

SENATE, No. 3215

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED OCTOBER 17, 2022

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns UI benefits during labor disputes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/9/2023)

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.

45 In the event the discharge should be rescinded by the employer

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

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

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

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

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

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

36 (1) In determining whether or not any work is suitable for an
37 individual, consideration shall be given to the degree of risk
38 involved to health, safety, and morals, the individual's physical
39 fitness and prior training, experience and prior earnings, the
40 individual's length of unemployment and prospects for securing
41 local work in the individual's customary occupation, and the
42 distance of the available work from the individual's residence. In
43 the case of work in the production and harvesting of agricultural
44 crops, the work shall be deemed to be suitable without regard to the
45 distance of the available work from the individual's residence if all
46 costs of transportation are provided to the individual and the terms
47 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 due to a stoppage of work, no
36 disqualification under this subsection (d) shall apply if it is shown
37 that the individual has been prevented from working by the
38 employer, even though the individual's recognized or certified
39 majority representative has directed the employees in the
40 individual's collective bargaining unit to work under the preexisting
41 terms and conditions of employment, and, if the period of
42 unemployment commenced before January 1, 2022, the employees
43 had not engaged in a strike immediately before being prevented
44 from working, or if the a period of unemployment commenced on
45 or after January 1, 2022, whether or not the employees had engaged
46 in a strike immediately before being prevented from working.

47 (3) For any claim for a period of unemployment commencing on
48 or after July 1, 2018 due to a stoppage of work, no disqualification

1 under this subsection (d) shall apply if ~~the~~ an issue in the labor
2 dispute is ~~caused by the~~ a failure or refusal of the employer to
3 comply with an agreement or contract between the employer and
4 the claimant, including a collective bargaining agreement with a
5 union representing the claimant, or a failure or refusal to comply
6 with a State or federal law pertaining to hours, wages, or other
7 conditions of work.

8 (4) For any claim for a period of unemployment commencing on
9 or after July 1, 2018 and before January 1, 2022, if the
10 unemployment is caused by a labor dispute, including a strike or
11 other concerted activities of employees at the claimant's workplace,
12 whether or not authorized or sanctioned by a union representing the
13 claimant, but not including a dispute subject to the provisions of
14 paragraph (2) or (3) of this subsection (d), the claimant shall not be
15 provided benefits for a period of the first 30 days following the
16 commencement of the unemployment caused by the labor dispute,
17 except that the period without benefits shall not apply if the
18 employer hires a permanent replacement worker for the claimant's
19 position. A replacement worker shall be presumed to be permanent
20 unless the employer certifies in writing that the claimant will be
21 permitted to return to his or her prior position upon conclusion of
22 the dispute. If the employer does not permit the return, the claimant
23 shall be entitled to recover any benefits lost as a result of the 30-day
24 waiting period before receiving benefits, and the department may
25 impose a penalty upon the employer of up to \$750 per employee per
26 week of benefits lost. The penalty collected shall be paid into the
27 unemployment compensation auxiliary fund established pursuant to
28 subsection (g) of R.S.43:21-14. For any claim for a period of
29 unemployment commencing on or after January 1, 2022 due to a
30 stoppage of work, no disqualification under this subsection (d)
31 shall apply if the unemployment is caused by a labor dispute,
32 including a strike or other concerted activities of employees at the
33 claimant's workplace, whether or not authorized or sanctioned by a
34 union representing the claimant, but not including a dispute subject
35 to the provisions of paragraph (2) or (3) of this subsection (d),
36 except that the claimant shall not be provided benefits for a period
37 of the first 14 days following the commencement of the
38 unemployment caused by the labor dispute, provided that the
39 claimant shall be provided benefits during any part of that the 14-
40 day period in which the employer hires a replacement worker for
41 the claimant's position.

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

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

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

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

9 (f) For any week with respect to which or a part of which the
10 individual has received or is seeking unemployment benefits under
11 an unemployment compensation law of any other state or of the
12 United States; provided that if the appropriate agency of the other
13 state or of the United States finally determines that the individual is
14 not entitled to unemployment benefits, this disqualification shall not
15 apply.

16 (g) (1) For a period of one year from the date of the discovery
17 by the division of the illegal receipt or attempted receipt of benefits
18 contrary to the provisions of this chapter, as the result of any false
19 or fraudulent representation; provided that any disqualification may
20 be appealed in the same manner as any other disqualification
21 imposed hereunder; and provided further that a conviction in the
22 courts of this State arising out of the illegal receipt or attempted
23 receipt of these benefits in any proceeding instituted against the
24 individual under the provisions of this chapter or any other law of
25 this State shall be conclusive upon the appeals tribunal and the
26 board of review.

