

## CHAPTER 82

AN ACT concerning unemployment compensation and amending and supplementing chapter 21 of Title 43 of the Revised Statutes.

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

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

Claim for benefits.

43:21-6. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers and at such places as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed a printed copy of benefit instructions. Both the aforesaid notices and instructions shall be supplied by the division to employers without cost to them.

(b) (1) Procedure for making initial determinations with respect to benefit years commencing on or after January 1, 1953.

A representative or representatives designated by the director of the division and hereafter referred to as a "deputy" shall promptly examine the claim, and shall notify the most recent employing unit and, successively as necessary, each employer in inverse chronological order during the base year. Such notification shall require said employing unit and employer to furnish such information to the deputy as may be necessary to determine the claimant's eligibility and his benefit rights with respect to the employer in question.

In his discretion, the director may appoint special deputies to make initial or subsequent determinations under subsection (f) of R.S.43:21-4 and subsection (d) of R.S.43:21-5.

If any employer or employing unit fails to respond to the request for information within 10 days after the mailing, or communicating by electronic means, of such request, the deputy shall rely entirely on information from other sources, including an affidavit to the best of the knowledge and belief of the claimant with respect to his wages and time worked. Except in the event of fraud, if it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant.

The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination relates, and the ratio of benefits chargeable to the employer's account for benefit years commencing on or after July 1, 1986, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.

Whenever an initial determination is based upon information other than that supplied by an employer because such employer failed to respond to the deputy's request for information, such initial determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer, as to any charges to his employer's account because of benefits paid prior to the close of the calendar week following the receipt of his reply. Such initial determination shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring

subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered initial determination.

The deputy shall issue a separate initial benefit determination with respect to each of the claimant's base year employers, starting with the most recent employer and continuing as necessary in the inverse chronological order of the claimant's last date of employment with each such employer. If an appeal is taken from an initial determination, as hereinafter provided, by any employer other than the first chargeable base year employer or for benefit years commencing on or after July 1, 1986, that employer from whom the individual was most recently separated, then such appeal shall be limited in scope to include only one or more of the following matters:

(A) The correctness of the benefit payments authorized to be made under the determination;

(B) Fraud in connection with the claim pursuant to which the initial determination is issued;

(C) The refusal of suitable work offered by the chargeable employer filing the appeal; or

(D) Gross misconduct as provided in subsection (b) of R.S.43:21-5.

The amount of benefits payable under an initial determination may be reduced or canceled if necessary to avoid payment of benefits for a number of weeks in excess of the maximum specified in subsection (d) of R.S.43:21-3.

Unless the claimant or any interested party, within seven calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered in benefit amounts or duration as provided in this paragraph. Benefits payable for periods pending an appeal and not in dispute shall be paid as such benefits accrue; provided that insofar as any such appeal is or may be an appeal from a determination to the effect that the claimant is disqualified under the provisions of R.S.43:21-5 or any amendments thereof or supplements thereto, benefits pending determination of the appeal shall be withheld only for the period of disqualification as provided for in said section, and notwithstanding such appeal, the benefits otherwise provided by this act shall be paid for the period subsequent to such period of disqualification; and provided, also, that if there are two determinations of entitlement, benefits for the period covered by such determinations shall be paid regardless of any appeal which may thereafter be taken, but no employer's account shall be charged with benefits so paid, if the decision is finally reversed.

(2) Procedure for making initial determinations in certain cases of concurrent employment, with respect to benefit years commencing on or after January 1, 1953 and prior to benefit years commencing on or after July 1, 1986.

Notwithstanding any other provisions of this Title, if an individual shows to the satisfaction of the deputy that there were at least 13 weeks in his base period in each of which he earned wages from two or more employers totaling \$30.00 or more but in each of which there was no single employer from whom he earned as much as \$100.00, then such individual's claim shall be determined in accordance with the special provisions of this paragraph. In such case, the deputy shall determine the individual's eligibility for benefits, his average weekly wage, weekly benefit rate and maximum total benefits as if all his base year employers were a single employer. Such determination shall apportion the liability for benefit charges thereunder to the individual's several base year employers so that each employer's maximum liability for charges thereunder bears approximately the same relation

to the maximum total benefits allowed as the wages earned by the individual from each employer during the base year bears to his total wages earned from all employers during the base year. Such initial determination shall also specify the individual's last date of employment within the base year with respect to each base year employer, and such employers shall be charged for benefits paid under said initial determination in the inverse chronological order of such last date of employment.

