

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3871

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 3871.

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

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

As amended, the bill provides that the burden of proof is upon the employer to sustain disqualification of benefits by misconduct, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee's actions constitute misconduct or gross misconduct

As amended, the bill defines "misconduct" change the definition of misconduct to conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

The bill eliminates the category of "severe misconduct" from provisions of the UI law regarding disqualification for misconduct. The category of "severe misconduct" was added to the UI law by P.L.2010, c.37, with the Governor's conditional veto, which amended the UI law to provide penalties concerning worker misconduct which are more stringent than the UI law's penalties for misconduct, but less severe than the UI law's penalties for "gross" misconduct. The UI law had previously provided that a claimant who is discharged for misconduct is disqualified for UI benefits for five weeks following the week of discharge, and that a claimant discharge for gross misconduct because of criminal acts connected with work is disqualified until the worker is reemployed for eight weeks. P.L.2010, c.37 provided that

severe misconduct would result in disqualification until a worker is reemployed for four weeks.

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

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

As amended, the bill includes a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act.”

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the definition of misconduct to conduct which is improper, intentional, connected with the individual’s work, within the individual’s control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer’s lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse;

(2) to amend the standard for sustaining disqualification of benefits by misconduct so that the burden of proof is upon the employer, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee’s actions constitute misconduct or gross misconduct; and

(3) to include a provision that nothing in the bill will be construed to interfere with the exercise of rights protected under the “National Labor Relations Act” or the “New Jersey Employer-Employee Relations Act”.