

SENATE, No. 2160

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 5, 2016

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Johnson, Coughlin and Eustace**

SYNOPSIS

Concerns unemployment compensation and labor disputes.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 9/30/2016)

1 AN ACT concerning unemployment compensation and labor
2 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
34 seven weeks which immediately follow that week, as determined in
35 each case.

36 For the week in which the individual has been suspended or
37 discharged for severe misconduct connected with the work, and for
38 each week thereafter until the individual becomes reemployed and
39 works four weeks in employment, which may include employment
40 for the federal government, and has earned in employment at least
41 six times the individual's weekly benefit rate, as determined in each
42 case. Examples of severe misconduct include, but are not
43 necessarily limited to, the following: repeated violations of an
44 employer's rule or policy, repeated lateness or absences after a
45 written warning by an employer, falsification of records, physical

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 assault or threats that do not constitute gross misconduct as defined
2 in this section, misuse of benefits, misuse of sick time, abuse of
3 leave, theft of company property, excessive use of intoxicants or
4 drugs on work premises, theft of time, or where the behavior is
5 malicious and deliberate but is not considered gross misconduct as
6 defined in this section.

7 In the event the discharge should be rescinded by the employer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

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

21 The director shall insure that any appeal of a determination
22 holding the individual disqualified for gross misconduct in
23 connection with the work shall be expeditiously processed by the
24 appeal tribunal.

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

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

47 (2) Notwithstanding any other provisions of this chapter, no
48 work shall be deemed suitable and benefits shall not be denied

1 under this chapter to any otherwise eligible individual for refusing
2 to accept new work under any of the following conditions: the
3 position offered is vacant due directly to a strike, lockout, or other
4 labor dispute; the remuneration, hours, or other conditions of the
5 work offered are substantially less favorable to the individual than
6 those prevailing for similar work in the locality; or, the individual,
7 as a condition of being employed, would be required to join a
8 company union or to resign from or refrain from joining any bona
9 fide labor organization.

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

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

16 (a) The individual is not participating in or financing or directly
17 interested in the labor dispute which caused the stoppage of work;
18 and

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

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

38 (3) For any claim for a period of unemployment commencing on
39 or after April 10, 2016, no disqualification under this subsection (d)
40 shall apply if the labor dispute is caused by the failure or refusal of
41 the employer to comply with an agreement or contract between the
42 employer and the claimant, including a collective bargaining
43 agreement with a union representing the claimant, or a State or
44 federal law pertaining to hours, wages, or other conditions of work.

45 (4) For any claim for a period of unemployment commencing on
46 or after April 10, 2016, if the unemployment is caused by a labor
47 dispute, including a strike or other concerted activities of employees
48 at the claimant's workplace, whether or not authorized or

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

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

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

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

38 (2) A disqualification under this subsection shall not preclude
39 the prosecution of any civil, criminal or administrative action or
40 proceeding to enforce other provisions of this chapter for the
41 assessment and collection of penalties or the refund of any amounts
42 collected as benefits under the provisions of R.S.43:21-16, or to
43 enforce any other law, where an individual obtains or attempts to
44 obtain by theft or robbery or false statements or representations any
45 money from any fund created or established under this chapter or
46 any negotiable or nonnegotiable instrument for the payment of
47 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
33 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be
34 denied benefits for any week in which the individual left work
35 voluntarily and without good cause attributable to the work, if the
36 individual left work to accompany his or her spouse who is an
37 active member of the United States Armed Forces, as defined in
38 N.J.S.38A:1-1(g), to a new place of residence outside the State, due
39 to the armed forces member's transfer to a new assignment in a
40 different geographical location outside the State, and the individual
41 moves to the new place of residence not more than nine months
42 after the spouse is transferred, and upon arrival at the new place of
43 residence the individual was in all respects available for suitable
44 work. No employer's account shall be charged for the payment of
45 benefits to an individual who left work under the circumstances
46 contained in this subsection (k), except that this shall not be
47 construed as relieving the State of New Jersey and any other
48 governmental entity or instrumentality or nonprofit organization

1 electing or required to make payments in lieu of contributions from
2 its responsibility to make all benefit payments otherwise required
3 by law and from being charged for those benefits as otherwise
4 required by law.

5 (cf: P.L.2015, c.41, s.1)

6

7 2. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill permits the payment of unemployment insurance (UI)
13 benefits during labor disputes under certain specified conditions.

14 The bill provides that, for any claim for a period of
15 unemployment commencing on or after April 10, 2016:

16 1. A claimant is not disqualified because of a labor dispute if
17 the labor dispute is caused by the failure or refusal of the employer
18 to comply with an agreement or contract between the employer and
19 the claimant, including a collective bargaining agreement with a
20 union representing the claimant, or a State or federal law pertaining
21 to hours, wages, or other conditions of work; and

22 2. If the unemployment of a claimant is caused by a labor
23 dispute, including a strike or other concerted employee activities,
24 but not by a lockout or a labor dispute caused by the employer non-
25 compliance indicated by the bill, the claimant shall not be provided
26 benefits during the first 30 days following the commencement of
27 the labor dispute, except that the waiting period shall not apply if
28 the employer hires a permanent replacement worker for the
29 claimant's position. A replacement worker shall be presumed to be
30 permanent unless the employer certifies in writing that the claimant
31 will be permitted to return to his or her prior position upon
32 conclusion of the dispute. If the employer does not permit the
33 return, the claimant shall be entitled to recover any benefits lost as a
34 result of the 30 day waiting period before receiving benefits, and
35 the department may impose a penalty upon the employer of up to
36 \$750 per employee per week of benefits lost, to be paid into the
37 unemployment compensation auxiliary fund.