(3) Procedure for making subsequent determinations with respect to benefit years commencing on or after January 1, 1953. The deputy shall make determinations with respect to claims for benefits thereafter in the course of the benefit year, in accordance with any initial determination allowing benefits, and under which benefits have not been exhausted, and each notification of a benefit payment shall be a notification of an affirmative subsequent determination. The allowance of benefits by the deputy on any such determination, or the denial of benefits by the deputy on any such determination, shall be appealable in the same manner and under the same limitations as is provided in the case of initial determinations.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and the determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless further appeal is initiated pursuant to subsection (e) of this section within 10 days after the date of notification or mailing of the decision for any decision made on or before December 1, 2010, or within 20 days after the date of notification or mailing of such decision for any decision made after December 1, 2010.

(d) Appeal tribunals. To hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under subsection (d) of R.S.43:21-16, the director with the approval of the Commissioner of Labor and Workforce Development shall establish impartial appeal tribunals consisting of a salaried body of examiners under the supervision of a Chief Appeals Examiner, all of whom shall be appointed pursuant to the provisions of Title 11A of the New Jersey Statutes, Civil Service and other applicable statutes.

(e) Board of review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and from any determination which has been overruled or modified by any appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed benefit claims, and appeals from determinations with respect to (1) claims for benefits and (2) demands for refunds of benefits under subsection (d) of R.S.43:21-16 shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all

proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the director. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter (R.S.43:21-1 et seq.).

(h) Court review. Any decision of the board of review shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address. The Division of Unemployment and Temporary Disability Insurance and any party to a proceeding before the board of review may secure judicial review of the final decision of the board of review. Any party not joining in the appeal shall be made a defendant; the board of review shall be deemed to be a party to any judicial action involving the review of, or appeal from, any of its decisions, and may be represented in any such judicial action by any qualified attorney, who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or, at the board of review's request, by the Attorney General.

(i) Failure to give notice. The failure of any public officer or employee at any time heretofore or hereafter to give notice of determination or decision required in subsections (b), (c) and (e) of this section, as originally passed or amended, shall not relieve any employer's account of any charge by reason of any benefits paid, unless and until that employer can show to the satisfaction of the director of the division that the said benefits, in whole or in part, would not have been charged or chargeable to his account had such notice been given. Any determination hereunder by the director shall be subject to court review.

2. R.S.43:21-16 is amended to read as follows:

Unemployment compensation offenses and penalties.

43:21-16. (a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase or attempts to obtain or increase any benefit or other payment under this chapter (R.S.43:21-1 et seq.), or under an employment security law of any other state or of the federal government, either for himself or for any other person, shall be liable to a fine of \$20.00 for each offense, or 25% of the amount fraudulently obtained, whichever is greater, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(b) (1) An employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter (R.S.43:21-1 et seq.), or under an employment security law of any other state or of the federal government, or who willfully fails or refuses to furnish any reports required

hereunder (except for such reports as may be required under subsection (b) of R.S.43:21-6) or to produce or permit the inspection or copying of records, as required hereunder, shall be liable to a fine of \$100.00, or 25% of the amount fraudulently withheld, whichever is greater, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. Any penalties imposed by this paragraph shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(2) Any employing unit or any officer or agent of an employing unit or any other person who fails to submit any report required under subsection (b) of R.S.43:21-6 shall be subject to a penalty of \$25.00 for the first report not submitted within 10 days after the mailing of a request for such report, and an additional \$25.00 penalty may be assessed for the next 10-day period, which may elapse after the end of the initial 10-day period and before the report is filed; provided that when such report or reports are not filed within the prescribed time but it is shown to the satisfaction of the director that the failure was due to a reasonable cause, no such penalty shall be imposed. Any penalties imposed by this paragraph shall be recovered as provided in subsection (e) of R.S.43:21-14, and when recovered shall be paid to the unemployment compensation auxiliary fund for the use of said fund.

(3) Any employing unit, officer or agent of the employing unit, or any other person, determined by the controller to have knowingly violated, or attempted to violate, or advised another person to violate the transfer of employment experience provisions found at R.S.43:21-7 (c)(7), or who otherwise knowingly attempts to obtain a lower rate of contributions by failing to disclose material information, or by making a false statement, or by a misrepresentation of fact, shall be subject to a fine of \$5,000 or 25% of the contributions under-reported or attempted to be under-reported, whichever is greater, to be recovered as provided in subsection (e) of R.S.43:21-14, and when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(c) Any person who shall willfully violate any provision of this chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter (R.S.43:21-1 et seq.), and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of \$50.00, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each day such violation continues shall be deemed to be a separate offense.

