

P.L.2011, CHAPTER 87, *approved July 1, 2011*  
Senate, No. 2580 (*Second Reprint*)

1 AN ACT concerning claims for unemployment insurance benefits  
2 and amending 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. <sup>2</sup>(1)<sup>2</sup> 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: <sup>2</sup>[(1)]  
21 (A)<sup>2</sup> the date upon which the individual becomes unemployed, and,  
22 in the case that the unemployment is temporary, <sup>1</sup>to the extent  
23 possible, <sup>1</sup>the date upon which the individual <sup>1</sup>[(will)] is expected  
24 to <sup>1</sup>be recalled to work; and <sup>2</sup>[(2)] (B)<sup>2</sup> that the individual may lose  
25 some or all of the benefit to which he is entitled if he fails to file a  
26 claim in a timely manner. Both the aforesaid notices and  
27 instructions <sup>1</sup>, including information detailing the time sensitivity of  
28 filing a claim, <sup>1</sup> shall be supplied by the division to employers  
29 without cost to them. <sup>1</sup>Nothing in this section shall be construed so  
30 as to require an employer to re-hire an individual formerly in the  
31 employer's service. <sup>1</sup>

32 <sup>2</sup>(2) Any claimant, except for a claimant who has, for any period  
33 during his base year, served in the military, worked for the federal  
34 government, or worked outside the State of New Jersey, may  
35 choose to certify, cancel or close his claim for unemployment  
36 insurance benefits at any time, 24 hours a day and seven days a  
37 week, via the Internet on a website developed by the division;  
38 however, any claim that is certified, cancelled or closed after 7:00  
39 PM will not be processed by the division until the next scheduled  
40 posting date. <sup>2</sup>

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLA committee amendments adopted January 20, 2011.

<sup>2</sup>Assembly ALA committee amendments adopted May 5, 2011.

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

3 A representative or representatives designated by the director of  
4 the division and hereafter referred to as a "deputy" shall promptly  
5 examine the claim, and shall notify the most recent employing unit  
6 and, successively as necessary, each employer in inverse  
7 chronological order during the base year. Such notification shall  
8 require said employing unit and employer to furnish such  
9 information to the deputy as may be necessary to determine the  
10 claimant's eligibility and his benefit rights with respect to the  
11 employer in question.

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

15 If any employer or employing unit fails to respond to the request  
16 for information within 10 days after the mailing, or communicating  
17 by electronic means, of such request, the deputy shall rely entirely  
18 on information from other sources, including an affidavit to the best  
19 of the knowledge and belief of the claimant with respect to his  
20 wages and time worked. Except in the event of fraud, if it is  
21 determined that any information in such affidavit is erroneous, no  
22 penalty shall be imposed on the claimant.

23 The deputy shall promptly make an initial determination based  
24 upon the available information. The initial determination shall  
25 show the weekly benefit amount payable, the maximum duration of  
26 benefits with respect to the employer to whom the determination  
27 relates, and the ratio of benefits chargeable to the employer's  
28 account for benefit years commencing on or after July 1, 1986, and  
29 also shall show whether the claimant is ineligible or disqualified for  
30 benefits under the initial determination. The claimant and the  
31 employer whose account may be charged for benefits payable  
32 pursuant to said determination shall be promptly notified thereof.

33 Whenever an initial determination is based upon information  
34 other than that supplied by an employer because such employer  
35 failed to respond to the deputy's request for information, such initial  
36 determination and any subsequent determination thereunder shall be  
37 incontestable by the noncomplying employer, as to any charges to  
38 his employer's account because of benefits paid prior to the close of  
39 the calendar week following the receipt of his reply. Such initial  
40 determination shall be altered if necessary upon receipt of  
41 information from the employer, and any benefits paid or payable  
42 with respect to weeks occurring subsequent to the close of the  
43 calendar week following the receipt of the employer's reply shall be  
44 paid in accordance with such altered initial determination.

