

ASSEMBLY, No. 5150

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 6, 2023

Sponsored by:

Assemblyman ALEX SAUICKIE

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Requires DOLWD to track and maintain information on job loss due to automation.

CURRENT VERSION OF TEXT

As introduced.



A5150 SAUICKIE

2

1 AN ACT concerning job loss due to automation and amending
2 R.S.43:21-6.

3

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

6

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

8 43:21-6. (a) Filing. (1) Claims for benefits shall be made in
9 accordance with such regulations as the Director of the Division of
10 Unemployment and Temporary Disability Insurance of the
11 Department of Labor and Workforce Development of the State of
12 New Jersey may approve. Each employer shall post and maintain
13 on his premises printed notices of his subject status, of such design,
14 in such numbers and at such places as the director of the division
15 may determine to be necessary to give notice thereof to persons in
16 the employer's service. Each employer shall give to each individual
17 at the time he becomes unemployed, for any reason, whether the
18 unemployment is permanent or temporary, a printed copy of benefit
19 instructions. The benefit instructions given to the individual shall
20 include, but not be limited to, the following information: (A) the
21 date upon which the individual becomes unemployed, and, in the
22 case that the unemployment is temporary, to the extent possible, the
23 date upon which the individual is expected to be recalled to work;
24 and (B) that the individual may lose some or all of the benefits to
25 which he is entitled if he fails to file a claim in a timely manner.
26 Both the aforesaid notices and instructions, including information
27 detailing the time sensitivity of filing a claim, and directions
28 provided in advance to all employers regarding what information
29 the division requires employers to provide to the division by
30 electronic means immediately upon a separation from employment
31 sufficient to enable the division to make a benefit determination,
32 including any information relevant to whether the individual may be
33 disqualified pursuant to subsections (a),(b),(d), or (e) of R.S.43:21-
34 5, shall be supplied by the division to employers without cost to
35 them. The directions provided to all employers in advance shall
36 include that each employer provide the division with an email
37 address for communications to and from the division. When an
38 employer provides benefit instructions to the individual which
39 disclose the date on which unemployment will commence, the
40 employer shall immediately and simultaneously provide by
41 electronic means that disclosure to the division together with the
42 information required by the division pursuant to the directions
43 provided in advance by the division. An employer who fails to
44 make the immediate and simultaneous disclosure to the department
45 as required by this paragraph shall be liable for the penalties

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.

A5150 SAUICKIE

1 imposed by subsection (b) of R.S.43:21-16 on employers for willful
2 failure to furnish reports. The division shall notify the employer by
3 electronic means not more than seven calendar days after the
4 department receives the disclosure of any failure of the employer to
5 provide all of the information needed by the division to make a
6 benefit determination. Nothing in this section shall be construed so
7 as to require an employer to re-hire an individual formerly in the
8 employer's service. Nothing in this section shall be construed as
9 requiring the division to issue a benefit determination solely based
10 on the information supplied by the employer. Notwithstanding the
11 provisions of this section which require employers to provide
12 information to the division by electronic means, and the division to
13 provide notifications to an employer by electronic means, the
14 commissioner shall have the discretion to establish by rule an
15 alternate method or methods for employers to provide the required
16 information to the division and for the division to provide the
17 required notifications to an employer in circumstances where it is
18 established, to the satisfaction of the commissioner, that the
19 employer is unable to provide the information to the division or is
20 unable to receive notifications from the division by electronic
21 means.

22 (2) Any claimant may choose to certify, cancel or close his
23 claim for unemployment insurance benefits at any time, 24 hours a
24 day and seven days a week, via the Internet on a website developed
25 by the division; however, any claim that is certified, cancelled or
26 closed after 7:00 PM will not be processed by the division until the
27 next scheduled posting date.

