

**SENATE, No. 2439**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED APRIL 5, 2018

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

Concerns disqualification from unemployment benefits.

**CURRENT VERSION OF TEXT**

As introduced.



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 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.

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

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

47 (g) (1) For a period of one year from the date of the discovery  
48 by the division of the illegal receipt or attempted receipt of benefits

1 contrary to the provisions of this chapter, as the result of any false  
2 or fraudulent representation; provided that any disqualification may  
3 be appealed in the same manner as any other disqualification  
4 imposed hereunder; and provided further that a conviction in the  
5 courts of this State arising out of the illegal receipt or attempted  
6 receipt of these benefits in any proceeding instituted against the  
7 individual under the provisions of this chapter or any other law of  
8 this State shall be conclusive upon the appeals tribunal and the  
9 board of review.

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

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

33 (2) For purposes of this subsection (h), the term "suitable"  
34 employment means, with respect to an individual, work of a  
35 substantially equal or higher skill level than the individual's past  
36 adversely affected employment, as defined for purposes of the  
37 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and  
38 wages for this work at not less than 80% of the individual's average  
39 weekly wage, as determined for the purposes of the "Trade Act of  
40 1974."

41 (i) For benefit years commencing after June 30, 1984, for any  
42 week in which the individual is a student in full attendance at, or on  
43 vacation from, an educational institution, as defined in subsection  
44 (y) of R.S.43:21-19; except that this subsection shall not apply to  
45 any individual attending a training program approved by the  
46 division to enhance the individual's employment opportunities, as  
47 defined under subsection (c) of R.S.43:21-4; nor shall this  
48 subsection apply to any individual who, during the individual's base

1 year, earned sufficient wages, as defined under subsection (e) of  
2 R.S.43:21-4, while attending an educational institution during  
3 periods other than established and customary vacation periods or  
4 holiday recesses at the educational institution, to establish a claim  
5 for benefits. For purposes of this subsection, an individual shall be  
6 treated as a full-time student for any period:

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

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

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

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

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

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

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

30 (4) Medical documentation of the domestic violence;

31 (5) Certification from a certified Domestic Violence Specialist  
32 or the director of a designated domestic violence agency that the  
33 individual is a victim of domestic violence; or

34 (6) Other documentation or certification of the domestic  
35 violence provided by a social worker, member of the clergy, shelter  
36 worker or other professional who has assisted the individual in  
37 dealing with the domestic violence.

38 For the purposes of this subsection (j):

39 "Certified Domestic Violence Specialist" means a person who  
40 has fulfilled the requirements of certification as a Domestic  
41 Violence Specialist established by the New Jersey Association of  
42 Domestic Violence Professionals; and "designated domestic  
43 violence agency" means a county-wide organization with a primary  
44 purpose to provide services to victims of domestic violence, and  
45 which provides services that conform to the core domestic violence  
46 services profile as defined by the Division of Youth and Family  
47 Services in the Department of Children and Families and is under

1 contract with the division for the express purpose of providing such  
2 services.

3 (k) 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 in which the individual left work  
6 voluntarily and without good cause attributable to the work, if the  
7 individual left work to accompany his or her spouse who is an  
8 active member of the United States Armed Forces, as defined in  
9 N.J.S.38A:1-1(g), to a new place of residence outside the State, due  
10 to the armed forces member's transfer to a new assignment in a  
11 different geographical location outside the State, and the individual  
12 moves to the new place of residence not more than nine months  
13 after the spouse is transferred, and upon arrival at the new place of  
14 residence the individual was in all respects available for suitable  
15 work. No employer's account shall be charged for the payment of  
16 benefits to an individual who left work under the circumstances  
17 contained in this subsection (k), except that this shall not be  
18 construed as relieving the State of New Jersey and any other  
19 governmental entity or instrumentality or nonprofit organization  
20 electing or required to make payments in lieu of contributions from  
21 its responsibility to make all benefit payments otherwise required  
22 by law and from being charged for those benefits as otherwise  
23 required by law.

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

25

26 2. This act shall take effect immediately.

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28

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## STATEMENT

30

31 This bill amends R.S.43:21-5 to eliminate the category of  
32 "severe misconduct" from provisions of the New Jersey  
33 "unemployment compensation law," R.S.43:21-1 et seq. which  
34 authorize the disqualification from unemployment insurance (UI)  
35 benefits because of workplace misconduct. The bill also reduces,  
36 from seven weeks to five weeks, the duration of time that a worker  
37 is disqualified from receiving UI benefits if the worker is  
38 discharged from work for misconduct.

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

1 weeks. P.L.2010, c.37 added the classification of severe  
2 misconduct and provided that it would result in disqualification  
3 until a worker is reemployed for four weeks.

4 P.L.2010, c.37, however, lacked clear definition of either  
5 “misconduct” or its new category of “severe misconduct,” which  
6 resulted in repeated court decisions preventing that act from being  
7 implemented. This bill reinstates the UI law’s provisions on  
8 misconduct as they had been before the enactment of P.L.2010,  
9 c.37.