

# ASSEMBLY, No. 3871

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 7, 2018

**Sponsored by:**

**Assemblyman NICHOLAS CHIARAVALLOTI**

**District 31 (Hudson)**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Concerns disqualification from unemployment benefits for misconduct.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/15/2018)**

1 AN ACT concerning disqualification from unemployment  
2 compensation 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]** five weeks which immediately follow that week, as  
35 determined in 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 “Misconduct” means behavior, other than gross misconduct,  
8 which is improper, intentional, connected with the individual’s  
9 work, malicious, within the individual’s control, not a good faith  
10 error of judgment or discretion, and is either a deliberate failure,  
11 without good cause, to comply with the employer’s lawful and  
12 reasonable rules made known to the employee or a disregard of  
13 standards of behavior the employer has a reasonable right to expect,  
14 including reasonable safety standards and reasonable standards for a  
15 workplace free of drug and substance abuse. “Misconduct”  
16 includes: (1) repeated failure, without good cause, to comply with  
17 instructions of the employer which are lawful, reasonable, and not  
18 requiring the employee to perform services beyond the scope of the  
19 employee’s customary job duties; (2) falsification of an  
20 employment application or other record required by the employer to  
21 determine the employee’s qualifications or suitability for the job or  
22 omitting information which created a material misrepresentation of  
23 the employee’s qualifications or suitability for the job; (3) tardiness  
24 without good cause which is chronic or excessive and repeated after  
25 written warnings from the employer; and (4) repeated unauthorized  
26 absences without good cause, such as illness or other compelling  
27 personal circumstance, or unjustified failure to provide notice prior  
28 to the unauthorized absences. An individual’s failure to meet  
29 standards regarding quality or quantity of work shall not be  
30 considered misconduct unless the employer demonstrates to the  
31 division that the standards are reasonable and that the individual  
32 deliberately performed below the standards. "Misconduct" does not  
33 include inadvertence or ordinary negligence in isolated instances, or  
34 inefficiency or failure to perform as the result of inability or  
35 incapacity.

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

42 If the discharge was for gross misconduct connected with the  
43 work because of the commission of an act punishable as a crime of  
44 the first, second, third or fourth degree under the "New Jersey Code  
45 of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be  
46 disqualified in accordance with the disqualification prescribed in  
47 subsection (a) of this section and no benefit rights shall accrue to

1 any individual based upon wages from that employer for services  
2 rendered prior to the day upon which the individual was discharged.

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

7 To sustain disqualification from benefits because of misconduct  
8 under this subsection (b), the burden of proof is upon the employer,  
9 who shall, prior to any determination of the division regarding  
10 misconduct, provide documentation, written at or immediately  
11 following the time of the misconduct, demonstrating that the  
12 employee's actions constitute simple misconduct or gross  
13 misconduct.

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

22 (1) In determining whether or not any work is suitable for an  
23 individual, consideration shall be given to the degree of risk  
24 involved to health, safety, and morals, the individual's physical  
25 fitness and prior training, experience and prior earnings, the  
26 individual's length of unemployment and prospects for securing  
27 local work in the individual's customary occupation, and the  
28 distance of the available work from the individual's residence. In  
29 the case of work in the production and harvesting of agricultural  
30 crops, the work shall be deemed to be suitable without regard to the  
31 distance of the available work from the individual's residence if all  
32 costs of transportation are provided to the individual and the terms  
33 and conditions of hire are as favorable or more favorable to the  
34 individual as the terms and conditions of the individual's base year  
35 employment.

36 (2) Notwithstanding any other provisions of this chapter, no  
37 work shall be deemed suitable and benefits shall not be denied  
38 under this chapter to any otherwise eligible individual for refusing  
39 to accept new work under any of the following conditions: the  
40 position offered is vacant due directly to a strike, lockout, or other  
41 labor dispute; the remuneration, hours, or other conditions of the  
42 work offered are substantially less favorable to the individual than  
43 those prevailing for similar work in the locality; or, the individual,  
44 as a condition of being employed, would be required to join a  
45 company union or to resign from or refrain from joining any bona  
46 fide labor organization.

47 (d) If it is found that this unemployment is due to a stoppage of  
48 work which exists because of a labor dispute at the factory,

1 establishment or other premises at which the individual is or was  
2 last employed.

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

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

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

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

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

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

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

47 (2) A disqualification under this subsection shall not preclude  
48 the prosecution of any civil, criminal or administrative action or

1 proceeding to enforce other provisions of this chapter for the  
2 assessment and collection of penalties or the refund of any amounts  
3 collected as benefits under the provisions of R.S.43:21-16, or to  
4 enforce any other law, where an individual obtains or attempts to  
5 obtain by theft or robbery or false statements or representations any  
6 money from any fund created or established under this chapter or  
7 any negotiable or nonnegotiable instrument for the payment of  
8 money from these funds, or to recover money erroneously or  
9 illegally obtained by an individual from any fund created or  
10 established under this chapter.

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

22 (2) For purposes of this subsection (h), the term "suitable"  
23 employment means, with respect to an individual, work of a  
24 substantially equal or higher skill level than the individual's past  
25 adversely affected employment, as defined for purposes of the  
26 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and  
27 wages for this work at not less than 80% of the individual's average  
28 weekly wage, as determined for the purposes of the "Trade Act of  
29 1974."

