

SENATE, No. 2303

STATE OF NEW JERSEY

INTRODUCED DECEMBER 1, 1997

By Senator LIPMAN

1 AN ACT concerning unemployment benefits and amending R.S.43:21-  
2 5.

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

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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 voluntarily  
10 without good cause attributable to such work, and for each week  
11 thereafter until the individual becomes reemployed and works four  
12 weeks in employment, which may include employment for the federal  
13 government, and has earned in employment at least six times the  
14 individual's weekly benefit rate, as determined in each case. This  
15 subsection shall apply to any individual seeking unemployment benefits  
16 on the basis of employment in the production and harvesting of  
17 agricultural crops, including any individual who was employed in the  
18 production and harvesting of agricultural crops on a contract basis and  
19 who has refused an offer of continuing work with that employer  
20 following the completion of the minimum period of work required to  
21 fulfill the contract.

22 (b) For the week in which the individual has been suspended or  
23 discharged for misconduct connected with the work, and for the five  
24 weeks which immediately follow that week (in addition to the waiting  
25 period), as determined in each case. In the event the discharge should  
26 be rescinded by the employer voluntarily or as a result of mediation or  
27 arbitration, this subsection (b) shall not apply, provided, however, an  
28 individual who is restored to employment with back pay shall return  
29 any benefits received under this chapter for any week of  
30 unemployment for which the individual is subsequently compensated  
31 by the employer.

32 If the discharge was for gross misconduct connected with the work  
33 because of the commission of an act punishable as a crime of the first,  
34 second, third or fourth degree under the "New Jersey Code of Criminal

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 Justice," N.J.S.2C:1-1 et seq., the individual shall be disqualified in  
2 accordance with the disqualification prescribed in subsection (a) of this  
3 section and no benefit rights shall accrue to any individual based upon  
4 wages from that employer for services rendered prior to the day upon  
5 which the individual was discharged; except that no individual shall be  
6 disqualified in accordance with the disqualification prescribed in  
7 subsection (a) of this section for gross misconduct connected with the  
8 work unless the individual is indicted for a crime of the first, second,  
9 third or fourth degree because of the gross misconduct.

10 The director shall insure that any appeal of a determination holding  
11 the individual disqualified for gross misconduct in connection with the  
12 work shall be expeditiously processed by the appeal tribunal.

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

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

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

44 (d) If it is found that this unemployment is due to a stoppage of  
45 work which exists because of a labor dispute at the factory,  
46 establishment or other premises at which the individual is or was last

1 employed. No disqualification under this subsection shall apply if it is  
2 shown that:

3 (1) The individual is not participating in or financing or directly  
4 interested in the labor dispute which caused the stoppage of work; and

5 (2) The individual does not belong to a grade or class of workers  
6 of which, immediately before the commencement of the stoppage,  
7 there were members employed at the premises at which the stoppage  
8 occurs, any of whom are participating in or financing or directly  
9 interested in the dispute; provided that if in any case in which (1) or  
10 (2) above applies, separate branches of work which are commonly  
11 conducted as separate businesses in separate premises are conducted  
12 in separate departments of the same premises, each department shall,  
13 for the purpose of this subsection, be deemed to be a separate factory,  
14 establishment, or other premises.

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

17 (f) For any week with respect to which or a part of which the  
18 individual has received or is seeking unemployment benefits under an  
19 unemployment compensation law of any other state or of the United  
20 States; provided that if the appropriate agency of the other state or of  
21 the United States finally determines that the individual is not entitled  
22 to unemployment benefits, this disqualification shall not apply.

23 (g)(1) For a period of one year from the date of the discovery by  
24 the division of the illegal receipt or attempted receipt of benefits  
25 contrary to the provisions of this chapter, as the result of any false or  
26 fraudulent representation; provided that any disqualification may be  
27 appealed in the same manner as any other disqualification imposed  
28 hereunder; and provided further that a conviction in the courts of this  
29 State arising out of the illegal receipt or attempted receipt of these  
30 benefits in any proceeding instituted against the individual under the  
31 provisions of this chapter or any other law of this State shall be  
32 conclusive upon the appeals tribunal and the board of review.

