term "United States" when used in a geographical sense  
48 in subsection R.S.43:21-19 (i) includes the states, the District of



1 Columbia, the Commonwealth of Puerto Rico and, effective on the  
2 day after the day on which the U.S. Secretary of Labor approves for  
3 the first time under section 3304 (a) of the Internal Revenue Code  
4 of 1986 (26 U.S.C. s.3304 (a)) an unemployment compensation law  
5 submitted to the Secretary by the Virgin Islands for such approval,  
6 the Virgin Islands.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (J) Domestic service after December 31, 1977 performed in the  
8 private home of an employing unit which paid cash remuneration of  
9 \$1,000.00 or more to one or more individuals for such domestic  
10 service in any calendar quarter in the current or preceding calendar  
11 year.

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

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

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

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

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

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

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

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

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

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

4 (B) **【Such service is either outside the usual course of the**  
5 **business for which such service is performed, or that such service is**  
6 **performed outside of all the places of business of the enterprise for**  
7 **which such service is performed; and】** (Deleted by amendment,  
8 P.L. , c. )(pending before the Legislature as this bill)

9 (C) **【Such individual is customarily engaged in an independently**  
10 **established trade, occupation, profession or business.】** (Deleted by  
11 amendment, P.L. , c. )(pending before the Legislature as this  
12 bill)

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

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

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

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

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

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

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

46 (E) Service performed in the employ of any other state or its  
47 political subdivisions or of an instrumentality of any other state or

1 states or their political subdivisions to the extent that such  
2 instrumentality is with respect to such service exempt under the  
3 Constitution of the United States from the tax imposed under the  
4 Federal Unemployment Tax Act, as amended, except as provided in  
5 R.S.43:21-19 (i) (1) (B) above;

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

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

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

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

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

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

47 (L) Services performed in the employ of any veterans'  
48 organization chartered by Act of Congress or of any auxiliary

1 thereof, no part of the net earnings of which organization, or  
2 auxiliary thereof, inures to the benefit of any private shareholder or  
3 individual;

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

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

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

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

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

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

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

42 (T) Service performed in the employ of a school, college, or  
43 university if such service is performed (i) by a student enrolled at  
44 such school, college, or university on a full-time basis in an  
45 educational program or completing such educational program  
46 leading to a degree at any of the severally recognized levels, or (ii)  
47 by the spouse of such a student, if such spouse is advised at the time  
48 such spouse commences to perform such service that (I) the

1 employment of such spouse to perform such service is provided  
2 under a program to provide financial assistance to such student by  
3 such school, college, or university, and (II) such employment will  
4 not be covered by any program of unemployment insurance;

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

16 (V) Service performed in the employ of a hospital, if such  
17 service is performed by a patient of the hospital; service performed  
18 as a student nurse in the employ of a hospital or a nurses' training  
19 school by an individual who is enrolled and regularly attending  
20 classes in a nurses' training school approved under the laws of this  
21 State; and service performed as an intern in the employ of a hospital  
22 by an individual who has completed a four-year course in a medical  
23 school approved pursuant to the laws of this State;

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

28 (X) Services performed by operators of motor vehicles weighing  
29 18,000 pounds or more, licensed for commercial use and used for  
30 the highway movement of motor freight, who own their equipment  
31 or who lease or finance the purchase of their equipment through an  
32 entity which is not owned or controlled directly or indirectly by the  
33 entity for which the services were performed and who were  
34 compensated by receiving a percentage of the gross revenue  
35 generated by the transportation move or by a schedule of payment  
36 based on the distance and weight of the transportation move;

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

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

44 (8) If one-half or more of the services in any pay period  
45 performed by an individual for an employing unit constitutes  
46 employment, all the services of such individual shall be deemed to  
47 be employment; but if more than one-half of the service in any pay  
48 period performed by an individual for an employing unit does not

1 constitute employment, then none of the service of such individual  
2 shall be deemed to be employment. As used in this paragraph, the  
3 term "pay period" means a period of not more than 31 consecutive  
4 days for which a payment for service is ordinarily made by an  
5 employing unit to individuals in its employ.

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

10 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

45 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

46 (u) "Average weekly wage" means the amount derived by  
47 dividing an individual's total wages received during his base year  
48 base weeks (as defined in subsection (t) of this section) from that

1 most recent base year employer with whom he has established at  
2 least 20 base weeks, by the number of base weeks in which such  
3 wages were earned. In the event that such claimant had no employer  
4 in his base year with whom he had established at least 20 base  
5 weeks, then such individual's average weekly wage shall be  
6 computed as if all of his base week wages were received from one  
7 employer and as if all his base weeks of employment had been  
8 performed in the employ of one employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (z) "Hospital" means an institution which has been licensed,  
14 certified or approved under the law of this State as a hospital.  
15 (cf: P.L.2009, c.211, s.1)

16  
17 2. This act shall take effect immediately.

18

19

20 STATEMENT

21

22 This bill revises the test used to determine whether a worker is  
23 an employee or an independent contractor under certain State labor  
24 laws.

25 The "ABC" test is widely used under current State labor law for  
26 determining whether a worker is an employee or an independent  
27 contractor. It is used to determine employee and employer  
28 obligations and entitlements under the following laws: the  
29 "unemployment compensation law," the "Temporary Disability  
30 Benefits Law," the New Jersey wage payment law, and the "New  
31 Jersey State Wage and Hour Law." It is also used under the "New  
32 Jersey Gross Income Tax Act," for purposes of determining whether  
33 an employer is required to deduct and withhold State income taxes.

34 The "ABC" test provides that an individual who performs  
35 services for remuneration is presumed to be an employee unless the  
36 employer can show to the satisfaction of the Department of Labor  
37 and Workforce Development that:

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

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

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

47 If an employer fails to prove any one of the three criteria for  
48 showing a worker is an independent contractor, the worker will be

1 classified as an employee, and will be eligible for benefits pursuant  
2 to the labor laws listed above. Additionally, the employer and  
3 employee will be required to comply with the contribution and  
4 participation obligations of the respective labor laws.

5 This bill eliminates the B and C factors of the employment status  
6 test, thereby limiting the test to factor A, whether the individual has  
7 been and will continue to be free from control of the employer. By  
8 limiting the factors used in the employment status test to the control  
9 test, it will be easier for employers to comply with regulations and  
10 categorize workers for purposes of State labor laws.