28 (3) The division may request that claimants obtain digital
29 identity credentials, but only if the division provides opportunities
30 for claimants to verify their identities even if they do not have the
31 knowledge or access to the equipment needed to obtain the digital
32 identity credentials. Any request by the division for a claimant to
33 obtain digital identity credentials shall include a statement that the
34 claimant may use alternative procedures to verify identification, and
35 fully describe the alternative procedures, which shall include
36 personal assistance in person or by phone which shall be made
37 available by representatives of the division as needed to prevent any
38 delay in processing claims. If the division requests that a claimant
39 obtain digital identity credentials, and the claimant chooses to
40 request a digital identity credential rather than utilize an alternative
41 procedure, but is denied the digital identity credential, the division
42 shall issue the claimant a written appealable determination.

43 (4) Any system that the division establishes for claimants or
44 recipients of benefits to verify identity, to apply for, or to make
45 appeals regarding, benefits either by phone or on-line, shall provide
46 a clearly and prominently expressed option for the claimant or
47 recipient, if not immediately provided personal assistance, to select
48 from available appointment times an appointment time to speak

A5150 SAUICKIE

1 with a representative to obtain assistance in verifying identity, filing
2 a claim or appeal, or obtaining information regarding the status of a
3 claim or appeal.

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

6 A representative or representatives designated by the director of
7 the division and hereafter referred to as a "deputy" shall promptly
8 examine any disclosure of information to the division by an
9 employer required by paragraph (1) of subsection (a) of this section
10 upon a separation from work and any claim for benefits, and shall,
11 by electronic means, notify the most recent employing unit and,
12 successively as necessary, each employer in inverse chronological
13 order during the base year. The notification shall be made not later
14 than seven calendar days after the employer provides to the
15 department the disclosure required by paragraph (1) of subsection
16 (a) of this section, or seven calendar days after the filing of the
17 claim, whichever occurs first, and require said employing unit and
18 employer to furnish, by electronic means, not more than seven
19 calendar days after the notification is made, any information to the
20 deputy which the employer failed to provide as required by
21 paragraph (1) of subsection (a) of this section as may be necessary
22 to determine the claimant's eligibility and his benefit rights with
23 respect to the employer in question. The claimant shall, at the time
24 the claim is filed, be provided any information the division has
25 received from the employer upon the separation from work and an
26 opportunity to respond to that information. If a claim is filed and
27 the employer has provided the information required upon separation
28 from work, the employer shall immediately be notified by electronic
29 means of the opportunity to provide, by electronic means and in not
30 more than seven calendar days, additional information in response
31 to the claim for benefits. If a claim is filed and the employer has
32 failed to provide the information required upon the separation from
33 work, the division shall immediately, by electronic means, request
34 the required information and the employer shall provide the
35 information, by electronic means and in not more than seven
36 calendar days. The division shall provide the claimant any
37 additional information it receives and an opportunity to respond.

38 If any employer or employing unit fails to respond to the
39 notification or request within seven calendar days after a
40 communication by electronic means of the notification or request,
41 the deputy shall rely entirely on information from other sources,
42 including an affidavit to the best of the knowledge and belief of the
43 claimant with respect to his wages and time worked. Except in the
44 event of a knowing, fraudulent nondisclosure or misrepresentation
45 by the claimant or his agent, if it is determined that any information
46 in such affidavit is erroneous, no penalty shall be imposed on the
47 claimant.

1 The deputy shall make an initial determination contingent upon
2 the receipt of all necessary information and notify the claimant no
3 later than three weeks from the date on which the division received
4 the claim for benefits. The initial determination shall show the
5 weekly benefit amount payable, the maximum duration of benefits
6 with respect to the employer to whom the determination relates, and
7 the ratio of benefits chargeable to the employer's account for benefit
8 years commencing on or after July 1, 1986, and also shall show
9 whether the claimant is ineligible or disqualified for benefits under
10 the initial determination. The employer whose account may be
11 charged for benefits payable pursuant to said determination shall be
12 promptly notified thereof.

