

# SENATE, No. 801

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**SYNOPSIS**

Provides that certain employees of educational institutions are eligible for unemployment benefits under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning unemployment benefits and employees of  
2 educational institutions and amending R.S.43:21-4.

3

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

6

7 1. R.S.43:21-4 is amended to read as follows:

8 43:21-4. Benefit eligibility conditions. An unemployed  
9 individual shall be eligible to receive benefits with respect to any  
10 week eligible only if:

11 (a) The individual has filed a claim at an unemployment  
12 insurance claims office and thereafter continues to report at an  
13 employment service office or unemployment insurance claims  
14 office, as directed by the division in accordance with such  
15 regulations as the division may prescribe, except that the division  
16 may, by regulation, waive or alter either or both of the requirements  
17 of this subsection as to individuals attached to regular jobs, and as  
18 to such other types of cases or situations with respect to which the  
19 division finds that compliance with such requirements would be  
20 oppressive, or would be inconsistent with the purpose of this act;  
21 provided that no such regulation shall conflict with subsection (a) of  
22 R.S.43:21-3.

23 (b) The individual has made a claim for benefits in accordance  
24 with the provisions of subsection (a) of R.S.43:21-6.

25 (c) (1) The individual is able to work, and is available for work,  
26 and has demonstrated to be actively seeking work, except as  
27 hereinafter provided in this subsection or in subsection (f) of this  
28 section.

29 (2) The director may modify the requirement of actively seeking  
30 work if such modification of this requirement is warranted by  
31 economic conditions.

32 (3) No individual, who is otherwise eligible, shall be deemed  
33 ineligible, or unavailable for work, because the individual is on  
34 vacation, without pay, during said week, if said vacation is not the  
35 result of the individual's own action as distinguished from any  
36 collective action of a collective bargaining agent or other action  
37 beyond the individual's control.

38 (4) (A) Subject to such limitations and conditions as the division  
39 may prescribe, an individual, who is otherwise eligible, shall not be  
40 deemed unavailable for work or ineligible because the individual is  
41 attending a training program approved for the individual by the  
42 division to enhance the individual's employment opportunities or  
43 because the individual failed or refused to accept work while  
44 attending such program.

45 (B) For the purpose of this paragraph (4), any training program  
46 shall be regarded as approved by the division for the individual if  
47 the program and the individual meet the following requirements:

**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 (i) The training is for a labor demand occupation and is likely to  
2 enhance the individual's marketable skills and earning power,  
3 except that the training may be for an occupation other than a labor  
4 demand occupation if the individual is receiving short-time benefits  
5 pursuant to the provisions of P.L.2011, c.154 (C.43:21-20.3 et al.)  
6 and the training is necessary to prevent a likely loss of jobs;

7 (ii) The training is provided by a competent and reliable private  
8 or public entity approved by the Commissioner of Labor and  
9 Workforce Development pursuant to the provisions of section 8 of  
10 the "1992 New Jersey Employment and Workforce Development  
11 Act," P.L.1992, c.43 (C.34:15D-8);

12 (iii) The individual can reasonably be expected to complete the  
13 program, either during or after the period of benefits;

14 (iv) The training does not include on the job training or other  
15 training under which the individual is paid by an employer for work  
16 performed by the individual during the time that the individual  
17 receives benefits; and

18 (v) The individual enrolls in vocational training, remedial  
19 education or a combination of both on a full-time basis, except that  
20 the training or education may be on a part-time basis if the  
21 individual is receiving short-time benefits pursuant to the provisions  
22 of P.L.2011, c.154 (C.43:21-20.3 et al.).

23 (C) If the requirements of subparagraph (B) of this paragraph (4)  
24 are met, the division shall not withhold approval of the training  
25 program for the individual for any of the following reasons:

26 (i) The training includes remedial basic skills education  
27 necessary for the individual to successfully complete the vocational  
28 component of the training;

29 (ii) The training is provided in connection with a program under  
30 which the individual may obtain a college degree, including a post-  
31 graduate degree;

32 (iii) The length of the training period under the program; or

33 (iv) The lack of a prior guarantee of employment upon  
34 completion of the training.