(d) (1) When it is determined by a representative or representatives designated by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey that any person, whether (i) by reason of the nondisclosure or misrepresentation by him or by another of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter

(R.S.43:21-1 et seq.) while any conditions for the receipt of benefits imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits, such person, unless the director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full. The employer's account shall not be charged for the amount of an overpayment of benefits if the overpayment was caused by an error of the division and not by any error of the employer. The sum shall be deducted from any future benefits payable to the individual under this chapter (R.S.43:21-1 et seq.) or shall be paid by the individual to the division for the unemployment compensation fund, and such sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; provided, however, that, except in the event of fraud, no person shall be liable for any such refunds or deductions against future benefits unless so notified before four years have elapsed from the time the benefits in question were paid. Such person shall be promptly notified of the determination and the reasons therefor. The determination shall be final unless the person files an appeal of the determination within seven calendar days after the delivery of the determination, or within 10 calendar days after such notification was mailed to his last-known address, for any determination made on or before December 1, 2010, and any initial determination made pursuant to paragraph (1) of subsection (b) of R.S.43:21-6 after December 1, 2010, or within 20 calendar days after the delivery of such determination, or within 20 calendar days after such notification was mailed to his last-known address, for any determination other than an initial determination made after December 1, 2010.

(2) Interstate and cross-offset of state and federal unemployment benefits. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby:

(A) Overpayments of unemployment benefits as determined under subsection (d) of R.S.43:21-16 shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of another state shall be recovered by offset from unemployment benefits otherwise payable under R.S.43:21-1 et seq.; and

(B) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under R.S.43:21-1 et seq., or any federal program administered by this State, or under the unemployment compensation law of another state or any federal unemployment benefit or allowance program administered by another state under an agreement with the United States Secretary of Labor, if the other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, and if the United States agrees, as provided in the reciprocal agreement with this State entered into under subsection (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits as determined under subsection (d) of R.S.43:21-16 and overpayments as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset from benefits or allowances otherwise payable under a federal

program administered by this State or another state under an agreement with the United States Secretary of Labor.

(e) (1) Any employing unit, or any officer or agent of an employing unit, which officer or agent is directly or indirectly responsible for collecting, truthfully accounting for, remitting when payable any contribution, or filing or causing to be filed any report or statement required by this chapter, or employer, or person failing to remit, when payable, any employer contributions, or worker contributions (if withheld or deducted), or the amount of such worker contributions (if not withheld or deducted), or filing or causing to be filed with the controller or the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey, any false or fraudulent report or statement, and any person who aids or abets an employing unit, employer, or any person in the preparation or filing of any false or fraudulent report or statement with intent to defraud the State of New Jersey or an employment security agency of any other state or of the federal government, or with intent to evade the payment of any contributions, interest or penalties, or any part thereof, which shall be due under the provisions of this chapter (R.S.43:21-1 et seq.), shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed \$1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(2) Any employing unit, officer or agent of the employing unit, or any other person, who knowingly violates, or attempts to violate, or advise another person to violate the transfer of employment experience provisions found at R.S.43:21-7 (c)(7) shall be, upon conviction before any Superior Court or municipal court, guilty of a crime of the fourth degree. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(f) Any employing unit or any officer or agent of an employing unit or any other person who aids and abets any person to obtain any sum of benefits under this chapter to which he is not entitled, or a larger amount as benefits than that to which he is justly entitled, shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed \$1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(g) There shall be created in the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey an investigative staff for the purpose of investigating violations referred to in this section and enforcing the provisions thereof.

(h) An employing unit or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to paragraph (1) of subsection (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14. The fine when recovered shall be paid to the unemployment compensation auxiliary fund for the use of the fund. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal

shall constitute a separate offense. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in R.S.43:21-1 et seq.

C.43:21-6.2 Registration of authorized agent.