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

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

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

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

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

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

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

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

19 (4) Medical documentation of the domestic violence;

20 (5) Certification from a certified Domestic Violence Specialist  
21 or the director of a designated domestic violence agency that the  
22 individual is a victim of domestic violence; or

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

27 For the purposes of this subsection (j):

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

39 (k) 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 in which the individual left work  
42 voluntarily and without good cause attributable to the work, if the  
43 individual left work to accompany his or her spouse who is an  
44 active member of the United States Armed Forces, as defined in  
45 N.J.S.38A:1-1(g), to a new place of residence outside the State, due  
46 to the armed forces member's transfer to a new assignment in a  
47 different geographical location outside the State, and the individual  
48 moves to the new place of residence not more than nine months

1 after the spouse is transferred, and upon arrival at the new place of  
2 residence the individual was in all respects available for suitable  
3 work. No employer's account shall be charged for the payment of  
4 benefits to an individual who left work under the circumstances  
5 contained in this subsection (k), except that this shall not be  
6 construed as relieving the State of New Jersey and any other  
7 governmental entity or instrumentality or nonprofit organization  
8 electing or required to make payments in lieu of contributions from  
9 its responsibility to make all benefit payments otherwise required  
10 by law and from being charged for those benefits as otherwise  
11 required by law.

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

13

14 2. This act shall take effect immediately.

15

16

17

#### STATEMENT

18

19 This bill amends R.S.43:21-5 to make a number changes in the  
20 unemployment insurance (UI) law regarding the disqualification of  
21 applicants for UI benefits separated from work because of alleged  
22 misconduct.

23 The bill reduces, from seven weeks to five weeks, the duration of  
24 time that a worker is disqualified from receiving UI benefits if the  
25 worker is discharged from work for misconduct.

26 The bill provides that the burden of proof to demonstrate  
27 misconduct is on the employer, who is required, before any  
28 determination by the department, to provide documentation of the  
29 misconduct written at or immediately following the time of the  
30 misconduct.

31 The bill defines "misconduct" as behavior which is improper,  
32 intentional, connected with the individual's work, malicious, within  
33 the individual's control, not a good faith error of judgment or  
34 discretion, and is either a deliberate failure, without good cause, to  
35 comply with the employer's lawful and reasonable rules made  
36 known to the employee or a disregard of standards of behavior the  
37 employer has a reasonable right to expect, including reasonable  
38 safety standards and reasonable standards for a workplace free of  
39 drug and substance abuse. The bill specifies that the following  
40 behaviors are misconduct:

41 1. repeated failure, without good cause, to comply with lawful,  
42 reasonable instructions of the employer not requiring the employee  
43 to perform services beyond the scope of the employee's customary  
44 job duties;

45 2. falsification of an employment application or other record  
46 required by the employer to determine the employee's qualifications  
47 or suitability for the job or omitting information which creates a  
48 material misrepresentation of employee qualifications or suitability;



1       3. chronic or excessive tardiness without good cause repeated  
2 after written warnings; and

3       4. repeated unauthorized absences without good cause, or  
4 unjustified failure to provide notice prior to unauthorized absences.

5       The bill provides that failure to meet standards regarding quality  
6 or quantity of work is not considered to be misconduct unless the  
7 employer demonstrates that the standards are reasonable and that  
8 the individual deliberately performed below the standards. The bill  
9 provides that misconduct does not include inadvertence or ordinary  
10 negligence in isolated instances, or inefficiency or failure to  
11 perform as the result of inability or incapacity.

12       The bill eliminates the category of “severe misconduct” from  
13 provisions of the UI law regarding disqualification for misconduct.  
14 The category of “severe misconduct” was added to the UI law by  
15 P.L.2010, c.37, with the Governor’s conditional veto, which  
16 amended the UI law to provide penalties concerning worker  
17 misconduct which are more stringent than the UI law’s penalties for  
18 misconduct, but less severe than the UI law’s penalties for “gross”  
19 misconduct. The UI law had previously provided that a claimant  
20 who is discharged for misconduct is disqualified for UI benefits for  
21 five weeks following the week of discharge, and that a claimant  
22 discharge for gross misconduct because of criminal acts connected  
23 with work is disqualified until the worker is reemployed for eight  
24 weeks. P.L.2010, c.37 provided that severe misconduct would  
25 result in disqualification until a worker is reemployed for four  
26 weeks.

27       P.L.2010, c.37, however, lacked clear definition of either  
28 “misconduct” or its new category of “severe misconduct,” which  
29 contributed to repeated court decisions preventing provisions of that  
30 act concerning misconduct from being implemented.

31       This bill reinstates provisions of UI law on misconduct as they  
32 had been before the enactment of P.L.2010, c.37, and modifies that  
33 law by adding the requirement for written documentation of  
34 misconduct, and adding the definition of misconduct described  
35 above which is substantially the same in effect as the regulations  
36 regarding misconduct which were in effect prior to the enactment of  
37 P.L.2010, c.37, and subsequently repealed.