35 (D) For the purpose of this paragraph (4), "labor demand  
36 occupation" means an occupation for which there is or is likely to  
37 be an excess of demand over supply for adequately trained workers,  
38 including, but not limited to, an occupation designated as a labor  
39 demand occupation by the Center for Occupational Employment  
40 Information pursuant to the provisions of subsection d. of section  
41 27 of P.L.2005, c.354 (C.34:1A-86).

42 (5) An unemployed individual, who is otherwise eligible, shall  
43 not be deemed unavailable for work or ineligible solely by reason of  
44 the individual's attendance before a court in response to a summons  
45 for service on a jury.

46 (6) An unemployed individual, who is otherwise eligible, shall  
47 not be deemed unavailable for work or ineligible solely by reason of

1 the individual's attendance at the funeral of an immediate family  
2 member, provided that the duration of the attendance does not  
3 extend beyond a two-day period.

4 For purposes of this paragraph, "immediate family member"  
5 includes any of the following individuals: father, mother, mother-  
6 in-law, father-in-law, grandmother, grandfather, grandchild, spouse,  
7 child, child placed by the Division of Youth and Family Services in  
8 the Department of Children and Families, sister or brother of the  
9 unemployed individual and any relatives of the unemployed  
10 individual residing in the unemployed individual's household.

11 (7) No individual, who is otherwise eligible, shall be deemed  
12 ineligible or unavailable for work with respect to any week because,  
13 during that week, the individual fails or refuses to accept work  
14 while the individual is participating on a full-time basis in self-  
15 employment assistance activities authorized by the division,  
16 whether or not the individual is receiving a self-employment  
17 allowance during that week.

18 (8) Any individual who is determined to be likely to exhaust  
19 regular benefits and need reemployment services based on  
20 information obtained by the worker profiling system shall not be  
21 eligible to receive benefits if the individual fails to participate in  
22 available reemployment services to which the individual is referred  
23 by the division or in similar services, unless the division determines  
24 that:

25 (A) The individual has completed the reemployment services; or  
26 (B) There is justifiable cause for the failure to participate, which  
27 shall include participation in employment and training, self-  
28 employment assistance activities or other activities authorized by  
29 the division to assist reemployment or enhance the marketable skills  
30 and earning power of the individual and which shall include any  
31 other circumstance indicated pursuant to this section in which an  
32 individual is not required to be available for and actively seeking  
33 work to receive benefits.

34 (9) An unemployed individual, who is otherwise eligible, shall  
35 not be deemed unavailable for work or ineligible solely by reason of  
36 the individual's work as a board worker for a county board of  
37 elections on an election day.

38 (10) An individual who is employed by a shared work employer  
39 and is otherwise eligible for benefits shall not be deemed ineligible  
40 for short-time benefits because the individual is unavailable for  
41 work with employers other than the shared work employer, so long  
42 as:

43 (A) The individual is able to work and is available to work the  
44 individual's normal full-time hours for the shared work employer;  
45 or

46 (B) The individual is attending a training program which is in  
47 compliance with the provisions of paragraph (4) of subsection (c) of

1 this section and the agreements and certifications required pursuant  
2 to the provisions of section 2 of P.L.2011, c.154 (C.43:21-20.4).

3 (d) With respect to any benefit year commencing before January  
4 1, 2002, the individual has been totally or partially unemployed for  
5 a waiting period of one week in the benefit year which includes that  
6 week. When benefits become payable with respect to the third  
7 consecutive week next following the waiting period, the individual  
8 shall be eligible to receive benefits as appropriate with respect to  
9 the waiting period. No week shall be counted as a week of  
10 unemployment for the purposes of this subsection:

11 (1) If benefits have been paid, or are payable with respect  
12 thereto; provided that the requirements of this paragraph shall be  
13 waived with respect to any benefits paid or payable for a waiting  
14 period as provided in this subsection;

15 (2) If it has constituted a waiting period week under the  
16 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
17 et al.);

18 (3) Unless the individual fulfills the requirements of subsections  
19 (a) and (c) of this section;

20 (4) If with respect thereto, claimant was disqualified for benefits  
21 in accordance with the provisions of subsection (d) of R.S.43:21-5.

