

**SENATE, No. 4262**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED DECEMBER 9, 2021

**Sponsored by:**

**Senator MICHAEL L. TESTA, JR.**

**District 1 (Atlantic, Cape May and Cumberland)**

**Senator HOLLY T. SCHEPISI**

**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senator T.Kean**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/16/2021)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (g) "Employing unit" means the State or any of its  
40 instrumentalities or any political subdivision thereof or any of its  
41 instrumentalities or any instrumentality of more than one of the  
42 foregoing or any instrumentality of any of the foregoing and one or  
43 more other states or political subdivisions or any individual or type  
44 of organization, any partnership, association, trust, estate, joint-  
45 stock company, insurance company or corporation, whether  
46 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
47 successor thereof, or the legal representative of a deceased person,  
48 which has or subsequent to January 1, 1936, had in its employ one

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

13 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3306 (c)(8) of that act, if such service is not excluded from  
2 "employment" under paragraph (D) below.

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

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

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

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

18 (aa) as an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

10 To determine whether an individual is an employee or an  
11 independent contractor, the division shall consider all information  
12 that provides evidence of the degree of control and the degree of  
13 independence. Facts that provide evidence of the degree of control  
14 and independence fall into three categories:

15 (A) behavioral control;

16 (B) financial control; and

17 (C) the type of relationship of the parties.

18 In making an employment determination pursuant to this  
19 paragraph, the division shall consider any guidance on determining  
20 a worker's employment status provided by the federal Internal  
21 Revenue Service in the Department of the Treasury.

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

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

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

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

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

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

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

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

16 (F) Service performed in the employ of the United States  
17 Government or of any instrumentality of the United States exempt  
18 under the Constitution of the United States from the contributions  
19 imposed by the "unemployment compensation law," except that to  
20 the extent that the Congress of the United States shall permit states  
21 to require any instrumentalities of the United States to make  
22 payments into an unemployment fund under a state unemployment  
23 compensation law, all of the provisions of this act shall be  
24 applicable to such instrumentalities, and to service performed for  
25 such instrumentalities, in the same manner, to the same extent and  
26 on the same terms as to all other employers, employing units,  
27 individuals and services; provided that if this State shall not be  
28 certified for any year by the Secretary of Labor of the United States  
29 under section 3304 of the federal Internal Revenue Code of 1986  
30 (26 U.S.C. s.3304), the payments required of such instrumentalities  
31 with respect to such year shall be refunded by the division from the  
32 fund in the same manner and within the same period as is provided  
33 in R.S.43:21-14 (f) with respect to contributions erroneously paid to  
34 or collected by the division;

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

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

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

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

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

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

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

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

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

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

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

45 (R) Service in the employ of an international organization  
46 entitled to enjoy the privileges, exemptions and immunities under  
47 the International Organizations Immunities Act  
48 (22 U.S.C. s.288 et seq.);

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

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

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

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

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

38 (X) Services performed by operators of motor vehicles weighing  
39 18,000 pounds or more, licensed for commercial use and used for  
40 the highway movement of motor freight, who own their equipment  
41 or who lease or finance the purchase of their equipment through an  
42 entity which is not owned or controlled directly or indirectly by the  
43 entity for which the services were performed and who were  
44 compensated by receiving a percentage of the gross revenue  
45 generated by the transportation move or by a schedule of payment  
46 based on the distance and weight of the transportation move;

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

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

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

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

21 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

8 (m) "Unemployment."

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (cf: P.L.2017, c.230)

24

25 2. This act shall take effect on the 90th day next following  
26 enactment.

27

28

29

#### STATEMENT

30

31 This bill revises the factors that are used to determine whether a  
32 worker is an employee or an independent contractor under certain  
33 State labor laws.

34 The "ABC" test is widely used under current State labor law for  
35 determining whether a worker is an employee or an independent  
36 contractor. It is used to determine employee and employer  
37 obligations and entitlements under the following laws: the  
38 "unemployment compensation law," the "Temporary Disability  
39 Benefits Law," the New Jersey wage payment law, and the "New  
40 Jersey State Wage and Hour Law." It is also used under the "New  
41 Jersey Gross Income Tax Act," for purposes of determining whether  
42 an employer is required to deduct and withhold State income taxes.

43 The "ABC" test provides that an individual who performs  
44 services for remuneration is presumed to be an employee unless the  
45 employer can show to the satisfaction of the Department of Labor  
46 and Workforce Development 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 business  
5 for which such service is performed, or that such service is  
6 performed outside of all the places of business of the enterprise for  
7 which such service is performed; and

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

10 If an employer fails to prove any one of the three criteria for  
11 showing a worker is an independent contractor, the worker will be  
12 classified as an employee, and will be eligible for benefits pursuant  
13 to the labor laws listed above. Additionally, the employer and  
14 employee will be required to comply with the contribution and  
15 participation obligations of the respective labor laws.

16 This bill revises the factors for showing a worker is an  
17 independent contract. Under the bill, to determine whether an  
18 individual is an employee or an independent contractor, all  
19 information that provides evidence of the degree of control and the  
20 degree of independence is to be considered. Facts that provide  
21 evidence of the degree of control and independence fall into three  
22 categories:

23 (A) behavioral control;

24 (B) financial control; and

25 (C) the type of relationship of the parties.

26 In making an employment determination any guidance on  
27 determining a worker's employment status provided by the federal  
28 Internal Revenue Service in the United States Department of the  
29 Treasury is to be considered. This bill aligns the test for  
30 employment status under State law with the test in use by the  
31 Internal Revenue Service in the Department of the Treasury.