

ASSEMBLY, No. 3924

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 11, 2009

Sponsored by:

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

SYNOPSIS

Concerns availability of unemployment compensation during labor disputes.

CURRENT VERSION OF TEXT

As introduced.



A3924 CARROLL

2

1 AN ACT concerning the availability of unemployment compensation
2 during certain 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 four weeks in employment, which may include employment
13 for the federal government, and has earned in employment at least
14 six 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.

22 (b) For the week in which the individual has been suspended or
23 discharged for misconduct connected with the work, and for the five
24 weeks which immediately follow that week, as determined in each
25 case. In the event the discharge should be rescinded by the
26 employer voluntarily or as a result of mediation or arbitration, this
27 subsection (b) shall not apply, provided, however, an individual
28 who is restored to employment with back pay shall return any
29 benefits received under this chapter for any week of unemployment
30 for which the individual is subsequently compensated by the
31 employer.

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

40 The director shall insure that any appeal of a determination
41 holding the individual disqualified for gross misconduct in
42 connection with the work shall be expeditiously processed by the
43 appeal tribunal.

44 (c) If it is found that the individual has failed, without good
45 cause, either to apply for available, suitable work when so directed

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 by the employment office or the director or to accept suitable work
2 when it is offered, or to return to the individual's customary self-
3 employment (if any) when so directed by the director. The
4 disqualification shall continue for the week in which the failure
5 occurred and for the three weeks which immediately follow that
6 week, as determined:

7 (1) In determining whether or not any work is suitable for an
8 individual, consideration shall be given to the degree of risk
9 involved to health, safety, and morals, the individual's physical
10 fitness and prior training, experience and prior earnings, the
11 individual's length of unemployment and prospects for securing
12 local work in the individual's customary occupation, and the
13 distance of the available work from the individual's residence. In
14 the case of work in the production and harvesting of agricultural
15 crops, the work shall be deemed to be suitable without regard to the
16 distance of the available work from the individual's residence if all
17 costs of transportation are provided to the individual and the terms
18 and conditions of hire are as favorable or more favorable to the
19 individual as the terms and conditions of the individual's base year
20 employment.

21 (2) Notwithstanding any other provisions of this chapter, no
22 work shall be deemed suitable and benefits shall not be denied
23 under this chapter to any otherwise eligible individual for refusing
24 to accept new work under any of the following conditions: the
25 position offered is vacant due directly to a strike, lockout, or other
26 labor dispute; the remuneration, hours, or other conditions of the
27 work offered are substantially less favorable to the individual than
28 those prevailing for similar work in the locality; or, the individual,
29 as a condition of being employed, would be required to join a
30 company union or to resign from or refrain from joining any bona
31 fide labor organization.

32 (d) If it is found that this unemployment is due to a stoppage of
33 work which exists because of a labor dispute at the factory,
34 establishment or other premises at which the individual is or was
35 last employed.

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

38 (a) The individual is not participating in or financing or directly
39 interested in the labor dispute which caused the stoppage of work;
40 and

41 (b) The individual does not belong to a grade or class of workers
42 of which, immediately before the commencement of the stoppage,
43 there were members employed at the premises at which the
44 stoppage occurs, any of whom are participating in or financing or
45 directly interested in the dispute; provided that if in any case in
46 which (a) or (b) above applies, separate branches of work which are
47 commonly conducted as separate businesses in separate premises
48 are conducted in separate departments of the same premises, each

1 department shall, for the purpose of this subsection, be deemed to
2 be a separate factory, establishment, or other premises.

3 (2) For any claim for a period of unemployment commencing on
4 or after December 1, 2004, no disqualification under this subsection
5 (d) shall apply if it is shown that the individual has been prevented
6 from working by the employer, even though the individual's
7 recognized or certified majority representative has directed the
8 employees in the individual's collective bargaining unit to work
9 under the preexisting terms and conditions of employment, and the
10 employees had not engaged in a strike immediately before being
11 prevented from working.

12 (3) For the purposes of this subsection (d) "stoppage of work"
13 means any stoppage of work by an individual in connection with a
14 labor dispute, without regard to the impact of the stoppage of work
15 on the individual's employer, and without regard to whether or not
16 the stoppage results in a significant reduction of production or
17 significant increase of costs to sustain production by means such as
18 hiring replacement workers.