3. a. An authorized agent who represents parties for a fee shall not represent any party after December 1, 2010 in any procedure with the division regarding claims for unemployment benefits or any obligations of employers regarding charges or taxes for unemployment compensation, including any filing of information, or any appeal, hearing, or other proceeding regarding unemployment benefit claims, charges or taxes before any representative of the division, unless the authorized agent is registered with the division pursuant to this section.

b. Each authorized agent shall register with the division using forms provided by the division. An applying authorized agent who is an individual shall provide the individual's name, permanent address and telephone number. An authorized agent which is an organization or business shall provide the name, local address and telephone numbers, and address and telephone number of the principal place of business, if different, and the names of principals or others authorized to act on behalf of the organization and to receive notice. Any changes in identifying information shall be promptly reported to the division. The division may elect to set by regulation a schedule of fees for the registration of agents required by this section, except that if the division elects to set a schedule of fees pursuant to this subsection, the amount collected in fees shall not exceed the amount determined by the director of the division to be necessary for the implementation of the provisions of sections 3 through 9 of this act.

c. Upon registration, an authorized agent shall be assigned a registration number that shall be used in all communications with, or appearances before, any representative of the division. An individual communicating or appearing on behalf of an organization or business providing representation for a fee to parties before any representative of the division shall indicate the registration number of the individual, unless that individual is an attorney, and the registration number of the organization or business, and the division shall not accept any representation of the party in a communication with, or proceeding of, the division by an individual, organization or business if the number or numbers are not provided. If an attorney is employed by, or otherwise provides service to, an organization or business which is an authorized agent, the registration number of the organization or business shall be provided.

d. Each registrant shall file notice with the division within thirty days after the agent ceases activity as an authorized agent.

C.43:21-6.3 Responsibilities of authorized agent to client.

4. a. An authorized agent shall keep any party that is a client of the agent reasonably informed about the status of any matter before the division and verify with the client the accuracy of any information it provides to the division.

b. An authorized agent shall promptly notify the client of any scheduled proceedings before any representative of the division to allow time for case preparation and the scheduling of witnesses. Clients shall be apprised of the consequences of not appearing and the importance of participation at all stages of the proceedings and of producing first-hand testimony.

c. If a client determines that it does not wish to pursue an appeal, a request for withdrawal of the appeal shall be made in writing, or communicated orally and followed by a



written request, in a timely fashion. If the client and the authorized agent determine that there is no basis for an appeal, that the appeal is frivolous, or that the client is not interested in pursuing the appeal, the appeal shall be withdrawn, as soon as possible, and prior to the scheduling of a hearing if possible.

C.43:21-6.4 Postponement request.

5. a. If an authorized agent believes that a critical witness will not be available for a scheduled hearing and requests a postponement in order to produce the witness, the authorized agent shall, after consulting with the client, provide the division with the name, address, and title of the witness, the reason the witness is unable to attend, the general nature and importance of the witness's testimony, and an explanation of why there is no other witness able to provide the essential testimony that the critical witness would provide. Upon request, the authorized agent shall submit a written statement of its request and supporting documentation or sworn affidavit to the division.

b. If a postponement request is denied, the authorized agent shall notify the client that the hearing will go forward as scheduled and advise the client to appear. In the event that a postponement request made pursuant to subsection a. of this section is denied, the client shall be advised to appear with or without the critical witness or another witness, and that it may renew the postponement request at the hearing by requesting a continuance of the hearing.

c. In the event that the client or agent does not appear at a scheduled hearing without requesting a postponement, or that a postponement request is made but properly denied and the agent or the client does not appear, no further hearings will be scheduled at the request of the client or agent, unless the client or agent can demonstrate to the satisfaction of a representative of the division that the failure to appear was due to circumstances beyond the control of the client or agent.

C.43:21-6.5 Representation provided by authorized agent.

6. a. An authorized agent shall provide competent representation to each party that is a client of the agent. The authorized agent shall explain the proceedings and prepare the case with the client and any witnesses before any division hearing is called, shall be acquainted with the facts and legal issues involved, and shall arrange for producing witnesses and documentary evidence at the hearing.

b. An authorized agent shall make a reasonable effort to have testimony given by first-hand witnesses in the case.

c. An authorized agent seeking to inspect or review a case file may do so prior to the date of the hearing. If it is necessary for the authorized agent to review the file on the day of the hearing, the authorized agent shall make arrangements with the division in advance of the scheduled hearing time.

d. An authorized agent shall not delay the hearing or disturb the progress of other cases or the functioning of the division in an effort to view a case file or consult with its client or witnesses.

C.43:21-6.6 Production of evidence, witnesses at hearing.