22 The waiting period provided by this subsection shall not apply to  
23 benefit years commencing on or after January 1, 2002. An  
24 individual whose total benefit amount was reduced by the  
25 application of the waiting period to a claim which occurred on or  
26 after January 1, 2002 and before the effective date of P.L.2002,  
27 c.13, shall be permitted to file a claim for the additional benefits  
28 attributable to the waiting period in the form and manner prescribed  
29 by the division, but not later than the 180th day following the  
30 effective date of P.L.2002, c.13 unless the division determines that  
31 there is good cause for a later filing.

32 (e) (1) (Deleted by amendment, P.L.2001, c.17).

33 (2) (Deleted by amendment, P.L.2008, c.17).

34 (3) (Deleted by amendment, P.L.2008, c.17).

35 (4) With respect to benefit years commencing on or after  
36 January 7, 2001, except as otherwise provided in paragraph (5) of  
37 this subsection, the individual has, during his base year as defined  
38 in subsection (c) of R.S.43:21-19:

39 (A) Established at least 20 base weeks as defined in paragraphs  
40 (2) and (3) of subsection (t) of R.S.43:21-19; or

41 (B) If the individual has not met the requirements of  
42 subparagraph (A) of this paragraph (4), earned remuneration not  
43 less than an amount 1,000 times the minimum wage in effect  
44 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October  
45 1 of the calendar year preceding the calendar year in which the  
46 benefit year commences, which amount shall be adjusted to the next  
47 higher multiple of \$100 if not already a multiple thereof.

1       (5) With respect to benefit years commencing on or after  
2 January 7, 2001, notwithstanding the provisions of paragraph (4) of  
3 this subsection, an unemployed individual claiming benefits on the  
4 basis of service performed in the production and harvesting of  
5 agricultural crops shall, subject to the limitations of subsection (i)  
6 of R.S.43:21-19, be eligible to receive benefits if during his base  
7 year, as defined in subsection (c) of R.S.43:21-19, the individual:

8       (A) Has established at least 20 base weeks as defined in  
9 paragraphs (2) and (3) of subsection (t) of R.S.43:21-19; or

10       (B) Has earned remuneration not less than an amount 1,000  
11 times the minimum wage in effect pursuant to section 5 of  
12 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year  
13 preceding the calendar year in which the benefit year commences,  
14 which amount shall be adjusted to the next higher multiple of \$100  
15 if not already a multiple thereof; or

16       (C) Has performed at least 770 hours of service in the  
17 production and harvesting of agricultural crops.

18       (6) The individual applying for benefits in any successive  
19 benefit year has earned at least six times his previous weekly  
20 benefit amount and has had four weeks of employment since the  
21 beginning of the immediately preceding benefit year. This  
22 provision shall be in addition to the earnings requirements specified  
23 in paragraph (4) or (5) of this subsection, as applicable.

24       (f) (1) The individual has suffered any accident or sickness not  
25 compensable under the workers' compensation law, R.S.34:15-1 et  
26 seq. and resulting in the individual's total disability to perform any  
27 work for remuneration, and would be eligible to receive benefits  
28 under this chapter (R.S.43:21-1 et seq.) (without regard to the  
29 maximum amount of benefits payable during any benefit year)  
30 except for the inability to work and has furnished notice and proof  
31 of claim to the division, in accordance with its rules and  
32 regulations, and payment is not precluded by the provisions of  
33 R.S.43:21-3(d); provided, however, that benefits paid under this  
34 subsection (f) shall be computed on the basis of only those base  
35 year wages earned by the claimant as a "covered individual," as  
36 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
37 27); provided further that no benefits shall be payable under this  
38 subsection to any individual:

39       (A) For any period during which such individual is not under the  
40 care of a legally licensed physician, dentist, optometrist, podiatrist,  
41 practicing psychologist, advanced practice nurse, or chiropractor,  
42 who, when requested by the division, shall certify within the scope  
43 of the practitioner's practice, the disability of the individual, the  
44 probable duration thereof, and, where applicable, the medical facts  
45 within the practitioner's knowledge;

46       (B) (Deleted by amendment, P.L.1980, c.90.)