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

21 (f) For any week with respect to which or a part of which the
22 individual has received or is seeking unemployment benefits under
23 an unemployment compensation law of any other state or of the
24 United States; provided that if the appropriate agency of the other
25 state or of the United States finally determines that the individual is
26 not entitled to unemployment benefits, this disqualification shall not
27 apply.

28 (g) (1) For a period of one year from the date of the discovery by
29 the division of the illegal receipt or attempted receipt of benefits
30 contrary to the provisions of this chapter, as the result of any false
31 or fraudulent representation; provided that any disqualification may
32 be appealed in the same manner as any other disqualification
33 imposed hereunder; and provided further that a conviction in the
34 courts of this State arising out of the illegal receipt or attempted
35 receipt of these benefits in any proceeding instituted against the
36 individual under the provisions of this chapter or any other law of
37 this State shall be conclusive upon the appeals tribunal and the
38 board of review.

39 (2) A disqualification under this subsection shall not preclude
40 the prosecution of any civil, criminal or administrative action or
41 proceeding to enforce other provisions of this chapter for the
42 assessment and collection of penalties or the refund of any amounts
43 collected as benefits under the provisions of R.S.43:21-16, or to
44 enforce any other law, where an individual obtains or attempts to
45 obtain by theft or robbery or false statements or representations any
46 money from any fund created or established under this chapter or
47 any negotiable or nonnegotiable instrument for the payment of
48 money from these funds, or to recover money erroneously or

1 illegally obtained by an individual from any fund created or
2 established under this chapter.

3 (h) (1) Notwithstanding any other provisions of this chapter
4 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
5 denied benefits for any week because the individual is in training
6 approved under section 236(a)(1) of the "Trade Act of 1974,"
7 Pub.L.93-618 (19 U.S.C. s.2296 (a)(1)) nor shall the individual be
8 denied benefits by reason of leaving work to enter this training,
9 provided the work left is not suitable employment, or because of the
10 application to any week in training of provisions in this chapter
11 (R.S.43:21-1 et seq.), or any applicable federal unemployment
12 compensation law, relating to availability for work, active search
13 for work, or refusal to accept work.

14 (2) For purposes of this subsection (h), the term "suitable"
15 employment means, with respect to an individual, work of a
16 substantially equal or higher skill level than the individual's past
17 adversely affected employment, as defined for purposes of the
18 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and
19 wages for this work at not less than 80% of the individual's average
20 weekly wage, as determined for the purposes of the "Trade Act of
21 1974."

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

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

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

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

1 circumstances resulting from the individual being a victim of
2 domestic violence.

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

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

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

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

12 (4) Medical documentation of the domestic violence;

13 (5) Certification from a certified Domestic Violence Specialist
14 or the director of a designated domestic violence agency that the
15 individual is a victim of domestic violence; or

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

20 For the purposes of this subsection (j):

21 "Certified Domestic Violence Specialist" means a person who
22 has fulfilled the requirements of certification as a Domestic
23 Violence Specialist established by the New Jersey Association of
24 Domestic Violence Professionals; and "designated domestic
25 violence agency" means a county-wide organization with a primary
26 purpose to provide services to victims of domestic violence, and
27 which provides services that conform to the core domestic violence
28 services profile as defined by the Division of Youth and Family
29 Services in the Department of Children and Families and is under
30 contract with the division for the express purpose of providing such
31 services.

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

1 make payments in lieu of contributions from its responsibility to
2 make all benefit payments otherwise required by law and from
3 being charged for those benefits as otherwise required by law.
4 (cf: P.L.2007, c.162)

5

6 2. This act shall take effect immediately.

7

8

9

STATEMENT

10

11 This bill prevents the collecting of unemployment compensation
12 by any individual who participates in a strike or other stoppage of
13 work in connection with a labor dispute, without regard to the
14 impact of the stoppage of work on the individual's employer, and
15 without regard to whether or not the stoppage results in a significant
16 reduction of production or significant increase of costs to sustain
17 production by means such as hiring replacement workers. The bill
18 upholds the principal that no individual who voluntarily leaves
19 work should receive unemployment compensation, even if they
20 leave work in connection with a labor dispute, and responds to the
21 State Supreme court decision in Lourdes Medical Center of
22 Burlington County v. Board of Review 197 N.J. 329 (NJ 2009),
23 which allows workers to receive unemployment compensation if the
24 operations of their workplace were not significantly reduced by
25 their absence. The bill clarifies the intent of the Legislature that,
26 for the purposes of unemployment compensation, "stoppage of
27 work" applies to the individual, not the workplace.