

ASSEMBLY, No. 4460

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2022

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SYNOPSIS

Concerns UI benefits during labor disputes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2022)

1 AN ACT concerning unemployment compensation during certain
2 labor disputes and amending R.S.43:21-5.

3

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

6

7 1. R.S.43:21-5 is amended to read as follows:

8 43:21-5. An individual shall be disqualified for benefits:

9 (a) For the week in which the individual has left work
10 voluntarily without good cause attributable to such work, and for
11 each week thereafter until the individual becomes reemployed and
12 works eight weeks in employment, which may include employment
13 for the federal government, and has earned in employment at least
14 ten times the individual's weekly benefit rate, as determined in each
15 case. This subsection shall apply to any individual seeking
16 unemployment benefits on the basis of employment in the
17 production and harvesting of agricultural crops, including any
18 individual who was employed in the production and harvesting of
19 agricultural crops on a contract basis and who has refused an offer
20 of continuing work with that employer following the completion of
21 the minimum period of work required to fulfill the contract. This
22 subsection shall not apply to an individual who voluntarily leaves
23 work with one employer to accept from another employer
24 employment which commences not more than seven days after the
25 individual leaves employment with the first employer, if the
26 employment with the second employer has weekly hours or pay not
27 less than the hours or pay of the employment of the first employer,
28 except that if the individual gives notice to the first employer that
29 the individual will leave employment on a specified date and the
30 first employer terminates the individual before that date, the seven-
31 day period will commence from the specified date.

32 (b) For the week in which the individual has been suspended or
33 discharged for misconduct connected with the work, and for the five
34 weeks which immediately follow that week, as determined in each
35 case.

36 "Misconduct" means conduct which is improper, intentional,
37 connected with the individual's work, within the individual's
38 control, not a good faith error of judgment or discretion, and is
39 either a deliberate refusal, without good cause, to comply with the
40 employer's lawful and reasonable rules made known to the
41 employee or a deliberate disregard of standards of behavior the
42 employer has a reasonable right to expect, including reasonable
43 safety standards and reasonable standards for a workplace free of
44 drug and substance abuse.

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 In the event the discharge should be rescinded by the employer
2 voluntarily or as a result of mediation or arbitration, this subsection
3 (b) shall not apply, provided, however, an individual who is
4 restored to employment with back pay shall return any benefits
5 received under this chapter for any week of unemployment for
6 which the individual is subsequently compensated by the employer.

7 If the discharge was for gross misconduct connected with the
8 work because of the commission of an act punishable as a crime of
9 the first, second, third or fourth degree under the "New Jersey Code
10 of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be
11 disqualified in accordance with the disqualification prescribed in
12 subsection (a) of this section and no benefit rights shall accrue to
13 any individual based upon wages from that employer for services
14 rendered prior to the day upon which the individual was discharged.

15 The director shall insure that any appeal of a determination
16 holding the individual disqualified for gross misconduct in
17 connection with the work shall be expeditiously processed by the
18 appeal tribunal.

19 To sustain disqualification from benefits because of misconduct
20 under this subsection (b), the burden of proof is upon the employer,
21 who shall, prior to a determination by the department of
22 misconduct, provide written documentation demonstrating that the
23 employee's actions constitute misconduct or gross misconduct.

24 Nothing within this subsection (b) shall be construed to interfere
25 with the exercise of rights protected under the "National Labor
26 Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey
27 Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1
28 et seq.).

29 (c) If it is found that the individual has failed, without good
30 cause, either to apply for available, suitable work when so directed
31 by the employment office or the director or to accept suitable work
32 when it is offered, or to return to the individual's customary self-
33 employment (if any) when so directed by the director. The
34 disqualification shall continue for the week in which the failure
35 occurred and for the three weeks which immediately follow that
36 week, as determined:

37 (1) In determining whether or not any work is suitable for an
38 individual, consideration shall be given to the degree of risk
39 involved to health, safety, and morals, the individual's physical
40 fitness and prior training, experience and prior earnings, the
41 individual's length of unemployment and prospects for securing
42 local work in the individual's customary occupation, and the
43 distance of the available work from the individual's residence. In
44 the case of work in the production and harvesting of agricultural
45 crops, the work shall be deemed to be suitable without regard to the
46 distance of the available work from the individual's residence if all
47 costs of transportation are provided to the individual and the terms
48 and conditions of hire are as favorable or more favorable to the

1 individual as the terms and conditions of the individual's base year
2 employment.

