



1 of 95 DOCUMENTS

NEW JERSEY REGISTER  
Copyright © 2010 by the New Jersey Office of Administrative Law

VOLUME 42, ISSUE 20

ISSUE DATE: OCTOBER 18, 2010

**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
INCOME SECURITY**

*42 N.J.R. 2371(a)*

**Proposed Readoption with Amendments: N.J.A.C. 12:16**

[Click here to view Interested Persons Statement](#)

**Contributions, Records and Reports**

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 43:21-1* et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-249.

A **public hearing** on the proposed readoption will be held on the following date at the following location:

Thursday, October 28, 2010  
10:00 A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
2nd Floor, Large Conference Room  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by December 17, 2010 to:

David Fish, Regulatory Officer  
Office of Legal and Regulatory Services  
NJ Department of Labor and Workforce Development  
P.O. Box 110 - 13th Floor  
Trenton, New Jersey 08625-0110

If you need this document in Braille, large print or audio cassette, contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

### Summary

Pursuant to Executive Order No. 1 (2010), the chapter expiration date for *N.J.A.C. 12:16*, Contributions, Records and Reports, is extended from March 10, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. The Department of Labor and Workforce Development has reviewed these rules and, with the exception of three technical amendments described in detail below, has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The three technical amendments would remove references to deductions from wages for contributions to the Health Care Subsidy Fund. Contributions to the Health Care Subsidy Fund had been required under *N.J.S.A. 43:21-7b*. However, as of June 30, 2006, *N.J.S.A. 43:21-7b* no longer requires contributions to the Health Care Subsidy Fund. Accordingly, the Department proposes that *N.J.A.C. 12:16* be readopted with only the three technical amendments, which would remove references to the Health Care Subsidy Fund.

A summary of the subchapters proposed for readoption follows:

N.J.A.C. 12:16-1 addresses the need for a social security number when identifying workers who are subject to the Unemployment Compensation Law.

N.J.A.C. 12:16-1A sets forth definitions of words and terms used throughout the chapter.

N.J.A.C. 12:16-2 requires that employers keep certain records, including payroll records, individual worker records and Federal and State tax returns. This subchapter also requires that records be kept at the place of business of the employing unit and be maintained for the current calendar year, as well as the preceding four years. Additionally, the subchapter allows inactive employers to destroy records where there is no longer a need for claims information.

N.J.A.C. 12:16-3 lists the conditions that must be met in order for an employer to grant power of attorney to another person for the purposes of representing the employer before the Employment Security Agency.

N.J.A.C. 12:16-4 addresses the use of the term "remuneration," within the Unemployment Compensation Law, and provides guidance with regard to whether certain specific types of payments to employees constitute "remuneration."

N.J.A.C. 12:16-5 concerns employer contributions and the manner in which such contributions must be paid.

N.J.A.C. 12:16-6 addresses the reimbursement options for unemployment insurance financing available to non-profit organizations.

N.J.A.C. 12:16-7 addresses the conditions under which a governmental entity can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment insurance may use surplus monies remaining in an unemployment trust fund.

N.J.A.C. 12:16-8 addresses group accounts for the purpose of sharing the risk of unemployment benefit costs for two or more employers liable for payments in lieu of contributions.

[page=2372] N.J.A.C. 12:16-9 addresses employers' responsibility for withholding and paying worker contributions and for providing each worker with evidence of such amounts withheld.

*N.J.A.C. 12:16-10* addresses the refund of excess deductions made from an individual worker's wages and deposited into the trust funds for unemployment compensation, disability benefits and workforce development partnership and the method by which a worker may make application for a refund of such excess deductions.

N.J.A.C. 12:16-11 addresses certain special employment situations, including real estate managing agents and limited liability companies.

N.J.A.C. 12:16-12 addresses both concurrent employment by related employers and common paymasters.

N.J.A.C. 12:16-13 outlines the reports to be submitted by employers, the penalties applicable for failure to file reports and the procedures for requesting penalty abatement.

N.J.A.C. 12:16-14 concerns election of coverage. Specifically, the subchapter provides that any employing unit may elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Laws in order to extend coverage to individuals performing services that do not constitute covered employment. It also sets forth the requirements for such voluntary election of coverage.

N.J.A.C. 12:16-15 concerns the establishment of voluntary joint accounts, whereby two or more employers are permitted to maintain joint accounts for the purposes of complying with *N.J.S.A. 43:21-7* of the Unemployment Compensation Law. This subchapter also addresses the effective date, duration, modification and dissolution of such an arrangement.

N.J.A.C. 12:16-16 requires that employers provide notice to employees that they are covered by the Unemployment Compensation Law.

*N.J.A.C. 12:16-17* is reserved.

N.J.A.C. 12:16-18 addresses the transfer of employment experience from one employer to a successor in interest.

N.J.A.C. 12:16-19 addresses benefit charges and provides that the Department must notify the employer of benefits charged to his or her account.

N.J.A.C. 12:16-20 explains the conditions that must be met by an unemployment work-relief or work-training program that is financed or assisted in whole or in part by a Federal agency, State agency, or political subdivision of a State, in order to qualify for the exemption provided by *N.J.S.A. 43:21-19(i)(1)(D)(v)*.

