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SYNOPSIS
Concerns unemployment compensation and labor disputes.

CURRENT VERSION OF TEXT
As reported by the Assembly Labor Committee on June 14, 2018, with amendments.

(Sponsorship Updated As Of: 6/26/2018)
AN ACT concerning unemployment compensation and labor
disputes and amending R.S.43:21-5.

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

1. R.S.43:21-5 is amended to read as follows:

3:21-5. An individual shall be disqualified for benefits:
(a) For the week in which the individual has left work
voluntarily without good cause attributable to such work, and for
each week thereafter until the individual becomes reemployed and
works eight weeks in employment, which may include employment
for the federal government, and has earned in employment at least
ten times the individual’s weekly benefit rate, as determined in each
case. This subsection shall apply to any individual seeking
unemployment benefits on the basis of employment in the
production and harvesting of agricultural crops, including any
individual who was employed in the production and harvesting of
agricultural crops on a contract basis and who has refused an offer
of continuing work with that employer following the completion of
the minimum period of work required to fulfill the contract. This
subsection shall not apply to an individual who voluntarily leaves
work with one employer to accept from another employer
employment which commences not more than seven days after the
individual leaves employment with the first employer, if the
employment with the second employer has weekly hours or pay not
less than the hours or pay of the employment of the first employer,
except that if the individual gives notice to the first employer that
the individual will leave employment on a specified date and the
first employer terminates the individual before that date, the seven-
day period will commence from the specified date.
(b) For the week in which the individual has been suspended or
discharged for misconduct connected with the work, and for the
seven weeks which immediately follow that week, as determined in
each case.

For the week in which the individual has been suspended or
discharged for severe misconduct connected with the work, and for
each week thereafter until the individual becomes reemployed and
works four weeks in employment, which may include employment
for the federal government, and has earned in employment at least
six times the individual’s weekly benefit rate, as determined in each
case. Examples of severe misconduct include, but are not
necessarily limited to, the following: repeated violations of an
employer’s rule or policy, repeated lateness or absences after a

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:
Assembly ALA committee amendments adopted June 14, 2018.
written warning by an employer, falsification of records, physical
assault or threats that do not constitute gross misconduct as defined
in this section, misuse of benefits, misuse of sick time, abuse of
leave, theft of company property, excessive use of intoxicants or
drugs on work premises, theft of time, or where the behavior is
malicious and deliberate but is not considered gross misconduct as
defined in this section.

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

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

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

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

(1) In determining whether or not any work is suitable for an
individual, consideration shall be given to the degree of risk
involved to health, safety, and morals, the individual's physical
fitness and prior training, experience and prior earnings, the
individual's length of unemployment and prospects for securing
local work in the individual's customary occupation, and the
distance of the available work from the individual's residence. In
the case of work in the production and harvesting of agricultural
crops, the work shall be deemed to be suitable without regard to the
distance of the available work from the individual's residence if all
costs of transportation are provided to the individual and the terms
and conditions of hire are as favorable or more favorable to the
individual as the terms and conditions of the individual's base year
employment.
Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: the position offered is vacant due directly to a strike, lockout, or other labor dispute; the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or, the individual, as a condition of being employed, would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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

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

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

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

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

(3) For any claim for a period of unemployment commencing on or after April 10, 2016, no disqualification under this subsection (d) shall apply if the labor dispute is caused by the 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 State or federal law pertaining to hours, wages, or other conditions of work.
(4) For any claim for a period of unemployment commencing on
or after [April 10, 2016] July 1, 2018, if the unemployment is
caused by a labor dispute, including a strike or other concerted
activities of employees at the claimant’s workplace, whether or not
authorized or sanctioned by a union representing the claimant, but
not including a dispute subject to the provisions of paragraphs (2)
or (3) of this subsection (d), the claimant shall not be provided
benefits for a period of the first 30 days following the
commencement of the unemployment caused by the labor dispute,
except that the period without benefits shall not apply if the
employer hires a permanent replacement worker for the claimant’s
position. A replacement worker shall be presumed to be permanent
unless the employer certifies in writing that the claimant will be
permitted to return to his or her prior position upon conclusion of
the dispute. If the employer does not permit the return, the claimant
shall be entitled to recover any benefits lost as a result of the 30 day
waiting period before receiving benefits, and the department may
impose a penalty upon the employer of up to $750 per employee per
week of benefits lost. The penalty collected shall be paid into the
unemployment compensation auxiliary fund established pursuant to
subsection (g) of R.S.43:21-14.

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

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

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

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

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

(2) For purposes of this subsection (h), the term "suitable"
employment means, with respect to an individual, work of a
substantially equal or higher skill level than the individual's past
adversely affected employment, as defined for purposes of the
wages for this work at not less than 80% of the individual's average
weekly wage, as determined for the purposes of the "Trade Act of
1974."

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

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

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

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

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

1. A restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
2. A police record documenting the domestic violence;
3. Documentation that the perpetrator of the domestic violence has been convicted of one or more of the offenses enumerated in section 3 of P.L.1991, c.261 (C.2C:25-19);
4. Medical documentation of the domestic violence;
5. Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency that the individual is a victim of domestic violence; or
6. Other documentation or certification of the domestic violence provided by a social worker, member of the clergy, shelter worker or other professional who has assisted the individual in dealing with the domestic violence.

For the purposes of this subsection (j):
"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals; and "designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Youth and Family Services in the Department of Children and Families and is under contract with the division for the express purpose of providing such services.

(k) Notwithstanding any other provisions of this chapter (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied benefits for any week in which the individual left work voluntarily and without good cause attributable to the work, if the individual left work to accompany his or her spouse who is an active member of the United States Armed Forces, as defined in N.J.S.38A:1-1(g), to a new place of residence outside the State, due to the armed forces member's transfer to a new assignment in a different geographical location outside the State, and the individual moves to the new place of residence not more than nine months after the spouse is transferred, and upon arrival at the new place of residence the individual was in all respects available for suitable work. No employer's account shall be charged for the payment of benefits to an individual who left work under the circumstances contained in this subsection (k), except that this shall not be
construed as relieving the State of New Jersey and any other
governmental entity or instrumentality or nonprofit organization
electing or required to make payments in lieu of contributions from
its responsibility to make all benefit payments otherwise required
by law and from being charged for those benefits as otherwise
required by law.
(cf: P.L.2015, c.41, s.1)

2. This act shall take effect immediately.