27 (2) A disqualification under this subsection shall not preclude
28 the prosecution of any civil, criminal or administrative action or
29 proceeding to enforce other provisions of this chapter for the
30 assessment and collection of penalties or the refund of any amounts
31 collected as benefits under the provisions of R.S.43:21-16, or to
32 enforce any other law, where an individual obtains or attempts to
33 obtain by theft or robbery or false statements or representations any
34 money from any fund created or established under this chapter or
35 any negotiable or nonnegotiable instrument for the payment of
36 money from these funds, or to recover money erroneously or
37 illegally obtained by an individual from any fund created or
38 established under this chapter.

39 (h) (1) Notwithstanding any other provisions of this chapter
40 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
41 denied benefits for any week because the individual is in training
42 approved under section 236(a)(1) of the "Trade Act of 1974,"
43 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
44 denied benefits by reason of leaving work to enter this training,
45 provided the work left is not suitable employment, or because of the
46 application to any week in training of provisions in this chapter
47 (R.S.43:21-1 et seq.), or any applicable federal unemployment

1 compensation law, relating to availability for work, active search
2 for work, or refusal to accept work.

3 (2) For purposes of this subsection (h), the term "suitable"
4 employment means, with respect to an individual, work of a
5 substantially equal or higher skill level than the individual's past
6 adversely affected employment, as defined for purposes of the
7 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
8 wages for this work at not less than 80% of the individual's average
9 weekly wage, as determined for the purposes of the "Trade Act of
10 1974."

11 (i) For benefit years commencing after June 30, 1984, for any
12 week in which the individual is a student in full attendance at, or on
13 vacation from, an educational institution, as defined in subsection
14 (y) of R.S.43:21-19; except that this subsection shall not apply to
15 any individual attending a training program approved by the
16 division to enhance the individual's employment opportunities, as
17 defined under subsection (c) of R.S.43:21-4; nor shall this
18 subsection apply to any individual who, during the individual's base
19 year, earned sufficient wages, as defined under subsection (e) of
20 R.S.43:21-4, while attending an educational institution during
21 periods other than established and customary vacation periods or
22 holiday recesses at the educational institution, to establish a claim
23 for benefits. For purposes of this subsection, an individual shall be
24 treated as a full-time student for any period:

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

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

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

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

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

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

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

48 (4) Medical documentation of the domestic violence;

1 (5) Certification from a certified Domestic Violence Specialist
2 or the director of a designated domestic violence agency that the
3 individual is a victim of domestic violence; or

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

8 For the purposes of this subsection (j):

9 "Certified Domestic Violence Specialist" means a person who
10 has fulfilled the requirements of certification as a Domestic
11 Violence Specialist established by the New Jersey Association of
12 Domestic Violence Professionals; and "designated domestic
13 violence agency" means a county-wide organization with a primary
14 purpose to provide services to victims of domestic violence, and
15 which provides services that conform to the core domestic violence
16 services profile as defined by the Division of Youth and Family
17 Services in the Department of Children and Families and is under
18 contract with the division for the express purpose of providing such
19 services.

20 (k) Notwithstanding any other provisions of this chapter
21 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
22 denied benefits for any week in which the individual left work
23 voluntarily and without good cause attributable to the work, if the
24 individual left work to accompany his or her spouse who is an
25 active member of the United States Armed Forces, as defined in
26 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
27 to the armed forces member's transfer to a new assignment in a
28 different geographical location outside the State, and the individual
29 moves to the new place of residence not more than nine months
30 after the spouse is transferred, and upon arrival at the new place of
31 residence the individual was in all respects available for suitable
32 work. No employer's account shall be charged for the payment of
33 benefits to an individual who left work under the circumstances
34 contained in this subsection (k), except that this shall not be
35 construed as relieving the State of New Jersey and any other
36 governmental entity or instrumentality or nonprofit organization
37 electing or required to make payments in lieu of contributions from
38 its responsibility to make all benefit payments otherwise required
39 by law and from being charged for those benefits as otherwise
40 required by law.

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

42
43 2. This act shall take effect immediately.

STATEMENT

This bill modifies certain conditions under which employees involved in a labor dispute may obtain unemployment insurance (UI) benefits. The bill:

1. Decreases from 30 days to 14 days the period of time following the commencement of unemployment caused by a labor dispute before which UI benefits may be paid, but specifies that benefits be paid to claimants immediately, even during the 14-day period, upon the hiring of replacement workers to take positions of the claimants, without regard to whether the replacement workers are purported to be “permanent”, and removes the penalty of up to \$750 per week against employers who state that a replacement worker is not “permanent” but fails to rehire the replaced worker upon the conclusion of the dispute;

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

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

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