45 The deputy shall issue a separate initial benefit determination  
46 with respect to each of the claimant's base year employers, starting  
47 with the most recent employer and continuing as necessary in the  
48 inverse chronological order of the claimant's last date of

1 employment with each such employer. If an appeal is taken from  
2 an initial determination, as hereinafter provided, by any employer  
3 other than the first chargeable base year employer or for benefit  
4 years commencing on or after July 1, 1986, that employer from  
5 whom the individual was most recently separated, then such appeal  
6 shall be limited in scope to include only one or more of the  
7 following matters:

8 (A) The correctness of the benefit payments authorized to be  
9 made under the determination;

10 (B) Fraud in connection with the claim pursuant to which the  
11 initial determination is issued;

12 (C) The refusal of suitable work offered by the chargeable  
13 employer filing the appeal; <sup>2</sup>[or]<sup>2</sup>

14 (D) Gross misconduct as provided in subsection (b) of  
15 R.S.43:21-5.

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

20 Unless the claimant or any interested party, within seven  
21 calendar days after delivery of notification of an initial  
22 determination or within 10 calendar days after such notification was  
23 mailed to his or their last-known address and addresses, files an  
24 appeal from such decision, such decision shall be final and benefits  
25 shall be paid or denied in accordance therewith, except for such  
26 determinations as may be altered in benefit amounts or duration as  
27 provided in this paragraph. Benefits payable for periods pending an  
28 appeal and not in dispute shall be paid as such benefits accrue;  
29 provided that insofar as any such appeal is or may be an appeal  
30 from a determination to the effect that the claimant is disqualified  
31 under the provisions of R.S.43:21-5 or any amendments thereof or  
32 supplements thereto, benefits pending determination of the appeal  
33 shall be withheld only for the period of disqualification as provided  
34 for in said section, and notwithstanding such appeal, the benefits  
35 otherwise provided by this act shall be paid for the period  
36 subsequent to such period of disqualification; and provided, also,  
37 that if there are two determinations of entitlement, benefits for the  
38 period covered by such determinations shall be paid regardless of  
39 any appeal which may thereafter be taken, but no employer's  
40 account shall be charged with benefits so paid, if the decision is  
41 finally reversed.

42 (2) Procedure for making initial determinations in certain cases  
43 of concurrent employment, with respect to benefit years  
44 commencing on or after January 1, 1953 and prior to benefit years  
45 commencing on or after July 1, 1986.

46 Notwithstanding any other provisions of this Title, if an  
47 individual shows to the satisfaction of the deputy that there were at  
48 least 13 weeks in his base period in each of which he earned wages

1 from two or more employers totaling \$30.00 or more but in each of  
2 which there was no single employer from whom he earned as much  
3 as \$100.00, then such individual's claim shall be determined in  
4 accordance with the special provisions of this paragraph. In such  
5 case, the deputy shall determine the individual's eligibility for  
6 benefits, his average weekly wage, weekly benefit rate and  
7 maximum total benefits as if all his base year employers were a  
8 single employer. Such determination shall apportion the liability  
9 for benefit charges thereunder to the individual's several base year  
10 employers so that each employer's maximum liability for charges  
11 thereunder bears approximately the same relation to the maximum  
12 total benefits allowed as the wages earned by the individual from  
13 each employer during the base year bears to his total wages earned  
14 from all employers during the base year. Such initial determination  
15 shall also specify the individual's last date of employment within  
16 the base year with respect to each base year employer, and such  
17 employers shall be charged for benefits paid under said initial  
18 determination in the inverse chronological order of such last date of  
19 employment.

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. The allowance of benefits by the deputy on any such  
28 determination, or the denial of benefits by the deputy on any such  
29 determination, shall be appealable in the same manner and under  
30 the same limitations as is provided in the case of initial  
31 determinations.