1 (C) For any period of disability due to willfully or intentionally  
2 self-inflicted injury, or to injuries sustained in the perpetration by  
3 the individual of a crime of the first, second or third degree;

4 (D) For any week with respect to which or a part of which the  
5 individual has received or is seeking benefits under any  
6 unemployment compensation or disability benefits law of any other  
7 state or of the United States; provided that if the appropriate agency  
8 of such other state or the United States finally determines that the  
9 individual is not entitled to such benefits, this disqualification shall  
10 not apply;

11 (E) For any week with respect to which or part of which the  
12 individual has received or is seeking disability benefits under the  
13 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
14 et al.);

15 (F) For any period of disability commencing while such  
16 individual is a "covered individual," as defined in subsection (b) of  
17 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
18 c.110 (C.43:21-27).

19 (2) The individual is taking family temporary disability leave to  
20 provide care for a family member with a serious health condition or  
21 to be with a child during the first 12 months after the child's birth or  
22 placement of the child for adoption or as a foster child with the  
23 individual, and the individual would be eligible to receive benefits  
24 under R.S.43:21-1 et seq. (without regard to the maximum amount  
25 of benefits payable during any benefit year) except for the  
26 individual's unavailability for work while taking the family  
27 temporary disability leave, and the individual has furnished notice  
28 and proof of claim to the division, in accordance with its rules and  
29 regulations, and payment is not precluded by the provisions of  
30 R.S.43:21-3(d) provided, however, that benefits paid under this  
31 subsection (f) shall be computed on the basis of only those base  
32 year wages earned by the claimant as a "covered individual," as  
33 defined in subsection (b) of section 3 of P.L.1948, c.110 (C.43:21-  
34 27); provided further that no benefits shall be payable under this  
35 subsection to any individual:

36 (A) For any week with respect to which or a part of which the  
37 individual has received or is seeking benefits under any  
38 unemployment compensation or disability benefits law of any other  
39 state or of the United States; provided that if the appropriate agency  
40 of such other state or the United States finally determines that the  
41 individual is not entitled to such benefits, this disqualification shall  
42 not apply;

43 (B) For any week with respect to which or part of which the  
44 individual has received or is seeking disability benefits for a  
45 disability of the individual under the "Temporary Disability  
46 Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

47 (C) For any period of family temporary disability leave  
48 commencing while the individual is a "covered individual," as

1 defined in subsection (b) of section 3 of the "Temporary Disability  
2 Benefits Law," P.L.1948, c.110 (C.43:21-27); or

3 (D) For any period of family temporary disability leave for a  
4 serious health condition of a family member of the claimant during  
5 which the family member is not receiving inpatient care in a  
6 hospital, hospice, or residential medical care facility and is not  
7 subject to continuing medical treatment or continuing supervision  
8 by a health care provider, who, when requested by the division,  
9 shall certify within the scope of the provider's practice, the serious  
10 health condition of the family member, the probable duration  
11 thereof, and, where applicable, the medical facts within the  
12 provider's knowledge.

13 (3) Benefit payments under this subsection (f) shall be charged  
14 to and paid from the State disability benefits fund established by the  
15 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
16 et al.), and shall not be charged to any employer account in  
17 computing any employer's experience rate for contributions payable  
18 under this chapter.

