

# ASSEMBLY, No. 2057

## STATE OF NEW JERSEY

### 220th LEGISLATURE

INTRODUCED FEBRUARY 3, 2022

**Sponsored by:**

**Assemblyman JOHN DIMAIO**

**District 23 (Hunterdon, Somerset and Warren)**

**Co-Sponsored by:**

**Assemblymen Peterson, S.Kean, Assemblywoman N.Munoz, Assemblymen Clifton and McGuckin**

**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-  
8 1 et 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 calendar  
14 years, whichever average is higher, except that any year or years  
15 throughout which an employer has had no "annual payroll" because  
16 of military service shall be deleted from the reckoning; the "average  
17 annual payroll" in such case is to be determined on the basis of the  
18 prior three or five calendar years in each of which the employer had  
19 an "annual payroll" in the operation of his business, if the employer  
20 resumes his business within 12 months after separation, discharge or  
21 release from such service, under conditions other than dishonorable,  
22 and makes application to have his "average annual payroll"  
23 determined on the basis of such deletion within 12 months after he  
24 resumes his business; provided, however, that "average annual  
25 payroll" solely for the purposes of paragraph (3) of subsection (e) of  
26 R.S.43:21-7 means the average of the annual payrolls of any  
27 employer on which he paid contributions to the State disability  
28 benefits fund for the last three or five preceding calendar years,  
29 whichever average is higher; provided further that only those wages  
30 be included on which employer contributions have been paid on or  
31 before January 31 (or the next succeeding day if such January 31 is a  
32 Saturday or Sunday) immediately preceding the beginning of the 12-  
33 month period for which the employer's 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 on  
38 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 calendar

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

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

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

40 (3) With respect to a benefit year commencing on or after June 1,  
41 1990 for an individual who immediately preceding the benefit year  
42 was subject to a disability compensable under the provisions of the  
43 workers' compensation law (chapter 15 of Title 34 of the Revised  
44 Statutes), "base year" shall mean the first four of the last five  
45 completed calendar quarters immediately preceding the individual's  
46 period of disability, if the period of disability was not longer than two  
47 years, if the employment held by the individual immediately  
48 preceding the period of disability is no longer available at the

1 conclusion of that period and if the individual files a valid claim for  
2 unemployment benefits after the conclusion of that period. For the  
3 purposes of this paragraph, "period of disability" means the period  
4 from the time at which the individual becomes unable to work  
5 because of the compensable disability until the time that the  
6 individual becomes able to resume work and continue work on a  
7 permanent basis. An individual who files a claim under the  
8 provisions of this paragraph (3) shall not be regarded as having left  
9 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

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

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

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

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

10 (h) "Employer" means:

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

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

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

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

30 (5) Any employing unit for which service in employment as  
31 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
32 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed  
33 after December 31, 1977;

34 (6) Any employing unit for which service in employment as  
35 defined in R.S.43:21-19 (i) (1) (c) is performed after December 31,  
36 1971 and which in either the current or the preceding calendar year  
37 paid remuneration for employment in the amount of \$1,000.00 or  
38 more;

39 (7) Any employing unit not an employer by reason of any other  
40 paragraph of this subsection (h) for which, within either the current  
41 or preceding calendar year, service is or was performed with respect  
42 to which such employing unit is liable for any federal tax against  
43 which credit may be taken for contributions required to be paid into  
44 a state unemployment fund; or which, as a condition for approval of  
45 the "unemployment compensation law" for full tax credit against the  
46 tax imposed by the Federal Unemployment Tax Act, is required  
47 pursuant to such act to be an employer under this chapter (R.S.43:21-  
48 1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

40 (C) Service performed after December 31, 1971 by an individual  
41 in the employ of a religious, charitable, educational, or other  
42 organization, which is excluded from "employment" as defined in the  
43 Federal Unemployment Tax Act, solely by reason of section 3306  
44 (c)(8) of that act, if such service is not excluded from "employment"  
45 under paragraph (D) below.

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

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

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

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

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

14 (aa) as an elected official;

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

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

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

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

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

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

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

41 (E) The term "employment" shall include the services of an  
42 individual who is a citizen of the United States, performed outside  
43 the United States after December 31, 1971 (except in Canada and in  
44 the case of the Virgin Islands, after December 31, 1971) and prior to  
45 January 1 of the year following the year in which the U.S. Secretary  
46 of Labor approves the unemployment compensation law of the Virgin  
47 Islands, under section 3304 (a) of the Internal Revenue Code of 1986  
48 (26 U.S.C. s.3304 (a)) in the employ of an American employer (other

1 than the service which is deemed employment under the provisions  
2 of R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another  
3 state's unemployment compensation law), if

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

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

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

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

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

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

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



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

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

8 (bb) for some portion of a day in each of 20 different calendar  
9 weeks, whether or not such weeks were consecutive, in either the  
10 current or the preceding calendar year, employed in agricultural labor  
11 10 or more individuals, regardless of whether they were employed at  
12 the same moment in time.

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

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

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

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

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

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

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

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

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

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

47 (J) Domestic service after December 31, 1977 performed in the  
48 private home of an employing unit which paid cash remuneration of

1 \$1,000.00 or more to one or more individuals for such domestic  
2 service in any calendar quarter in the current or preceding calendar  
3 year.