3 (2) Notwithstanding any other provisions of this chapter, no
4 work shall be deemed suitable and benefits shall not be denied
5 under this chapter to any otherwise eligible individual for refusing
6 to accept new work under any of the following conditions: the
7 position offered is vacant due directly to a strike, lockout, or other
8 labor dispute; the remuneration, hours, or other conditions of the
9 work offered are substantially less favorable to the individual than
10 those prevailing for similar work in the locality; or, the individual,
11 as a condition of being employed, would be required to join a
12 company union or to resign from or refrain from joining any bona
13 fide labor organization.

14 (d) If it is found that this unemployment is due to a stoppage of
15 work which exists because of a labor dispute at the factory,
16 establishment or other premises at which the individual is or was
17 last employed, except as otherwise provided by this subsection (d).

18 (1) No disqualification under this subsection (d) shall apply if it
19 is shown that:

20 **[(a)]** (i) The individual is not participating in or financing or
21 directly interested in the labor dispute which caused the stoppage of
22 work; and

23 **[(b)]** (ii) The individual does not belong to a grade or class of
24 workers of which, immediately before the commencement of the
25 stoppage, there were members employed at the premises at which
26 the stoppage occurs, any of whom are participating in or financing
27 or directly interested in the dispute; provided that if in any case in
28 which **[(a) or (b) above]** subparagraphs (i) or (ii) of this paragraph
29 (1) applies, separate branches of work which are commonly
30 conducted as separate businesses in separate premises are conducted
31 in separate departments of the same premises, each department
32 shall, for the purpose of this subsection, be deemed to be a separate
33 factory, establishment, or other premises.

34 (2) For any claim for a period of unemployment commencing on
35 or after December 1, 2004, no disqualification under this subsection
36 (d) shall apply if it is shown that the individual has been prevented
37 from working by the employer, even though the individual's
38 recognized or certified majority representative has directed the
39 employees in the individual's collective bargaining unit to work
40 under the preexisting terms and conditions of employment, **[and]**
41 whether or not the employees had **[not]** engaged in a strike
42 immediately before being prevented from working.

43 (3) For any claim for a period of unemployment commencing on
44 or after July 1, 2018, no disqualification under this subsection (d)
45 shall apply if **[the]** an issue in the labor dispute is **[caused by the]**
46 a failure or refusal of the employer to comply with an agreement or
47 contract between the employer and the claimant, including a

1 collective bargaining agreement with a union representing the
2 claimant, or a failure or refusal to comply with a State or federal
3 law pertaining to hours, wages, or other conditions of work.

4 (4) For any claim for a period of unemployment commencing on
5 or after July 1, 2018, if the unemployment is caused by a labor
6 dispute, including a strike or other concerted activities of employees
7 at the claimant's workplace, whether or not authorized or sanctioned
8 by a union representing the claimant, but not including a dispute
9 subject to the provisions of paragraph (2) or (3) of this subsection
10 (d), the claimant shall not be provided benefits for a period of the
11 first ~~30~~ 14 days following the commencement of the
12 unemployment caused by the labor dispute, except that the period
13 without benefits shall not apply if the employer hires a permanent
14 replacement worker for the claimant's position. A replacement
15 worker shall be presumed to be permanent unless the employer
16 certifies in writing that the claimant will be permitted to return to
17 his or her prior position upon conclusion of the dispute. If the
18 employer does not permit the return, the claimant shall be entitled
19 to recover any benefits lost as a result of the ~~30-day~~ 14-day
20 waiting period before receiving benefits, and the department may
21 impose a penalty upon the employer of up to \$750 per employee per
22 week of benefits lost. The penalty collected shall be paid into the
23 unemployment compensation auxiliary fund established pursuant to
24 subsection (g) of R.S.43:21-14

25 (5) For the purposes of this subsection (d), "stoppage of work"
26 means a substantial curtailment of work which is due to a labor
27 dispute, during which less than 80% of the normal production of
28 goods or services is met. A claim for benefits may not be
29 disqualified because of a stoppage of work pursuant to this
30 subsection (d), unless:

31 (i) the employer documents to the satisfaction of the division
32 that less than 80% of the normal production of goods or services
33 has been met; and

34 (ii) none of the circumstances indicated as preventing
35 disqualification in paragraphs (1), (2), (3) or (4) of this subsection
36 (d) are applicable to the claim.