19 (g) Benefits based on service in employment defined in  
20 subparagraphs (B) and (C) of R.S.43:21-19 (i)(1) shall be payable  
21 in the same amount and on the terms and subject to the same  
22 conditions as benefits payable on the basis of other service subject  
23 to the "unemployment compensation law"; except that,  
24 notwithstanding any other provisions of the "unemployment  
25 compensation law":

26 (1) With respect to service performed after December 31, 1977,  
27 in an instructional research, or principal administrative capacity for  
28 an educational institution, benefits shall not be paid based on such  
29 services for any week of unemployment commencing during the  
30 period between two successive academic years, or during a similar  
31 period between two regular terms, whether or not successive, or  
32 during a period of paid sabbatical leave provided for in the  
33 individual's contract, to any individual if such individual performs  
34 such services in the first of such academic years (or terms) and if  
35 there is a contract or a reasonable assurance that such individual  
36 will perform services in any such capacity for any educational  
37 institution in the second of such academic years or terms;

38 (2) With respect to weeks of unemployment beginning after  
39 September 3, 1982, on the basis of service performed in any other  
40 capacity for an educational institution, benefits shall not be paid on  
41 the basis of such services to any individual for any week which  
42 commences during a period between two successive academic years  
43 or terms if such individual performs such services in the first of  
44 such academic years or terms and there is a reasonable assurance  
45 that such individual will perform such services in the second of  
46 such academic years or terms, except that if benefits are denied to  
47 any individual under this paragraph (2) and the individual was not



1 offered an opportunity to perform these services for the educational  
2 institution for the second of any academic years or terms, the  
3 individual shall be entitled to a retroactive payment of benefits for  
4 each week for which the individual filed a timely claim for benefits  
5 and for which benefits were denied solely by reason of this clause;

6 (3) With respect to those services described in paragraphs (1)  
7 and (2) above, benefits shall not be paid on the basis of such  
8 services to any individual for any week which commences during  
9 an established and customary vacation period or holiday recess if  
10 such individual performs such services in the period immediately  
11 before such vacation period or holiday recess, and there is a  
12 reasonable assurance that such individual will perform such  
13 services in the period immediately following such period or holiday  
14 recess;

15 (4) With respect to any services described in paragraphs (1) and  
16 (2) above, benefits shall not be paid as specified in paragraphs (1),  
17 (2), and (3) above to any individual who performed those services  
18 in an educational institution while in the employ of an educational  
19 service agency, and for this purpose the term "educational service  
20 agency" means a governmental agency or governmental entity  
21 which is established and operated exclusively for the purpose of  
22 providing those services to one or more educational institutions.

23 (5) As used in this subsection:

24 "Established and customary vacation period or holiday recess"  
25 includes those breaks scheduled during fall, winter, and spring  
26 recesses when those vacation periods occur within a term or  
27 semester. "Established and customary vacation period or holiday  
28 recess" shall not include the summer term or semester, unless,  
29 based on objective criteria including enrollment and staffing, the  
30 summer is not in fact a part of the academic year for a particular  
31 institution.

32 "Reasonable assurance" means a written, verbal, or implied  
33 agreement that the employee will perform services in the same  
34 capacity during the ensuing academic year or term as in the first  
35 academic year or term. A person shall not be deemed to be  
36 performing services "in the same capacity" unless those services are  
37 rendered under the same terms or conditions of employment in the  
38 ensuing year as in the first academic year or term.

39 An individual who is tenured or holds tenure track status is  
40 considered to have reasonable assurance, unless advised otherwise.  
41 For the purposes of this subsection, tenure track status means a  
42 probationary faculty employee having an opportunity to be  
43 reviewed for tenure.

44 A person is presumed not to have reasonable assurance under an  
45 offer that is conditioned on enrollment, funding, program changes,  
46 or other circumstances under the control of the employer. It is the  
47 employer's burden to provide sufficient documentation to overcome  
48 this presumption. Reasonable assurance shall be determined on a

1 case-by-case basis considering the totality of circumstances rather  
2 than on the existence of any one factor. For an individual to be  
3 regarded as having reasonable assurance of employment, the totality  
4 of circumstances must show that it is highly probable that there is a  
5 job available for the employee in the following academic year or  
6 term. If any contingencies in the employment offer are within the  
7 employer's control, the claimant shall not be regarded as having a  
8 reasonable assurance of employment. Contingencies within the  
9 employer's control include, but are not limited to, enrollment,  
10 funding, including appropriations and the allocation of funding,  
11 program changes, final course offering, and facility availability.