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

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

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

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

20 (4) Services not covered under paragraph (2) of this subsection  
21 and performed entirely without this State, with respect to no part of  
22 which contributions are required and paid under an unemployment  
23 compensation law of any other state or of the federal government,  
24 shall be deemed to be employment subject to this chapter (R.S.43:21-  
25 1 et seq.) if the individual performing such services is a resident of  
26 this State and the employing unit for whom such services are  
27 performed files with the division an election that the entire service of  
28 such individual shall be deemed to be employment subject to this  
29 chapter (R.S.43:21-1 et seq.).

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

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

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

36 (6) Services performed by an individual for remuneration shall be  
37 deemed to be employment subject to this chapter (R.S.43:21-  
38 1 et seq.) unless and until it is shown to the satisfaction of the  
39 division that:

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

43 (B) **Such service is either outside the usual course of the business**  
44 **for which such service is performed, or that such service is performed**  
45 **outside of all the places of business of the enterprise for which such**  
46 **service is performed; and** (Deleted by amendment,  
47 P.L. , c. )(pending before the Legislature as this bill)

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

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

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

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

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

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

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

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

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

44 (F) Service performed in the employ of the United States  
45 Government or of any instrumentality of the United States exempt  
46 under the Constitution of the United States from the contributions  
47 imposed by the "unemployment compensation law," except that to  
48 the extent that the Congress of the United States shall permit states

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

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

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

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

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

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

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

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

47 (N) Services performed after January 1, 1973 by an individual for  
48 a labor union organization, known and recognized as a union local,

1 as a member of a committee or committees reimbursed by the union  
2 local for time lost from regular employment, or as a part-time officer  
3 of a union local and the remuneration for such services is less than  
4 \$1,000.00 in a calendar year;

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

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

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

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

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

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

41 (U) Service performed by an individual who is enrolled at a  
42 nonprofit or public educational institution which normally maintains  
43 a regular faculty and curriculum and normally has a regularly  
44 organized body of students in attendance at the place where its  
45 educational activities are carried on, as a student in a full-time  
46 program, taken for credit at such institution, which combines  
47 academic instruction with work experience, if such service is an  
48 integral part of such program, and such institution has so certified to

1 the employer, except that this subparagraph shall not apply to service  
2 performed in a program established for or on behalf of an employer  
3 or group of employers;

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

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

13 (X) Services performed by operators of motor vehicles weighing  
14 18,000 pounds or more, licensed for commercial use and used for the  
15 highway movement of motor freight, who own their equipment or  
16 who lease or finance the purchase of their equipment through an  
17 entity which is not owned or controlled directly or indirectly by the  
18 entity for which the services were performed and who were  
19 compensated by receiving a percentage of the gross revenue  
20 generated by the transportation move or by a schedule of payment  
21 based on the distance and weight of the transportation move;

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

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

28 (8) If one-half or more of the services in any pay period  
29 performed by an individual for an employing unit constitutes  
30 employment, all the services of such individual shall be deemed to  
31 be employment; but if more than one-half of the service in any pay  
32 period performed by an individual for an employing unit does not  
33 constitute employment, then none of the service of such individual  
34 shall be deemed to be employment. As used in this paragraph, the  
35 term "pay period" means a period of not more than 31 consecutive  
36 days for which a payment for service is ordinarily made by an  
37 employing unit to individuals in its employ.

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

42 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

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

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

29 (m) "Unemployment."

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

32 (A) The individual is not engaged in full-time work and with  
33 respect to which his remuneration is less than his weekly benefit rate,  
34 including any week during which he is on vacation without pay;  
35 provided such vacation is not the result of the individual's voluntary  
36 action, except that for benefit years commencing on or after July 1,  
37 1984, an officer of a corporation, or a person who has more than a  
38 5% equitable or debt interest in the corporation, whose claim for  
39 benefits is based on wages with that corporation shall not be deemed  
40 to be unemployed in any week during the individual's term of office  
41 or ownership in the corporation; or

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

45 (2) The term "remuneration" with respect to any individual for  
46 benefit years commencing on or after July 1, 1961, and as used in  
47 this subsection, shall include only that part of the same which in any  
48 week exceeds 20% of his weekly benefit rate (fractional parts of a

1 dollar omitted) or \$5.00, whichever is the larger, and shall not include  
2 any moneys paid to an individual by a county board of elections for  
3 work as a board worker on an election day.

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

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

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

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

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

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

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

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

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

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



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

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

28 (u) "Average weekly wage" means the amount derived by  
29 dividing an individual's total wages received during his base year  
30 base weeks (as defined in subsection (t) of this section) from that  
31 most recent base year employer with whom he has established at least  
32 20 base weeks, by the number of base weeks in which such wages  
33 were earned. In the event that such claimant had no employer in his  
34 base year with whom he had established at least 20 base weeks, then  
35 such individual's average weekly wage shall be computed as if all of  
36 his base week wages were received from one employer and as if all  
37 his base weeks of employment had been performed in the employ of  
38 one employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (cf: P.L.2017, c.230, s.1)

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45 2. This act shall take effect immediately.

STATEMENT

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

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

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

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

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

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

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

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