7. An authorized agent shall be prepared to produce all necessary evidence and witnesses at the time the hearing is scheduled to commence and provide, prior to the date of the hearing, to all parties copies of any documentary evidence to be admitted into the record. An authorized agent shall not:

a. Engage in, or counsel or assist any party that is a client to engage in, conduct which the authorized agent knows or should know to be criminal, in violation of the provisions of sections 3 through 9 of this act or other provisions of this chapter (R.S.43:21-1 et seq.), or is prejudicial to, or unnecessarily delays, the efficient administration of this chapter (R.S.43:21-1 et seq.), including any failure to be, without good cause, available and properly prepared to participate in appeals, hearings and other procedures at the scheduled times;

b. Engage in, or counsel or assist any party that is a client to engage in, conduct involving dishonesty, fraud, deceit, misrepresentation, or the withholding of material facts;

c. Unlawfully obstruct another party's access to evidence or destroy or conceal evidence; assert personal knowledge of the facts unless testifying as a witness;

d. Refer at a hearing to a matter which the authorized agent does not reasonably believe is relevant or is not supported by evidence;

e. Seek to improperly influence any representative of the division; or

f. Engage in any ex parte communication with any representative of the division concerning the merits of any pending appeal unless all other parties have waived their right to participate.

C.43:21-6.7 Violations committed by authorized agent.

8. a. If the commissioner determines that an authorized agent has exhibited a pattern of repeated violations of the provisions of sections 3 through 9 of this act or other provisions of this chapter (R.S.43:21-1 et seq.), including any violations of the provisions of R.S.43:21-16 which apply to the agents of employing units, the commissioner shall, in addition to any other actions taken in the enforcement of this chapter, notify the authorized agent of this finding and that the commissioner will monitor the authorized agent to ascertain whether the violations continue after the notification.

b. If, at the conclusion of a monitoring period of not more than 12 months after the first determination, the commissioner determines that the agent has continued the pattern of repeated violations of the provisions, the commissioner:

(1) May, after affording the authorized agent notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), suspend the registration of the authorized agent, for a period of time determined by the commissioner. In determining the length of a suspension, the commissioner shall distinguish between serious violations which potentially undermine the integrity of the benefit determination and appeals processes and lesser violations, and shall consider any of the following factors which are relevant: whether the violations represent a continuation of the violations identified in the previous determination, the gravity and duration of the violations, the amount of harm resulting from the violations, the experience of the authorized agent, the authorized agent's history of previous violations or complaints filed of a similar or different nature, the number of violations identified, and the existence of mitigating circumstances, whether the authorized agent made good faith efforts to comply with any applicable requirements, and any other factors the commissioner considers relevant.

(2) Shall continue to monitor the conduct of the authorized agent for a period of not more than 12 months after the determination made pursuant to this subsection b.

c. If, in the subsequent monitoring of the conduct of the authorized agent pursuant to subsection b. of this section, the commissioner determines that the authorized agent has continued the pattern of repeated violations, the commissioner, after affording the authorized agent notice and an opportunity for a hearing in accordance with the provisions of the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall revoke the registration of the authorized agent.

An authorized agent representing an employer shall be regarded as an agent of an employing unit for the purposes of R.S.43:21-16 and be subject to, in addition to the provisions of this section, all requirements and penalties imposed pursuant to that section for a agent of an employing unit.

Any individual, organization or business which, after notification of the registration requirements of sections 3 through 9 of this act, operates, or attempts to operate, as an authorized agent without the required registration, shall be liable to a fine of \$1,000 for each violation, to be recovered in an action at law in the name of the division, and shall not be permitted by the division to represent any party in connection with any communication with, or proceeding of, the division.

C.43:21-6.8 Definitions relative to C.43:21-6.2 et seq.

9. For the purposes of sections 3 through 9 of this act:

"Authorized agent" means an individual, organization or business that, for a fee, provides representation to parties in communications with, or hearings or other proceedings before, representatives of the division in connection with claims for unemployment benefits, charges or tax assessments. In the case of an individual authorized agent representing an organization or business that provides representation to parties for a fee, both the individual and the organization or business shall register with the division and both will be held responsible as the authorized agents. An attorney is not an authorized agent for purposes of this section and is not required to register. If an attorney is employed by, or otherwise provides service to, an organization or business which is an authorized agent, the organization or business shall register with the division and will be considered the authorized agent for purposes of this section. An authorized agent representing an employer shall be regarded as an agent of an employing unit for the purposes of R.S.43:21-16 and be subject to all requirements and penalties imposed by that section for an agent of an employing unit.

"Party" means any of the following parties to an appeal, hearing or other procedure of the division: the division; a claimant for unemployment compensation; or any employer against whom charges may be made or tax liability may be assessed due to the claim for unemployment compensation.

"Representative of the division" means any individual or entity, including any deputy, appeal tribunal, the board of review or any other individual or entity which represents the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Workforce Development in connection with claims, benefits, charges or taxes for unemployment compensation.

10. This act shall take effect immediately.

Approved October 27, 2010.