

**SENATE, No. 218**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

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

**District 18 (Middlesex)**

**SYNOPSIS**

Establishes standards regarding the disqualification of claimants for unemployment compensation for misconduct.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning unemployment compensation claims and  
2 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 simple misconduct **【connected with the work】**, and  
34 for the seven weeks which immediately follow that week, as  
35 determined in each case. “Simple misconduct” means misconduct,  
36 other than severe or gross misconduct, which is improper,  
37 intentional, connected with the individual’s work, malicious, within  
38 the individual’s control, not a good faith error of judgment or  
39 discretion, and is either a deliberate failure, without good cause, to  
40 comply with the employer’s lawful and reasonable rules made  
41 known to the employee or a disregard of standards of behavior the  
42 employer has a reasonable right to expect, including reasonable  
43 safety standards and reasonable standards for a workplace free of  
44 drug and substance abuse. “Simple misconduct” includes: (1)  
45 repeated failure, without good cause, to comply with lawful,  
46 reasonable instructions of the employer not requiring the employee  
47 to perform services beyond the scope of the employee’s customary

**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 job duties; (2) falsification of an employment application or other  
2 record required by the employer to determine the employee's  
3 qualifications or suitability for the job or omitting information  
4 which created a material misrepresentation of the employee's  
5 qualifications or suitability for the job; (3) tardiness without good  
6 cause which is chronic or excessive and repeated after written  
7 warnings from the employer; and (4) repeated unauthorized  
8 absences without good cause, such as illness or other compelling  
9 personal circumstance, or unjustified failure to provide notice prior  
10 to the unauthorized absences. An unauthorized absence without  
11 good cause for five or more consecutive work days may constitute  
12 job abandonment and subject the individual to disqualification for  
13 voluntarily leaving work without good cause attributable to work  
14 pursuant to subsection (a) of this section. An individual's discharge  
15 for failure to meet the employer's standards regarding quality or  
16 quantity of work shall not be considered misconduct unless the  
17 employer demonstrates to the division that the standards are  
18 reasonable and that the individual deliberately performed below the  
19 standards.

20 For the week in which the individual has been suspended or  
21 discharged for severe misconduct connected with the individual's  
22 work, and for each week thereafter until the individual becomes  
23 reemployed and works four weeks in employment, which may  
24 include employment for the federal government, and has earned in  
25 employment at least six times the individual's weekly benefit rate,  
26 as determined in each case. [Examples of severe misconduct  
27 include, but are not necessarily limited to, the following: repeated  
28 violations of an employer's rule or policy, repeated lateness or  
29 absences after a written warning by an employer, falsification of  
30 records, physical assault or threats that do not constitute gross  
31 misconduct as defined in this section, misuse of benefits, misuse of  
32 sick time, abuse of leave, theft of company property, excessive use  
33 of intoxicants or drugs on work premises, theft of time, or where the  
34 behavior is malicious and deliberate but is not considered gross  
35 misconduct as defined in this section.] "Severe misconduct" means  
36 misconduct connected with the individual's work other than gross  
37 misconduct, which: (1) is committed with actual malice and  
38 deliberate disregard for property, safety or life of the employer,  
39 fellow employees, contractors, invitees of the employer, or  
40 members of the public at the worksite, or consumers of the  
41 employer's products or services, and consists of physical assault,  
42 threats of physical assault, or theft or other employee-caused  
43 property or monetary loss or damage so serious that it is determined  
44 by the division that the penalties for simple misconduct are not  
45 sufficient; or (2) is comprised of a pattern of instances of simple  
46 misconduct which are, after repeated written warnings from the  
47 employer, repeated so frequently that they cause substantial  
48 disruption of the employer's operations or substantial property or

1 monetary damage or loss for the employer which is so serious that it  
2 is determined by the division that the penalties for simple  
3 misconduct are not sufficient. Disruption of operations from a  
4 cessation of work during a labor dispute shall not be regarded as  
5 severe misconduct for the purposes of this subsection (b).

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

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

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

24 To sustain disqualification under this subsection (b), the burden  
25 of proof is upon the employer, who shall provide written  
26 documentation, to show that the employee's actions constitute  
27 simple misconduct, severe misconduct, or gross misconduct.

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

36 (1) In determining whether or not any work is suitable for an  
37 individual, consideration shall be given to the degree of risk  
38 involved to health, safety, and morals, the individual's physical  
39 fitness and prior training, experience and prior earnings, the  
40 individual's length of unemployment and prospects for securing  
41 local work in the individual's customary occupation, and the  
42 distance of the available work from the individual's residence. In  
43 the case of work in the production and harvesting of agricultural  
44 crops, the work shall be deemed to be suitable without regard to the  
45 distance of the available work from the individual's residence if all  
46 costs of transportation are provided to the individual and the terms  
47 and conditions of hire are as favorable or more favorable to the

1 individual as the terms and conditions of the individual's base year  
2 employment.

3 (2) Notwithstanding any other provisions of this chapter, no  
4 work shall be deemed suitable and benefits shall not be denied  
5 under this chapter to any otherwise eligible individual for refusing  
6 to accept new work under any of the following conditions: the  
7 position offered is vacant due directly to a strike, lockout, or other  
8 labor dispute; the remuneration, hours, or other conditions of the  
9 work offered are substantially less favorable to the individual than  
10 those prevailing for similar work in the locality; or, the individual,  
11 as a condition of being employed, would be required to join a  
12 company union or to resign from or refrain from joining any bona  
13 fide labor organization.