32 (c) Appeals. Unless such appeal is withdrawn, an appeal  
33 tribunal, after affording the parties reasonable opportunity for fair  
34 hearing, shall affirm or modify the findings of fact and the  
35 determination. The parties shall be duly notified of such tribunal's  
36 decision, together with its reasons therefor, which shall be deemed  
37 to be the final decision of the board of review, unless further appeal  
38 is initiated pursuant to subsection (e) of this section within 10 days  
39 after the date of notification or mailing of the decision for any  
40 decision made on or before December 1, 2010, or within 20 days  
41 after the date of notification or mailing of such decision for any  
42 decision made after December 1, 2010.

43 (d) Appeal tribunals. To hear and decide disputed benefit  
44 claims, including appeals from determinations with respect to  
45 demands for refunds of benefits under subsection (d) of R.S.43:21-  
46 16, the director with the approval of the Commissioner of Labor and  
47 Workforce Development shall establish impartial appeal tribunals  
48 consisting of a salaried body of examiners under the supervision of

1 a Chief Appeals Examiner, all of whom shall be appointed pursuant  
2 to the provisions of Title 11A of the New Jersey Statutes, Civil  
3 Service and other applicable statutes.

4 (e) Board of review. The board of review may on its own  
5 motion affirm, modify, or set aside any decision of an appeal  
6 tribunal on the basis of the evidence previously submitted in such  
7 case, or direct the taking of additional evidence, or may permit any  
8 of the parties to such decision to initiate further appeals before it.  
9 The board of review shall permit such further appeal by any of the  
10 parties interested in a decision of an appeal tribunal which is not  
11 unanimous and from any determination which has been overruled or  
12 modified by any appeal tribunal. The board of review may remove  
13 to itself or transfer to another appeal tribunal the proceedings on  
14 any claim pending before an appeal tribunal. Any proceedings so  
15 removed to the board of review shall be heard by a quorum thereof  
16 in accordance with the requirements of subsection (c) of this  
17 section. The board of review shall promptly notify the interested  
18 parties of its findings and decision.

19 (f) Procedure. The manner in which disputed benefit claims,  
20 and appeals from determinations with respect to (1) claims for  
21 benefits and (2) demands for refunds of benefits under subsection  
22 (d) of R.S.43:21-16 shall be presented, the reports thereon required  
23 from the claimant and from employers, and the conduct of hearings  
24 and appeals shall be in accordance with rules prescribed by the  
25 board of review for determining the rights of the parties, whether or  
26 not such rules conform to common law or statutory rules of  
27 evidence and other technical rules of procedure. A full and  
28 complete record shall be kept of all proceedings in connection with  
29 a disputed claim. All testimony at any hearing upon a disputed  
30 claim shall be recorded, but need not be transcribed unless the  
31 disputed claim is further appealed.

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

37 (h) Court review. Any decision of the board of review shall  
38 become final as to any party upon the mailing of a copy thereof to  
39 such party or to his attorney, or upon the mailing of a copy thereof  
40 to such party at his last-known address. The Division of  
41 Unemployment and Temporary Disability Insurance and any party  
42 to a proceeding before the board of review may secure judicial  
43 review of the final decision of the board of review. Any party not  
44 joining in the appeal shall be made a defendant; the board of review  
45 shall be deemed to be a party to any judicial action involving the  
46 review of, or appeal from, any of its decisions, and may be  
47 represented in any such judicial action by any qualified attorney,  
48 who may be a regular salaried employee of the board of review or

1 has been designated by it for that purpose, or, at the board of  
2 review's request, by the Attorney General.

3 (i) Failure to give notice. The failure of any public officer or  
4 employee at any time heretofore or hereafter to give notice of  
5 determination or decision required in subsections (b), (c) and (e) of  
6 this section, as originally passed or amended, shall not relieve any  
7 employer's account of any charge by reason of any benefits paid,  
8 unless and until that employer can show to the satisfaction of the  
9 director of the division that the said benefits, in whole or in part,  
10 would not have been charged or chargeable to his account had such  
11 notice been given. Any determination hereunder by the director  
12 shall be subject to court review.

13 (cf: P.L.2011, c.32, s.1)

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15 2. This act shall take effect immediately.

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21 Requires specific instructions for workers filing unemployment  
insurance claims.