37 (e) For any week with respect to which the individual is
38 receiving or has received remuneration in lieu of notice.

39 (f) For any week with respect to which or a part of which the
40 individual has received or is seeking unemployment benefits under
41 an unemployment compensation law of any other state or of the
42 United States; provided that if the appropriate agency of the other
43 state or of the United States finally determines that the individual is
44 not entitled to unemployment benefits, this disqualification shall not
45 apply.

46 (g) (1) For a period of one year from the date of the discovery
47 by the division of the illegal receipt or attempted receipt of benefits
48 contrary to the provisions of this chapter, as the result of any false

1 or fraudulent representation; provided that any disqualification may
2 be appealed in the same manner as any other disqualification
3 imposed hereunder; and provided further that a conviction in the
4 courts of this State arising out of the illegal receipt or attempted
5 receipt of these benefits in any proceeding instituted against the
6 individual under the provisions of this chapter or any other law of
7 this State shall be conclusive upon the appeals tribunal and the
8 board of review.

9 (2) A disqualification under this subsection shall not preclude
10 the prosecution of any civil, criminal or administrative action or
11 proceeding to enforce other provisions of this chapter for the
12 assessment and collection of penalties or the refund of any amounts
13 collected as benefits under the provisions of R.S.43:21-16, or to
14 enforce any other law, where an individual obtains or attempts to
15 obtain by theft or robbery or false statements or representations any
16 money from any fund created or established under this chapter or
17 any negotiable or nonnegotiable instrument for the payment of
18 money from these funds, or to recover money erroneously or
19 illegally obtained by an individual from any fund created or
20 established under this chapter.

21 (h) (1) Notwithstanding any other provisions of this chapter
22 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
23 denied benefits for any week because the individual is in training
24 approved under section 236(a)(1) of the "Trade Act of 1974,"
25 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
26 denied benefits by reason of leaving work to enter this training,
27 provided the work left is not suitable employment, or because of the
28 application to any week in training of provisions in this chapter
29 (R.S.43:21-1 et seq.), or any applicable federal unemployment
30 compensation law, relating to availability for work, active search
31 for work, or refusal to accept work.

32 (2) For purposes of this subsection (h), the term "suitable"
33 employment means, with respect to an individual, work of a
34 substantially equal or higher skill level than the individual's past
35 adversely affected employment, as defined for purposes of the
36 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
37 wages for this work at not less than 80% of the individual's average
38 weekly wage, as determined for the purposes of the "Trade Act of
39 1974."

40 (i) For benefit years commencing after June 30, 1984, for any
41 week in which the individual is a student in full attendance at, or on
42 vacation from, an educational institution, as defined in subsection
43 (y) of R.S.43:21-19; except that this subsection shall not apply to
44 any individual attending a training program approved by the
45 division to enhance the individual's employment opportunities, as
46 defined under subsection (c) of R.S.43:21-4; nor shall this
47 subsection apply to any individual who, during the individual's base
48 year, earned sufficient wages, as defined under subsection (e) of

1 R.S.43:21-4, while attending an educational institution during
2 periods other than established and customary vacation periods or
3 holiday recesses at the educational institution, to establish a claim
4 for benefits. For purposes of this subsection, an individual shall be
5 treated as a full-time student for any period:

6 (1) During which the individual is enrolled as a full-time student
7 at an educational institution, or

8 (2) Which is between academic years or terms, if the individual
9 was enrolled as a full-time student at an educational institution for
10 the immediately preceding academic year or term.