N.J.A.C. 12:16-21 requires that all employers report employee statistics concerning zip codes to the Department of Transportation.

N.J.A.C. 12:16-22 outlines the procedures for hearings involving questions of coverage, status, liability for contributions, reporting, refunds or rates of contributions. The subchapter also provides for informal conferences, formal hearings, final determinations by the Commissioner and appeals to the Appellate Division of the New Jersey Superior Court.

N.J.A.C. 12:16-23 addresses the services that are excluded from coverage under the Unemployment Compensation Law.

N.J.A.C. 12:16-24 sets forth the requirements that must be met by an employee leasing company, also known as a professional employer organization (PEO), in order to be registered by the Department. Among these requirements are initial and annual registration, proof of financial security, payroll tax certification and proof of workers' compensation insurance. The subchapter also addresses the dissolution of an employee leasing arrangement and rescission of registration by the Department.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The rules proposed for readoption with amendments would have a positive social impact in that they would enable the Department to continue to provide needed unemployment compensation and temporary disability coverage to all workers in a timely and efficient manner. In particular, they would continue to require employers to submit detailed reports concerning wages and the payment of contributions. The rules would also continue to have a positive impact on the stability of the Unemployment Compensation and State Disability Benefit Funds by keeping pace with current technology, to ensure that the wage data and contributions needed for the payment of unemployment and temporary disability insurance benefits are received from employers via the most timely and accurate methods of transmission.

### **Economic Impact**

The rules proposed for readoption with amendments would have no significant economic impact upon employers or workers. Employer wage reporting and contribution payment requirements have been in existence for many years. Any employer costs associated with *N.J.A.C. 12:16-5.3* and *13.7*, which would require certain wage reports and contribution payments to be transmitted via electronic means, are far outweighed by the Department's responsibility to ensure that the reports and payments needed for unemployment insurance, temporary disability benefit and family leave insurance benefit payments are received in a timely and accurate manner.

**Federal Standards Statement**

The rules proposed for reoption with amendments would not exceed standards imposed by Federal law. Specifically, the subject rules are consistent with the Federal Unemployment Tax Act, 26 U.S.C. §§3301 et seq., and the regulations promulgated in accordance therewith, 20 CFR 601 et seq. Consequently, no Federal standards analysis is required.

**Jobs Impact**

The rules proposed for reoption with amendments would not have an impact on jobs. The Department does not anticipate that there would be an increase or decrease in jobs as a result of these rules.

**Agriculture Industry Impact**

The rules proposed for reoption with amendments would have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The rules proposed for reoption with amendments would have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. All employers are required to submit reports concerning withholding, payroll records, remuneration paid and contributions to the Department of Labor and Workforce Development, and must provide employees with certain notices and worker contribution statements. Although some employers may have to employ the services of bookkeepers and/or accountants to prepare the necessary documentation, these records must be provided by all employers regardless of size, as the success of the unemployment compensation and temporary disability insurance programs is dependent on the Department's ability to accumulate accurate information regarding the entire State workforce. The recordkeeping and reporting costs for small businesses would most likely be less than those for larger employers since such expenses are generally directly proportionate to the number of workers employed. These rules would continue to educate employers as to the Department's policies and procedures related to Unemployment Compensation, Temporary Disability Benefits and Workforce Development Partnership Laws, so as to eliminate confusion and unnecessary expense caused by failure to comply with reporting requirements.

**Smart Growth Impact**

The rules proposed for reoption with amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Housing Affordability Impact**

The rules proposed for reoption with amendments would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for reoption with amendments pertain to contributions, recordkeeping and reports as they relate to the Unemployment Compensation Fund, Temporary Disability Benefits Fund and the Workforce Development Partnership Fund, not housing.

**Smart Growth Development Impact**

The rules proposed for reoption with amendments would not evoke a change in the housing production within Planning Areas 1 or 2, or [page=2373] within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for reoption with amendments pertain to contributions, recordkeeping and reports as they relate to the Unemployment Compensation Fund, Temporary Disability Benefits Fund and Workforce Development Partnership Fund and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

**Full text** of the rules proposed for reoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:16*.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

**SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS**

## 12:16-9.2 Evidence of amounts withheld furnished workers

(a) Every employer, at the time of making each payment of wages, shall furnish to each of its workers a statement showing clearly the total amount deducted for contributions for the Unemployment Compensation Fund, the State Disability Benefits Fund[,] **and** the Workforce Development Partnership Fund[, and the Health Care Subsidy Fund].

(b)-(c) (No change.)

**SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS**

## 12:16-10.2 Excess unemployment, [health care,] workforce development and supplemental workforce fund for basic skills deductions

If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the State Unemployment Compensation Fund or in a trust fund for the purpose of repaying benefits, [the Health Care Subsidy Fund,] the Workforce Development Partnership Fund[, and the Supplemental Workforce Fund for Basic Skills exceeds seventeen-fortieths of one percent of the taxable wage base for the period beginning January 1, 2002, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation within two calendar years after the end of the calendar year in which the wages were received.