12 (h) Benefits shall not be paid to any individual on the basis of  
13 any services, substantially all of which consist of participating in  
14 sports or athletic events or training or preparing to so participate,  
15 for any week which commences during the period between two  
16 successive sports seasons (or similar periods) if such individual  
17 performed such services in the first of such seasons (or similar  
18 periods) and there is a reasonable assurance that such individual  
19 will perform such services in the later of such seasons (or similar  
20 periods).

21 (i) (1) Benefits shall not be paid on the basis of services  
22 performed by an alien unless such alien is an individual who was  
23 lawfully admitted for permanent residence at the time the services  
24 were performed and was lawfully present for the purpose of  
25 performing the services or otherwise was permanently residing in  
26 the United States under color of law at the time the services were  
27 performed (including an alien who is lawfully present in the United  
28 States as a result of the application of the provisions of section  
29 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the Immigration and  
30 Nationality Act (8 U.S.C. s.1101 et seq.)); provided that any  
31 modifications of the provisions of section 3304(a)(14) of the  
32 Federal Unemployment Tax Act (26 U.S.C. s. 3304 (a) (14)) as  
33 provided by Pub.L.94-566, which specify other conditions or other  
34 effective dates than stated herein for the denial of benefits based on  
35 services performed by aliens and which modifications are required  
36 to be implemented under State law as a condition for full tax credit  
37 against the tax imposed by the Federal Unemployment Tax Act,  
38 shall be deemed applicable under the provisions of this section.

39 (2) Any data or information required of individuals applying for  
40 benefits to determine whether benefits are not payable to them  
41 because of their alien status shall be uniformly required from all  
42 applicants for benefits.

43 (3) In the case of an individual whose application for benefits  
44 would otherwise be approved, no determination that benefits to such  
45 individual are not payable because of alien status shall be made  
46 except upon a preponderance of the evidence.

47 (j) Notwithstanding any other provision of this chapter, the  
48 director may, to the extent that it may be deemed efficient and

1 economical, provide for consolidated administration by one or more  
2 representatives or deputies of claims made pursuant to subsection  
3 (f) of this section with those made pursuant to Article III (State  
4 plan) of the "Temporary Disability Benefits Law," P.L.1948, c.110  
5 (C.43:21-25 et al.).  
6 (cf: P.L.2019, c.37, s.5)  
7

8 2. This act shall take effect on the 30th day next following  
9 enactment.  
10

11  
12 STATEMENT  
13

14 This bill provides that certain employees of educational  
15 institutions may not be denied unemployment benefits when those  
16 employees are denied employment during the summer semester or  
17 term. The bill's intent is to provide that certain adjunct and  
18 nonpermanent faculty and staff may not be denied unemployment  
19 benefits during summer terms, under certain conditions.

20 Under current law, unemployment benefits are not paid to  
21 employees of educational institutions for any week which  
22 commences during an established and customary vacation period or  
23 holiday recess if the employee works in the period immediately  
24 before the vacation or holiday recess, and there is a reasonable  
25 assurance that the employee will work in the period immediately  
26 following the vacation or holiday recess. "Established and  
27 customary vacation period or holiday recess" has been interpreted  
28 to include the summer, even in cases where the educational  
29 institution is in session during the summer, and has a summer  
30 semester or term.

31 This bill provides that the summer may not be considered an  
32 established and customary vacation period or holiday recess for  
33 purposes of determining unemployment benefits eligibility, unless  
34 based on objective criteria including enrollment and staffing, the  
35 summer is not in fact a part of the academic year for a particular  
36 institution.

37 The bill also provides that "reasonable assurance" means a  
38 written, verbal, or implied agreement that the employee will  
39 perform services in the same capacity during the ensuing academic  
40 year or term as in the first academic year or term. Under the bill, a  
41 person is not deemed to be performing services "in the same  
42 capacity" unless those services are rendered under the same terms  
43 or conditions of employment in the ensuing year as in the first  
44 academic year or term.