11 (j) Notwithstanding any other provisions of this chapter
12 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
13 denied benefits because the individual left work or was discharged
14 due to circumstances resulting from the individual being a victim of
15 domestic violence as defined in section 3 of P.L.1991, c.261
16 (C.2C:25-19). No employer's account shall be charged for the
17 payment of benefits to an individual who left work due to
18 circumstances resulting from the individual being a victim of
19 domestic violence.

20 For the purposes of this subsection (j), the individual shall be
21 treated as being a victim of domestic violence if the individual
22 provides one or more of the following:

23 (1) A restraining order or other documentation of equitable
24 relief issued by a court of competent jurisdiction;

25 (2) A police record documenting the domestic violence;

26 (3) Documentation that the perpetrator of the domestic violence
27 has been convicted of one or more of the offenses enumerated in
28 section 3 of P.L.1991, c.261 (C.2C:25-19);

29 (4) Medical documentation of the domestic violence;

30 (5) Certification from a certified Domestic Violence Specialist
31 or the director of a designated domestic violence agency that the
32 individual is a victim of domestic violence; or

33 (6) Other documentation or certification of the domestic
34 violence provided by a social worker, member of the clergy, shelter
35 worker or other professional who has assisted the individual in
36 dealing with the domestic violence.

37 For the purposes of this subsection (j):

38 "Certified Domestic Violence Specialist" means a person who
39 has fulfilled the requirements of certification as a Domestic
40 Violence Specialist established by the New Jersey Association of
41 Domestic Violence Professionals; and "designated domestic
42 violence agency" means a county-wide organization with a primary
43 purpose to provide services to victims of domestic violence, and
44 which provides services that conform to the core domestic violence
45 services profile as defined by the Division of Youth and Family
46 Services in the Department of Children and Families and is under
47 contract with the division for the express purpose of providing such
48 services.

1 (k) Notwithstanding any other provisions of this chapter
2 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
3 denied benefits for any week in which the individual left work
4 voluntarily and without good cause attributable to the work, if the
5 individual left work to accompany his or her spouse who is an
6 active member of the United States Armed Forces, as defined in
7 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
8 to the armed forces member's transfer to a new assignment in a
9 different geographical location outside the State, and the individual
10 moves to the new place of residence not more than nine months
11 after the spouse is transferred, and upon arrival at the new place of
12 residence the individual was in all respects available for suitable
13 work. No employer's account shall be charged for the payment of
14 benefits to an individual who left work under the circumstances
15 contained in this subsection (k), except that this shall not be
16 construed as relieving the State of New Jersey and any other
17 governmental entity or instrumentality or nonprofit organization
18 electing or required to make payments in lieu of contributions from
19 its responsibility to make all benefit payments otherwise required
20 by law and from being charged for those benefits as otherwise
21 required by law.

22 (cf: P.L.2018, c.112)

23
24 2. This act shall take effect immediately.

25
26
27 STATEMENT

28
29 This bill modifies certain conditions under which employees
30 involved in a labor dispute may obtain unemployment benefits. The
31 bill:

32 1. Decreases from 30 days to 14 days the period of time
33 following the commencement of unemployment caused by a labor
34 dispute before which unemployment benefits may be paid;

35 2. Changes the provisions of the law permitting the payment of
36 benefits in the case of an employer lockout (that is, the employer
37 preventing the employees from working after their union has
38 directed them to work under previous contract conditions) to permit
39 the benefit payments even if there was not a strike immediately
40 preceding the lockout;

41 3. Defines "stoppage of work" as a substantial curtailment of
42 work which is due to a labor dispute in which production has been
43 reduced by 20% or more, and provides that a claim for benefits may
44 not be disqualified because of the stoppage of work unless the
45 employer documents the reduction of production; and that the claim
46 may not be disqualified if any of the other circumstances indicated
47 in the law as preventing disqualification are applicable to the claim;
48 and

1 4. Clarifies that that there is no disqualification of a claim due
2 to a labor dispute if an issue in the labor dispute is a failure or
3 refusal of the employer to comply with an agreement or contract
4 between the employer and the claimant, including a collective
5 bargaining agreement with a union representing the claimant, or a
6 failure or refusal to comply with a State or federal law pertaining to
7 hours, wages, or other conditions of work, even if the failure or
8 refusal is not the only issue in the labor dispute.

WITHDRAWN