13 Whenever an initial determination is based upon information
14 other than that supplied by an employer because such employer
15 failed to provide information as required at the time of separation
16 from employment, and failed to respond to the deputy's request for
17 additional information, benefit payments based on the determination
18 shall commence immediately, and such initial determination and
19 any subsequent determination thereunder shall be incontestable by
20 the noncomplying employer, as to any charges to his employer's
21 account because of benefits paid prior to the close of the calendar
22 week following the receipt of his reply. Such initial determination
23 shall be altered if necessary upon receipt of information from the
24 employer, and any benefits paid or payable with respect to weeks
25 occurring subsequent to the close of the calendar week following
26 the receipt of the employer's reply and the determination of the
27 division to alter the initial determination after providing the
28 claimant the information and an opportunity to respond shall be
29 paid in accordance with such altered initial determination.

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

- 41 (A) The correctness of the benefit payments authorized to be
42 made under the determination;
- 43 (B) Fraud in connection with the claim pursuant to which the
44 initial determination is issued;
- 45 (C) The refusal of suitable work offered by the chargeable
46 employer filing the appeal;
- 47 (D) Gross misconduct as provided in subsection (b) of
48 R.S.43:21-5.

A5150 SAUICKIE

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

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

8 Unless the employer, within seven calendar days after a
9 confirmed receipt of notification of an initial determination,
10 including by electronic means, or the claimant, within 21 calendar
11 days after the notification was mailed to the claimant's last-known
12 address and addresses, files an appeal of the decision, the decision
13 shall be final and benefits shall immediately be paid or denied in
14 accordance therewith, except for such determinations as may be
15 altered in benefit amounts or duration as provided in this paragraph.
16 An appeal concerning an initial determination shall not be filed
17 after whichever is applicable of the seven-day or 21-day period.
18 Benefits payable for periods pending an appeal shall be paid as such
19 benefits accrue and be paid according to the initial determination
20 but shall be, to the extent that the amount paid exceeds the amount
21 determined in the appeal, regarded as an overpayment subject to the
22 provisions of R.S.43:21-16 regarding overpayments, including the
23 requirement of that section that a claimant who makes knowing,
24 fraudulent nondisclosure or misrepresentation is liable to repay the
25 full amount of the overpayment; provided that if the appeal is an
26 appeal of a determination that the claimant is disqualified under the
27 provisions of R.S.43:21-5, benefits pending determination of the
28 appeal shall be withheld only for the period of disqualification as
29 provided for in that section, and while the appeal is pending, the
30 benefits otherwise provided by this act shall be paid for the period
31 subsequent to such period of disqualification; provided further that
32 if it is determined in the appeal that the claimant was not
33 disqualified, the claimant shall be paid the benefits due for the
34 period of the disqualification, except that no such benefits shall be
35 paid to the claimant for any week during which the claimant has
36 failed to provide to the division a weekly certification evidencing
37 the claimant's eligibility for benefits; and provided, also, that if
38 there are two determinations of entitlement, benefits for the period
39 covered by such determinations shall be paid regardless of any
40 appeal which may thereafter be taken, but no employer's account
41 shall be charged with benefits so paid, if the decision is finally
42 reversed. If an employer appeals the charging of benefits to the
43 employer's account after the seven-day period to appeal the initial
44 benefit determination, and, as a result of the appeal on the charging
45 to the employer's account, the division, after the claimant is notified
46 and given the opportunity to respond, reduces the amount charged
47 to the employer's account, any resulting reduction in the amount of
48 benefits shall take effect only after the resolution of the appeal of

A5150 SAUICKIE

1 the charging, and any amount of benefits paid before the resolution
2 of the appeal of the charging which exceeds the amount determined
3 in that appeal shall be regarded as an overpayment caused by
4 employer error and shall be charged to the employer's account, and
5 the claimant shall not be liable to repay any portion of that
6 overpayment where the overpayment is of regular Unemployment
7 Compensation. In the case of the recovery of an overpayment of
8 benefit under any of the following programs authorized by the
9 federal "Coronavirus Aid, Relief, and Economic Security (CARES)
10 Act," Pub.L.116-136: Federal Pandemic Unemployment
11 Compensation (FPUC), Pandemic Emergency Unemployment
12 Compensation (PEUC), Mixed Earners Unemployment
13 Compensation (MEUC), Pandemic Unemployment Assistance
14 (PUA), or the first week of regular Unemployment Compensation
15 that is reimbursed in accordance with Section 2105 of the CARES
16 Act, a recovery shall not be waived unless the division determines
17 that the claimant is without fault and the repayment would be
18 contrary to equity and good conscience.