14 (d) If it is found that this unemployment is due to a stoppage of  
15 work which exists because of a labor dispute at the factory,  
16 establishment or other premises at which the individual is or was  
17 last employed.

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

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

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

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

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

44 (f) For any week with respect to which or a part of which the  
45 individual has received or is seeking unemployment benefits under  
46 an unemployment compensation law of any other state or of the  
47 United States; provided that if the appropriate agency of the other

1 state or of the United States finally determines that the individual is  
2 not entitled to unemployment benefits, this disqualification shall not  
3 apply.

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

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

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

38 (2) For purposes of this subsection (h), the term "suitable"  
39 employment means, with respect to an individual, work of a  
40 substantially equal or higher skill level than the individual's past  
41 adversely affected employment, as defined for purposes of the  
42 "Trade Act of 1974," Pub.L.93-618 (19 U.S.C. s.2101 et seq.) and  
43 wages for this work at not less than 80% of the individual's average  
44 weekly wage, as determined for the purposes of the "Trade Act of  
45 1974."

46 (i) For benefit years commencing after June 30, 1984, for any  
47 week in which the individual is a student in full attendance at, or on

1 vacation from, an educational institution, as defined in subsection  
2 (y) of R.S.43:21-19; except that this subsection shall not apply to  
3 any individual attending a training program approved by the  
4 division to enhance the individual's employment opportunities, as  
5 defined under subsection (c) of R.S.43:21-4; nor shall this  
6 subsection apply to any individual who, during the individual's base  
7 year, earned sufficient wages, as defined under subsection (e) of  
8 R.S.43:21-4, while attending an educational institution during  
9 periods other than established and customary vacation periods or  
10 holiday recesses at the educational institution, to establish a claim  
11 for benefits. For purposes of this subsection, an individual shall be  
12 treated as a full-time student for any period:

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

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

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

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

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

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

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

36 (4) Medical documentation of the domestic violence;

37 (5) Certification from a certified Domestic Violence Specialist  
38 or the director of a designated domestic violence agency that the  
39 individual is a victim of domestic violence; or

40 (6) Other documentation or certification of the domestic  
41 violence provided by a social worker, member of the clergy, shelter  
42 worker or other professional who has assisted the individual in  
43 dealing with the domestic violence.

44 For the purposes of this subsection (j):

45 "Certified Domestic Violence Specialist" means a person who  
46 has fulfilled the requirements of certification as a Domestic  
47 Violence Specialist established by the New Jersey Association of  
48 Domestic Violence Professionals; and "designated domestic

1 violence agency" means a county-wide organization with a primary  
2 purpose to provide services to victims of domestic violence, and  
3 which provides services that conform to the core domestic violence  
4 services profile as defined by the Division of Youth and Family  
5 Services in the Department of Children and Families and is under  
6 contract with the division for the express purpose of providing such  
7 services.

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

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

30  
31 2. This act shall take effect immediately.

## 32 33 34 STATEMENT

35  
36 This bill amends the current provisions of R.S.43:21-5 regarding  
37 disqualification from unemployment insurance (UI) benefits for  
38 misconduct by claimants. The bill retains the provisions of  
39 P.L.2010, c.37 that bar UI benefits in cases of "severe misconduct"  
40 by claimants and increase periods of disqualification from and  
41 requalification for benefits, but amends the law to clearly define  
42 "simple misconduct" and "severe misconduct" in a manner that  
43 provides fair treatment to laid off workers and clear, consistent  
44 procedural standards for employers, as follows:

45 1. The bill adds to R.S.43:21-5 a definition of "simple  
46 misconduct." The current UI statute has no definition at all of any  
47 misconduct other than "gross" (criminal) misconduct. To be  
48 regarded under the bill as "simple misconduct," behavior would



1 have to be: improper; intentional; work-connected; malicious;  
2 within the individual's control; not a good faith error; and either a  
3 deliberate violation of the employer's lawful, reasonable rules made  
4 known to the employee, or a disregard of reasonable standards of  
5 behavior. For example, for tardiness and absences to be regarded as  
6 simple misconduct under the bill, they must be repeated or chronic  
7 and without good cause, and unsatisfactory work performance must  
8 be deliberate and below reasonable standards.

9 2. The bill replaces the law's definition of "severe  
10 misconduct," which is currently only a list of examples, with a  
11 comprehensive definition of "severe misconduct" as work-  
12 connected misconduct other than gross misconduct which either: (1)  
13 is committed with malice and deliberate disregard for the property,  
14 safety or life of people at the worksite or consumers, and consists of  
15 violence, threats, theft, or other employee-caused, substantial  
16 property or monetary loss; or (2) is comprised of a pattern of  
17 instances of simple misconduct which are, after written employer  
18 warnings, repeated so frequently that they cause substantial  
19 property damage or disruption of employer operations.

20 3. The bill adds to the UI statute the requirement found in  
21 existing regulations that the burden of proof is on the employer to  
22 demonstrate that employee actions constitute misconduct, and adds  
23 a requirement not in the current or proposed regulations that the  
24 employer must provide written documentation.