33 (2) A disqualification under this subsection shall not preclude the  
34 prosecution of any civil, criminal or administrative action or  
35 proceeding to enforce other provisions of this chapter for the  
36 assessment and collection of penalties or the refund of any amounts  
37 collected as benefits under the provisions of R.S.43:21-16, or to  
38 enforce any other law, where an individual obtains or attempts to  
39 obtain by theft or robbery or false statements or representations any  
40 money from any fund created or established under this chapter or any  
41 negotiable or nonnegotiable instrument for the payment of money from  
42 these funds, or to recover money erroneously or illegally obtained by  
43 an individual from any fund created or established under this chapter.

44 (h)(1) Notwithstanding any other provisions of this chapter  
45 (R.S.43:21-1 et seq.), no otherwise eligible individual shall be denied  
46 benefits for any week because the individual is in training approved

1 under section 236(a)(1) of the Trade Act of 1974, P.L.93-618,  
2 19 U.S.C. s.2296, nor shall the individual be denied benefits by reason  
3 of leaving work to enter this training, provided the work left is not  
4 suitable employment, or because of the application to any week in  
5 training of provisions in this chapter (R.S.43:21-1 et seq.), or any  
6 applicable federal unemployment compensation law, relating to  
7 availability for work, active search for work, or refusal to accept  
8 work.

9 (2) For purposes of this subsection (h), the term "suitable"  
10 employment means, with respect to an individual, work of a  
11 substantially equal or higher skill level than the individual's past  
12 adversely affected employment (as defined for purposes of the Trade  
13 Act of 1974, P.L.93-618, 19 U.S.C. s.2102 et seq.), and wages for this  
14 work at not less than 80% of the individual's average weekly wage, as  
15 determined for the purposes of the Trade Act of 1974.

16 (i) For benefit years commencing after June 30, 1984, for any week  
17 in which the individual is a student in full attendance at, or on vacation  
18 from, an educational institution, as defined in subsection (y) of  
19 R.S.43:21-19; except that this subsection shall not apply to any  
20 individual attending a training program approved by the division to  
21 enhance the individual's employment opportunities, as defined under  
22 subsection (c) of R.S.43:21-4; nor shall this subsection apply to any  
23 individual who, during the individual's base year, earned sufficient  
24 wages, as defined under subsection (e) of R.S.43:21-4, while attending  
25 an educational institution during periods other than established and  
26 customary vacation periods or holiday recesses at the educational  
27 institution, to establish a claim for benefits. For purposes of this  
28 subsection, an individual shall be treated as a full-time student for any  
29 period:

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

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

35 (cf: P.L.1985, c.508, s.3)

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37 2. This act shall take effect immediately.

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#### STATEMENT

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42 This bill provides that no worker who is discharged from  
43 employment because of alleged misconduct related to the work may be  
44 disqualified for unemployment benefits for more than six weeks unless  
45 the individual is indicted for a crime of the first, second, third or fourth  
46 degree in connection with the alleged misconduct.

1 Current law disqualifies an individual from receiving unemployment  
2 benefits if the individual is discharged from work because of the  
3 commission, in connection with the work, of an act punishable as a  
4 crime of the first, second, third or fourth degree until the individual is  
5 reemployed, works at least four weeks, and earns at least six times the  
6 individual's weekly benefit rate. Current law also disqualifies an  
7 individual from receiving benefits for six weeks for work-related  
8 misconduct other than gross misconduct. This bill simply prevents the  
9 Department of Labor from imposing the more severe penalty for gross  
10 misconduct unless the individual is indicted for the alleged crime.

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15 Concerns disqualification from unemployment benefits for gross  
16 misconduct.