19 (2) (Deleted by amendment, P.L.2022, c.120)

20 (3) Procedure for making subsequent determinations with
21 respect to benefit years commencing on or after January 1, 1953.
22 The deputy shall make determinations with respect to claims for
23 benefits thereafter in the course of the benefit year, in accordance
24 with any initial determination allowing benefits, and under which
25 benefits have not been exhausted, and each notification of a benefit
26 payment shall be a notification of an affirmative subsequent
27 determination. Any change in the allowance, amount, or other
28 characteristic of benefits by the deputy in any such determination,
29 or the denial of benefits by the deputy in any such determination,
30 shall be appealable in the same manner and under the same
31 limitations as is provided in the case of initial determinations,
32 except that, after an initial determination, the resolution of any
33 appeal of the initial determination, and the payment of one or more
34 weeks of benefits pursuant to the initial determination, if a
35 subsequent determination will result in any termination or reduction
36 of those benefits from the amount or duration of benefits specified
37 in the initial determination, the claimant shall be provided
38 notification with a full written explanation of why the reduction or
39 termination of benefits will occur, and provided, during the seven
40 calendar days following the notification, an opportunity to file an
41 appeal before the reduction or termination goes into effect. If the
42 claimant files an appeal during the seven-day period, benefits shall
43 continue to be paid at the rate, and for the duration, stipulated in the
44 initial determination until the appeal is resolved. If the claimant
45 does not file an appeal, or the claimant files an appeal and it is
46 found in the resolution of the appeal that the amount in benefits
47 paid during the processing of the appeal exceeded the amount
48 determined in the appeal to be correct, or the claimant is found in

1 the appeal to be ineligible for benefits, any resulting excess
2 payment of benefits shall be regarded as an overpayment subject to
3 the provisions of R.S.43:21-16 regarding overpayments, including
4 the requirement of that section that a claimant who makes knowing,
5 fraudulent nondisclosure or misrepresentation is liable to repay the
6 full amount of the overpayment.

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

16 (d) Appeal tribunals. To hear and decide disputed benefit
17 claims, including appeals from determinations with respect to
18 demands for refunds of benefits under subsection (d) of R.S.43:21-
19 16, the director with the approval of the Commissioner of Labor and
20 Workforce Development shall establish impartial appeal tribunals
21 consisting of a salaried body of examiners under the supervision of
22 a Chief Appeals Examiner, all of whom shall be appointed pursuant
23 to the provisions of Title 11A of the New Jersey Statutes, Civil
24 Service and other applicable statutes.

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

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

1 complete record shall be kept of all proceedings in connection with
2 a disputed claim. All testimony at any hearing upon a disputed
3 claim shall be recorded, but need not be transcribed unless the
4 disputed claim is further appealed.

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

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

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

34 (j) With respect to benefit payments made on or after October
35 22, 2013, an employer's account shall not be relieved of charges
36 related to a benefit payment that was made erroneously from the
37 division if it is determined that:

38 (1) The erroneous benefit payment was made because the
39 employer, or an agent of the employer, failed to respond in a timely
40 or adequate manner to a request from the division for information
41 related to the claim for benefits, including failing to provide the
42 information required by subsection (a) of this section upon a
43 separation from employment; and

44 (2) The employer, or an agent of the employer, has established a
45 pattern of failing to respond in a timely or adequate manner to
46 requests from the division for information related to claims for
47 benefits, including failing to provide the information required by
48 subsection (a) of this section upon a separation from employment.

1 Determinations of the division prohibiting the relief of charges
2 pursuant to this subsection shall be subject to appeal in the same
3 manner as other determinations of the division related to the
4 charging of employer accounts.

5 For purposes of subsection (j) of this section:

6 "Erroneous benefit payment" means a benefit payment that,
7 except for the failure by the employer, or an agent of the employer,
8 to respond in a timely or adequate manner to a request from the
9 division for information with respect to the claim for benefits,
10 would not have been made; and

11 "Pattern of failing" means repeated documented failure on the
12 part of the employer, or an agent of the employer, to respond to
13 requests from the division to the employer or employer's agent for
14 information related to a claim for benefits, including failing to
15 provide the information required by subsection (a) of this section
16 upon a separation from employment, except that an employer, or an
17 agent of an employer, shall not be determined to have engaged in a
18 "pattern of failing" if the number of failures to provide the required
19 information or respond to requests from the division for information
20 related to claims for benefits during the previous 365 calendar days
21 is less than three, or if the number of failures is less than two
22 percent of the number of requests from the division, whichever is
23 greater.

24 (k) The Department of Labor and Workforce Development shall
25 establish and maintain a procedure by which personnel access rights
26 to the department's primary system for unemployment claims
27 receipt and processing are comprehensively reviewed every
28 calendar quarter. The procedure shall include an evaluation of
29 access needs to the primary unemployment claims receipt and
30 processing system for all department personnel and the adjustment,
31 addition, or deletion of access rights for department personnel based
32 on the quarterly review.

33 (l) The Department of Labor and Workforce Development shall
34 require, as part of the claim filing process, each applicant to
35 designate whether the claimant's job loss was due to automation or
36 other technological advances that eliminated the need for a person
37 to perform the duties required of the position. The department shall
38 track and maintain records, without any personal identifying
39 information, of job loss due to automation or other technological
40 advances:

41 (i) to identify industries and positions that are vulnerable to job
42 loss;

43 (ii) to provide resources for individuals at risk for job loss and
44 who may be qualified for alternative positions with or without
45 training, education, or other experience; and

46 (iii) for any other purpose that the Commissioner of Labor and
47 Workforce Development deems appropriate to address employment
48 concerns within the State.

1 The department shall make available to any State department or
2 agency, upon that department or agency’s request, the records
3 maintained pursuant to this subsection (1). On a semi-annual basis,
4 the department shall submit a written report to the Governor and,
5 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
6 Legislature, that addresses employment trends, areas of concern, or
7 any other issues that the commissioner deems appropriate based on
8 the information contained in those records.

9 (cf: P.L.2022, c.120, s.1)

10
11 2. This act shall take effect immediately.

12
13
14 STATEMENT

15
16 This bill requires the Department of Labor and Workforce
17 Development to track and maintain records on job loss due to
18 automation or other technological advances that eliminated the need
19 for a person to perform the duties required of the position. The
20 department will require applicants for unemployment benefits to
21 note on the application whether the job loss was due to automation
22 or other technological advances that eliminated the need for a
23 person to perform the position. The information collected from the
24 unemployment application will be maintained without personal
25 identifying information:

26 (1) to identify industries and positions that are vulnerable to job
27 loss;

28 (2) to provide resources for individuals at risk for job loss and
29 who may be qualified for alternative positions with or without
30 training, education, or other experience; and

31 (3) for any other purpose that the Commissioner of Labor and
32 Workforce Development deems appropriate to address employment
33 concerns within the State.

34 The department will make the records available to any State
35 department or agency, upon that department or agency’s request.
36 On a semi-annual basis, the department will submit a written report
37 to the Governor and the Legislature that addresses employment
38 trends, areas of concern, or any other issues that the commissioner
39 deems appropriate based on the information contained in those
40 records.

41 According to a 2020 ALICE report from United Way of New
42 Jersey, 84 percent of jobs paying less than \$20 per hour and 42
43 percent of jobs paying more than \$20 per hour in the State are at
44 high risk of becoming automated, based on data from 2018.